

National Electricity Law (Schedule to the *National Electricity (South Australia) Act 1996*) and the National Electricity Rules applied as a law of New South Wales by the *National Electricity (New South Wales) Act 1997*

IN THE DISPUTE RESOLUTION PANEL AT SYDNEY

BETWEEN

Snowy Hydro Limited ACN 090 574 431

Applicant

AND

National Electricity Market Management Company Limited ACN 072 010 327

Respondent

DECISION OF THE DISPUTE RESOLUTION PANEL
(Sir Anthony Mason AC KBE, Mr G H Thorpe and Mr T Fitzgerald)

Background

1 The applicant, Snowy Hydro Limited (Snowy), operates a number of generators including the hydro-electric generators comprising the Snowy Mountains Hydro-electric Scheme.

2 The respondent, the National Electricity Market Management Company Limited (NEMMCO), performs various functions under the National Electricity Rules (the Rules). The present matter falls for determination in accordance with Version 1 of the Rules.

3 Snowy operates a number of scheduled generating units within the meaning of the Rules. Snowy's scheduled generating units that are relevant to this present matter are located in the Snowy region of the National Electricity Market (NEM).

4 Snowy is a Scheduled Generator and a Market Generator and therefore a Market Participant in the NEM.

5 Snowy sells electricity from its relevant scheduled generating units on the spot market in the Snowy region of the NEM. It also:

- (i) enters into electricity price risk contracts with customers in the Snowy region and the New South Wales region of the NEM; and
- (ii) purchases units in NEMMCO's settlement residue auctions (SRAs) and subsequently enters into settlement residue distribution (SRD) agreements with NEMMCO.

6 NEMMCO's functions include conducting the central dispatch process under cl.3.8 of the Rules and determining spot prices under cl.3.9 of the Rules.

7 On 31 October 2005, NEMMCO made scheduling errors by failing to properly:

- (i) reflect 15 minute line ratings for lines 81 and 82 in the central dispatch process between 9am and 11am; and
- (ii) hand dress the Mt. Piper and Wallerawang power stations to reflect their current generation levels in the central dispatch process between 7.25am and 10.40am.

8 Because of its scheduling errors, NEMMCO gave Snowy an instruction to operate its relevant scheduled generating units at lower levels than the levels at which each would have been instructed to operate if the scheduling errors had not occurred.

9 Snowy's compliance with that instruction reduced the quantity of electricity its relevant scheduled units dispatched. As a Scheduled Generator which is a Market Participant, Snowy was paid for the reduced quantity it dispatched at the Snowy region spot price. Snowy claims that, because it dispatched less electricity as a result of complying with NEMMCO's instruction, it sustained loss in the Snowy region spot market (spot market loss).

10 NEMMCO's scheduling errors also led to it:

- (i) operating the interconnector between the Snowy region and the NSW region at a reduced level; and
- (ii) determining spot prices under cl.3.9 in both the Snowy region and the NSW region of the NEM that were different from the prices that would have been determined had the scheduling errors not occurred.

11 Snowy has not argued to this point that there is a material connection between Snowy's compliance with NEMMCO's instruction to operate its relevant scheduled generating units at lower levels than the levels at which each would have been instructed to operate if the scheduling errors had not occurred and the reduced operation of the interconnector between the Snowy region and the NSW region and/or the spot price differences.

12 However, for the purpose of this proceeding, NEMMCO has, using methodology identical to that prescribed by cl.3.9 ascertained with reasonable accuracy:

- (i) the spot prices that would have been determined if the scheduling errors had not occurred (“notional spot prices”); and
- (ii) the levels of dispatch and interconnector flows that would have been determined if the scheduling errors had not occurred.

13 Particularly in the NSW region of the NEM, the actual spot prices that NEMMCO determined are significantly higher than corresponding notional spot prices for the material period.

14 Taken in conjunction with the reduction in Snowy’s dispatch as a result of its compliance with NEMMCO’s instruction to operate its relevant scheduled generating units at lower levels than the levels at which each would have been instructed to operate if the scheduling errors had not occurred, differences between actual and notional spot prices in the Snowy region potentially affect Snowy’s spot market loss.

15 Snowy claims that NEMMCO’s scheduling errors caused it other losses in addition to its spot market loss. It argued that the higher spot prices affected its electricity price risk contracts and SRD agreements and caused it losses from:

- (i) the operation of price risk contracts (contract loss); and
- (ii) reduced SRD payments (SRD loss). (Although SRD payments were higher because of higher spot prices, Snowy argues they would have been even higher had the interconnector flow not been reduced.)

16 According to Snowy, its SRD loss and its contract loss were:

- (i) caused by NEMMCO’s scheduling errors; and
- (ii) sustained by Snowy in the course of its operations as a Scheduled Generator.

17 Because Snowy presented its case on a different basis, it is unclear whether it contends that there is a material connection between its SRD loss and/or its contract loss and its compliance with NEMMCO’s instruction to operate its relevant scheduled generating units at lower levels than the levels at which each would have been instructed to operate if the scheduling errors had not occurred.

18 As required by cl.3.16.1(a) of the Rules, NEMMCO maintains a Participant compensation fund (the “fund”) “for the purpose of paying compensation to Scheduled Generators and Scheduled Network Service Providers as determined by the dispute resolution panel for scheduling errors under this Chapter 3.”

19 Snowy claims compensation from the fund for all its losses from NEMMCO’s scheduling errors, including losses that were not caused by its compliance with NEMMCO’s instruction to operate its relevant scheduled generating units at lower levels

than the levels at which each would have been instructed to operate if the scheduling errors had not occurred.

20 Snowy's losses, as quantified by Snowy, exceed the amount in the fund, which is currently about \$6,100,000. Snowy is the only Market Participant to have claimed compensation from the fund but NEMMCO is aware of circumstances which might give rise to other claims.

21 Clause 3.16.2(a) of the Rules requires the Panel to make two determinations in accordance with cl.3.16.2 in respect of a scheduling error by NEMMCO, namely:

- (i) which Market Participants may receive compensation from the fund; and
- (ii) the amount of compensation payable.

22 Consistently with cl.3.16.1(a), the only Market Participants referred to in cl.3.16.2 are Scheduled Generators and Scheduled Network Service Providers.

23 It is plain from cl.3.16.1(a) and 3.16.2 that only Scheduled Generators and Scheduled Network Service Providers are entitled to compensation from the fund. Further, cl.3.16.2 limits compensation from the fund to Market Participants. It follows that compensation may be provided from the fund only to Scheduled Generators and Scheduled Network Service Providers which are Market Participants. References in the Rules to Scheduled Generators and Scheduled Network Service Providers mean Scheduled Generators and Scheduled Network Service Providers which are Market Participants ("relevant Market Participants").

The level of compensation payable under the Rules

24 By cl.3.16.2(b), the Panel's determination of the compensation to which a relevant Market Participant is entitled must be consistent with cl.3.16.2. The Panel must:

- (i) use "the spot price as determined under cl.3.9" (cl.3.16.2(d));
- (ii) take into account the current balance of the fund and the potential for further liabilities to arise during the year (cl.3.16.2(e)); and
- (iii) recognise that the aggregate liability in any year in respect of scheduling errors cannot exceed the balance of the fund that would have been available at the end of the year if no compensation payments for scheduling errors had been made during the year (cl.3.16.2(f)).

25 The only provisions which explicitly entitle relevant Market Participants to compensation are cl. 3.16.2(c) and (c1).

- (i) Clause 3.16.2(c) entitles a Scheduled Generator which receives an instruction to operate a scheduled generating unit at a lower level than that at which it would have been instructed to operate the scheduled generating

unit if the scheduling error had not occurred “to receive in compensation an amount determined by” the Panel.

- (ii) Clause 3.16.2(c)(i) provides an analogous entitlement to a Scheduled Network Service Provider which receives an instruction in respect of its scheduled network services to transfer less power than it would have been instructed to transfer on the scheduled network service had the scheduling error not occurred.

26 Snowy advanced three complementary submissions which are essential to its case; namely:

- (i) references to “compensation” in cl.3.16.2 indicate that a relevant Market Participant is entitled to compensation for its total loss in the course of its operations as a relevant Market Participant from a scheduling error, including its loss under SRD agreements and electricity price risk contracts caused by the effect of the scheduling error on spot prices, so as to place the relevant Market Participant, so far as possible, in the financial position it would have been in if the scheduling error had not occurred;
- (ii) cl.3.16.2(c) does not limit the compensation to which a Scheduled Generator which receives an instruction to operate a scheduled generating unit at a lower level than that at which it would have been instructed to operate the unit if the scheduling error had not occurred to compensation for loss caused by that instruction; and
- (iii) the requirement in cl.3.16.2(d) that the Panel use “the spot price as determined under clause 3.9” requires, or at least permits, the Panel, when determining the loss, if any, sustained by a relevant Market Participant as a result of a scheduling error, to use spot prices determined by NEMMCO under cl.3.9 only in determining what payments a relevant Market Participant actually made and received and to use notional spot prices “determined” by the Panel to determine what payments the relevant Market Participant would have made and received but for the scheduling error.

27 While references to compensation in cl.3.16.2 might indicate that a relevant Market Participant is to be compensated for loss, they do not establish what loss is to be compensated. To determine that, the Panel must construe cl.3.16.2 as a consistent whole, with each of its provisions aiding the construction of others. Compensation is influenced by a number of factors. The Panel must give effect to cll.3.16.2(b), (d), (e) and (f) and any implications to be derived from cll.3.16.2(c) and (c1) as well as any other relevant provisions of the Rules. Irrespective of whether cll.3.16.2(e) and (f) might sometimes not need to be considered until after the compensation to which a Market Participant would otherwise be entitled has been determined, those provisions are incompatible with Snowy’s broad proposition that a relevant Market Participant is entitled to compensation for its total loss in the course of its operations as a relevant Market Participant from a scheduling error.

28 Further, even if in isolation each might be open to more than one possible construction, cl.3.16.2(c) and (c1) must serve some purpose. Those provisions would be unnecessary if relevant Market participants which had not received an instruction of the type referred to in cl.3.16.2(c) or cl.3.16.2(c1) are entitled to compensation for loss caused by a scheduling error. It is implicit in cl.3.16.2(c) and (c1) that only relevant Market Participants which received such an instruction (and sustained loss) are entitled to compensation.

29 The conclusion that only relevant Market Participants which received an instruction of the type referred to in cl.3.16.2(c) or (c1) and sustained loss are entitled to compensation assists in determining the compensation to which they are entitled. Unless compensation is confined to loss caused by complying with the instruction, there is no reason to distinguish between relevant Market Participants which did, and relevant Market Participants which did not, receive such an instruction.

30 The conclusion that only relevant Market Participants which have received an instruction of the type referred to in cl.3.16.2(c) or (c1) and sustained loss as a result of complying with that instruction are entitled to compensation only for that loss means that notional spot prices are immaterial to the determination of loss. That enables cl.3.16.2(d) to operate according to its terms.

31 It is also consistent with cl.3.8.24(b) which provides that spot prices will not be adjusted when a scheduling error occurs. Clause 3.8.24(b), which is of general application, applies irrespective of whether or not a Market Participant is a relevant Market Participant and whether or not a relevant Market Participant has received an instruction of the type referred to in cl.3.16.2(c) or cl.3.16.2(c1).

32 Snowy submitted that the conclusion that only relevant Market Participants which have received an instruction of the type referred to in cl.3.16.2(c) or (c1) and sustained loss as a result of complying with that instruction are entitled to compensation only for that loss results a relevant Market Participant having an entitlement to compensation for that loss even if it profited overall from the scheduling error; for example, because the effect of the scheduling error on spot prices caused the relevant Market Participant's overall financial position, including from performing SRD agreements and electricity price risk contracts, to be better than it would have been if NEMMCO had not made the scheduling error. According to Snowy, such an outcome would be absurd.

33 However, Snowy's proposition depends on its erroneous premise that cl.3.16.2 must relate to a relevant Market Participant's total loss in the course of its operations as a relevant Market Participant from a scheduling error. There is nothing absurd or unreasonable in cl.3.16.2 quarantining the material financial consequences of a scheduling error for the purpose of compensation and restricting compensation to loss caused by a relevant Market Participant's compliance with an instruction of the type referred to in cl.3.16.2(c) or cl.3.16.2(c1). Limited entitlements to compensation are quite consistent with the comparatively small sum in the fund.

34 It is unnecessary on this occasion to decide whether the Panel might refuse or reduce compensation to a relevant Market Participant which sustained loss from complying with an instruction of the type referred to in cl.3.16.2(c) or (c1) if it profited overall from a scheduling error. Snowy's overall loss from NEMMCO's scheduling errors, including its SRD loss and its contract loss, was substantial.

35 Snowy also pointed to the Panel's statement in its decision of 1 February 2007 that "compensation for losses in addition to spot market trading is payable out of the Fund in the absence of an express exclusion of, or limitation on, the recovery of such losses". At that point, both parties accepted that a relevant Market participant is entitled to compensation for spot market trading losses but NEMMCO argued that cl.3.16.2 limits the compensation recoverable to such losses. The Panel made the statement Snowy relies on when rejecting NEMMCO's argument. The reference in the statement to "express" exclusion or limitation was not intended to exclude the possibility that one or more provisions in cl.3.16.2, on their proper construction, might implicitly constitute a material exclusion or limitation. Whether the statement is otherwise consistent with the views now expressed need not be decided on this occasion. Snowy did not argue that the Panel was bound by its earlier statement and it is plain from the manner in which this matter has proceeded since the Panel's decision of 2 February 2007 that the issues now under consideration have remained in contention throughout.

36 For the reasons stated, Snowy is not entitled to compensation from the fund for all its losses from NEMMCO's scheduling errors. Subject to discretionary considerations including cl.3.16.2(e) and (f), Snowy is entitled to compensation for its losses caused by its compliance with NEMMCO's instruction to operate its relevant scheduled generating units at lower levels than the levels at which each would have been instructed to operate if the scheduling errors had not occurred but only those losses. Further, actual spot prices must be used, and notional spot prices must be disregarded, when quantifying Snowy's loss.

37 Snowy's spot market loss can be determined by multiplying the Snowy region spot price by the reduction in the amount of electricity which Snowy dispatched as a result of giving effect to NEMMCO's instruction to operate its relevant scheduled generating units at lower levels than the levels at which each would have been instructed to operate if the scheduling errors had not occurred.

38 As earlier noted, because Snowy presented its case on a different basis it is unclear whether it wishes to submit that all or part of its SRD loss and/or its contract loss was caused by its compliance with NEMMCO's instruction to operate its relevant scheduled generating units at lower levels than the levels at which each would have been instructed to operate if the scheduling errors had not occurred. It is therefore difficult at this point to determine Snowy's material loss and assess appropriate compensation.

39 In the circumstances, including the novelty of the issues for the Panel's determination, the parties may within 14 days make written submissions limited to:

- (i) the correct assessment of Snowy's compensable loss in accordance with this decision;
- (ii) the amount to be paid to Snowy from the fund for that loss; and
- (iii) costs.

DATED the 29 day of August 2007.

Signed
A.F. Mason

Sir Anthony Mason AC KBE
Chairman

ADDENDUM

Background

This addendum provides a broad market oriented explanation of impacts of the determination of the Dispute Resolution Panel for the benefit of market participants and should be read in conjunction with the Panel's determination. It has been prepared independently by Mr G Thorpe, the industry member of the Panel, and is neither endorsed by nor disagreed with by the other members of the Panel.

Introduction

- 1 Snowy has claimed losses under three headings (refer clauses 9 and 15 of the Panel's determination):
 - a) Spot market
 - b) Contract; and
 - c) SRDs.

The following material notes the relationship between changes in price and dispatch and the effect of compensation on market participants and the different components of the claim.

- 2 If, because of a scheduling error, spot price in a region increases and a scheduled generator receives and complies with a dispatch instruction to operate at a reduced level (an affected scheduled generator), and because cl. 3.8.24 of the market rules requires that the spot price may not be adjusted from the level set under cl. 3.9, then:
 - a) all scheduled generators will be paid at the higher price for their actual dispatch; and
 - b) an affected scheduled generator's revenue from the spot market will be based on the actual spot price, but be reduced below what it would have been had its dispatch not been reduced.
- 3 In general, if spot price increases, to the extent that a scheduled generator holds contracts for differences against the spot price in the region in which it is located for an amount that exceeds the level of its actual dispatch, it will be required to pay out more than the increase in spot market revenue it receives. Conversely a scheduled generator with dispatch that exceeds the level of contracts it holds will receive a net increase in revenue. This is the case regardless of whether a scheduling error occurs

The amount and effect of compensation

- 4 At cll. 28 through 30, the Panel's determination concludes that cl. 3.16.2(c) of the market rules provides, subject to other provisions of cl. 3.16.2, for compensation to affected scheduled generators for an amount related to loss of dispatch due to a scheduling error, at the price determined under cl. 3.9, that is the actual spot price in the market.
- 5 Where a Panel makes an award of compensation in an amount equal only to the loss of dispatch multiplied by the price set under cl. 3.9, an affected scheduled generator located in the region where its contracts were settled would therefore be treated the same as other scheduled generators. This is because the compensation would replace revenue that it would otherwise have received to meet obligations under contracts. Note, this outcome occurs

without explicit consideration of the contracts and will “make good” revenue needed to cover contracts only to the extent that dispatch has been reduced as a result of a scheduling error.

- 6 As noted in cl. 33 of the Panel’s determination, such an assessment does not explicitly consider total losses (or gains) of scheduled generators.
- 7 However, in line with cl. 36 of the determination, it would be open to a Panel to apply the provisions of cl. 3.16.2(e) and (f) of the market rules to award a lesser amount of compensation, for example to retain funds in the Participant Compensation Fund against future claims rather than provide a windfall gain to an affected generator (refer cl. 32 of the Panel’s determination), even though other scheduled generators may have received such a gain. In this case, this has not been a matter the Panel has needed to consider.
- 8 Snowy’s claim, however, includes a claim for reduced SRD payments that could potentially have offset at least part of its increased obligation to make payments under contracts settled at the NSW price that cannot be provided by compensation based on loss of dispatch at the Snowy region price.
- 9 SRD payments are related to:
 - a) the number of SRD units held by a party;
 - b) the difference in price between the regions; and
 - c) the flow on the interconnector between the regions that the SRD units refer to.
- 10 The position of a scheduled generator in a different region to where its contracts are settled to cover increases in obligations under contract is related to:
 - a) the price in the region in which the scheduled generator is located;
 - b) the level of dispatch of a scheduled generator;
 - c) the price in the region in which the relevant price risk contracts settle;
 - d) the level of contract;
 - e) the level of flow on the interconnector; and
 - f) the level of SRD units held.
- 11 The scheduling errors resulted in dispatch instructions to Snowy for a reduced level of dispatch, and to NEMMCO operating the interconnector between Snowy and NSW at a lower level than it would otherwise have operated it at. As a result SRD payments to all parties holding SRD units, including Snowy, were affected.
- 12 The Panel has concluded that the provisions for compensation for scheduled generators relate only to those scheduled generators whose dispatch has been reduced (refer cl. 29 and 30 of the determination). The Panel has noted there is a question as to whether Snowy is claiming losses under SRD agreements are related to the reduction in its dispatch. At cl. 32 of its determination the Panel is inviting the parties to present an additional submission on the specific losses incurred through reduction in dispatch, amongst other matters.

DATED the 29 day of August 2007.

