IN THE DISPUTE RESOLUTION PANEL AT MELBOURNE

(Constituted for a determination as to compensation under Rule 3.16.2 of the National Electricity Rules)

Lake Bonney Wind Power Pty Ltd (ABN 48 104 654 837) and **Woodlawn Wind Pty Ltd** (ABN 38139 165 610) (**Infigen**)

and

Australian Energy Market Operator Limited (ABN 94 072 010 327) (**AEMO**)

AEMO SUPPLEMENTARY SUBMISSION AS TO REC COMPENSATION ON UIGF SCHEDULING ERROR

Introduction

1. In this submission terms have the meaning given, or that are expressed to apply, to them in AEMO's submission of 8 November 2012.

2. This submission is supplementary to the AEMO's submission of 8 November, its reply to Infigen's submission of 12 November and to the oral submissions of Mr Chris Furnell before the DRP on 14 November 2012.

3. AEMO has received a supplementary submission by Infigen dated 16 November 2012 (**Infigen's Supplementary Submission**) and intends by this submission to reply to a new matter raised in that submission, and a related matter raised in oral submissions by Mr Peter Hanks QC (for Infigen) before the DRP.

Application of clause 3.16.2(h)(3)

4. Paragraphs 4 to 6 of Infigen's Supplementary Submission indicate that Infigen's claim for compensation in respect of REC losses and for compensation in respect of *spot market* losses are to be treated as one and the same claim. Infigen suggests that, as a result, the *spot price* will in fact be used in determining the level of compensation to which Infigen is entitled, and therefore the DRP need not rule out compensation referable to REC losses (if it were minded to) on the ground that clause 3.16.2(h)(3) of the Rules precludes it from determining compensation other than by using the *spot price*.

5. In AEMO's view, whether in this case there are two separate claims or two components of the same claim is irrelevant to the entitlement to compensation. AEMO does not dispute

that REC losses and *spot market* losses may arise as a result of the same *scheduling error*, but submits that they are different heads of loss, because they are incurred in different markets and as a result of separate and distinct rights and obligations.

6. The sum of an award of compensation in any matter may comprise amounts referable to different types of loss, but each type of loss must be considered separately to determine whether and to what extent it meets the applicable requirements to be compensable. This process was evident in the decisions of the DRP concerning Snowy Hydro.[1]

7. The requirements which the DRP is directed to follow in clause 3.16.2(h) apply to the whole amount of any compensation it determines to be payable and to each part of the losses claimed. There is no support in the Rules for the proposition that the DRP may determine some part of the total compensation using the spot price under clause 3.9 but, having done so, might then determine a further amount which does not use that spot price.

8. The question for the DRP is, in AEMO's submission, whether the amount of compensation determined by the DRP should include or exclude any amount in respect of REC losses, either:

    a. on the proper construction of clause 3.16.2, in particular whether clause 3.16.2(h)(3) requires the DRP to limit compensation to an amount that is referable to the *spot price* (as AEMO submits) or it merely directs the DRP to use the *spot price* determined under clause 3.9 where relevant (as Infigen submits); or

    b. as a result of the exercise of the DRP's discretion to determine an amount to be awarded in compensation under clause 3.16.2(d), having regard to all the circumstances including the context provided by Chapter 3 of the Rules.

Effect of AEMC rule changes

9. Paragraph 7(e) of Infigen's Supplementary Submission states that the change that introduced the present drafting of clause 3.16.2(h)(3) was not intended to change the meaning from what was previously clause 3.16.2(d), because otherwise the AEMC would have said so in its Rule determination.

10. AEMO does not dispute this submission. Indeed, AEMO submits that the intended nature of compensation entitlements from the fund has remained essentially unchanged since the current clause 3.16.2 of the Rules was embodied in rule 155 of the VicPool Rules.[2] AEMO further submits that the drafters of the National Electricity Code and subsequently the National Electricity Rules never saw fit to include an express limitation on the type of loss for

[1] See, for example, the decision of 29 August 2007, at paragraph 15 and at paragraph 1 of the Addendum.
[2] See paragraph 32 of AEMO's submission of 8 November.

which compensation was available because the fund provisions were understood to relate only to losses relating to the *spot market* under what is now Chapter 3 of the Rules.

11. In the oral submissions of Mr Hanks before the DRP, it was suggested that at the time that *Semi-Scheduled Generators* were created as a separate category of *Market Participant* under the Rules,[3] clause 3.16.2 could have been amended if the drafters had intended to prevent compensation from the fund from extending to REC losses. Mr Hanks indicated that the omission of such a restriction was 'deliberate', because the rule change was undertaken in full understanding of the REC regime. [4]

12. AEMO submits that no change was made to clause 3.16.2 simply because neither the AEMC as rule drafter, nor AEMO, nor (presumably) consulted parties expected that compensation might be payable from the fund for anything other than *spot market* losses. If they had, it is hardly conceivable that the AEMC would have made the following statement in its final rule determination without referring to the potentially greater losses that might arise for *Semi-Scheduled Generators* in relation to RECs:

> As semi-scheduled generators are only subject to dispatch errors during semi-dispatch intervals, the probability of a semi-scheduled generator being incorrectly dispatched is much less than for a scheduled generator. The Commission considers that it would be appropriate for NEMMCO to take this into account when determining contributions to the participant compensation fund.[5]

13. AEMO submits that it is plain from this statement that the AEMC did not contemplate that the fund would respond to REC losses of *Semi-Scheduled Generators*. On that basis, the AEMC would not have considered it necessary to decide whether to amend clause 3.16.2.

Dated 19 November 2012

Australian Energy Market Operator Limited

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[3] The AEMC made the amending rule on 1 May 2008. Wind farms were previously *non-scheduled generating units*, which may have been *market generating units* (receiving the *spot price*) or *non-market generating units*, depending on their size and other factors.

[4] DRP Hearing Transcript of 14 November 2012, page 27, lines 15-27.

[5] AEMC 2008, Central Dispatch and Integration of Wind and Other Intermittent Generation, Rule Determination, 01 May 2008, Sydney, at page 72. AEMO determines the structure of *Participant fees* for five-year periods in accordance with the principles and requirements in clause 2.11.1 of the NER. The current structure applies until the year ending 30 June 2016.