**IN THE DISPUTE RESOLUTION PANEL AT MELBOURNE**

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

**BETWEEN**

**The Claimants:**

**AGL Hydro Partnership** (ABN 86 076 691 481**)**

**AGL Loy Yang Marketing Pty Ltd** (ABN 19 105 758 316)

**AGL Macquarie Pty Ltd** (ABN 18 167 859 494)

**AGL SA Generation Pty Ltd (**ABN 84 081 074 204)

**Aurora Energy (Tamar Valley) Pty Ltd (Trading as AETV Power) (**ABN 29 123 391 613)

**Braemar Power Project Pty Ltd (**ABN 54 113 386 600)

**Callide Power Trading Pty Limited (**ABN 80 082 468 719)

**CS Energy Limited (**ABN 54 078 848 745)

**Delta Electricity (**ABN 75 162 696 335)

**EnergyAustralia Pty Ltd (**ABN 99 086 014 968)

**EnergyAustralia Yallourn Pty Ltd (**ABN 47 065 325 224)

**Flinders Operating Services Pty Ltd (**ABN 36 094 130 837)

**Hazelwood Power (**ABN 40 924 759 557)

**Hydro-Electric Corporation (Trading as Hydro Tasmania) (**ABN 48 072 377 158)

**IPM Australia Limited (**ABN 87 055 563 785)

**Origin Energy Electricity Limited (**ABN 33 071 052 287)

**Origin Energy Uranquinty Power Pty Ltd (**ABN 26 120 384 938)

**Pelican Point Power Limited (**ABN 11 086 411 814)

**Snowy Hydro Limited** (ABN 17 090 574 431)

**Stanwell Corporation Limited** (ABN 37 078 848 674)

and

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

**DETERMINATION**

(National Electricity Rules, clause 3.16.2)

The Dispute Resolution Panel determines that

1. Compensation is payable to the claimants in respect of the scheduling error declared by AEMO in its Scheduling Error Report entitled 'NEM Scheduling Error - Incorrect Tasmanian Southern Area Load' published in November 2015.
2. A total compensation amount of $296,661.14 should be paid to the Claimants in respect of revenue for sale of electricity on the *spot market* that was lost by reason of the scheduling error.
3. AEMO should
    a. allocate the total compensation amount to the Claimants according to the individual amounts calculated for each market participant by AEMO and which have been agreed by AEMO with each Claimant; and
    b. make each payment through Austraclear within 7 days.
4. The costs of the dispute resolution process are to be allocated between the parties as has been agreed by the parties.

Date : 9 November 2016

Geoffrey Swier

**REASONS FOR DETERMINATION**

**(National Electivity Rules clause 3.16.2)**

**BETWEEN**

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and

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

**REASONS FOR DETERMINATION**

(National Electricity Rules, clause 3.16.2)

1. The italicised terms used in this determination are defined in the National Electricity Rules (**Rules**).

2. On 31 October 2015, AEMO declared under clause 3.8.24(a)(2) of the Rules that a *scheduling error* had occurred that affected *generating systems* in southern Tasmania over the period from 1110 hours on 2 May to 1740 hours on 6 June 2014.

3. AEMO stated that the cause of the *scheduling error* was that it had failed to follow the central dispatch process when its Energy Management System did not calculate the load for southern Tasmania correctly and as a result incorrect data was used in the constraint equations that are used by AEMO in *central dispatch*.

4. AEMO published a Scheduling Error Report in November 2015 entitled 'NEM Scheduling Error - Incorrect Tasmanian Southern Area Load' (**Scheduling Error Report**). [1]

5. Clause 3.16(a), (b), (d) and (i) of the Rules relevantly provide

> (a) Where a *scheduling error* occurs, a *Market Participant* may apply to the *dispute resolution panel* for a determination as to compensation under this clause 3.16.2.
>
> (b) Where a *scheduling error* occurs, the *dispute resolution panel* may determine that compensation is payable to *Market Participants* and the amount of any such compensation payable from the *Participant compensation fund.*
>
> ….
>
> (d) A *Scheduled Generator* or *Semi-Scheduled Generator* who receives an instruction in respect of a *scheduled generating unit* or *semi-scheduled generating unit* (as the case may be) to operate at a lower level than the level at which it would have been instructed to operate had the *scheduling error* not occurred, will be entitled to receive in compensation an amount determined by the *dispute resolution panel*
>
> ….
>
> (h) In determining the level of compensation to which *Market Participants* are entitled in relation to a *scheduling error*, the *dispute resolution panel* must:
>
> ….
>
> (3) Use the *spot price* as determined under rule 3.9…..
>
> (4) Take into account the current balance of the *Participant compensation fund* and the potential for further liabilities to arise during the year;
>
> (5) Recognise that the aggregate liability in any year in respect of *scheduling errors* cannot exceed the balance of the *Participant compensation fund* that would have been available at the end of that year if no compensation payments for *scheduling errors* had been made during that year.

[1] https://www.aemo.com.au/media/Files/Other/reports/market_events/Scheduling%20error%20%20Incorrect%20Tasmanian%20Southern%20Area%20load%20calculation_final.pdf

(i) The manner and timing of payments from the *Participant compensation fund* are to be determined by the *dispute resolution panel*

6. A claim notice was received by AEMO from Hydro Tasmania on 29 June 2016.

7. The Wholesale Electricity Market Dispute Resolution *Adviser* (**the *Adviser***) requested a list from AEMO of each *Generator* who was affected by the error for an amount in excess of $1,000 (**the Affected *Generators***). The *Adviser* adopted a threshold of $1,000 for claims to promote efficient administration of the dispute resolution process.

8. The *Adviser* contacted each other Affected *Generator* from 24 August 2016 to ensure they were aware of the claim regarding a potential claim against the *Participant compensation fund* in respect of this scheduling error.

9. On 14 October 2015 the presently constituted *dispute resolution panel* was established to determine compensation in respect of the *scheduling error.*

10. My function under clause 3.16.2 is to determine:

    (a) whether compensation is payable to the *Market Participants* which are parties to this dispute;

    (b) if so the amount (clause 3.16.2(b) refers) or level (clause 3.16.2 (h) refers) of compensation; and

    *(c)* the manner and timing of any payments to them from the *Participant compensation fund.*

11. A Joint Submission was prepared by AEMO and the Claimants (the parties) and finalised on 18 October 2016. All relevant matters have been agreed between the parties.

12. It is clear that the *scheduling error* caused the Affected *Generators* to be constrained down for a total of 126 *dispatch intervals* when relevant *network constraints* were binding or violated[2]. But for the *scheduling error* the Affected *Generators* would have operated at a higher level of generation and would have been entitled to earn revenue for the sale of additional electricity at the applicable *spot price*.

13. The following compensation principles have been agreed by the parties for the purposes of quantifying each Claimant's spot market losses during affected dispatch intervals or semi-dispatch intervals (as applicable) for this scheduling error:

    *(a) Calculate the difference (in MWh) between the actual output of a generating unit and the output that would have occurred in the absence of the scheduling error;*

    *(b) Multiply the quantity calculated under paragraph (a) by the intra-regional loss factor to give the compensable quantity (in MWh).*

    *(c) The spot market loss is the compensable quantity calculated under paragraph (b) multiplied by the applicable spot price.*

    *(d) If the applicable spot price for an affected dispatch interval or semi-dispatch interval is negative, the calculation under paragraph (c) will result in a payment to the market (that is, a credit).*

14. By reason of the manner in which the matter has come before me described in paragraphs 11 and 12 above I regard my function referred in paragraph 10 (b) above in this particular dispute as being limited to determining the amount or level of compensation which would, but for the scheduling error, have been earned for sale of additional electricity on the spot market.

[2] Pg. 7 Scheduling Error Report

15. I was provided by AEMO with a confidential spreadsheet entitled 'Market Impact Calculation_Incorrect TAS load_Final'. (**Market Impact Calculation**)

16. The Market Impact Calculation sets out that the net financial impact for each *Market Participant*. The total net financial impact for all *Market Participants* was $310,178.88. 32 *Market Participants* were adversely affected by the scheduling error and of these 15 experienced a net financial impact of more than $1,000 and 3 *Market Participants* experienced no impact.

17. The total compensation amount claimed is $296,661.14 by 20 *Market Participants*. The individual compensation amounts for each claimant were redacted from the Joint Submission by reason of AEMO policy on treatment of confidentiality, but was provided in confidence to the DRP. Three of the claims are for amounts that were less than $1,000. This is due to some claimants being *Market Participants* that have common ownership.

18. A hearing was convened on 26 October 2016. Two matters were discussed being:

    (a) a review of the Market Impact Calculation

    (b) the treatment of potential further liabilities.

19. I made inquiries to be satisfied that the Market Impact Calculation spreadsheet had been properly constructed and that the sources of the spreadsheet inputs were accurate. Appropriate assurances were provided by AEMO in response to my inquiries.

20. I am satisfied, based on my review of the Market Impact Calculations and my inquiries of AEMO, that the total net market impacts and the individual compensation amounts have been appropriately calculated by AEMO.

21. I now turn to consider clauses 3.16.2 (h) (4) and (5) which set out matters that the *dispute resolution panel* must consider in regard to the current and future balance of the *Participant compensation fund*.

22. The *Participant compensation fund* balance as at 27 September 2016 is $5,336,741.30.

23. The Joint Submission states that as of 18 October 2016 AEMO was aware that claims for compensation were likely or possible in respect of two other *scheduling errors*.

24. The first matter is a potential compensation claim that resulted from *scheduling errors* declared by AEMO resulting from an incorrect *unconstrained intermittent generation forecast* (UIGF) that resulted in incorrect scheduling of wind *Generators* (**wind scheduling error**). The UIGF affected a number of *semi-dispatch intervals* between 2012 and 2016. This *Adviser* has been notified of this matter and the details of a claim are currently being finalised. This matter is expected to result in compensation claims for an amount in the order of $5 million. The Joint Submission states that AEMO is still working on an agreement with Affected *Generators* as to the calculation methodology.

25. The *Adviser* provided the panel and the parties with correspondence in relation to this claim. Finalisation of this claim will require a determination by a *dispute resolution panel*.

26. Based on this advice I consider that:

    (a) it is more probable than not that the wind scheduling error matter will result in a liability to be met from the *Participant compensation fund;*

    (b) the timing of when the liability may crystallise is uncertain but it may be before 30 June 2017;

    (c) the exact amount of the liability is uncertain.

27. This liability is not an actual liability but should be characterised as a contingent liability given these uncertainties.

28. The second matter is a possible compensation claim resulting from a *scheduling error* declared by AEMO as a result of incorrect line ratings applied to 66kv lines in Victoria between 1 December 2014 and 13 January 2015 (**Victoria scheduling error**). If all potential claimants were to seek compensation, AEMO estimates the total amount to be in the order of $5.6 million.

29. The *Adviser* supplied the *dispute resolution panel* and all parties with recent correspondence about the Victoria scheduling error matter.

30. This matter has proceeded as follows:

    (a) AEMO published a *scheduling error* report in August 2015.[3]

    (b) The Joint Submission states that one Affected *Generator* enquired of AEMO as to the size of its potential compensation claim but has not indicated whether it would make a claim.

    (c) It the not the *Adviser's* practice to notify parties of the opportunity to seek a compensation claim for a *scheduling error* unless formal notice in the format published by the *Adviser* is received for processing.

    (d) The *Adviser* notified the Affected *Generator* on 6 October of how the Victorian scheduling matter was being described in the Joint Submission at paragraphs 64 and 65.

    (e) The Affected *Generator* contacted the *Adviser* on 7 October 2016 inquiring whether other parties were considering making a compensation claim.

    (f) The *Adviser* replied on 11 October stating that she had not heard from any other participant on the matter and asked if this party could provide a firm view by the end of that week.

    (g) The *Adviser* provided a notice on 14 October to all *dispute management system* contacts about the referral of this matter to the *DRP*

    (h) As of 18 October (the date of Joint Submission) no claim for compensation for the Victorian scheduling error matter had been made.

31. The affected participants have had over thirteen months to consider this matter and to determine whether or not to lodge a compensation claim for the Victoria *scheduling error* matter.

32. Clearly this matter is also a contingent liability. The parties may still lodge a claim with AEMO but it is uncertain as to whether they will do so.

33. The parties submitted that no reduction be made to the compensation awarded to Affected Generators as other potential claimants' entitlements would ordinarily be paid out of any balance in the *Participant compensation fund* up to $5 million. Any windfall gain, such as accumulated interest over the maximum of $5 million, should not be subject to apportionment but dealt with on a first-comer's basis.

34. I now consider the current balance of the *Participant compensation fund and the impact of future liabilities* as required by rule *3*.18 (h) (4):

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[3] *NEM Scheduling error, 1 December 2014 – 13 January 2015, Incorrect 66kV line ratings in Victoria* Published by AEMO, August 2015
https://www.aemo.com.au/-/media/Files/PDF/Scheduling-Error--Incorrect-66kV-line-ratings-in-Victoria.ashx

(a) The fund has a sufficient balance at this time (approximately $5,337,000) to meet:

i. the compensation claim amount of $296,661.14 (exclusive of GST) in relation to this matter; and

ii. a compensation claim in the order of $5 million (exclusive of GST) for the wind scheduling matter were it to be finalised by 30 June 2017;

(b) The fund does not have a sufficient balance to also meet the total estimated claim from the Victorian scheduling matter were it to crystallise before 30 June 2017.

35. AEMO advised that in the past compensation amounts have been paid without GST.

36. I now turn to the question of the approach which should be taken to the exercise in taking account of "the potential for future liabilities to arise during the year".

37. Guidance on the approach is provided by the *DRP* in Macquarie Generation and NEMMCO scheduling error determination[4], noting determinations by previous *DRPs* are not binding on the present *DRP*.

38. The *DRP* in this matter stated that

> *20. The purpose of the underlying rule is the avoidance of the situation where the Participant Compensation Fund is almost exhausted by payment of liability at the expense of a future claim for compensation. Hence the DRP must take account of the potential for a future liability or future liabilities to arise during the year.*
>
> *21. The question that arises of whether the liabilities of which the DRP must take account include potential or contingent liabilities or whether it is only actual liabilities with which the rule is concerned.*
>
> *22. There is an argument for the wider meaning based on practicality. As an actual liability only arises where a DRP has accepted a claim for compensation and quantified the amount it may be through unduly restrictive to limit the claims which should be potentially account to actual claims. This is because the process takes time and the actual liability may not arise until the following year and need not be taken into account under the rule*
>
> *23. Nonetheless in directing attention at the potential for a liability to arise the rule appears to be focusing on the possibility that an actual liability will arise rather than then a contingent or potential liability. ….*
>
> *24. On balance while there are strong arguments in according word liabilities a wider meaning we are of the view that the rule is speaking of actual liabilities which at the end of the year will have created a clear balance in the Fund.*

39. I consider that the purpose of the underlying rule is the avoidance of the situation where the *Participant compensation fund* is almost exhausted by payment of liability at the expense of a future claim for compensation.

40. In determining whether or not contingent liabilities are to be taken into account, I consider that a common sense approach needs to be taken.

41. I consider that the wind scheduling matter is a type of future contingent liability that was contemplated by rule 3.16(h)(4) because: the matter has been advised to the *Adviser* and is well known to the market; AEMO is presently working on an agreement with the Affected Generators; it is more likely than not that the wind scheduling error matter will result in a liability to be met from the *Participant compensation fund*; and while the timing is unclear the liability may crystallise before 30 June 2017.

[4] Claim for compensation by Macquarie Generation following a scheduling error on 22 October 2007. Dispute Resolution Panel: John Clarke QC and Greg Thorpe https://www.aer.gov.au/system/files/20080424%20-%20Determination.pdf

42. In support of this interpretation I note that the *DRP* in the Macquarie Generation and NEMMCO scheduling error determination matter acknowledged that there are strong arguments in according a wider meaning to the word 'liabilities'.

43. I consider that the Victorian scheduling error matter is a type of contingent liability that was not contemplated to be taken into account by the *DRP* under rule 3.16(h) (4). The affected parties have been provided with relevant information on the progress of other claims on the *Participant compensation fund* by the *Adviser*; and they have had significant time to lodge a compensation claim; and at this time have not done so. It is therefore reasonable to consider that it is not probable that a compensation amount will crystallise prior to 30 June 2017.

44. Further, the efficient administration of the *Participant compensation fund* depends on parties exercising their rights to seek compensation in a reasonable and timely manner. It raises practical difficulties for claimants whose claims that have been determined or are probable if there is to be long periods of uncertainty about other possible claims and this results in current compensation amounts not being paid in full.

45. I am therefore satisfied that there is no reason under clause 3.16.2(h)(2) and (3) not to order full payment to be made of the amounts of compensation that have been calculated in this matter.

46. The allocation of the costs of the dispute resolution process has been agreed by the parties

Dated: 9 November 2016

SIGNED

Geoffrey Swier