

Without Prejudice

Stage 2 Dispute under clause 8.2.5 of the National Electricity Rules

between

Origin Energy Electricity Limited (Origin)

and

Australian Energy Market Operator Limited (AEMO)

Outline of position of Alinta Group of Companies

A Introduction

1. This outline is made on behalf of Alinta Energy Retail Sales Pty Ltd (**AERS**), Flinders Operating Services Pty Ltd (**FOS**) and Braemar Power Project Pty Ltd (**BPP**) (together, **Alinta**) in respect of the Stage 2 Adviser referral notice dated 28 April 2016. It states, at a high level, the position Alinta would adopt if joined to the Stage 2 dispute under clause 3.15.18(d) of the National Electricity Rules (**NER**).¹
2. The dispute raises a question as to the proper construction and operation of the NER and procedures made pursuant thereto; in particular the "Causer Pays: Procedure for Determining Contribution Factors" dated 15 December 2013 (**Causer Pays Procedure**).
3. The factual substratum is described in the outlines of position of Origin Energy Electricity Limited (**Origin**) and Australian Energy Market Operator Limited (**AEMO**) each dated 25 May 2016.
4. In summary, Alinta contends that, when proper regard is had to the text and context of the applicable rules:
 - (a) clauses 3.15.6A(h)(2) and (i)(1) require the costs of both global and local market ancillary service requirements for each relevant dispatch interval to be aggregated and then allocated to participants by means of the calculation of a single trading amount for each Market Participant for each relevant trading interval, using a single MPF for each such participant, as calculated under clause 3.15.6A(j) in accordance with the procedure prepared by AEMO under clause 3.15.6A(k);
 - (b) having regard to the text and context of clauses 3.15.6A(h)-(m), AEMO is permitted to prepare a procedure under clause 3.15.6A(k) that requires the calculation of a global contribution factor for each participant for this purpose;

¹ Terms defined in version 80 of the NER are used as so defined in this Outline.

(c) this can be contrasted with the position under clause 3.15.6A(j)(2) that expressly calls for determination of local contribution factors where regions operate asynchronously during a relevant trading interval;

(d) amendments to the procedure prepared under clause 3.15.6A(k) and applied under clause 3.15.6A(j) may be made from time to time, but when so made ought apply prospectively and after consultation: clauses 3.15.6A(l), (m), (na), read consistently with the scheme of the National Electricity Law (**NEL**).

B The Regulatory Scheme

5. Chapter 3 of the NER sets out the procedures that govern the operation of the market relating to the wholesale trading of electricity and the provision of ancillary services.

6. Clause 3.1.4(8) contains a market design principle. It provides that, where arrangements require participants to pay a proportion of AEMO costs for ancillary services, charges should (where possible) be allocated to provide incentives to lower overall costs of the NEM. Costs unable to be reasonably allocated in this way should be apportioned as broadly as possible whilst minimising distortions to production, consumption and investment decisions.

7. Clause 3.15.6A governs ancillary service transactions. In each trading interval, in relation to each enabled ancillary service generating unit or enabled ancillary service load, an ancillary services transaction occurs, which results in a trading amount for the relevant Market Participant determined in accordance with the formula prescribed by clause 3.15.6A(a).

8. The current dispute concerns regulating frequency control ancillary services (**FCAS**) procured by AEMO in South Australia during the period between 11 October and 10 November 2015. Regulating raise and regulating lower services are used to control the level of generation from a facility to correct an imbalance between generation and demand in the national electricity market (**NEM**). Those services engage the operation of clause 3.15.6A(h)-(nb) read alongside the market design principle in clause 3.1.4(8).

9. Clause 3.15.6A(h) provides that the total amount calculated by AEMO under clause 3.15.6A(a) for the regulating raise service or the regulating lower service in respect of each dispatch interval which falls within the trading interval must be allocated by AEMO to each region in accordance with the following procedure:

(a) by allocating on a pro-rata basis for each region and for each dispatch interval within the relevant trading interval the proportion of the total amount calculated by AEMO under clause 3.15.6A(a) for the regulating raise service and regulating lower service between global market ancillary service requirements and local market ancillary service requirements to the respective marginal prices for each such service; and

- (b) by calculating for each relevant dispatch interval the sum of the costs of acquiring the global market ancillary service requirements for all regions and the sum of the costs of acquiring local market ancillary service requirements for all regions, as determined under subparagraph (h)(1).
10. Under NER clause 3.15.6A(i), the costs of regulating raise services and regulating lower services are recovered by AEMO by two means:
- (a) in relation to each Market Generator, Market Small Generation Aggregator and Market Customer with metering on their facilities that allows their contribution to the aggregate deviation in frequency of the power system to be assessed, based on a contribution factor for each of those persons (the **MPF**). MPF is, in this context, "the contribution factor last set by AEMO for the Market Generator, Market Small Generation Aggregator or Market Customer, as the case may be, under paragraph (j) for the region or regions relevant to the regulating raise service or regulating lower service": clause 3.15.6A(i)(1); and
- (b) in relation to each Market Customer without such metering, in accordance with an "aggregate" contribution factor which is the same for each such Market Customer. This too is referred to as MPF. MPF is, in this context, defined as "the aggregate of the contribution factor set by AEMO under paragraph (j) for Market Customers, for whom the trading amount is not calculated in accordance with the formula in subparagraph (1) for the region or regions relevant to the regulating raise service or the regulating lower service": clause 3.15.6A(i)(2).
11. Under clause 3.15.6A(i), the amount referred to as "TSFCAS" is the total amount to be recovered by AEMO for the regulating raise service or the regulating lower service in respect of a dispatch interval, and is to be applied to a single MPF contribution factor for each Market Participant. Put differently, TSFCAS is the aggregate cost for both global and local market ancillary service requirements (clause 3.15.6A(h)(2)).
12. Under clause 3.15.6A(j)(1), AEMO must determine a contribution factor for each Market Participant in accordance with the procedure prepared under clause 3.15.6A(k).
13. Several aspects of clause 3.15.6A(j)(1) can be noted.
14. *First*, the indefinite article is used in referring to "a contribution factor". This indicates that various contribution factors may answer that description. This indication would not arise were the definite article used (i.e., "the" contribution factor). The language of subparagraph (j)(1) contrasts with that of (j)(2) in two respects. That paragraph provides that if a region has or regions have operated asynchronously during a trading interval, AEMO must determine (in accordance with the Causa Pays Procedure) "the contribution factors

relevant to the allocation of regulating raise service or regulating lower service to that region or regions.” The two matters of contrast between (j)(1) and (j)(2) are that:

(a) paragraph (j)(2) speaks of “the” contribution factors, hence employing more determinate language than sub-paragraph(j)(1); and

(b) paragraph (j)(2) expressly contemplates factors relevant to the allocation of regulating raise or lower services to particular regions.

15. *Secondly*, by reason of clause 3.15.6A(na), the factors determined under paragraph (j)(1) must be published at least 10 business days before those factors are applied to a trading interval under paragraphs (h) and (i). That is, the contribution factors must be published *before* they are to be applied. As a result, Market Participants participate in the market on the basis of published and known contribution factors.
16. *Thirdly*, clause 3.15.6A(l) expressly provides that AEMO may amend the procedure in clause 3.15.6A(j) from time to time. Consistent with the scheme of the NEL (e.g., s 104 and Schedule 2, clauses 31AH – 35) such amendment should be construed as having prospective application. As a result, Market Participants participate in the market on the basis of a published and known procedure. Clause 3.15.6A(m) confirms this by providing that AEMO must comply with the Rules consultation procedures when making or amending the procedure referred to in clause 3.15.6A(k) (as to which see NEL Schedule 2, clause 12(2)).
17. Clause 3.15.6A(k) requires AEMO to prepare a procedure for determining contribution factors for use in the exercise to be conducted under clause 3.15.6A(j) and - where AEMO considers appropriate - for use in clause 3.15.6A(nb). The Causer Pays Procedure is the relevant instrument. In preparing it, AEMO is required to take into account various principles. Two of those are significant. *First*, by sub-paragraph (1), the contribution factor for a Market Participant should reflect the extent to which the Market Participant contributed to the need for regulation services. *Secondly*, by sub-paragraph (4), the individual Market Participant’s contribution to the aggregate need for regulation services will be determined over a period of time to be determined by AEMO.
18. Several aspects of clause 3.15.6A(k) can then be noted.
19. *First*, the obligation imposed by the sub-paragraph is referable to the preparation of the relevant procedure (as opposed to its application). The matters enumerated in sub-paragraphs (k)(1)-(7) that must be taken into account must be taken into account in preparing the procedure.
20. *Secondly*, clause 3.15.6(k)(1) provides that this contribution factor “should reflect” the extent to which the Market Participant contributed to the need for regulation services. Being undefined, that word takes its ordinary meaning. The ordinary meaning of the verb

“reflect” is to “give back or show an image of, mirror”. This may not be a perfect image. It will correspond to, without directly representing, that which is reflected. The use of reflects is significant. So too that no adverb qualifies it, such as “directly” or “precisely.” This margin of correspondence fairly accommodates the fact that the assessment of contribution factors by AEMO will be a multi-factorial and complex exercise in which precision in respect of all affected Market Participants will not be possible.

21. *Thirdly*, clause 3.15.6A(k)(4), in providing that the individual Market Participant’s contribution to the aggregate need for regulation services will be determined over a period of time to be determined by AEMO, necessarily contemplates a backward-looking period: clauses 3.15.6A(n) and (na). By reason of this look-back and the discretion vested in AEMO to select a relevant period, there will never be a perfect fit between any particular Market Participant’s individual contribution to the aggregate need for FCAS and the period for which the actual need is to be allocated. This fact sits well with the use of the indefinite article in clause 3.15.6A(j)(1) and of “reflect” in clause 3.15.6A(k)(1). It supports a conclusion that a range of contribution factors may be permissible so long as they are reached in accordance with the NEL, the NER, clause 3.15.6A generally and market design principles such as clause 3.1.4(8).

C Conclusion

22. When proper regard is had to the above matters, the following emerges:

- (a) clauses 3.15.6A(h)(2) and (i)(1) require the costs of both global and local market ancillary service requirements for each relevant dispatch interval to be aggregated and then allocated to participants by means of the calculation of a single Trading Amount for each Market Participant for each relevant trading interval, using a single MPF for each such participant, as calculated under clause 3.15.6A(j) in accordance with the procedure prepared by AEMO under clause 3.15.6A(k);
- (b) having regard to the text and context of clauses 3.15.6A(h)-(m), AEMO is permitted to prepare a procedure under clause 3.15.6A(k) that requires the calculation of a global contribution factor for each participant for this purpose;
- (c) this can be contrasted with the position under clause 3.15.6A(j)(2) that expressly calls for determination of local contribution factors where regions operate asynchronously during a relevant trading interval;
- (d) amendments to the procedure prepared under clause 3.15.6A(k) and applied under clause 3.15.6A(j) may be made from time to time, but when so made ought apply prospectively and after consultation: clauses 3.15.6A(l), (m), (na) read consistently with the scheme of the NEL.