

**IN THE DISPUTE RESOLUTION PANEL AT MELBOURNE**  
**(Constituted for a determination under clause 3.16.2 of the National Electricity Rules)**

**Application for compensation in relation to the scheduling error between 12 and 18 March 2021 declared by AEMO on 9 April 2021**

**Dundonnell Wind Farm Pty Ltd**

**Claimant**

**DETERMINATION**

The Dispute Resolution Panel determines that:

1. Compensation in the sum of \$57,429.37 is payable out of the Participant compensation fund (the **Fund**) to Dundonnell Wind Farm Pty Ltd (**DWF**).
2. DWF shall pay the costs of the dispute resolution processes, comprising the costs of the Dispute Resolution Panel and the Wholesale Energy Market Dispute Resolution Adviser.
3. DWF is entitled to be reimbursed out of the Fund for the costs paid pursuant to paragraph 2.
4. AEMO shall pay to DWF through Austraclear:
  - a. the amount determined in paragraph 1, within 20 business days of this Determination; and
  - b. the reimbursement determined in paragraph 3, within 20 business days of DWF furnishing proof of payment of the costs referred to in paragraph 2.

21 December 2021

  
Tom Clarke

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**Claimant**

**REASONS FOR DETERMINATION**

1. The claimant, Dundonnell Wind Farm Pty Ltd (**DWF**), is registered as the *Market Generator* for the Dundonnell Wind Farm (**Dundonnell WF**). The Dundonnell WF comprises three aggregated *generating units*, situated in the Victorian region, with a total registered maximum capacity of 336 MW.
2. The generating units are classified as *semi-scheduled generating units*. Accordingly, DWF is a *Semi-Scheduled Generator* in respect of the Dundonnell WF.
3. On 9 April 2021, AEMO declared that a *scheduling error* had occurred from the 5-minute *dispatch interval (DI)*<sup>1</sup> ending 05:00 on 12 March 2021 to the DI ending 06:55 on 18 March 2021. Dundonnell WF was affected by the *scheduling error*, as I will describe below.
4. A *scheduling error* occurs if (among other circumstances) AEMO declares that it failed to follow the *central dispatch* process in **rule 3.8** of the National Electricity Rules (**NER**): **NER cl 3.8.24(a)(2)**. AEMO's declaration on 9 April 2021 was such a declaration that, during the identified interval, AEMO failed to follow the *central dispatch* process.
5. If a *scheduling error* occurs, a *Market Participant* may apply to the *dispute resolution panel* (the **DRP**) for a determination as to compensation under **NER cl 3.16.2**. If so determined, any such compensation is payable from the *Participant compensation fund* (the **Fund**), which AEMO

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<sup>1</sup> The present scheduling error occurred prior to the commencement of the *National Electricity Amendment (Five Minute Settlement) Rule 2017 No 15* (as amended). Before the introduction of 5-minute settlement:

- (a) the central dispatch process was run for each 5-minute *dispatch interval*, which produced a *dispatch price* in each region for that *dispatch interval*; and
- (b) market settlement was conducted for each 30-minute *trading interval*, based on the *spot price*, which was calculated in each region as the time-weighted average of the 6 *dispatch prices* in each *trading interval*: **cl 3.9.2(h)** as then in force.

maintains and administers under Part 5, Div 7 of the National Electricity Law (**NEL**) and **NER cl 3.16.1**.

6. On 30 November 2021, DWF submitted an application to the Wholesale Energy Market Dispute Resolution Adviser (the **WEMDRA**) for compensation under cl 3.16.2.
7. DWF's claim for compensation has been referred by the WEMDRA to the DRP constituted by me.
8. DWF and AEMO have filed joint submissions, setting out the basis on which they agree that DWF is entitled to compensation, and as to the amount. The joint submissions refer to a market impact assessment report prepared by AEMO (the **Impact Assessment Report**), a copy of which has also been provided to me.
9. I conducted a short hearing by videoconference on 16 December 2021, which was attended by representatives of DWF and AEMO and by the WEMDRA.

### **Scheduling and dispatch of semi-scheduled generation**

10. For each DI, AEMO prepares a forecast of the available capacity of each semi-scheduled generating unit to generate electricity from its energy source, which is the *unconstrained intermittent generation forecast (UIGF)*.
11. The objective of the central dispatch process that AEMO conducts for each DI is to maximise the value of spot market trading subject to, among other matters:
  - a. *dispatch offers*;
  - b. constraints on semi-scheduled generating units, identified by the UIGF; and
  - c. *constraints* imposed by *ancillary services* requirements: **cl 3.8.1(b)**.
12. Typically,<sup>2</sup> the *dispatch level* that AEMO notifies in the *dispatch instruction* for a semi-scheduled generating unit in any DI is equal to its UIGF for that DI. The *dispatch instruction* also indicates whether the DI is a *semi-dispatch interval* or a *non semi-dispatch interval*.
  - a. In a *semi-dispatch interval*, the generating unit's active power at the end of the DI must not exceed the specified *dispatch level*. At the relevant time,<sup>3</sup> this was apparent from **NER cll 4.9.2(a)(3)** and **4.9.5(a)(6)** and the definition of *dispatch level* in **NER Ch 10**.<sup>4</sup>

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<sup>2</sup> Subject to any limits on availability indicated by the Generator's dispatch offer or other technical limits communicated to AEMO.

<sup>3</sup> At the time of the scheduling error, version 159 of the NER was in force.

<sup>4</sup> Since the *National Electricity Amendment (Semi-scheduled generator dispatch obligations) Rule 2021 No 2*, this requirement is now stated directly by **NER cl 4.9.8(a2)(2)**.

- b. In a *non semi-dispatch interval*, the *generating unit's active power* at the end of the DI may exceed the specified *dispatch level*.

### The scheduling error declared by AEMO

13. From 05:00 on 12 March 2021 until 18 March 2021, there was a planned outage on the Moorabool to Mortlake 500 kV line. In order to manage frequency across the South Australian power system in the event that South Australia became separated from the rest of the NEM, AEMO invoked a set of frequency control ancillary service (**FCAS**) constraint equations (constraint set V-MLMO) specifying a minimum lower contingency FCAS requirement.<sup>5</sup>
14. In four of those FCAS constraint equations, AEMO incorrectly included all 3 units of the Dundonnell WF on the left-hand side (**LHS**) of the equation. Those equations subsequently bound during 804 DIs between 05:00 on 12 March 2021 and 06:55 on 18 March 2021 (the **affected DIs**).<sup>6</sup> As a result, during those DIs, the *dispatch level* notified to Dundonnell WF was curtailed below the *dispatch level* that would have been determined if the FCAS constraint equations had been correctly formulated.
15. Each DI in which the FCAS constraint equations were binding was also specified as a *semi-dispatch interval*. As I have noted above, this meant that the dispatch level notified to Dundonnell WF for that DI was binding as a maximum permitted level for Dundonnell WF's active power output at the end of that DI.

### The Participant compensation fund

16. AEMO maintains the Fund for the purpose of paying compensation, as determined by the DRP, for *scheduling errors* to Scheduled Generators, Semi-Scheduled Generators and Scheduled Network Service Providers.
17. Each financial year, AEMO is required to top up the Fund in the amount of \$1,000,000, or the difference between \$5,000,000 and the amount which AEMO reasonably estimates will be the balance of the Fund at the end of the financial year, whichever is the lesser.
18. As at 30 November 2021, the balance of the Fund was \$4,501,733.28.

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<sup>5</sup> AEMO, Market notice 83206, issued 10 March 2021.

<sup>6</sup> In total, there were approximately 1,750 DIs over the 6 days while the incorrect network constraint equations were in use.

### Matters to be determined by the DRP

19. In an application for compensation under **clause 3.16.2**, the function of the DRP is to determine:
  - a. whether compensation is payable to the claimant;
  - b. if so, the amount or level of compensation; and
  - c. the manner and timing of any payments from the Fund.
20. The DRP's determination must be made consistently with clause 3.16.2: **cl 3.16.2(c)**.
21. The key requirements of clause 3.16.2 for this determination are:
  - a. A Semi-Scheduled Generator who receives an instruction to operate its semi-scheduled generating unit at a lower level than the level at which it would have been instructed to operate had the scheduling error not occurred, will be entitled to receive compensation in an amount determined by the DRP: **cl 3.16.2(d)**.
  - b. In determining the level of compensation to which the claimant is entitled in relation to a scheduling error, the DRP must:
    - i. use the *spot price* as determined under rule 3.9, for the 30-minute *trading interval* in which each affected DI occurred;
    - ii. take into account the current balance of the Fund and the potential for further liabilities to arise during the financial<sup>7</sup> year; and
    - iii. recognise that the aggregate liability of the Fund in any financial year in respect of *scheduling errors* cannot exceed the balance of the Fund that would have been available at the end of that year if no compensation payments had been made during that year: **cl 3.16.2(h)(3)-(5)**.
  - c. The manner and timing of payments from the Fund are to be determined by the DRP: **cl 3.16.2(i)**.
  - d. To the maximum extent permitted by law, AEMO is not liable in respect of a scheduling error except out of the Fund: **cl 3.16.2(j)**.

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<sup>7</sup> See decision of the DRP (constituted by The Hon MJ Clarke QC and Greg Thorpe), Scheduling error compensation claim by Macquarie Generation, 24 April 2008, at [14]-[18].

### Whether compensation is payable

22. DWF's entitlement to compensation is established if the scheduling error resulted in it receiving instructions to operate the Dundonnell WF at a lower level than it would have been instructed to operate had the *scheduling error* not occurred: **cl 3.16.2(d)**.
23. The Impact Assessment Report confirms that in the affected DIs, Dundonnell WF received dispatch instructions with *dispatch levels* at lower MW amounts than it would have received if the FCAS constraint equations had been correctly formulated. AEMO has rerun the NEM Dispatch Engine (**NEMDE**) with the Dundonnell WF terms removed from the LHS of those FCAS constraints to establish that the *dispatch levels* notified in those DIs were lower than they would have been had the FCAS constraint equations been correctly formulated.
24. I am therefore satisfied that DWF is entitled to compensation for the scheduling error.

### The amount of spot market losses incurred as a result of the scheduling error

25. In the Impact Assessment Report, AEMO has described the steps it took to calculate the compensation amounts for Dundonnell WF as follows:
  - Reviewed and confirmed no other market participants were adversely impacted as a result of the error in the above-mentioned FCAS constraints.
  - Rerun the National Electricity Market Dispatch Engine (NEMDE) for the scheduling error period removing the Dundonnell WF terms from the LHS of the relevant FCAS constraints.
  - Compared dispatch targets between the original and rerun of NEMDE for all three Dundonnell WF units and taken the difference in megawatt hours (MWh) for each dispatch interval.
  - Adjusted the difference to account for AEMO's non-intertemporal modelling approach that resulted in a ramping constraint and difference between dispatch target in the rerun and unit availability at the time:
    - In performing the NEMDE rerun the non-intertemporal approach utilises the initial megawatt (MW) values from the original NEMDE run at the start of the DI and the ramp rates bid for Dundonnell WF to calculate a target MW value for the end of the DI. In certain DIs across the scheduling error period this resulted in the target MWs being below the availability MWs at each of the three Dundonnell WF units. For example, in DI 0325 on 13 March, for DUNDWF1 the Initial MW was 63.5 MW, the Up Ramp Rate was 8 MW per min resulting in a target MW of 103.5 MW for the interval – despite availability of 117.1 MW.

- Given this modelling approach and after further investigation AEMO revised its methodology to estimate the compensation payable by relying on each DUID’s availability (as opposed to target MW from the rerun) for those DI in question. AEMO considers this a prudent assumption as: (a) had the ramping constraint not been in place and (b) with each of the three Dundonnell WF DUIDs bid in at or close to market price floor for the DI/period in question, it is likely Dundonnell WF would have been dispatched at its full availability.
    - Adjusted the difference in targets by the marginal loss factor for Dundonnell WF.
    - Aggregated this amount (MWh) on a trading interval basis and multiplied it by the trading interval price (\$/MWh).
26. This method conforms with the requirements of cl 3.16.2, in that it:
- a. calculates the difference between the actual *dispatch level* and the corrected *dispatch level* in each affected DI;
  - b. adjusts that difference by the *marginal loss factor* for Dundonnell WF; and
  - c. aggregates the active power shortfall on a 30-minute trading interval basis (in MWh) and then multiplies it by the *spot price* for that trading interval, as required by **cl 3.16.2(h)(3)**.
27. I note that, during the occurrence of the scheduling error, negative *spot prices* were experienced in the Victorian region during a number of the affected DIs. In aggregating the spot market losses by reference to the *spot price* for each trading interval, AEMO has netted off the benefits realised by Dundonnell WF being dispatched at a reduced *dispatch level* during negatively-priced trading intervals against the significantly larger losses incurred during positively-priced trading intervals.
28. Given that AEMO’s reconstruction of the counterfactual dispatch outcomes (with the scheduling error removed) is done on a non-intertemporal basis – that is, that the counterfactual dispatch outcome for each DI is modelled discretely, not taking account of the wind farm’s active power output at the start of that DI implied by the modelled reconstruction of the immediately preceding DI – I accept that it is appropriate for AEMO to have disapplied the ramp rate limit for Dundonnell WF for the reasons summarised in the extract above.
29. On the basis of the matters set out in the joint submissions and the Impact Assessment Report, I am therefore satisfied that the quantum of the spot market losses incurred by DWF as a result of the declared scheduling error is \$57,429.37.

### Balance and potential further liabilities of the Fund

30. In determining the level of compensation to which the claimant is entitled, in addition to taking into account the current balance of the Fund (approximately \$4.5 million), I am also required:
  - a. to take into account the potential for further liabilities to arise during the current financial year; and
  - b. to recognise that the aggregate liability in the current financial year for scheduling errors cannot exceed the expected balance of the Fund that would be available at 30 June 2022 if no compensation payments were made: **cl 3.16.2(h)(4)-(5)**.
31. The approach to be taken by a DRP in considering these matters has been helpfully analysed in the *Macquarie Generation* decision of the DRP, at [10]-[26].<sup>8</sup>
32. Since declaring this scheduling error on 9 April 2021, AEMO has subsequently declared 5 further scheduling errors, with the most recent declaration having been made on 5 July 2021.
33. Both AEMO and the WEMDRA have confirmed that no other outstanding claims for compensation have been notified in respect of any of these other declared scheduling errors.
34. Moreover, AEMO has confirmed that it is presently investigating a number of other discrete events or circumstances to confirm whether or not a scheduling error has occurred. AEMO has submitted that, based on its present understanding of those events, if any of those matters are determined to be a scheduling error, AEMO does not expect that they would be likely to result in a material impact relative to the balance of the Fund.
35. On the basis of the information provided and submissions made by AEMO, I do not perceive any basis on which the payment of compensation out of the Fund should be reduced or deferred on account of the risk that the Fund might otherwise be depleted through additional claims for compensation during the current financial year.
36. I am therefore satisfied that DWF is entitled to compensation from the Fund in the full amount of its spot market losses, namely \$57,429.37.

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<sup>8</sup> Decision of the DRP (constituted by The Hon MJ Clarke QC and Greg Thorpe), Scheduling error compensation claim by Macquarie Generation, 24 April 2008.



### Costs of the DRP and the WEMDRA

37. **Clause 8.2.8(a)** provides that the costs of any dispute resolution process, including the costs incurred by the WEMDRA in constituting and convening the DRP,<sup>9</sup> are to be borne equally by the parties to the dispute unless **cl 8.2.8(b)** applies,<sup>10</sup> or otherwise agreed by the parties.
38. In this case, the parties jointly submitted that the costs of the DRP and the WEMDRA, and the manner and timing of payment of those costs, are to be determined by the DRP; and that each party would bear its own legal costs.
39. At the hearing, the WEMDRA advanced written and oral submissions that, in claims for scheduling error compensation such as this application, where there is no contest about either the occurrence of a scheduling error or the quantum of compensation payable out of the Fund, the DRP should order that the DRP and WEMDRA costs be paid or reimbursed out of the Fund.
40. In particular, the WEMDRA submitted that:
  - a. In an uncontested claim for scheduling error compensation, there is not a “dispute” per se. It is therefore inappropriate that the cl 8.2.8(a) starting point – that the DRP and WEMDRA costs should be borne equally by the parties – should apply in the same way that it applies to contested disputes.
  - b. The objective of the scheduling error compensation framework is to compensate affected participants for their losses (principally their spot market losses) caused by the scheduling error.
  - c. Rule 3.16 mandates that such compensation cannot be paid out of the Fund except pursuant to determination of the DRP. The appointment of a DRP and the making of a determination by the DRP are therefore necessary steps that are required in order for a claimant to become eligible to receive such compensation.
  - d. If the claimant is required to bear the DRP and WEMDRA costs that must necessarily be incurred in order to obtain compensation, its burden of meeting those costs will tend to undermine the objective of compensating the claimant for losses it has incurred by reason of the scheduling error. This is particularly so where the quantum

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<sup>9</sup> **Clause 8.2.8(a)** refers to costs incurred by WEMDRA “in performing functions of the *Adviser* under clauses 8.2.5, 8.2.6A, 8.2.6B, 8.2.6C or 8.2.6D”. **Clause 8.2.6A** is the clause that requires WEMDRA to establish a DRP, out of the members of the pool established under **cl 8.2.2(e)**, whenever it becomes necessary to refer a dispute for resolution by a DRP.

<sup>10</sup> **Clause 8.2.8(b)** provides: “Costs of the dispute resolution processes ... may be allocated by the *DRP* for payment by one or more parties as part of any determination. ... [I]n deciding to allocate costs against one or more parties to a dispute, the *DRP* may have regard to any relevant matters, including (but not limited to) whether the conduct of that party or those parties unreasonably prolonged or escalated the dispute or otherwise increased the costs of the *DRP* proceedings”.

of compensation is small, such that the practical effect of the claimant bearing some or all of the DRP and WEMDRA costs may result in the claimant being deprived of a material portion of the compensation to which it is entitled.

- e. In future uncontested claims for scheduling error compensation, the fairness and efficiency of the compensation mechanism will be enhanced if the DRP orders that the DRP and WEMDRA costs be paid or reimbursed out of the Fund, as this will avoid the need for WEMDRA to facilitate an agreed allocation of those costs through further discussions with the parties.
  - f. The DRP's obligation to have regard to the balance of the Fund and the likelihood that the Fund might be depleted by further claims during the financial year provides a safeguard against the Fund being depleted by meeting the DRP and WEMDRA costs, in addition to the compensation for the losses caused directly by the scheduling error.
41. The WEMDRA also noted that she will not charge her time incurred in preparing submissions in respect of the costs of this application as part of her costs of this application.
  42. In response to the WEMDRA's submissions, AEMO noted that, in addition to cl 8.2.8, **cl 3.16.2(j)** specifies that, to the maximum extent permitted by law, AEMO is not liable in respect of a scheduling error except out of the Fund. It is not necessary for me to decide whether cl 3.16.2(j) precludes a DRP from ordering that AEMO pay some or all of the DRP and WEMDRA costs other than from the Fund.
  43. At the hearing, I indicated to the parties that, if I am satisfied that it is open to the DRP to direct that the DRP and WEMDRA costs be paid or reimbursed out of the Fund, I would be minded to order that:
    - a. AEMO pay DWF compensation out of the Fund, in the sum of \$57,429.37;
    - b. DWF pay the DRP and WEMDRA costs of this application; and
    - c. DWF be reimbursed out of the Fund for the DRP and WEMDRA costs.
  44. DWF indicated that it had no objection to the WEMDRA's proposal, but noted that, in addition to the spot market losses that are the subject of its claim for compensation from the Fund, the scheduling error had also caused it to incur contract losses and to forgo income from large-scale generation certificates.
  45. AEMO indicated that agreed to the DRP making orders in the manner that I have proposed.
  46. It then remains for me to consider whether the DRP and WEMDRA costs of an application for compensation that are borne by the claimant are a loss of a kind that is compensable out

of the Fund. In considering that matter below, I am conscious that I have not had the benefit of submissions advanced by an active contradictor.

47. This question is ultimately a question of the proper construction of rule 3.16. That requires consideration of the text of rule 3.16, in its legislative context and with a proper understanding of the purpose of the rule.<sup>11</sup> In particular, as **cl 7 of Schedule 2** to the NEL applies to interpretation of the NER, it requires that, in interpreting a provision of the Rules, the interpretation that will best achieve the purpose or object of the Rules – whether or not that purpose is expressly stated – is to be preferred to any other interpretation.
48. In considering this question, I have been much assisted by the analysis of the DRP (constituted by The Hon Michael Black AC QC, Geoff Swier and Peter RD Gray SC) in the *Woodlawn Wind* determination.<sup>12</sup> Although I am not bound by that prior determination of the DRP, the authorship and the evident rigour of the analysis in that decision commands respect.
49. In *Woodlawn Wind*, the preliminary question determined by the DRP was whether a Semi-Scheduled Generator's lost opportunity to create renewable energy certificates (**REC losses**),<sup>13</sup> suffered as a direct consequence of a scheduling error, was a loss of a kind that is compensable out of the Fund. The DRP held that rule 3.16 did not permit REC losses to be compensated out of the Fund, principally for the following reasons:
- a. The right to compensation under cl 3.16.2 is a provision ancillary to the operation of the NEM under the Rules. Moreover, when Semi-Scheduled Generators were brought within central dispatch and the scheduling error and participant compensation framework in 2008, there was no evident intention to allow Semi-Scheduled Generators to recover compensation from the Fund for losses incurred under other existing statutory schemes: at [75]-[76].
  - b. **Clause 3.16.2(h)(3)** requires that, in determining the level of compensation to which a Market Participant is entitled in relation to a scheduling error, the DRP must use the *spot price* as determined under rule 3.9. REC losses are not capable of being quantified by reference to the NEM *spot price* for each relevant trading interval. As such, cl 3.16.2(h)(3) is a powerful indication that only heads of loss that involve the application of the *spot price* are compensable under cl 3.16.2 – obviously including, but not necessarily limited, to spot market losses: at [61]-[64].
  - c. A Semi-Scheduled Generator's entitlement to compensation (as expressed in **cl 3.16.2(d)**) is to be understood as referring to the Semi-Scheduled Generator only

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<sup>11</sup> See, eg, *Thiess v Collector of Customs* (2014) 250 CLR 664 at 671-672, [22]-[23].

<sup>12</sup> Reasons for determination of the DRP, Scheduling error compensation claim by Woodlawn Wind and Lake Bonney Wind Power, 12 December 2012.

<sup>13</sup> Under the *Renewable Energy (Electricity) Act 2000* (Cth).

insofar as its activities relate to a semi-scheduled generating unit: **cl 2.2.7(g)**. This underscores the conclusion that, in order to be compensable out of the Fund, the loss must be attributable to the claimant's activity in the NEM as a Market Participant: at [58]-[60].

50. I consider that, at least in an uncontested application for scheduling error compensation, the DRP and WEMDRA costs that are required to authorise the payment of compensation from the Fund are costs which, if borne by the claimant, may be compensated out of the Fund. I reach this conclusion as a matter of the proper construction of rule 3.16, which I consider is also consistent with the DRP's reasoning in *Woodlawn Wind*.
51. The purpose of the Fund is to pay compensation for scheduling errors to Scheduled Generators, Semi-Scheduled Generators and Scheduled Network Service Providers, as determined by the DRP: **cl 3.16.1(a)**. The DRP's determination as to compensation must be consistent with cl 3.16.2: **cl 3.16.2(c)**.
52. Relevantly to this case, where a scheduling error has occurred with the result that a Semi-Scheduled Generator has received a dispatch instruction to operate its semi-scheduled generating unit at a lower level than it would have been instructed had the scheduling error not occurred, the Semi-Scheduled Generator will be entitled to receive compensation in an amount determined by the DRP: **cl 3.16.2(d)**. In determining the level of compensation, the DRP must use the *spot price* as determined under rule 3.9: **cl 3.16.2(h)(3)**.
53. As emerges from *Woodlawn Wind*, those provisions together make clear that losses that may be compensated out of the Fund are losses that a Market Participant incurs as a result of a scheduling error and which are attributable to the Market Participant's participation in the market that is established by Chapter 3 of the NER. In circumstances where, under **rule 3.16** and **cl 8.2.6A**, the route to obtaining compensation for such losses (such as the spot market losses claimed in this case) requires a claimant to approach the WEMDRA to constitute a DRP to authorise the payment of compensation, it is but a short step to conclude that the DRP and WEMDRA costs borne by the claimant are within the scope of losses flowing from a scheduling error that may be compensated out of the Fund. And in allowing those costs to be reimbursed out of the Fund, the claimant is kept whole for the quantum of its spot market losses, that have been determined by reference to the *spot price*.
54. As the DRP observed in *Woodlawn Wind* at [43], rule 3.16 establishes a mechanism for determining "compensation" in respect of a scheduling error, but without any express limit on the compensable heads of loss, and indeed without referring to "loss" at all. It is therefore necessary to focus instead on what is conveyed by the word "compensation" as it is used in **cll 3.16.1(a)** and **3.16.2(a), (b), (c), (d)** and **(h)**.
55. In both tort and contract, although damages are awarded on different measures, in each case the primary purpose of damages is to compensate the plaintiff for losses that it has incurred

by reason of the tort or breach of contract. And in both cases, the general principle that underpins the award and quantification of compensatory damages is “that the injured party should receive compensation in a sum which, so far as money can do so, will put him in the same position as he would have been in” but for the tort or breach of contract.<sup>14</sup>

56. In my view, it follows that the object of compensating a claimant out of the Fund for scheduling errors is to place the claimant, so far as practicable, in the same position as it would have been in had the scheduling error not occurred. The achievement of that objective is furthered, rather than undermined, by permitting the claimant to be reimbursed out of the Fund for the DRP and WEMDRA costs that it must incur in order to make good its entitlement to compensation under cl 3.16.2.
57. That conclusion flows readily in the case of an uncontested claim for compensation for a scheduling error declared or determined by AEMO. Different considerations might arise in claims for scheduling error compensation that require the DRP to resolve a true dispute: for example, if AEMO denies but the DRP determines that a scheduling error has occurred (see **cl 3.8.24(a)(1)**), if the quantum of compensation or the heads of compensable loss are contested (as was the case in *Woodlawn Wind*), or where a claimant or AEMO advances some argument that consumes time in argument and determination, but which is ultimately not accepted. When such a contested claim is considered by a DRP in future, and *a fortiori* if a 3-member DRP is appointed, it may be appropriate for that DRP to determine itself whether it is permissible and appropriate to make similar orders in that case.
58. While recognising that this decision is itself not binding on any future DRP, I agree with the WEMDRA’s submission that – at least in uncontested claims for scheduling error compensation and where no question arises about the adequacy of the Fund to meet scheduling error losses in any given financial year – to allow the DRP and WEMDRA costs to be reimbursed to the claimant out of the Fund will enhance the fairness and efficiency of the compensation process, and will serve to promote rather than undermine the purpose for which the Fund was established.

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<sup>14</sup> See, eg, *Butler v Egg and Egg Pulp Marketing Board* (1966) 114 CLR 185 at 191 (Taylor, Owen JJ; emphasis added); *Wenham v Ella* (1972) 127 CLR 454 at 471 (Gibbs J); *The Commonwealth v Amann Aviation Pty Ltd* (1991) 174 CLR 64 at 99 (Brennan J).

59. I will therefore make orders to the effect set out in paragraph 43 above.

21 December 2021

A handwritten signature in blue ink, appearing to read 'Tom Clarke', with a stylized, cursive script.

Tom Clarke