



Australian Energy Market Commission

Draft Amended Compensation Guidelines

Explanatory Statement and Invitation for Written Submissions

(under clause 6A.20(b) of the National Electricity Rules)

The Australian Energy Market Commission (AEMC or Commission) published “The Determination of Compensation Following the Application of the Administered Price Cap, Market Price Cap, Market Floor Price or Administered Floor Price Guidelines” (compensation guidelines) on 1 July 2009. These compensation guidelines support the operation of clause 3.14.6 of the National Electricity Rules (NER or Rules).

Following the recent application of the compensation guidelines to assess and determine a claim for compensation under NER clause 3.14.6, some issues with the compensation guidelines were identified. The Commission is seeking to amend these compensation guidelines to address these issues.

Clause 3.14.6(f) of the Rules provides that the AEMC may, from time to time, amend or replace the compensation guidelines in accordance with the transmission consultation procedures (rule 6A.20).

In accordance with clause 6A.20(b) of the transmission consultation procedures, to commence the process to amend the compensation guidelines, the Commission is required to publish:

- its proposed guidelines (i.e. the draft amended compensation guidelines);
- an explanatory statement that sets out the provisions of the Rules under which the proposed amendment to guidelines are to be made and the reasons for the amendment; and
- invite written submissions on the proposed amendment to the guidelines.

This explanatory statement sets out the provisions of the Rules under which the proposed amendments to the compensation guidelines are made and summarises the AEMC’s reasoning in proposing the amendments.

The Commission invites submissions on its draft amended compensation guidelines under clause 3.14.6 of the Rules by **10 December 2010**. Set out below is background information on the compensation guidelines for stakeholders.

Compensation due to the application of an administered price cap, market price cap, market floor price or administered floor price

The administered price period (APP) provisions of the Rules form an important component of the market safety net which operates to protect and sustain electricity trading during periods of high sustained prices in the spot market. If market prices in a region rise to levels which are likely to cause substantial financial stress, then those prices are capped by the Australian Energy Market Operator Limited (AEMO) until they return to lower levels. These periods of capped prices are known as APPs.

During an APP, market prices and dispatch of generation continue to be calculated normally, based on market participant bids and offers. However, the administered price cap (APC) and administered price floor are invoked to apply upper and lower limits on the published dispatch prices for energy and market ancillary services.

Following an application of an APC, market price cap, market price floor or administered floor price during an APP or market suspension in a region, there is an opportunity for market participants to claim compensation from AEMO in accordance with clause 3.14.6 of the Rules.

Content of the compensation guidelines

Clause 3.14.6(c) of the Rules requires that the compensation guidelines:

- identify the objectives for the payment of compensation as being to maintain the incentive: for scheduled generators, scheduled network service providers and other market participants to invest in plant that provides services during peak periods; and for market participants to supply energy and other services during an APP;
- require that the amount of compensation be based on costs directly incurred by the claimant and the value of any opportunities foregone;
- outline the methodology to be used to calculate the amount of any compensation payable; and
- set out the required information to be provided by AEMO and the claimant.

Purpose of the compensation guidelines

The compensation guidelines play an important role in the decision-making process. The key purpose of the compensation guidelines is to provide guidance to:

- a three member panel in providing advice to the Commission on compensation;¹
- the Commission when determining whether compensation should be paid and the amount of compensation payable under the Rules;² and
- potential claimants and AEMO on the information to be provided in support of a claim for compensation.

¹ The panel must apply the compensation guidelines under NER clause 3.14.6(l).

² The Commission must apply the compensation guidelines unless it is satisfied that there are compelling reasons not to do so under NER clause 3.14.6(p).

Requirements under clauses 3.14.6(c) and (f) of the Rules

The proposed amendments to the compensation guidelines are made under the following provisions of the Rules:

- clause 3.14.6(c) requires the AEMC to develop and publish guidelines with respect to certain matters which are set out in detail in that clause, in accordance with the transmission consultation procedures contained in rule 6A.20 of the Rules; and
- clause 3.14.6(f) provides that the AEMC may, from time to time, amend or replace the compensation guidelines in accordance with the transmission consultation procedures.

Amendments made to the compensation guidelines

On 8 September 2010, the Commission determined that compensation is payable to Synergen Power Pty Ltd in relation to its claim for compensation under clause 3.14.6 of the Rules. The compensation claim related to the application of the APC during an APP in South Australia between 29 January 2009 and 7 February 2009. This was the first compensation claim considered by the Commission under this clause.

Following the practical application of the compensation guidelines for this claim, it was identified that the confidentiality section of the compensation guidelines was inconsistent with the AEMC's obligations to protect confidential information under the Australian Energy Market Commission Establishment Act 2004 (SA) (AEMC Act) and the National Electricity Law (NEL). Therefore, the confidentiality section of the compensation guidelines requires updating.

During the processing of this first compensation claim, other practical matters arose that the AEMC considers should be addressed in the amended compensation guidelines to provide further guidance to potential claimants.

The Commission therefore proposes to amend the compensation guidelines in the following manner. The following amendments are marked up in the draft amended compensation guidelines:

- foreword and section 1: clarifying the purpose of the guidelines;
- version control table added;
- section 3: the commencement date for the amended compensation guidelines;
- section 4: omitting the current section on confidentiality and replacing this text to ensure it is consistent with the AEMC's obligations to protect confidential information under the AEMC Act and the NEL;
- section 7: inclusion of the principle the Commission will apply in exercising its discretion to recover any costs from a claimant under 3.14.6(q) of the Rules;
- sections 9.2 and 10: clarification that all costs claimed are to be exclusive of GST, and any compensation payable is also exclusive of GST; and

- section 10.1: some clarification regarding the basic calculation for the total claimable amount.

In addition, other minor amendments to the compensation guidelines include formatting, typographical and grammatical corrections, and the consistent use of acronyms throughout the document. These minor amendments are not marked up in the draft amended compensation guidelines.

It should also be noted that the Commission also proposes to initiate a review of arrangements for determining and paying compensation under clauses 3.14.6 and 3.15.10 of the NEL³, which will consider the broader issues in determining compensation claims under NEL clause 3.14.6 and how AEMO recovers any compensation payable from market customers under NEL clause 3.15.10. The Commission's intention to undertake this review was discussed in its final decision on Synergen Power's compensation claim.⁴

An outcome of the compensation arrangements review may be proposed Rule changes. As a consequence, further amendments to the compensation guidelines are likely to be required to ensure the guidelines are consistent with any changes to the Rules.

Invitation for submissions

Interested parties are invited to make written submissions to the Commission on the draft amended compensation guidelines. Submissions must be received by **10 December 2010**. It should be noted that clause 6A.20(c) provides that the AEMC is not required to consider any submission made after 10 December 2010.

Submissions may be lodged with the Commission electronically or in hard copy.

To lodge a submission electronically:

- the submission must be lodged online via the Commission's website, www.aemc.gov.au, using the "lodge a submission" function and selecting the project code "EPR0023";
- the submission must be on letterhead (if submitted on behalf of an organisation), signed and dated;
- the submission must be in PDF format;
- upon receipt of the electronic submission, the AEMC will issue a confirmation email. If this confirmation email is not received within three business days, it is the submitter's responsibility to ensure the submission has been delivered successfully; and
- the submission should also be forwarded to the AEMC via ordinary mail.

³ Under section 45 of the NEL, the AEMC may conduct a review into the operation and effectiveness of the Rules.

⁴ AEMC 2010, Compensation claim from Synergen Power Pty Ltd, Final decision, 8 September 2010, p.6.

To lodge a submission in hard copy, via ordinary mail:

- the submission must be on letterhead (if submitted on behalf of an organisation), signed and dated;
- the submission should be sent by mail to:

Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Or by fax to (02) 8296 7899

- the envelope must be clearly marked with the project reference code: EPR0023; and
- except in circumstances where the submission has been received electronically, upon receipt of the hardcopy submission, the AEMC will issue a confirmation letter. If this confirmation letter is not received within three business days, it is the submitter's responsibility to ensure successful delivery of the submission has occurred.