**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

**Lake Bonney Wind Power Pty Ltd (ABN 48 104 654 837)**

**Woodlawn Wind Power Pty Ltd (ABN 38 139 165 610)**

(together **"Infigen"**)

and

**Australian Energy Market Operator**

(**"AEMO"**)

**INFIGEN SUPPLEMENTARY SUBMISSIONS**

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# A. Introduction

1. These submissions are supplementary to:

   (a) the primary written submissions made by Infigen dated 8 November 2012 (**Primary Submissions**);

   (b) the written submissions made by Infigen dated 12 November 2012 in reply to AEMO's primary submissions dated 8 November 2012 (**Reply Submissions**); and

   (c) oral submissions made by Mr Hanks QC to the *DRP* on the afternoon of 14 November 2012.

2. In these submissions terms and acronyms are as used in the Primary Submissions and Reply Submissions.

# B. Supplementary submissions

3. During the hearing relating to the REC loss component of Infigen's claim on the afternoon of 14 November 2012, submissions were made relating to the significance, if any, that should be attributed to clause 3.16.2(h)(3) of the *Rules.*

4. Infigen submits that, to the extent that the *DRP* has any regard to the effect of clause 3.16.2(h)(3) of the *Rules*, the *DRP* must take into account the fact that Infigen's claim for compensation in respect of the declared *scheduling error* is a single claim.

5. In particular, Infigen submits the *DRP* must take into account that the *spot price* as determined under rule 3.9 will be used in determining the level of compensation to which Infigen is entitled in relation to the declared *scheduling error* as part of the *spot market*

loss component of its claim, heard before Mr Gray SC on the morning of 14 November 2012.

6. Infigen submits that its claim for compensation should not be prejudiced by the fact that it agreed to the claim being heard in two parts, so as to facilitate the administrative convenience of the other claimants.

7. Infigen otherwise reaffirms the submissions previously made to the *DRP* on its behalf in respect of the relevance and effect of clause 3.16.2(h)(3) for the purposes of determining its entitlement to compensation under clause 3.16.2, namely:

   (a) if clause 3.16.2(h)(3) was intended to limit the type of loss capable of being compensated this would have been stated expressly in the *Rules* and there is no justification to read such an effect into that provision;

   (b) clause 3.16.2(h)(3) is not exhaustive and does not preclude the use of additional inputs in determining the level of compensation to which *Market Participants* are entitled in relation to a *scheduling error* – it is a right to receive an amount in compensation in the case of a *scheduling error* which is the primary right under Rule 3.16.2(d);

   (c) clause 3.16.2(h)(3) specifies which *spot price* must be used, but that is only relevant to the extent that the *spot price* is relevant to determination of compensation;

   (d) in particular, clause 3.16.2(h)(3) distinguishes the *spot price* as determined under rule 3.9 from a notional 'counterfactual' spot price that would have arisen in the absence of the *scheduling error*; and

   (e) if the rule change that introduced the drafting of clause 3.16.2(h)(3) had been intended to change the meaning of its previous equivalent (clause 3.16.2(d)) this would have been expressly considered in the final rule determination published by the AEMC in November 2005, which is not the case.

**DATED: 16 November 2012**

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**MINTER ELLISON**
Solicitors for Infigen