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ERC0287 CONSULTATION PAPER – COMPENSATION FOLLOWING DIRECTIONS FOR SERVICES OTHER THAN ENERGY AND MARKET ANCILLARY SERVICES

AGL Energy (**AGL**) welcomes the opportunity to comment on the Australian Energy Market Commission's (**AEMC**) consultation on compensation following directions for services other than energy and market ancillary services, which considers a rule change proposal from the Australian Energy Market Operator (**AEMO**).

AGL is one of Australia's leading integrated energy companies and the largest ASX listed owner, operator and developer of renewable generation. Our diverse power generation portfolio includes base, peaking and intermediate generation plants, spread across traditional thermal generation as well as renewable sources. AGL is also a significant retailer of energy and provides energy solutions to over 3.6 million customers in New South Wales, Victoria, Queensland, Western Australia and South Australia.

AEMO's rule change proposal seeks to condense the process by which participants are compensated when providing other services. Specifically, AEMO proposes to remove the ability for directed participants to claim additional compensation under clause 3.15.7B of the National Electricity Rules (**NER**), suggesting that loss of revenue and additional net direct costs can be sought through the independent expert (**IE**) fair payment price process in clause 3.15.7A.

RESPONSE TO CONSULTATION QUESTIONS

*Question 1: Assessment framework*

AGL supports the AEMC's proposed assessment framework, which considers transparency and predictability, efficiency, risk allocation, and consistency.

*Question 2: Application of clause 3.15.7A(a1) to date*

The application of clauses 3.15.7A and 3.15.7A(a1) could be clearer, as could the process by which AEMO determines the applicable compensation methodology. As the Consultation Paper notes in relation to directed services, both the type of service and "the cost recovery methodology to apply, is determined by AEMO after the situation which precipitated the direction is resolved."<sup>1</sup>

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<sup>1</sup> AEMC, Compensation following directions for services other than energy and market ancillary services, Consultation paper, 11 June 2020, p. 4.



From the outset, and with reference to the AEMC’s proposed assessment framework, directed participants have little transparency or predictability regarding the cost implications of what AEMO has asked them to do. In our experience, AEMO only identifies the dispatchable unit identifier and the operating regime at the time of the direction. There is no post-direction confirmation of the service that was required, which in turn determines the cost recovery methodology. There have been examples where AGL did not have knowledge of the services that its units were directed for and hence could not initially submit an accurate claim.

There is merit in amending the NER to provide clarity on when a participant will be compensated under clause 3.15.7A or clause 3.15.7A(a1), to improve consistency in the determination of ‘other’ services. While the list of historically applied ‘other’ services provides a degree of guidance, the changing mix of services that can be provided means this list cannot be relied upon.

To improve transparency, the market should be advised (as soon as practicable) as to the substance and nature of a direction. This information may include the shortfall that required the direction, the service that was directed, together with the participant providing the service. We note that post event, it is clear from a participant’s bids that they were the subject of the direction.

#### *Question 3: Administrative efficiency of current arrangements*

AGL appreciates the concerns outlined by AEMO that the current two-step process for compensation following other services directions may be inefficient. It is, however, a concern not shared by AGL. AEMO considers that a two-step process is not necessary for participants to recover their costs but concedes that there may be times when a participant may require a number of opportunities to do so.

AGL’s understanding is that the aim of this process is to ensure the IE has all of the information required to make a fair and reasonable determination of costs. The NER should facilitate a process that allows additional opportunities to submit further information to the IE should new information arise.

The recent islanding in the South Australian region earlier this year has resulted in a significant number of directions for which IEs are in the process of determining compensation. At no stage during our discussions with the IEs have they indicated that there is a risk that they will not be able to finalise compensation within the 30-week routine revision process. It would be worth seeking clarification from AEMO as to this concern.

AEMO’s proposal would allow a directed participant to make submissions to the IE on loss of revenue and net direct costs as part of the fair payment price (**FPP**) process. AGL considers it is important that participants have the ability to make claims for loss of revenue and net direct costs following the FPP determination, and not as a part of it. The FPP determines the value to the market of the service provided by the participant, while the additional compensation claim considers the cost to the participant of providing that service. In any case, the IE has to assess value and cost separately to determine the total compensation payable.

Finally, the proposed rule muddies the IE’s consideration of additional compensation, resulting in an inappropriate allocation of risk for directed participants, per AEMC consultation question 6. Should the rule change go ahead in some form, this matter would need to be resolved.

#### *Question 4: Proposed solution – single step compensation process*

Section 6.1.1 of the Consultation Paper highlights critical issues regarding participants’ ability to challenge an AEMO decision that no service has been provided, or to challenge an IE’s findings where one is



appointed. In each scenario, participants must be given a right of reply. This is increasingly relevant considering the changing scope of services participants can be directed to provide.

As stated in the response to question 2, AGL's experience suggests that AEMO can and does change its position regarding what type of service has been directed, or if a service has been directed at all. This occurs in the period between AEMO issuing the direction and subsequently determining if a cost recovery methodology applies. The process lacks transparency and independence, given AEMO is examining its own actions.

AGL does not agree that AEMO is the appropriate party to have the final say on whether a service is compensable or not. Accordingly, AGL supports the AEMC's suggestion that the NER formalise a process by which AEMO must publish a determination where it considers a service is not compensable. Taking this a step further, we consider participants should have the ability to challenge AEMO's decision either directly with the Australian Energy Regulator (**AER**) or through the dispute resolution provisions in chapter 8 of the NER.

Regarding the findings of IEs, the existing two-step process of FPP determination followed by additional compensation determination, provides some opportunity for participants to challenge the expert's draft conclusions. It is appropriate that the NER facilitates participants' ability to formally challenge these findings.

Finally, AGL supports the suggested amendment to clause 3.15.7B(a)(1) to enable participants to seek compensation where they have incurred costs as a result of complying with directions, even where no service has been provided, consistent with the NER's treatment of other directed participants.

*Question 7: Information used to determine compensation*

The Consultation Paper questions the value of considering approaches in other jurisdictions when determining compensation. AGL appreciates that experience in overseas markets may not always translate well to the NEM, but the energy market transition shows that unusual or unprecedented events will occur, for which there will be no NEM reference point. As the NEM continues to evolve, it may be that some experience from another jurisdiction or market does prove valuable. Accordingly, it is our view that any amendment to the NER should not constrain what may be considered in determining compensation.

*Question 8: Entity that determines compensation*

AGL does not support a rule change that removes the ability to claim additional compensation following FPP determination. However, should such a rule be made, AGL advocates to retain independent assessment of compensation. 'Other' services, when not linked with the provision of energy or FCAS, may not have an applicable market value. An IE is better placed than AEMO to assess evidence provided by directed participants and determine the value of those services to the market.

Further, as stated in response to question 4, AGL does not consider it appropriate for AEMO to be the arbiter of its own directions, particularly for determining the value of services for which AEMO does not operate a market.

*Question 10: Application of FPP for same service for 12 months*

The AEMC asks that if the NER were amended so that compensation is based on loss of revenue and net direct costs, whether this could co-exist with a requirement for the same compensation to apply for the



same service directed in the ensuing 12-month period. The only way it could, is if it remains possible to separate the FPP and loss of revenue/net direct costs components of the final compensation.

Loss of revenue and net direct costs must continue to be determined on a case by case basis to prevent under- or over-recovery.

*Question 11: Other considerations*

The AEMC refers to the requirement for the IE to consider a 'market price' for services, where the NEM only has energy and FCAS markets. AGL does not consider this to be problematic. Energy and/or FCAS are often by-products of directions for other services, and the spot price is directly impacted by market intervention. This flow on effect, along with other factors, remains relevant in the determination of the 'market price' of these services.

If you have any queries about this submission, please contact Liz Gharghori on (03) 8633 6723 or [lgharghori@agl.com.au](mailto:lgharghori@agl.com.au).

Yours sincerely,

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