

Stage 2 - Adviser referral notice

To activate Stage 2 of DMS serve this notice on the Adviser. *[Clause 8.2.5]*

Send To:

Shirli Kirschner
Wholesale Energy Market Dispute Resolution Adviser
M | 0411 380 380
E | shirli@resolveadvisors.com.au

Stage 2 - Adviser referral notice *[Clause 8.2.5 (a)]*

Note: *Annotations to this document are in and italics for ease of distinguishing the commentary.*

Please note: *The Adviser may provide a copy of this Stage 2 - Adviser referral notice to a dispute resolution panel (DRP) should one be constituted in accordance with the NER. The Adviser may also include a copy of the Stage 2 - Adviser referral notice (or a summary) in her quarterly report to the market and on the dispute resolution portion of the AER website for precedent purposes.*

1 Details of Registered Participant(s) referring the matter to the Adviser

Organisation: Origin Energy Electricity Limited

DMS Contact Name: Jan Prichard

Phone: (02) 9503 5824

Email: Jan.Prichard@originenergy.com.au

Mobile: 0402 060 546

Date: 28 April 2016

2 This is a referral under Clause 8.2.5 (a) of the NER

Type of referral (circle as appropriate)

- (1) The application or interpretation of the NER;
- ~~(2) The failure of any Registered Participants to reach agreement on a matter where the NER require agreement or require the Registered Participants to negotiate in good faith with a view to reaching agreement;~~
- ~~(4) The proposed access arrangements or connection agreements of an Intending Participant or a Connection Applicant;~~
- (5) The payment of moneys under or concerning any obligation under the NER;
- ~~(6) Any other matter relating to or arising out of the NER to which a contract between two or more Registered Participants provides that the dispute resolution procedures under the NER are to apply;~~
- ~~(7) Any other matter relating to or arising out of the NER in respect of which two or more Registered Participants have agreed in writing that this rule 8.2 should apply; or~~
- (8) Any other matter that the NER provide may or must be dealt with under this clause 8.2: (specify) dispute in respect of a final statement under clause 3.15.18 of the NER

[Clause 8.2.1(a)]

or

- ~~Request for compensation from the participant compensation fund.~~

3 Outline of dispute/compensation claim:

A brief history of the dispute/compensation claim and the circumstances giving rise to it:

During the period between approximately 11 October 2015 and 10 November 2015, the Australian Energy Market Operator Limited (**AEMO**) determined that certain regulating raise services and regulating lower services must be sourced only from within the South Australian region of the National Electricity Market (**NEM**) ("local market ancillary service requirements").

For a period of time on 1 November 2015, the South Australian region of the NEM also became separated from the Victorian region of the NEM.

The cost of acquiring local market ancillary services requirements is allocated by AEMO to Market Participants through the "causer pays" process described in clause 3.15.6A of the National Electricity Rules (**NER**).

Origin considers that the cost of these South Australian local market ancillary service requirements was not calculated or allocated to Market Participants in accordance with the NER.

A Stage 1 DMS referral notice was issued by Origin to the DMS Contact of AEMO on 2 February 2016.

The Stage 1 process failed to resolve the dispute.

_____ (Please continue on a separate sheet of paper if necessary.)

Correspondence attached: Yes No

2 This is a referral under Clause 8.2.5 (a) of the NER

4 Date of disputed decision or the occurrence of disputed conduct or when it became known: [clause 8.2.4(b)]

(For compensation claims please provide the date of the incident and whether AEMO has declared that it failed to follow the central dispatch processes set out in clause 3.8 or that a dispatch interval contains a manifestly incorrect input [clause 3.8.24(2),(3)].)

Date of issue of each affected final statement issued to Origin Energy Electricity Limited by AEMO (as revised by AEMO, where applicable), being the final statements dated 11 November 2015 (as revised on 7 December 2015), 18 November 2015 (as revised on 14 December 2015), 25 November 2015 (as revised on 21 December 2015), 2 December 2015 and 9 December 2015.

3 1 1 0 2 0 1 3

5 Date of last service of a DMS referral Notice (please attach a copy of the notice):

(not required for compensation claims)

2 February 2016

Please see attached copy of the notice.

6 A statement of your organisation's issues in relation to the dispute:

(The heads of damages and the relevant trading intervals for compensation claims.)

The dispute relates to the basis on which AEMO has calculated and allocated to Market Participants its cost of the local market ancillary service requirements (defined in section 3 above).

AEMO allocated the cost of the local market ancillary service requirements to Market Participants that have generating units in South Australia on the basis of the whole of their NEM generation using a global contribution factor, adjusted so that South Australian Market Participants share in the cost of the local requirement in proportion to those global factors.

It is Origin's contention that this approach does not meet the requirements or the intention of the Rules and that these costs should have either been allocated to all Market Participants in the NEM or allocated using local contribution factors (that is, contribution factors determined by reference only to the performance of generating units in South Australia).

__ *(Please continue on a separate sheet of paper if necessary.)*

Name and firm of external legal adviser if applicable:

Mitzi Gilligan, Hive Legal Pty Ltd

7 Names of other parties which the applicant considers parties to the dispute:

(Attach pages for multi-party dispute.)

Australian Energy Market Operator Limited

Note: By this time the Adviser expects there will have been a number of DMS meetings. Considering the identity of who should be a party to this dispute is important. Being a party gives a participant the right to access information and to participate in the process. It is also necessary to consider who will be bound by any determination. In general terms if you need a participant to be bound by the determination they will need to be a party. This may affect your view of who should be a party. If there is a difference of view between the participants about who is a party/affected please indicate below, or by cover email. We can then have a discussion about this matter as a preliminary issue before progressing further.

~~For compensation claims please outline if you think there are any other participants who have an interest in the matter.~~

Page 4 of 7

Shirli Kirschner, Wholesale Energy Market Dispute Resolution Adviser

M: 0411 380 380

Email: shirli@resolveadvisors.com.au

31102013

Other parties affected – for each provide:

Organisation: _____

DMS Contact Name: _____

Phone: _____

Email: _____

Mobile: _____

Date: _____

8 Process Election:

We agree/~~do not agree~~ (strike out whichever does not apply) to

8.1 the Adviser attempting to resolve the dispute by any means she considers appropriate

[see clause 8.2.5(c)(1)];

8.2 the Adviser case managing the dispute using a non-binding approach before establishing a DRP.

Note: For claims from the participant compensation fund the scope of the Adviser process under this election is restricted as the determination of a scheduling error under clause 3.8.24 or the award of compensation must be made by a dispute resolution panel, DRP. See [Guidelines and application for compensation for a scheduling error](#).

Note re Adviser process: The NER provide fairly tight time frames for the establishment of the DRP as an alternative to the Adviser process. Agreeing to the Adviser resolving the dispute can take a number of forms. It may be agreement to for the Adviser to resolve it generally, appoint a mediator or some other process. A number of disputes have been resolved this way.

It may also be more limited including meeting to agree to a time frame and a process for bringing the dispute into a sharper focus. This can include having the parties exchange issues statements and clarify the exact scope of the dispute.

The DRP process provides for the selection of 1-3 panel members and there are a range of skills. Having a process to clarify the dispute is useful to ensure that the DRP, when selected, has the right skill mix and that a timeframe is properly estimated allowing the consultants on the DRP to ensure that they are available to meet the commitment. It ensures a tighter process which, in turn, impacts on costs.

Often parties are uncomfortable to tick the box and give the Adviser an unfettered discretion. In other disputes this has been dealt with by referring it to a DRP, with the agreement of the Adviser and that of the parties, for a specified time period with agreed steps.

Generally, once referred the Adviser will contact the other parties to the dispute and then meet by

31102013

phone or in person to agree next steps.

In the event that the Adviser process cannot resolve the dispute, what occurs next is a referral to the DRP. Prior to the referral the Adviser will meet with the parties to discuss:

- *the constitution of the DRP; and*
- *the exchange of information prior to submitting the matter to a DRP.*

In the usual course the information exchange will include:

- *Confirmation of all the parties to the dispute.*
- *The Applicant providing a full statement of issues, facts and contentions in dispute.
(Around 5 days.)*
- *The Respondent(s) providing a reply statement of issues, facts and contentions in dispute.
(Around 7-10 days.)*
- *The parties, if possible, agreeing on a list of documents.
(At the same time.)*
- *The parties providing an estimate of the number and type of witnesses.
(At the same time.)*

This allows for an estimate of hearing dates and when the hearing is likely to occur. This is useful in choosing a DRP. The information can then be submitted to a DRP.

9 Consultation on a DRP:

Names of persons the Registered Participant(s) would like the Adviser to consider in constituting any DRP. Please provide contact details if they are not on the pool as published on the net.

Numbers of members and the types of skills they have would be a useful guide.

9.1 Names of persons for a DRP

(Additional columns for multiple members.)

Name:			
Technical expertise:			
Contact details:			
Referee (if possible):			

9.2 Number of persons for a DRP and expertise required

Number of members: _____

Expertise required: _____

9.3 Adviser checklist

Date received: _____

Clause 8.2 applies: Yes / No *(delete as applicable)*

31102013

10 Document Control Details

Notification sent to parties: _____

Notes on resolution options sent: _____

Please direct comments and questions to the Adviser, Shirli Kirschner, by email:

shirli@resolveadvisors.com.au

History of Amendments:

- Designed June 2011
- Reviewed and amended October 2013

31102013