



Australian Energy Market Commission

COMPENSATION GUIDELINES UNDER CLAUSE 3.14.6 OF THE NATIONAL ELECTRICITY RULES

Final Decision on Amended Guidelines

Commissioners

Pierce
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Spalding

17 February 2011

GUIDELINES

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Compensation Guidelines under clause 3.14.6 of the National Electricity Rules

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About the AEMC

The Council of Australian Governments, through its Ministerial Council on Energy (MCE), established the Australian Energy Market Commission (AEMC) in July 2005. The AEMC has two principal functions. To make and amend the national electricity and gas rules – and to conduct independent reviews of the energy markets for the MCE.

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Foreword

The Commission's decision

The Australian Energy Market Commission (AEMC or Commission) has amended the compensation guidelines to ensure the guidelines are consistent with the AEMC's obligations under the relevant legislation, to provide further guidance to potential claimants and to improve the practical application of the guidelines, where possible.

The more substantive amendments to the compensation guidelines include:

- amending the confidentiality section to ensure it is consistent with the AEMC's obligations to protect confidential information under the relevant legislation;
- including the principles the Commission will apply in exercising its discretion to recover any costs from a claimant;
- clarifying how scheduled load may be eligible to claim compensation and the calculation of that compensation; and
- clarifying the calculation of compensation for scheduled network service providers.

In amending the compensation guidelines, the Commission has had regard to the national electricity objective (NEO). These amendments to the compensation guidelines reflect experience gained following the practical application of the guidelines to a claim, and provide increased regulatory certainty, transparency and consistency for potential claimants and stakeholders.

Why the guidelines are being amended

Following the recent application of the compensation guidelines to a claim for compensation, some practical issues with the guidelines were identified. Amendments to the compensation guidelines were required. Clause 3.14.6(f) of the National Electricity Rules (NER or Rules) provides that the AEMC may, from time to time, amend or replace the compensation guidelines in accordance with the transmission consultation procedures (NER rule 6A.20)

As the Commission has foreshadowed a review of arrangements for determining and paying compensation under clauses 3.14.6 and 3.15.10 of the NER (compensation arrangements review), these amendments to the compensation guidelines have been limited to only those necessary or desirable to clarify the operation of the current Rules provisions. These amendments ensure the guidelines are consistent with the AEMC's obligations under the relevant legislation and, where possible, aim to provide further guidance to potential claimants and improve the practical application of the guidelines, in the event the guidelines are to be applied prior to the outcomes of this review. An outcome of this 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.

Consultation on the review of the compensation guidelines

On 28 October 2010, the Commission published its draft amended compensation guidelines and explanatory statement, and invited submissions on the draft amended compensation guidelines by 10 December 2010. Three submissions were received - from the National Generators Forum (NGF), AGL Energy and International Power.

Concerns raised in submissions regarding amendments to the compensation guidelines are addressed in section 3. All amendments to the compensation guidelines must be consistent with the current drafting of the Rules. Where submissions raised concerns in relation to the drafting of NER clause 3.14.6, these are beyond the scope of amendments to these compensation guidelines and will be considered in the Commission's compensation arrangements review. Appendix A summarises the key issues raised in submissions and the AEMC's responses to these issues.

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1 Amendments to the compensation guidelines

In this section, we discuss the provisions of the Rules under which the compensation guidelines are made and amended, the reasons for limiting the amendments to the guidelines at this time, and the Australian Energy Market Commission's (AEMC's or Commission's) foreshadowed review of arrangements for determining and paying compensation under clauses 3.14.6 and 3.15.10 of the National Electricity Rules (NER or Rules).

1.1 Rules provisions

In accordance with the transmission consultation procedures contained in rule 6A.20 of the Rules, clause 3.14.6(c) of the Rules requires the Commission to develop and publish compensation guidelines that:

- identify the objectives for the payment of compensation under clause 3.14.6 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
 - market participants to supply energy and other services during an administered price period;
- require that the amount of compensation payable in respect of a claim be based on costs directly incurred by the claimant and the value of any opportunities foregone due to the application of the administered price cap, the market price cap, the market floor price or the administered floor price (as the case may be);
- outline the methodology to be used to calculate the amount of any compensation payable; and
- set out the required information to be provided by the Australian Energy Market Operator (AEMO) and the claimant.

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.

In amending the compensation guidelines, the Commission has also had regard to the national electricity objective (NEO). One of the objectives for the payment of compensation under NER clause 3.14.6 is to maintain the incentive for market participants to supply energy and other services during an administered price period. Maintaining the supply of energy and other services during such high stress events in the market is in the long term interests of consumers, by minimising electricity supply interruptions and contributing to the reliable operation of the market at such times.

These amendments to the compensation guidelines reflect experience gained following the practical application of the guidelines to a claim, and provide increased regulatory certainty, transparency and consistency for potential claimants and stakeholders. These improvements to the guidelines should also provide incremental efficiency benefits, as they now incorporate real-world experience from the application of the guidelines to a claim for compensation. The next application of the guidelines to a claim for compensation should result in a more streamlined, efficient process for all participants and stakeholders, minimising the costs of processing a claim for compensation.

1.2 Why the guidelines are being amended

Following the recent application of the compensation guidelines¹ to assess and determine a claim for compensation under NER clause 3.14.6, some issues with the compensation guidelines were identified. Amendments to the compensation guidelines were required.

As the Commission has foreshadowed a review of arrangements for determining and paying compensation under clauses 3.14.6 and 3.15.10 of the NER (compensation arrangements review)², these amendments to the compensation guidelines have been limited to only those necessary to ensure the guidelines are consistent with the AEMC's obligations under the relevant legislation and, where possible, to provide further guidance to potential claimants and to improve the practical application of the guidelines if they are to be applied prior to the outcomes of the review.

1.3 Foreshadowed compensation arrangements review

The Commission proposes to initiate a compensation arrangements review.³ This review will consider the broader issues in determining compensation claims under NER clause 3.14.6 and how AEMO recovers any compensation payable from market customers under NER clause 3.15.10. The Commission's intention to undertake this review was discussed in its final decision on Synergen Power Pty Ltd's compensation claim.⁴

An outcome of this 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.

¹ The version of the guidelines that applied to this compensation claim is called The Determination of Compensation Following the Application of the Administered Price Cap, Market Price Cap, Market Floor Price or Administered Floor Price Guidelines, which commenced on 1 July 2009.

² See section 1.3.

³ Under section 45 of the National Electricity Law (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.

2 Consultation

On 28 October 2010, the Commission published its draft amended compensation guidelines and explanatory statement, and invited submissions on the draft amended compensation guidelines by 10 December 2010.

The Commission received three submissions from:

- National Generators Forum (NGF);
- AGL Energy; and
- International Power.

Where the submissions raised concerns in relation to the drafting of NER clause 3.14.6, these are beyond the scope of amendments to the compensation guidelines. These concerns will be considered in the Commission's foreshadowed compensation arrangements review. Concerns regarding amendments to the compensation guidelines are further addressed in section 3. Any amendments to the compensation guidelines must be consistent with the current drafting of the Rules.

Appendix A summarises the key issues raised in these submissions and the AEMC's responses to these issues.

3 Commission's reasoning in amending the guidelines

In amending the compensation guidelines, the Commission has considered the comments raised in submissions. In accordance with rule 6A.20(f) of the Rules, this section discusses each substantive issue raised in submissions in relation to amendments to the compensation guidelines and the Commission's consideration of that issue.

This section steps through the substantive amendments to the first compensation guidelines⁵ and explains the Commission's reasoning for the amendment, in light of submissions and any issues identified by the Commission.

3.1 Purpose of the guidelines

In the draft amended guidelines, the purpose of the guidelines was clarified and made consistent, including improving the readability and formatting, in the foreword and section 1. These amendments provide further guidance to potential claimants and stakeholders.

No submissions raised any concerns on this issue.

These amendments are included in the final guidelines.

3.2 Version control table and commencement date

In the draft amended guidelines, a version control table was added to identify the history of the guidelines and reflect any changes made to the guidelines over time. This table complements the commencement date section of the guidelines, i.e. section 3 of the guidelines. These amendments provide transparency and regulatory certainty for potential claimants and stakeholders.

No submissions raised any concerns on this issue.

These amendments are included in the final guidelines, with a commencement date of 17 February 2011.

3.3 Confidentiality

On 8 September 2010, the Commission determined that compensation was payable to Synergen Power Pty Ltd in relation to its claim for compensation under NER clause 3.14.6. Following the practical application of the compensation guidelines for this claim, it was identified that the confidentiality section of the 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).

In the draft amended guidelines, the confidentiality section (i.e. section 4) of the guidelines was replaced with text which is consistent with the AEMC's obligations to protect confidential information under the AEMC Act and the NEL. The section sets out how the Commission will deal with confidential information provided to it in claims or submissions.

The International Power submission⁶ raised two key concerns:

- while International Power agreed that there should be an appropriate disclosure of information to ensure the public consultation process is effective in assessing a compensation claim, the level of disclosure should balance the competing requirements of a claimant to protect its competitive edge against the needs of a stakeholder for information to comment on the claim; and
- whether the inability to disclose confidential information, and the associated reduction in public scrutiny of that information, should affect the weight given to such information.

Following the recent assessment of the Synergen Power compensation claim, it was recognised that there is potential tension between a claimant's interest to protect its confidential information and a stakeholder's need to have access to enough information to make a submission during the public consultation process. As International Power identified in its submission, the amendments to section 10.1 of the guidelines are intended to encourage claimants to narrow their claims of confidentiality as much as possible. In particular, as the basic equation for calculating the total claimable amount uses aggregated numbers, claimants should not need to claim confidentiality over this equation.

As to International Power's second concern, the confidentiality section of the guidelines sets out how the Commission will deal with confidential information provided to it in claims or submissions. In each case where the AEMC receives information from claimants or persons making submissions in relation to a claim for compensation, the AEMC will use its discretion in determining the appropriate weight to be given to such information. The Commission considers that the extent of public scrutiny of information may be relevant to the issue of whether such information is considered to be reliable and/or verifiable. The confidentiality section of the guidelines therefore makes clear that the Commission may take a lack of public scrutiny into account when determining the appropriate weight to be given to confidential information provided to it in claims or submissions.

The Commission has not made any further amendments to the confidentiality section of the guidelines from those proposed in the draft amended guidelines. These amendments are included in the final guidelines.

⁵ Dated 30 June 2009.

⁶ International Power, 14 December 2010, p.2

3.4 Principle for recovery of costs from a claimant

In assessing the Synergen Power compensation claim, the Commission determined the principles it will apply in exercising its discretion to recover costs from a claimant. These principles were added to the draft amended guidelines (i.e. in section 7) to provide further guidance to potential claimants.

No submissions raised any concerns on this issue.

These amendments are included in the final guidelines.

3.5 Claimed costs and compensation payable are exclusive of GST

In assessing the Synergen Power compensation claim, the Commission recognised that it was implicit that costs claimed and any compensation payable would be exclusive of GST. However, further clarity should be provided to potential claimants and stakeholders on this matter. In the draft amended guidelines, amendments were made to sections 9.2 and 10 of the guidelines clarifying that any costs claimed and compensation payable are exclusive of GST.

No submissions raised any concerns on this issue.

These amendments are included in the final guidelines.

3.6 Descriptive references of direct and opportunity costs

The draft amended guidelines did not propose any changes to the calculation of direct or opportunity cost sections of the guidelines.

The NGF submission⁷ raised some drafting issues regarding the reference point for an aspect of additional wear and tear (section 10.2.3 of the guidelines) and two issues for consideration in determining future opportunities foreclosed (section 10.3.2.1 of the guidelines).

The Commission has considered the NGF's concerns and accepted the NGF's drafting suggestions. The Commission considers that these amendments tighten the language in these sections of the guidelines, and reflect the practical operation of a generating unit, based on a number of economic and organisational policy considerations, and publicly available information to support a claim for opportunity costs. In addition, these drafting suggestions should improve the understanding and application of these sections for potential claimants and stakeholders. Sections 10.2.3 and 10.3.2.1 of the guidelines have been amended to reflect these changes.

These further amendments are included in the final guidelines.

⁷ NGF, 10 December 2010, pp.2 & 6.

3.7 Treatment of scheduled load

The draft amended guidelines did not propose any changes to the treatment of scheduled load section of the guidelines (section 10.4).

However, the NGF submission⁸ raised concerns that one of the variables in the calculation of compensation for scheduled loads may "lead to compensation based on an intention that was not revealed to the market through the market bid." This would imply that the "participant has failed to comply with the good faith provisions as set out in clause 3.8.22A." The NGF "propose that compensation for scheduled loads be based only on market intentions as revealed in market bids." The NGF submission also suggested an amendment to the wording of the note associated with Figure 10.1.

This is the first time this section of the guidelines has been subject to public consultation. Section 10.4 of the compensation guidelines, which considers the treatment of scheduled load, was not consulted on in making the first compensation guidelines. Its omission from the draft first compensation guidelines was identified following the consultation period, and the transmission consultation procedures did not allow for further consultation phases prior to making the first compensation guidelines.

The Commission has considered the NGF's concerns and further reviewed this section. The Commission recognised that the language and diagram describing how a scheduled load may be eligible to claim compensation may be unclear. In addition, the Commission considered that the principles for compensation under NER clause 3.14.6 (under which compensation is to be based on direct and opportunity costs) were not reflected in the guidelines relating to the treatment of scheduled load. Accordingly, the provisions of the guidelines relating to the calculation of compensation for scheduled load have been amended to:

- clarify the circumstances in which a scheduled load may be eligible to claim compensation; and
- ensure that the calculation of such compensation is consistent with the principles for compensation specified under NER clause 3.14.6.

These further amendments should provide regulatory certainty, transparency and consistency for potential claimants and stakeholders. These further amendments are included in the final guidelines.

3.8 Treatment of scheduled network service providers

The draft amended guidelines did not propose any changes to the treatment of scheduled network service providers section of the guidelines (section 10.5).

⁸ NGF, 10 December 2010, p.2.

However, the NGF submission⁹ raised concerns that the principles for compensation under NER clause 3.14.6 (under which compensation is to be based on direct and opportunity costs) is inconsistently applied to the treatment of scheduled network service providers. The NGF submitted "that the application of such radically different principles to different classes of participant is not good regulatory practice."

As with the section on the treatment of scheduled load, this is the first time this section of the guidelines has been subject to public consultation. Similar to the process followed for the section on the treatment of scheduled load, this section was omitted from the draft first compensation guidelines and its inclusion in the final first compensation guidelines was not able to be consulted on.

The Commission has reviewed this section and agrees with the NGF's concerns. The provisions of the guidelines relating to the calculation of compensation for scheduled network service providers have been amended to make them consistent with the principles for compensation specified under NER clause 3.14.6.

These amendments should provide regulatory certainty, transparency and consistency for potential claimants and stakeholders. These further amendments are included in the final guidelines.

⁹ NGF, 10 December 2010, p.2.

Abbreviations

AEMC	Australian Energy Market Commission
AEMC Act	Australian Energy Market Commission Establishment Act 2004 (SA)
AEMO	Australian Energy Market Operator
Commission	See AEMC
compensation arrangements review	review of arrangements for determining and paying compensation under clauses 3.14.6 and 3.15.10 of the NER
NEL	National Electricity Law
NEO	national electricity objective
NER	National Electricity Rules
NGF	National Generators Forum
Rules	See NER

A Summary of issues raised in submissions

Consultation on the draft amended compensation guidelines closed on 10 December 2010. Three submissions were received. The key issues raised in the submissions, and the AEMC's responses to these issues, are summarised in the following table.

Stakeholder	Issue ¹⁰	AEMC response
NGF	Identified that the methodology for calculating compensation applies inconsistent principles for different categories of participants. (p.2)	Agreed. The methodology for calculating compensation for scheduled network service providers has been amended to be consistent with the principles applied for other categories of participants.
NGF	Suggests that compensation for scheduled loads should be based only on market intentions as revealed in market bids. (p.2)	Agreed. The methodology for calculating compensation for scheduled loads has been amended accordingly.
NGF	Provided some specific drafting amendments for the compensation guidelines, which should clarify the application of the guidelines. (pp.2 & 6)	Amendments generally accepted and adopted.
NGF	Raised a drafting error in clause 3.14.6 of the NER in that costs are not "due to" the administered price cap, market price cap, market floor price or administered floor price - the wording is inconsistent with the reality of the process during such events. (p.3)	This review of the compensation guidelines cannot result in an amendment of the Rules. The compensation arrangements review is expected to consider how compensation will be calculated.
NGF	Raised a number of drafting errors in the eligibility clauses in NER clause 3.14.6 for consideration in the broader compensation arrangements review. (pp.3-4)	As identified by the NGF, the drafting of the Rules provisions will be considered by the compensation arrangements review. This review is expected to consider the circumstances in which a claimant should be eligible to claim compensation.

¹⁰ Page numbers refer to page numbers in the stakeholder's submission.

Stakeholder	Issue ¹⁰	AEMC response
NGF	Claims that the first part of the statement of objectives in clause 3.14.6(c)(1) of the NER conflicts with the nature of the compensation as specified in clause 3.14.6 of the NER. (p.4)	The compensation arrangements review is expected to consider the purpose of paying compensation.
AGL Energy	Identifies that the objective of paying compensation is only to maintain the incentive for market participants to supply energy and other services during an administered price period - the Rules and compensation guidelines should be clarified accordingly. (pp.1-2)	The compensation guidelines reflect the current clause in the Rules. However, the compensation arrangements review is expected to consider the objective of paying compensation.
International Power	Claims that the compensation guidelines should recognise rebidding to avoid stop/start cycles in dispatch, where such rebidding has reduced the total cost of operating the plant, as eligible for compensation. (p.1)	<p>In applying the compensation guidelines to assess its first compensation claim, the Commission did not include rebids in determining the trading intervals for which a generator is eligible to claim compensation. This statutory interpretation reflected the current wording in the Rules.</p> <p>The compensation arrangements review is expected to consider the circumstances in which a claimant should be eligible to claim compensation.</p>
International Power	Identifies that guidance should be given on how costs that relate to the whole period of operation rather than to any specific trading interval e.g. start up costs, should be treated in the calculation of compensation process. (p.2)	<p>In applying the compensation guidelines to assess its first compensation claim, the Commission considered costs that relate to the whole period of operation during the administered price period. A methodology was then determined for allocating the total compensation payable by relevant trading interval.</p> <p>The compensation arrangements review is expected to consider how compensation will be calculated.</p>

Stakeholder	Issue ¹⁰	AEMC response
International Power	Agrees that there should be appropriate disclosure of information to enable the public consultation process to be effective, but that the level of disclosure be used to balance the competing requirements of the claimant and stakeholders. (p.2)	Comment noted. The amendments to section 10.1 of the compensation guidelines suggest that aggregated figures in the calculation of compensation payable should not be subject to a claim of confidentiality, to enable an effective public consultation process.
International Power	Does not agree that the inability to disclose confidential information and the associated reduction in public scrutiny should affect the appropriate weight given to such information - the AEMC should scrutinise whether the level of costs is appropriate and whether confidential information is relevant, in consultation with its appropriate advisers. (p.2)	The amended compensation guidelines indicate that the lack of public scrutiny <u>may</u> be taken into account in considering the appropriate weight to be attributed to confidential information omitted from a published claim or submission. The AEMC will use its discretion on a case-by-case basis.