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Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Amended Defence

No. QUD19 of 2021

Federal Court of Australia
District Registry: Queensland
Division: General

STILLWATER PASTORAL COMPANY PTY LTD ACN 101 400 668

Applicant

STANWELL CORPORATION LTD ACN 078 848 674

First Respondent

CS ENERGY LTD ACN 078 848 745

Second Respondent

This amended defence (the **defence**) responds to the second further amended statement of claim ~~filed on 28 September 2021~~ dated 5 December 2022 (the **statement of claim**).

This defence adopts the definitions and headings used in the statement of claim for convenience only. Section J of this defence contains a response to particular defined terms in Annexure A to the statement of claim.

In this defence, an admission of a paragraph in the statement of claim is an admission of the material facts, but not the particulars or conclusions of law, if any, pleaded in that paragraph.

For the sake of readability, this defence does not mark-up inconsequential changes to punctuation nor does it mark as insertions paragraphs that have been renumbered. The original paragraph numbering is indicated in mark-up.

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[Form approved 01/08/2011]

INTRODUCTION

1. The National Electricity Market (**NEM**) is a statutory scheme operated and administered by the Australian Energy Market Operator (**AEMO**) in accordance with the National Electricity Law and National Electricity Rules.
2. The National Electricity Rules regulate the operation of the NEM, and the required and permitted behaviour of **Market Participants** (as defined in the National Electricity Rules) operating within the NEM.
3. The NEM is designed to minimise AEMO decision-making to allow Market Participants (~~as defined in the National Electricity Rules~~) the greatest amount of commercial freedom to decide how they will operate in the market.

Particulars.

National Electricity Rules, clause 3.1.4(a)(1).

4. The NEM, and all Market Participants operating within it, are subject to regulatory oversight by AEMO, the Australian Energy Regulator (**AER**), and the Australian Energy Market Commission (**AEMC**).
5. The Spot Price for electricity dispatched by Generators to the NEM is determined by the process of bidding, rebidding and central dispatch set out in clause 3.8 of the National Electricity Rules.

6. In accordance with the central dispatch process, and during the Conduct Period:
- (a) the Dispatch Algorithm (developed by AEMO in accordance with clause 3.8.1(d) of the National Electricity Rules) was designed to sort Dispatch Offers and Rebids (Bids) submitted by Generators into an ascending list from the lowest price to the highest price (known by Market Participants as a 'bid stack') and to solve automatically for the lowest-priced services (including both the supply of electricity and frequency control ancillary services) required to meet demand every five minutes, having regard to technical parameters of the Grid, technical and performance characteristics, and the availability and Ramp Rates of generating units across all five regions of the NEM;
 - (b) instructions to dispatch were provided to Generators electronically via AEMO's automatic generation control system, shortly after the commencement of each Dispatch Interval to which the dispatch instruction related, and did not require a Generator manually to cause its generating unit to dispatch;
 - (c) prior to the start of each Trading Day, Generators submitted offers to AEMO to dispatch specified volumes of electricity at prices in ten (10) price bands (~~known by Market Participants as a 'bid stack'~~) and at Ramp Rates specified by the Generator;
 - (d) prior to dispatch, AEMO published a forecast of certain market information for each region of the NEM, including the forecast demand, aggregate generation available for dispatch, the projected surplus or deficit of generation (including for frequency control ancillary services), forecast Spot Prices, and the timing and location of possible network constraints;

- (e) AEMO did not publish, prior to dispatch, the volume or pricing of individual offers made by Generators;
- (f) all Generators could vary their Dispatch Offers (excluding price bands) prior to dispatch by submitting Rebids, including to withdraw capacity from lower price bands, and increase capacity in higher price bands, in the hope of achieving a higher Spot Price (**a ‘price-volume trade-off’**);
- (g) Generators were not privy to the Rebids made by other Generators until the day after the Trading Day to which such Rebids related;
- (h) if a Generator made a Rebid that moved electricity from a lower price to a higher price, the ‘bid stack’ of all Generators’ ~~Offers and Rebids~~ Bids would automatically be reassessed by the Dispatch Algorithm and relevant dispatch instructions adjusted accordingly;
- (i) the effect of the above process was that a competing Generator – who had previously offered to dispatch electricity at a lower price than the (increased) Dispatch Price – would automatically be dispatched without:
 - (i) making any further Rebid; or
 - (ii) taking steps to manually ‘turn on’ its generating unit, subject to any relevant technical limitation;
- (j) further, given that:
 - (i) the Dispatch Algorithm accepted the volumes bid at the lowest prices necessary to meet demand (having regard to the matters referred to in (a) above), and automatically issued dispatch instructions on the basis of all Rebids received; and

- (ii) Generators did not know the increments of volume or price of the Bids
~~Offers or Rebids~~ made by other Generators,

Rebids of the kind referred to in paragraph 6(f) above always bore the risk that the Generator would price its increments of volume higher than its competitors, and be dispatched at a total volume that was less than it anticipated (if at all), as well as the risk that the Spot Price would not be raised to the extent anticipated (if at all).

7. The Spot Price is intended to provide Market Participants with signals as to the value of providing or cost of consuming electricity at a particular location at a particular time.

Particulars

National Electricity Rules, clause 3.9.1(a)(7).

8. Throughout the Conduct Period, the potential for the Spot Price to be affected by Generators moving capacity to high price bands:
- (a) was a design feature of the NEM;
 - (b) was permitted by the National Electricity Rules; and
 - (c) created price signals that encouraged new generation plant, the enhancement of transmission networks and interconnection capacity and the removal of Grid congestion points.
9. The AER reviews and monitors, on a regular and systematic basis, whether there is efficient competition within the wholesale electricity market, and whether there are any features of the market that may be detrimentally affecting the effectiveness and efficiency of competition in the market, and conducts price surveillance to protect the interests of electricity consumers.

Particulars

National Electricity Law, section 18C(1).

10. The National Electricity Rules are reviewed and amended on a regular basis to ensure the effective operation of the NEM.
11. At all times during the Conduct Period, rebidding was permitted in accordance with clause 3.8.22 of the National Electricity Rules.
12. As pleaded in this defence:
 - (a) the first respondent (**Stanwell**) did not have or engage in ~~either the alleged Late Rebidding or the alleged Early Spiking strategies~~ the alleged Short-notice Rebidding strategy alleged in the statement of claim; and
 - (b) Stanwell did not take advantage of any substantial market power (the existence of which Stanwell denies) for the purpose of deterring or preventing competing Generators from competing in the market; ~~and~~
 - ~~(c) the Applicant has failed to identify the impact (if any) that the timing, price and volume of the sporadic Rebids impugned in the statement of claim had on the Spot Price or hedging costs.~~

A. THE APPLICANT AND GROUP MEMBERS

13. Stanwell:
 - (a) admits paragraphs 1, 2, 3 and 4(a) of the statement of claim;
 - (b) admits the Applicant purchased electricity from Ergon Energy Queensland Pty Ltd through three accounts;

- (c) otherwise does not know and therefore cannot admit paragraphs 4(b) and 4(c) of the statement of claim.

B. THE RESPONDENTS

14. As to paragraphs 5 and 6 of the statement of claim:

~~(a) the definition of 'Company GOC' was omitted from the GOCA on 1 January 2007;~~

(a) [14(b)] shares in the Respondents were held by 'shareholding Ministers', as this term is defined in the GOCA, on behalf of the State of Queensland;

(b) [14(e)] otherwise Stanwell admits paragraphs 5(a) to (c) and 6(a) to (c) of the statement of claim;

(c) [14(d)] Stanwell does not know, and therefore does not admit, the allegations in paragraphs 5(d) and 6(d) of the statement of claim;

(d) [14(e)] as to paragraph 5(e) and 6(e) of the statement of claim:

(i) the NEM is more properly defined in Chapter 10 of the National Electricity Rules and section 2(1) of the National Electricity Law; and

(ii) otherwise Stanwell admits the facts alleged therein.

15. Stanwell denies paragraph 7 of the statement of claim.

C. THE OPERATION OF THE NATIONAL ELECTRICITY MARKET

Summary

16. In the premises of the matters set out below, during the Conduct Period:

- (a) Generators supplied electricity to the NEM, and were paid by AEMO at the Spot Price for the volume of electricity they generated;
- (b) Market Customers (~~as defined in the National Electricity Rules~~) purchased electricity from the NEM and paid AEMO for the volume of electricity they purchased at the Spot Price;
- (c) the Spot Price was determined at each Regional Reference Node by the Dispatch Algorithm (~~as defined in the National Electricity Rules~~);
- (d) the Dispatch Algorithm took account of Bids ~~Dispatch Offers~~ made by Generators on a whole of NEM basis, and simultaneously determined Dispatch Prices at the lowest price (including both the supply of electricity and frequency control ancillary services) required to meet demand, having regard to technical parameters of the Grid, technical and performance characteristics, availability and Ramp Rates of generating units and technical characteristics of load across all five regions of the NEM;
- (e) the marginal Generator whose Dispatch Offer determined the Dispatch Price for the QRNEM was often a Generator located outside of the QRNEM;
- (f) Market Customers (~~as defined in the National Electricity Rules~~) and Generators could hedge a substantial proportion of their electricity requirements and generation capacity in order to limit their financial exposure to the Spot Market such that the effective price paid and received for the electricity was not determined directly by the Spot Price.

17. Stanwell admits paragraph 8 of the statement of claim.

18. As to paragraph 9 of the statement of claim:

(a) the NEM is more properly defined in Chapter 10 of the National Electricity Rules and section 2(1) of the National Electricity Law;

(b) as to paragraph (a):

(i) the NEM does not provide for the ‘sale of electricity by generators to QRNEM Retailers and Market Customers’, but provides for:

(A) the supply of electricity by Generators to the NEM, and AEMO’s payment to those Generators for the volume of electricity they generate, at the Spot Price; and

Particulars

This occurs through the central dispatch process described in clause 3.8 of the National Electricity Rules.

(B) the purchase of electricity from the NEM by Retailers and end users, who are Market Customers ~~as defined in the National Electricity Rules~~, and who pay AEMO for the volume of electricity they purchase at the Spot Price;

Particulars

National Electricity Rules, clause 2.3.4

(ii) Generators do not sell electricity directly to Retailers or Market Customers, as this term is defined in the statement of claim, through the Spot Market;

(iii) such Market Customers do not consume electricity from the Spot Market but consume electricity from the Grid;

- (iv) “National Electricity System” is not defined in the National Electricity Rules, but is defined in the National Electricity Law;
- (v) Stanwell denies that:
 - (A) the NEM was ‘for the sale of electricity by generators to QRNEM Retailers and Market Customers’; and
 - (B) the Grid is ‘more specifically defined by the National Electricity Rules as the “National Electricity System”’,

because the true position is that pleaded above;
- (vi) otherwise Stanwell admits the facts alleged;
- (c) as to paragraph (b):
 - (i) Stanwell denies that Generators sold generated electricity through the Spot Market, via the Grid, to Retailers or to Market Customers, as:
 - (A) the operation of the NEM with respect to Generators and end users of electricity is as pleaded in sub-paragraph 18(b) above;
 - (B) electricity was supplied from Generators to the Grid for distribution to end users along the transmission and distribution systems, which users may be Market Customers ~~as defined in the National Electricity Rules~~;
 - (ii) otherwise Stanwell admits the facts alleged;
- (d) Stanwell otherwise admits the facts alleged in paragraph (c).

19. As to paragraph 10 of the statement of claim:

- (a) the Spot Market:
 - (i) was operated and administered by AEMO under the National Electricity Law and the National Electricity Rules;
 - (ii) was also a mechanism for supplying and acquiring ancillary services; and
 - (iii) is more properly defined in Chapter 10 and clause 3.4.1 of the National Electricity Rules;
- (b) otherwise Stanwell admits the facts alleged.

C.1 The QRNEM

20. Stanwell ~~denies~~ admits paragraph 11 of the statement of claim, ~~as the true position is that:~~

- ~~(a) the QRNEM was not defined by the AEMC but was set by AEMO's predecessor (the National Electricity Market Management Company, or NEMMCO) and approved by the AER's predecessor (the National Electricity Code Administrator, or NECA);~~
- ~~(b) the QRNEM was a region of the NEM located largely but not wholly within the geographic State of Queensland;~~
- ~~(c) the QRNEM included some land in New South Wales and excluded some land in Queensland;~~
- ~~(d) the QRNEM is more properly defined in accordance with clause 9.37.7 of the National Electricity Rules; and~~

~~(e) — the Spot Price was set at each Regional Reference Node by the Dispatch Algorithm (also known as the NEM Dispatch Engine or NEMDE), which took account of bids made by Generators on a whole of NEM basis.~~

21. As to paragraph 12 of the statement of claim:

(a) as to paragraph (a):

(i) the Spot Price was determined at each Regional Reference Node by the Dispatch Algorithm, which took account of ~~bids~~ Bids made by Generators on a whole of NEM basis;

(ii) otherwise Stanwell admits the facts alleged;

(b) as to paragraph (b):

(i) Stanwell denies the table particularised as the true position was as follows:

| Year | Electricity consumed (demand MWh) | Volume flow through Interconnectors (north MWh) | Percentage of total consumption (%) |
|------|-----------------------------------|---|-------------------------------------|
| 2012 | 51,181,321 | 49,986 | 0.10% |
| 2013 | 49,964,030 | 419,337 | 0.84% |
| 2014 | 50,332,615 | 72,643 | 0.14% |
| 2015 | 52,870,383 | 138,216 | 0.26% |
| 2016 | 55,091,835 | 447,524 | 0.81% |
| 2017 | 54,573,717 | 193,109 | 0.35% |

(ii) the Interconnectors were physically capable of importing the following electricity into the QRNEM:

| Year | Available flow through Interconnectors (north MWh) | Percentage of total consumption (%) |
|------|--|-------------------------------------|
| 2012 | 1,649,685 | 3.22% |
| 2013 | 1,970,288 | 3.94% |
| 2014 | 2,168,791 | 4.31% |
| 2015 | 2,144,666 | 4.06% |
| 2016 | 2,572,045 | 4.67% |
| 2017 | 2,321,957 | 4.25% |

- (iii) the Interconnectors operate, unless constrained, to enable the Dispatch Algorithm to match demand and supply at the lowest price to meet the demand across the NEM;
- (iv) otherwise Stanwell admits the facts alleged.

C.2 The Spot Market

22. As to paragraph 13 of the statement of claim:

- (a) electricity generated by generating units located in Queensland was not wholly consumed in Queensland as some electricity flowed south through the Interconnectors;
- (b) the Spot Market operated in the manner pleaded in paragraph 18(b) above;
- (c) electricity was not “traded” through the Spot Market, because the supply and purchase transactions were separate as pleaded above;
- (d) where contracts had been entered into by Market Customers (~~as defined in the National Electricity Rules~~) and Generators in respect of their electricity requirements and generation capacity, the effective price paid and received for the electricity was not determined directly by the Spot Price;
- (e) otherwise Stanwell admits the facts alleged.

23. As to paragraphs 14(a) to (e) of the statement of claim:

- (a) the Spot Market operated in the manner pleaded in paragraph 18(b) above;
- (b) otherwise Stanwell admits paragraphs 14(a) to (e).

24. ~~[23(e)]~~ Stanwell denies paragraph 14(f) of the statement of claim as the correct position is that:
- (a) each generating unit received a fixed marginal loss factor for each financial year in the Conduct Period;
 - (b) the marginal loss factor for each generating unit measured the amount of notional electricity lost during transmission from the generating unit to the closest Regional Reference Node;
 - (c) the closest Regional Reference Node for each of the Respondents' generating units was located at South Pine; and
 - (d) ~~[23(d)]~~ the price bands that could be offered by a Generator's offer prices for each generating unit, once adjusted for the marginal loss factor, needed to fall between the market price floor and the market price cap pleaded in paragraph 14(f) of the statement of claim.
25. ~~[23(e)]~~ As to paragraph 14(g) of the statement of claim:
- (a) Dispatch Offers were made in the NEM, rather than 'in the QRNEM';
 - (b) AEMO's pre-dispatch forecasts for the following Trading Day ~~was~~ were based on Trading Interval, rather than Dispatch Interval, data;
 - (c) within a Trading Day, AEMO's pre-dispatch forecasts were updated regularly, including every five minutes for the current hour;
 - (d) otherwise Stanwell admits the facts alleged.
26. ~~[23(f)]~~ As to paragraph 14(h) of the statement of claim:

- (a) AEMO published forecast Spot Prices that assumed that demand in the QRNEM varied from that forecast in AEMO's base case scenario by between -500MW to +1,000MW (**AEMO sensitivity forecasts**);
- (b) Stanwell denies that the information AEMO published to Market Participants included 'generation capacity bid by Generators', because:
 - (i) there is no data available to Market Participants which is known as 'generation capacity bid by Generators';
 - (ii) in accordance with clause 3.13.4(f) of the National Electricity Rules, AEMO published to Market Participants the aggregate scheduled energy generation (in MW) from all dispatchable generating units and the overall surplus or deficit of generation, not the forecast dispatch levels or generation capacity for each Generator; and
 - (iii) in accordance with clause 3.8.20(j) of the National Electricity Rules, the forecast dispatch level of each generating unit was communicated only to the relevant Generator for that unit, on a confidential basis, and that information was not released to Market Participants;
- (c) otherwise Stanwell admits the facts alleged.

27. ~~[23(g)]~~ As to paragraph 14(i) of the statement of claim:

- (a) Stanwell denies the allegation that 'once a Dispatch Offer was submitted to AEMO, Generators' nominated price bands in a Dispatch Offer were required to remain fixed', as Generators could alter their nominated price bands in any Dispatch Offer submitted up until 12.30pm on the day before the Trading Day, even if a Dispatch Offer had been submitted;

Particulars

National Electricity Rules, clause 3.8.5 and 3.8.9(b).

(b) otherwise Stanwell admits the facts alleged.

28. ~~[23(h)]~~ As to paragraph 14(j) of the statement of claim:

(a) Stanwell denies the allegation that Rebids could be made at any time after the initial Dispatch Offer, as Rebids could only be made:

(i) after 12.30pm on the day before the Trading Day; and

(ii) in accordance with clause 3.8.22A of the National Electricity Rules, which provided, *inter alia*:

(A) from the beginning of the Conduct Period to 30 June 2016, that rebids were required to be made in good faith; and

(B) from 1 July 2016, that rebids were to be made as soon as practicable after a change in material conditions and circumstances, and rebids that were false, misleading or likely to mislead were prohibited; and

(b) in addition to the Rebids of other Generators, matters which constantly change and to which a Generator could have regard when considering a Rebid include:

(i) price, including:

(A) actual Dispatch Prices and Spot Prices in the NEM;

(B) forecast Dispatch Prices and Spot Prices in the NEM, including those in the AEMO sensitivity forecasts;

- (C) the effect, or lack thereof, on the forecast or actual Dispatch Price of an earlier Rebid by the Generator;
- (ii) demand, including:
 - (A) actual demand in the NEM;
 - (B) forecast demand in the NEM;
 - (C) for those periods when the Interconnectors are constrained, actual and forecast demand in the QRNEM;
- (iii) generation, including:
 - (A) actual generation in the NEM;
 - (B) forecast generation in the NEM;
 - (C) plant outages and configuration;
 - (D) actual generation of the Generator's own generating units; and
 - (E) target generation of the Generator's generating units (as set by the Generator, and by AEMO);
- (iv) inter-regional electricity flows, including:
 - (A) nett exports of electricity between different regions;
 - (B) actual interconnector flows;
 - (C) forecast interconnector flows;
 - (D) actual interconnector limits;

- (E) forecast interconnector limits;
 - (F) transmission outages;
 - (G) intra-regional electricity flows;
 - (v) actual and forecast weather conditions, including temperature and humidity;
 - (vi) system frequency;
 - (vii) frequency control ancillary services;
 - (viii) AEMO market notices; and
 - (ix) the variable costs of generation (such as fuel costs);
 - (c) Stanwell otherwise admits the facts alleged;
29. ~~{23(i)}~~ As to paragraph 14(k) of the statement of claim:
- (a) updated pre-dispatch schedules not only took into account Rebids but also took into account factors such as demand, network conditions and frequency control ancillary services;
 - (b) Stanwell denies that after the start of a Trading Day, AEMO published to Market Participants updated pre-dispatch schedules for future Dispatch Intervals forecasting whether Generators would be required to dispatch electricity in a given Dispatch Interval in the Trading Day, because AEMO's forecast as to whether a particular Generator would be required to dispatch electricity in a given Dispatch Interval in the Trading Day was communicated only to that Generator, and was not communicated to other Market Participants; and
 - (c) otherwise Stanwell admits the facts alleged;

30. ~~{23(i)}~~ As to paragraph 14(l) of the statement of claim

- (a) dispatch instructions were not based solely on Bids ~~Dispatch Offers and Rebids~~ and demand but took into account factors such as network conditions, the actual performance of generating units in the previous Dispatch Interval and whether they had achieved their targets as well as frequency control ancillary services;
- (b) otherwise Stanwell admits the facts alleged.

31. ~~{24}~~ As to paragraph 15 of the statement of claim:

- (a) Dispatch Prices were calculated at the Regional Reference Node on a whole of NEM basis, taking account of marginal loss factors and network constraints;
- (b) the Dispatch Algorithm simultaneously solved for the lowest-priced services (including both the supply of electricity and frequency control ancillary services) required to meet demand, having regard to technical parameters of the Grid, technical and performance characteristics, availability and Ramp Rates of generating units and technical characteristics of load across all five regions of the NEM;
- (c) the Spot Price at a Regional Reference Node was the time-weighted average of the Dispatch Prices at that Regional Reference Node and was not directly linked to the electricity generated in that region;
- (d) the Generator or Generators whose Dispatch Offer included the price band determined by the NEM dispatch engine to be the Dispatch Price for the QRNEM (the **Marginal Generator/s**) was often a Generator located outside the QRNEM or a mix of generating units located both inside and outside Queensland;

Particulars

As to the Conduct Period generally, the best particulars that Stanwell can presently provide are those contained in paragraph 24(d) of Stanwell's original defence dated 31 March 2022, which reveal that the Dispatch Price was wholly or partly set by generating units located outside Queensland in most of the Dispatch Intervals of the Trading Intervals which were then alleged by the Applicant to be Targeted Trading Intervals or Spiking Targeted Trading Intervals in the amended statement of claim filed on 28 September 2021.

As to the particular Affected Dispatch Intervals presently alleged by the Applicant:

- (A) The statement of claim identifies Affected Dispatch Intervals in which there was price separation between Queensland and New South Wales, in the sense described in section II.C.3 of the First Ledgerwood Report.
- (B) Annexure F to the statement of claim alleges that Stanwell's Short-notice Rebidding increased the Dispatch Price in 53 Dispatch Intervals and that Stanwell's and CSE's Short-notice Rebidding increased the Dispatch Price in a further 69 Dispatch Intervals. The total number of Dispatch Intervals in the Conduct Period was 571,392.
- (C) Within this group of 122, there were 16 Dispatch Intervals where the Dispatch Price was set by a mix of generating units located both inside and outside the QRNEM.

(D) Further particulars are contained in Annexure C.3 to this defence.

~~(E) — Of the Dispatch Intervals of the Trading Intervals in the Conduct Period that are identified by the Applicant as Targeted Trading Intervals (the **alleged Targeted Trading Intervals**):~~

~~(I) — the Dispatch Price was set by a generating unit or units located outside Queensland in 47% of cases (4,557 Dispatch Intervals); and~~

~~(II) — the Dispatch Price was set by generating units located both inside and outside Queensland in a further 15% of cases (1,419 Dispatch Intervals).~~

~~Further particulars are in Annexure C.3.~~

~~(F) — Of the Dispatch Intervals of the Trading Intervals in the Conduct Period that are identified by the Applicant as the Spiking Targeted Trading Intervals (the **alleged Spiking Targeted Trading Intervals**):~~

~~(I) — the Dispatch Price was set by a generating unit or units located outside Queensland in 57% of cases (767 Dispatch Intervals); and~~

~~(II) — the Dispatch Price was set by generating units located both within and outside Queensland in a further 13% of cases (175 Dispatch Intervals).~~

~~Further particulars are in Annexure D.4.~~

- (e) Market Customers ~~as defined in the National Electricity Rules~~ and Generators could hedge a substantial proportion of their electricity requirements and generation in order to limit their financial exposure to the Spot Market;
 - (f) Stanwell denies that the relevant price was for electricity ‘sold and purchased’, and says it was for electricity supplied;
 - (g) otherwise Stanwell admits the facts alleged.
32. ~~[25]~~ As to paragraph 16 of the statement of claim:
- (a) the Spot Price was set in the manner described in paragraph 31 above;
 - (b) Generators were paid the Spot Price (adjusted for their marginal loss factor/s) for electricity dispatched by them during a Trading Interval in the NEM;
 - (c) otherwise Stanwell admits the facts alleged.
33. ~~[26]~~ As to paragraph 17 of the statement of claim:
- (a) the Spot Price was set in the manner described in paragraph 31 above;
 - (b) Stanwell denies that the Spot Price was set only for the QRNEM;
 - (c) Stanwell otherwise admits the facts alleged.
34. ~~[27]~~ As to paragraph 18 of the statement of claim:
- (a) the terms of a power purchase agreement, and the basis on which payments were made, were the subject of separate negotiation by the parties to such agreements;
 - (b) Stanwell is not privy to the terms of power purchase agreements entered into by other Generators; and

- (c) otherwise Stanwell does not know and therefore cannot admit the facts alleged.

C.3 Hedging in the electricity market

35. [28] As to paragraph 19 of the statement of claim:

- (a) any risk to the businesses of a Generator, Retailer or Market Customer arising from volatility in Spot Prices would be affected by and dependent upon the nature and extent of hedging arrangements entered into;
- (b) otherwise Stanwell does not know and therefore cannot admit the facts alleged.

36. [29] As to paragraph 20 of the statement of claim:

- (a) Retailers and Market Customers (~~as defined in the statement of claim~~) also entered into contracts to manage risk;
- (b) Stanwell admits that it entered into Hedging Contracts to manage exposure to risk resulting from volatility in Spot Prices but says it also did so to:
 - (i) secure revenue for future years; and
 - (ii) provide certainty that it could meet its costs of generation;
- (c) hedging is not restricted to individual regions;
- (d) inter-regional hedging is enhanced by inter-regional settlement residues;

Particulars

The Spot Price is generally determined on a whole of NEM basis. However, price separation between regions can occur when interconnectors are constrained. Inter-regional settlement residues are a deliberate design feature of the NEM (see clause 3.18 of the National

Electricity Rules) and permit Market Participants to partially hedge the risk of price separation between regions.

- (e) some hedging contracts (such as power purchase agreements) have defined counterparties and some (such as ASX Futures Contracts which are between the ASX and an entity) do not; and
- (f) otherwise Stanwell does not know and therefore cannot admit the facts alleged.

37. ~~[30] As to Stanwell does not know and therefore cannot admit~~ paragraph 21 of the statement of claim:-

- (a) depending on the nature and terms of the hedging contract, the market price of a hedging contract could be influenced by a number of variables including a Market Participant's exposure to and/or expectations of the Spot Price, the inter-regional spread of prices, actual and forecast fuel costs, forecast demand, the weather forecast, the Australian yield curve and the value of the Australian dollar;
- (b) hedging contracts traded on the ASX during the Conduct Period included:
 - (i) base load monthly futures;
 - (ii) base load calendar quarter futures;
 - (iii) peak load calendar quarter futures;
 - (iv) base load calendar quarter \$300 cap futures;
 - (v) base load calendar and financial year strip options;
 - (vi) base load calendar quarter average rate options;
- (c) Market Participants also entered into bilateral (over the counter) hedging contracts during the Conduct Period;

- (d) Stanwell otherwise does not know and therefore cannot admit the facts alleged.

D. THE MARKET

38. ~~{31}~~ Stanwell denies paragraph 22 of the statement of claim as well as subsequent references to the ‘Market’ in the statement of claim.

39. ~~{32}~~ Further, as to paragraph 22 of the statement of claim:

- (a) at all material times, the geographic dimension of the relevant market was not confined to Queensland but extended to all States and Territories other than Western Australia and the Northern Territory;
- (b) the Grid which serviced that geographic market extended from Port Douglas in North Queensland to Port Lincoln in South Australia and across the Bass Strait to Tasmania;
- (c) generating units located in any region of the NEM could be dispatched to satisfy demand in the QRNEM;
- (d) prices in the QRNEM, including the Spot Price at the Regional Reference Node, were often bid by generating units located outside of the QRNEM.

Particulars

Paragraph 31(d) above.

E. SUBSTANTIAL DEGREE OF POWER IN THE MARKET

Summary

40. ~~{33}~~ In the premises of the matters set out below, during the Conduct Period:

- (a) the demand for electricity in the QRNEM could be, and was, met by Generators located both within and outside of the QRNEM;
- (b) the market for the supply of electricity to the QRNEM was characterised by vigorous competition;
- (c) all Generators, including Stanwell, had an ability to influence the Spot Price by their bidding behaviour;
- (d) Stanwell's ability to influence the Spot Price was constrained by, *inter alia*, the availability and minimum load requirements of its generating units, its need to cover its fixed and variable costs, its Contract Position, the National Electricity Rules, the physical and financial constraints imposed by its generating units, the bidding behaviour and market power of other Generators and Retailers, and potential demand and supply responses.

Particulars

Stanwell's **Contract Position** reflected the amount of electricity for which Stanwell had agreed to accept a fixed price.

41. [34] As to paragraph 23 of the statement of claim:

- (a) Stanwell denies the definitions of 'Scheduled Generator' and 'Semi-Scheduled Generator', as the proper definitions of those terms ~~is~~ are as set out in clauses 2.2.2 and 2.2.7 of the National Electricity Rules;
- (b) Stanwell admits the figures pleaded in columns 2 to 4 of the table and says that:
 - (i) column 2 represents the average demand in the QRNEM, whether calculated on the basis of Trading Intervals or Dispatch Intervals;

- (ii) columns 3 and 4 represent the minimum and peak demand in the QRNEM calculated on the basis of Trading Intervals;
- (c) the minimum and peak demand in the QRNEM calculated on the basis of Dispatch Intervals is tabled as follows:

| Year | Minimum (MW) | Peak (MW) |
|------|--------------|-----------|
| 2012 | 4,073 | 8,757 |
| 2013 | 4,113 | 8,304 |
| 2014 | 4,037 | 8,472 |
| 2015 | 4,231 | 8,892 |
| 2016 | 4,799 | 9,158 |
| 2017 | 4,668 | 9,477 |

- (d) Stanwell denies the electricity generated by Scheduled and Semi-Scheduled Generators is that pleaded in column 5 of the table as the correct figures are tabled below:

| Year | Generated Electricity (MWh, as generated) |
|------|---|
| 2012 | 56,792,537 |
| 2013 | 51,320,030 |
| 2014 | 55,331,393 |
| 2015 | 57,114,478 |
| 2016 | 57,641,006 |
| 2017 | 59,719,826 |

42. ~~[35]~~ As to paragraph 24 of the statement of claim:

- (a) the table particularised in paragraph 24 does not accurately represent available capacity in the QRNEM as the correct position is set out in Annexure A to this defence;
- (b) the output of generating units owned or controlled by Stanwell, as well as the output of generating units owned or controlled by other parties, including

generating units located outside of Queensland as registered with AEMO from time to time, was available to meet the demand for electricity in the NEM;

- (c) during the Conduct Period, there was at all material times vigorous competition between the Generators listed in Annexure A to this defence (the **Competing Queensland Generators**) and generating units located outside of Queensland as registered with AEMO from time to time.

E.1 Barriers to Entry ~~Stanwell's power in the Market~~

43. As to paragraph 25 of the statement of claim:

- (a) the degree of capital expenditure and investment costs required to construct a new Dispatch Unit varied with the type and size of Dispatch Unit;
- (b) save for the allegations implicit in the terms 'complex', 'significant' and 'substantial', the precise meaning of which is unclear such that Stanwell does not know and therefore cannot admit those allegations, Stanwell admits paragraph 25.

44. Stanwell denies paragraph 26 of the statement of claim and says that:

- (a) any consideration of 'barriers to entry' should form part of a broader inquiry regarding the extent to which market conditions incentivised or disincentivised new generation capacity;
- (b) during the Conduct Period:
 - (i) new generation was built and began operating as pleaded in paragraphs 45(d) and 45(e) below;

- (ii) hedging contracts, including long term offtake agreements, allowed owners of new generation capacity to manage exposure to risk resulting from capital expenditure and investment costs;
- (c) further, from around the end of the Conduct Period, there was a significant increase in installed capacity in the QRNEM;
- (d) although this generation capacity largely became operational after the Conduct Period, it should be inferred that the decision to add this new generation capacity was taken during the Conduct Period;

Particulars

- (i) The time lag between making a decision to build a new Dispatch Unit and the new Dispatch Unit becoming operational was typically a matter of years;
- (ii) Steps required before a new Dispatch Unit became operational in the NEM would typically include site identification, site acquisition, entering contractual arrangements with landholders, undertaking constraint and stability studies, obtaining approvals, obtaining finance and actual construction.
- (e) Stanwell otherwise relies on the matters pleaded in paragraph 45 below.

40. — ~~As to paragraph 25(c) of the statement of claim:~~

- (a) — ~~Stanwell denies the allegations;~~

~~(b) — on the figures alleged in paragraphs 23 and 24 of the statement of claim, there is no year of the Conduct Period in which Stanwell's generation output was required in order to supply the QRNEM with electricity;~~

Particulars

~~(A) — Paragraph 23 of the statement of claim alleges that the peak demand in the QRNEM during the Conduct Period ranged from 8,278 MW to 9,369 MW;~~

~~(B) — Paragraph 24 of the statement of claim alleges that:~~

~~(I) — the total capacity of power stations controlled by Stanwell in the Conduct Period was 3,883 MW (at its peak);~~

~~(II) — the total available capacity in the QRNEM during the Conduct Period was 13,536.65 MW (at its lowest point);~~

~~(C) — Accordingly, the alleged total available capacity in the QRNEM, other than that controlled by Stanwell, was no less than 9,653.65 MW;~~

~~(D) — This generation capacity was sufficient to meet the peak QRNEM demand pleaded in paragraph 23 of the statement of claim.~~

~~(e) — further and alternatively, having regard to the matters set out in paragraph 37(g) of this defence, there was a volume of generation output which it was in Stanwell's interests to supply to the NEM in order to maintain Stanwell's generating units' minimum load and cover its fixed costs and Contract Position to which regard must be had in assessing whether or not Stanwell had a substantial degree of market power;~~

45. [41] As to paragraph 25(d) 27 of the statement of claim, Stanwell:

(a) denies the facts alleged;

and says as follows:

(b) there were various new and proposed coal-fired, gas-fired or hydroelectric projects within the geographic area of the QRNEM that were reported to AEMO each year during the Conduct Period;

Particulars

| Project name | Owner | Generation type | Status of Project as reported by AEMO | Date reported by AEMO |
|---------------------------------------|---|----------------------------|--|---|
| Oaky Creek 2 | EDL OCI Pty Ltd | Waste Coal Mine Gas | Reported as committed | August 2016 |
| Aldoga Power Station | TRU Energy and later EnergyAustralia | Open cycle gas turbine | Reported as expanded from Unit 1 to Units 1 to 6 | Between 31 July 2012 and 13 August 2013 |
| Blackstone Power Station (All Units) | TRU Energy and later EnergyAustralia | Open cycle gas turbine | Reported as proposed | Between July 2012 and May 2014 |
| Braemar 3 (Units 1 and 2) | ERM Power Limited | Open cycle gas turbine | Reported as proposed | Between July 2012 and June 2017 |
| Braemar 4 (Units 1, 2 and 3) | ERM Power Limited | Open cycle gas turbine | Reported as proposed | Between July 2012 and June 2017 |
| Darling Downs 2 (Units 1 to 4) | Origin Energy | Open cycle gas turbine | Reported as proposed | Between July 2012 and February 2017 |
| Spring Gully (Units 1 to 4) | Origin Energy | Combined cycle gas turbine | Reported as proposed | Between July 2012 and July 2013 |
| Westlink Power Project (Units 1 to 6) | Westlink Pty Ltd as trustee for Westlink Industrial Trust | Open cycle gas turbine | Reported as proposed | Between July 2012 and June 2017 |
| Mungi Generation Project (Unit 1) | Harcourt Generation | Open cycle gas turbine | Reported as proposed | Between 13 August 2013 and 28 February 2014 |
| Kidston Pumped Storage Hydro Project | Genex Power | Pump storage | Reported as proposed | Between 8 August 2014 and 5 June 2017 |
| | | | Reported as expanded from Unit 1 to all units | 13 August 2015 |
| | | | Reported as expanded to Generators 1 and 2 | August 2016 |
| | | | Reported as expanded to HYD1 and HYD2 | 5 June 2017 |

- (c) TRU Energy, ~~ERM Power Ltd~~, EnergyAustralia, Westlink Pty Ltd as trustee for Westlink Industrial Trust, Harcourt Generation and Genex Power did not, at the time their proposals were reported, own any generation units located within the geographic area of the QRNEM;
- (d) during the Conduct Period, new coal-fired generation capacity was added to the NEM;

Particulars

| Project name | Project capacity (MW) | Owner | Generation type | Year reported as approved by AEMO | Date project commenced generating electricity |
|-------------------|-----------------------|----------------|---------------------------------|-----------------------------------|---|
| NSW | | | | | |
| Eraring (upgrade) | 60 | Eraring Energy | Black coal – steam sub critical | 2012 | November 2012 |

- (e) during the Conduct Period, numerous Generators with fuel types other than coal-fired, gas-fired or hydroelectric generation (including those tabled below) began operating new generation units in the NEM;

Particulars

| Project name | Project capacity (MW) | Owner | Generation type | Year reported as approved by AEMO | Date project commenced generating electricity |
|-------------------------|-----------------------|--|-----------------|-----------------------------------|---|
| NSW | | | | | |
| Capital East Solar Farm | 0.13 | Infigen Solar Energy | Solar | 2013 | June 2013 |
| Gullen Range | 165.5 | Gullen Range Wind Farm Pty Ltd | Wind | 2013 | November 2014 |
| Boco Rock Wind Farm | 113 | Boco Rock Wind Farm Pty Ltd | Wind | 2013 | March 2015 |
| Taralga | 106.7 | CBD Energy / Banco Santander | Wind | 2013 | May 2015 |
| Royalla Solar Farm | 20 | Royalla Asset Pty Ltd ATF Royalla Asset Trust | Solar | 2014 | February 2015 |
| Nyngan | 102 | AGL Energy Ltd | Solar | 2014 | July 2015 |

| Project name | Project capacity (MW) | Owner | Generation type | Year reported as approved by AEMO | Date project commenced generating electricity |
|---|-----------------------|--|-----------------|-----------------------------------|---|
| Broken Hill Solar Plant | 53 | AGL PV Solar Development Pty Ltd | Solar | 2014 | October 2015 |
| Moree Solar Farm | 56 | Moree Solar Farm | Solar | 2014 | March 2016 |
| Williamsdale Solar Farm | 10 | Elementus Energy Pty Ltd | Solar | 2016 | March 2017 |
| Mugga Lane Solar Park | 13 | Zhenfa Canberra Solar Farm One Pty Ltd | Solar | 2016 | Prior to June 2017 (month not specified) |
| VIC | | | | | |
| Mortons Lane | 19.5 | Mortons Lane Wind Farm Pty Ltd | Wind | 2012 | December 2012 |
| Macarthur | 420 | Macarthur Wind Farm Unincorporated Joint Venture | Wind | 2012 | January 2013 |
| Mildura Power Station | 1.5 | Solar Systems | Solar | 2013 | July 2013 |
| Mt Mercer | 131.2 | Mt Mercer Wind Farm Pty Ltd | Wind | 2013 | Mid 2014 (month not specified) |
| Portland Stage 4 Cape Nelson North and Cape Sir William Grant | 47.15 | Pacific Hydro Portland Wind Farm Pty Ltd | Wind | 2013 | February 2015 |
| Bald Hills Phase 1 | 106.6 | Mitsui and Co. Australia Ltd | Wind | 2014 | May 2015 |
| Coonooer Bridge | 19.8 | Windlab Systems Pty Ltd | Wind | 2015 | March 2016 |
| Ararat | 240 | Ararat Wind Farm Pty Ltd | Wind | 2015 | May 2017 |
| TAS | | | | | |
| Musselroe | 168 | Woolnorth Wind Farm Holding Pty Ltd | Wind | 2012 | June 2013 |
| SA | | | | | |
| Snowtown S2 North | 270 | Snowtown Wind Farm Pty Ltd | Wind | 2013 | November 2014 |
| Snowtown S2 South | | | | | |
| Hornsedale Wind Farm Stage 1 | 102.4 | HWF 1 Pty Ltd | Wind | 2015 | November 2016 |
| Waterloo (expansion) | 19.8 | Waterloo Windfarm Pty Ltd | Wind | 2016 | November 2016 |
| Hornsedale Wind Farm Stage 2 | 102.4 | HWF 2 Pty Ltd | Wind | 2016 | February 2017 |

- (f) during the Conduct Period, the following proposals for new generation projects with fuel types other than coal-fired, gas-fired or hydroelectric generation in the

NEM were approved by AEMO but later withdrawn by the owner prior to completion:

| Project name | Project capacity (MW) | Owner | Generation type | Year reported as approved by AEMO |
|-------------------------|-----------------------|---------------|-----------------|-----------------------------------|
| QLD | | | | |
| Kogan Creek Solar Boost | 44 | CSE | Solar Thermal | 2013 |
| SA | | | | |
| Port Macdonnell | 1 | Oceanlinx Ltd | Wave | 2013 |

- (g) during the Conduct Period, AEMO approved numerous proposals for new generation projects with fuel types other than coal-fired, gas-fired or hydroelectric generation in the NEM (including those tabled below) which were due to begin operating after the Conduct Period.

Particulars

| Project name | Project capacity (MW) | Owner | Generation type | Year reported as approved by AEMO | Date project commenced generating electricity |
|---|-----------------------|--|-----------------|-----------------------------------|---|
| QLD | | | | | |
| Lake Somerset | 4.3 | Seqwater | Hydro – gravity | 2017 | July 2017 |
| Cook Shire Solar Storage Project (later renamed 'Lakeland Solar and Storage Project') | 28 | Lyon Infrastructure Investments Pty Ltd (later owned by 'Conergy') | Solar | 2016 | September 2017 |
| Clare Solar Farm | 150 | Clare Asset Co Pty Ltd ATF Clare Asset Trust | Solar | 2017 | Summer 2017/2018 |
| Hamilton Solar Farm | 57.5 | Hamilton Solar Farm Pty Ltd | Solar | 2017 | March 2018 |
| Whitsunday Solar Farm | 57.5 | Whitsunday Solar Farm Pty Ltd | Solar | 2017 | March 2018 |
| Mount Emerald | 180.5 | Ratch Australia | Wind | 2017 | September 2018 |
| NSW | | | | | |
| White Rock Wind Farm | 175 | White Rock Wind Farm Pty Ltd | Wind | 2016 | Summer 2017/2018 |
| Griffith Solar Farm | 29 | Griffith Solar Farm Pty Ltd | Solar | 2017 | Summer 2017/2018 |

| Project name | Project capacity (MW) | Owner | Generation type | Year reported as approved by AEMO | Date project commenced generating electricity |
|-------------------------------------|-----------------------|--|-----------------|-----------------------------------|---|
| Parkes Solar Farm | 55 | Parkes Solar Farm Pty Ltd | Solar | 2017 | Summer 2017/2018 |
| Gullen Range Solar Farm (expansion) | 10 | New Gullen Range Wind Farm Pty Ltd | Solar | 2017 | Summer 2017/2018 |
| Manildra Photovoltaic Solar Farm | 50 | Manildra Prop Pty Ltd ATF the Manildra Asset Trust | Solar | 2017 | Winter 2018 |
| VIC | | | | | |
| Mt Gellibrand | 66 | Acciona Energy | Wind | 2016 | June 2018 |
| Kiata | 31.05 | Kiata Wind Farm Pty Ltd | Wind | 2017 | November 2017 |
| Gannawarra | 50 | Gannawarra Solar Farm Pty Ltd | Solar | 2017 | April 2018 |
| Yaloak South | 28.7 | Energy Pacific Vic Pty Ltd | Wind | 2017 | July 2018 |
| SA | | | | | |
| Hornsedale Wind Farm Stage 3 | 109 | HWF 3 Pty Ltd | Wind | 2017 | Summer 2017/2018 |
| Bungala Solar Power Project | 220 | Reach Solar Management Co | Solar | 2017 | August 2018 |

E.2 Stanwell's power in the Market

46. [38] As to paragraph 25(a) 28(a) of the statement of claim:

- (a) Stanwell denies the facts alleged;
- (b) the table pleaded in paragraph 25(a) 28(a) presents data which uses maximum capacity for some generating units and registered capacity for other generating units;
- (c) a corrected version of the table, using registered capacity figures for each generating unit, is Annexure B.1 to this defence;
- (d) a corrected version of the table, using maximum capacity figures for each generating unit, is Annexure B.2 to this defence;

- (e) the table in paragraph ~~25(a)~~ 28(a) of the statement of claim (and the tables in Annexures B.1 and B.2) do not include Swanbank B, which had one generating unit (number 3) available in early 2012;
- (f) neither the registered capacity figures nor the maximum capacity figures take account of plant outages and other characteristics that practically limited the output which was able to be bid by that Generator.
47. ~~[39]~~ As to paragraph ~~25(b)~~ 28(b) of the statement of claim, Stanwell denies its generation from its Scheduled and Semi-Scheduled Generators represented the percentages of Generated Electricity in the table because the true position is as follows:

| Year | Stanwell's Generated Electricity (MWh) | Stanwell's Percentage of Generated Electricity (%) |
|------|--|--|
| 2012 | 20,445,798 | 36.00 |
| 2013 | 17,407,829 | 33.92 |
| 2014 | 17,809,637 | 32.19 |
| 2015 | 19,050,873 | 33.36 |
| 2016 | 21,249,220 | 36.86 |
| 2017 | 22,206,082 | 37.18 |

48. Stanwell admits paragraph 29(a) of the statement of claim and says that Stanwell's generating capacity during the Conduct Period was derived from the Scheduled, Semi-Scheduled and Non-Scheduled Generators listed in Annexure B.2 to this defence.
49. Stanwell denies the opening lines of paragraph 29(b) and says further that:
- (a) renewable generating units had the lowest costs of production;
 - (b) coal-fired generating units have relatively long start-up times and high start-up costs compared to other types of generating units;
 - (c) between 1 July 2012 and 30 June 2014, the operating costs of coal-fired generating units were increased by the carbon tax;

- (d) Stanwell had more coal-fired generating units than any Competing Queensland Generators during the Conduct Period;
- (e) Stanwell has an ageing fleet of coal-fired generating units which requires ongoing investment in repairs and maintenance.

50. Stanwell denies paragraph 29(b)(i) of the statement of claim including for the reasons pleaded in paragraph 49 above, and says further that:

- (a) the minimum price at which capacity could be bid during the Conduct Period was negative \$1,000/MWh;
- (b) a Generator might choose to bid capacity in a negative or low price band for reasons including to:
 - (i) manage the impact of constraints in the NEM dispatch engine which distorts what would otherwise be the least-cost bid stack;
 - (ii) avoid incurring high shut-down and start-up costs if its Dispatch Units were operated intermittently;
 - (iii) ensure that its Dispatch Units remained online in order to be able to respond to changes to actual and forecast demand requirements;
 - (iv) reduce stockpiled fuel;
- (c) any Generator was able to make a Bid to supply capacity at low prices regardless of its production costs.

51. As to paragraph 29(b)(ii) of the statement of claim:

- (a) Stanwell admits that it was normally instructed to dispatch substantial volumes of electricity;
 - (b) otherwise, Stanwell does not know and therefore cannot admit the allegations as they are generalised and vague.
52. Stanwell denies paragraph 29(c) of the statement of claim and says that:
- (a) competing Generators were not limited to Generators with Dispatch Units located in Queensland;
 - (b) there were competing Generators that had more generation capacity than Stanwell.
53. As to paragraph 29(d) of the statement of claim, Stanwell admits that a Dispatch Unit's up Ramp Rate and down Ramp Rate were broadly predictable as those Ramp Rates were published for each Dispatch Unit on the subsequent Trading Day but otherwise denies paragraph 29(d) and says that the Ramp Rate of a Dispatch Unit at any given point in time could vary due to technical limitations and conditions imposed by the engineering team and site operators;
54. As to paragraph 30 of the statement of claim:
- (a) like any other Generator, Stanwell could submit Bids at a low enough price to maximise the prospect that electricity produced by it was dispatched;
 - (b) Stanwell denies paragraph 30(a) as the true position is that pleaded in paragraph 52 above;
 - (c) Stanwell denies paragraph 30(b) as the true position is that pleaded in paragraph 49 above;

- (d) otherwise Stanwell does not know and therefore cannot admit paragraph 30 and says that the particularised reference to ‘maintaining financial viability’ is vague and unclear; and
 - (e) [50(b)] Stanwell says further that due to uncertainty of demand and generation, including matters such as changes in the Bids Offers of other Generators, physical outages and transmission limits, Stanwell did not know, ahead of time, by how much it would be dispatched in a particular Dispatch Interval.
55. Stanwell denies paragraph 31 of the statement of claim and says that competing Generators were not limited to Generators with Dispatch Units located in Queensland.
56. As to paragraph 32 of the statement of claim, Stanwell:
- (a) as to paragraph 32(a), admits that of the Competing Queensland Generators Stanwell was typically the largest or second largest (after CSE) supplier of electricity;
 - (b) admits paragraph 32(b) and says that Stanwell’s net ES revenues for a particular Trading Interval comprised the sum of:
 - (i) its contracted volume multiplied by the fixed price(s) payable for that volume pursuant to Stanwell’s Contract Position; and
 - (ii) the volume of its Tradeable Capacity (as this concept is defined in paragraph 69 below) which was dispatched in that Trading Interval multiplied by the Spot Price for that Trading Interval;
 - (c) Stanwell otherwise denies paragraph 32 and further says that:

- (i) the conclusion pleaded in paragraph 32(c) does not follow from the matters pleaded in paragraphs 32(a) and (b) including in view of the matters pleaded in paragraph 56(b) above;
- (ii) the conclusion pleaded in the final three lines of paragraph 32 does not follow from the matters pleaded in paragraphs 32(a), (b) and (c);
- (iii) paragraph 32 ignores Stanwell's Contract Position;
- (iv) for the majority of the Conduct Period, only a minor portion of Stanwell's capacity was not covered by Stanwell's Contract Position as most of Stanwell's generation had been forward-sold at a set price;
- (v) as pleaded in paragraph 69 below, it was contrary to Stanwell's interests to increase the Spot Price unless Stanwell was assured of covering its Contract Position;
- (vi) further, the risk of a price-volume trade-off is:
 - (A) a function of the *proportion* of Tradeable Capacity (as this concept is defined in paragraph 69 below) affected by the price-volume trade-off compared to Residual Supply; and
 - (B) not determined by the absolute generation capacity of the Generator;
- (d) [50(d)(ii)] Stanwell did not know, at the time of making the Offers alleged Short-notice Rebids, how much of its volume or Tradeable Capacity would be required to meet demand during the alleged Targeted Dispatch Intervals.

57. Stanwell denies paragraph 33 of the statement of claim and relies upon the matters pleaded below in paragraphs 58 to 74.

58. ~~[42(b)]~~ Stanwell, like all other Generators in the NEM, was able to Rebid so as to trade off volume against price.
59. ~~[42(c)]~~ Stanwell's ability to achieve a practical benefit in doing so was:
- (a) uncertain, transitory and *ad hoc*;
 - (b) infrequent, and not persistent as alleged by the Applicant; and
 - (c) not a product of market power.
60. Appendix F to the statement of claim, which identifies the impugned conduct alleged against Stanwell, is inconsistent with the allegation of Stanwell being persistently not constrained, or only constrained to a limited extent, from responding to opportunities to engage in Short-notice Rebidding.

Particulars

Appendix F alleges that Short-notice Rebidding occurred in 122 out of 571,392 Dispatch Intervals across the Conduct Period, being 0.02% of all Dispatch Intervals.

Appendix F further reveals:

- (i) a single Dispatch Interval in the first six months of the Conduct Period (being from 2.25pm to 2.30pm on 29 January 2012);
- (ii) a gap of over six months until the next Affected Dispatch Interval on 25 August 2012;
- (iii) a gap of almost three months between 8 September and 4 December 2012;
- (iv) a gap of almost eight months between 15 February 2013 and 8 October 2013;

- (v) a gap of approximately two months between 30 October 2013 and 29 December 2013;
- (vi) a gap of three months between 17 March 2014 and 17 June 2014;
- (vii) a gap of over four months until 27 October 2014;
- (viii) a gap of almost seven weeks between 18 January 2015 and 5 March 2015;
- (ix) a gap of almost four months between 19 March 2015 and 16 July 2015;
- (x) a gap of approximately six months between 5 August 2015 and 1 February 2016;
- (xi) a gap of more than nine months between 28 March 2016 and 31 December 2016;
and
- (xii) no instances of Affected Dispatch Intervals in the last four months of the Conduct Period.

Further:

- (xiii) the last Impugned Rebid that Stanwell is alleged to have made was on 31 January 2017, more than four months before the Section 257 Direction referred to in the statement of claim was given;
- (xiv) only 53 of the Affected Dispatch Intervals alleged in Appendix F involving alleged Short-notice Rebidding are attributable to Stanwell alone.

61. As to price separation between Queensland and New South Wales:

- (a) based on paragraph 52 of the First Ledgerwood Report, the Applicant alleges that Short-notice Rebidding occurred when *inter alia* the Dispatch Price in Queensland was at least twice that of the New South Wales Dispatch Price;

- (b) such price separation occurred in 9,211 Dispatch Intervals in the Conduct Period (being 1.61% of the 571,392 Dispatch Intervals in the Conduct Period), yet Stanwell is only alleged to have made Impugned Rebids affecting 122 of these Dispatch Intervals;
 - (c) in the premises:
 - (i) price separation was the exception rather than the norm during the Conduct Period; and
 - (ii) even within the relatively small subset of Dispatch Intervals where price separation occurred, Short-notice Rebidding by Stanwell is alleged to have affected only 1.3% of these (122 out of 9,211 Dispatch Intervals).
- 62. ~~[42(d)]~~ The ability of the Bids ~~Offers~~ of Generators to intermittently influence prices in the Spot Market did not give such Generators, and in particular Stanwell, a substantial degree of market power or the sustained ability to price without constraint from competition, nor did it indicate the existence of a substantial degree of market power.
- 63. ~~[40(d)] further,~~ The NEM is a dynamic market in that:
 - (a) supply, demand, price and generation (as well as predicted supply, demand, price and generation) fluctuate on a five-minute basis;
 - (b) supply fluctuates in response to matters including outages and actual and anticipated prices;
 - (c) demand fluctuates in response to matters including weather, price and anticipated price; and

- (d) the absence of Stanwell's generation capacity would have increased prices and forecast prices and produced demand and supply responses;

Particulars

Potential demand and supply responses to higher prices and forecasts include:

- reduced energy consumption by industrial users, such as Boyne Smelters Limited and Sun Metals, each of which operated smelters;
- network demand shaping or rotational load shedding by network operators such as Energex, for example by automatically turning off hot water and swimming pool pumps;
- demand reduction initiatives implemented by Retailers such as ERM pursuant to agreements with their customers;
- the activation of household batteries;
- the activation of off-grid or behind-the-meter power generators; and
- in the medium and longer term, greater investment in and reliance upon alternative energy production, including industrial solar and wind, and storage systems such as batteries and pumped hydro.

64. [37(e)] The nature of the NEM is that the Dispatch Price is determined by the Dispatch Algorithm at the top price band required to satisfy demand, having regard to technical parameters of the Grid, technical and performance characteristics, availability and Ramp Rates of generating units and technical characteristics of load across all five regions of the NEM (as pleaded in paragraph 2431 above).
65. [37(d)] Throughout the Conduct Period, the potential for the Spot Price to be affected by Generators moving capacity to high price bands:

- (a) was a feature of the NEM;
 - (b) was permitted by the National Electricity Rules; and
 - (c) created price signals that encouraged new generation plant, the enhancement of transmission networks and interconnection capacity and the removal of Grid congestion points.
66. ~~[37(e)]~~ The conduct alleged in the statement of claim which is alleged to have had the effect of increasing the Spot Price:
- (a) is conduct that would have incentivised new entrants into the market;
 - (b) was conduct that was engaged in during the Conduct Period by other Market Participants not alleged to have market power; and
 - (c) did not prevent or deter competitors from engaging in competitive conduct.
67. ~~[37(f)]~~ All ~~g~~Generators, including Stanwell, had an ability to influence the Spot Price by their bidding behaviour.
- ~~[37(g)] ——— A Generator was able to make a Rebid which did not include capacity in, or withdrew capacity from, lower price bands and increased capacity in higher price bands in the hope of achieving a higher Spot Price (**price-volume trade-off**).~~
68. ~~[37(h)]~~ A price-volume trade-off created a risk that the Generator would be dispatched at a volume that was less than anticipated (if at all), as well as a risk that the Spot Price would not be raised to the extent anticipated (if at all).
69. ~~[37(i)]~~ For the majority of the Conduct Period, only a minor portion of Stanwell's capacity was available to be risked in this manner (**Stanwell's Tradeable Capacity**), since:

- (a) ~~[37(i)(i)]~~ a portion of Stanwell's generation capacity had to be bid at a level close to the market price floor (being a negative price) in order to provide Stanwell with a reasonable assurance that it would be dispatched at a level which met the minimum load requirements of Stanwell's generating units;

Particulars

Stanwell's generating units' minimum load requirements for the alleged Affected Dispatch Intervals are set out in Annexure C.2 column P of Annexure C.2 and column P of Annexure D.2.

~~[37(i)(ii)]~~ — a Portion of Stanwell's generation capacity was then bid at a level sufficient to cover its fixed and variable costs;

- (b) ~~[37(i)(iii)]~~ most of Stanwell's remaining generation capacity then needed to be bid at prices low enough to provide Stanwell with a reasonable assurance that it would be dispatched in a quantity sufficient to cover Stanwell's Contract Position, the formulation of which was affected by the need to recover fixed and variable costs;
- (c) ~~[37(i)(iv)]~~ Stanwell would not receive the benefit of high Spot Prices unless it was instructed to dispatch at a level of generation above its Contract Position;
- (d) ~~[37(i)(v)]~~ high Spot Prices would in fact be harmful to Stanwell if Stanwell was instructed to dispatch less volume than the volume required to cover its Contract Position, as Stanwell:
- (i) was required to pay its counterparties the difference between the contract price and the Spot Price for the volume of generation not so covered; and
 - (ii) required adequate generation to be dispatched (for which generation revenue is earned) to offset these difference payments;

Particulars

~~Stanwell's Contract Position reflected the amount of electricity for which Stanwell had agreed to accept a fixed price.~~

70. ~~{37(j)}~~ Stanwell's ability to bid its generation capacity was also constrained by the requirements of the National Electricity Rules, including in particular clauses 3.8.22(c)(2) and 3.8.22A (the **good faith rebidding rules**).

Particulars

The relevant provisions of the good faith rebidding rules are set out in Annexure E of this defence.

71. ~~{37(k)}~~ The ability of Stanwell to affect the Spot Price by Rebids was also constrained by:
- (a) the regulatory oversight of the AER;

Particulars

Functions and powers were conferred on the AER by Part 3, Division 1 of the *National Electricity Law*, including to:

- monitor compliance and investigate breaches by Market Participants of the *National Electricity Law* and the National Electricity Rules;
 - institute and conduct proceedings against Market Participants for, and against persons involved in, breaches of energy laws and offences against the *National Electricity Law* including seeking civil penalties.
- (b) potential changes to the National Electricity Rules, to address perceived high Spot Prices or undesirable market outcomes;

Particulars

Any person could request a rule change (*National Electricity Law* s 91) and the AEMC could approve the change if it met the national electricity objective (as defined in s 7 of the *National Electricity Law*) (*National Electricity Law* s 88). The National Electricity Rules were amended on 48 occasions during the Conduct Period.

- (c) changes to the Grid, including by the upgrade of transmission lines, to address perceived high Spot Prices or undesirable market outcomes;
- (d) the technical limitations on Stanwell's ability to significantly increase or decrease its generation at short notice, due to Ramp Rate constraints.

72. ~~{37(1)}~~ Further:

- (a) most of Stanwell's generation capacity was derived from large coal-fired power stations;
- (b) ~~{37(m)}~~ these power stations operated under constraints or disadvantages not shared by other generating units, including:
 - (i) slower Ramp Rates than gas-fired or hydro power stations;
 - (ii) the need to keep generating at a minimum level, in order to avoid an expensive shut-down and expensive and slow re-start of generating units;
 - (iii) for the period 1 July 2012 to 30 June 2014, payment of the carbon tax;
 - (iv) an inability to earn revenue outside the NEM by claiming and selling large-scale generation certificates created under the *Renewable Energy (Electricity) Act 2000* (Cth);

- (v) regulatory constraints on the volume of emissions permitted to be produced each year, and in real time, in compliance with relevant environmental authorities;
- (vi) the risk of increases in the cost of coal and freight;
- (vii) the risk of disruptions to the supply of coal and water; and
- (viii) given the mature nature of the technology used in the power stations, limited prospects for future cost reduction compared to evolving technologies such as solar and wind power.

73. [37(n)] Stanwell was also constrained by:

- (a) [37(n)(i)] ~~constraints on~~ shortages of or interruptions to fuel supplies;
- (b) plant outages;
- (c) [37(n)(ii)] the bidding behaviour and market power of other Generators and Retailers, including firms with both generation capacity and retail operations;
- (d) [37(n)(iii)] the inherent complexity and uncertainty of trading activities; and
- (e) [37(n)(iv)] the inherent complexity and uncertainty of operating a coal-fired power station.

74. [42(f)] Further:

- (a) shifting capacity to higher price bands would, if it affected price at all, ordinarily result in a price-volume trade-off, so that a lower volume of electricity would be ordered for dispatch from that Generator;

- (b) the potential supply of electricity into Queensland was greater than the demand for electricity in Queensland;
- (c) whether price-volume trade-offs would be profitable would depend upon numerous factors, including a mis-match between forecast and actual demand, interconnector constraints, high temperatures, plant outages or other plant limitations;
- (d) these factors provided an opportunity for increased prices to be sought by all Generators in competition with Stanwell;~~;~~ and

~~[42(g)] Stanwell did not have the power to shift capacity to higher price bands ‘while still ensuring it was instructed by AEMO to dispatch large volumes of electricity’, as alleged in the particulars to paragraph 25(f) of the statement of claim.~~

~~42. As to paragraphs 25(e) and (f) of the statement of claim:~~

- ~~(a) Stanwell denies the facts alleged;~~
- ~~(e) Stanwell was constrained from engaging in the alleged Late Rebidding or Early Spiking Strategies, and in its bidding behaviour in general, by the matters pleaded in paragraphs 37(g) to 37(n), and 40 and 41 above;~~

~~43. As to paragraph 25(g) of the statement of claim, Stanwell admits that it was issued with a binding direction under the Electricity Act on 6 June 2017 but otherwise denies paragraph 25(g).~~

75. As to paragraph 34 of the statement of claim:

- (a) ~~[36]~~ Stanwell denies that during the Conduct Period it had a substantial degree of power:

- (i) in the Market as alleged; or
 - (ii) in the market pleaded in paragraph 39 ~~32~~ of this Defence,
- and relies on the matters pleaded in paragraphs 46 and 64 to 73 ~~above 37 and 38~~
~~below~~;
- (b) ~~[37(a)]~~ whether Stanwell had a substantial degree of market power depends on, *inter alia*:
 - (i) a time horizon longer than individual Dispatch Intervals or Trading Intervals; and
 - (ii) all circumstances that affected the formation of a commercially rational trading strategy;
 - (c) ~~[37(b)]~~ a Generator in Stanwell's position without market power would consider the long-term as well as the short-term impacts of a bidding strategy when formulating its trading activities;

E.3 ~~E.2~~ CSE's power in the Market

76. ~~[44]~~ As to paragraphs 35 to 41 ~~26~~ of the statement of claim, Stanwell:

- (a) relies upon the matters pleaded in paragraphs ~~23(d), 31, 32, 33(a) — 33(e), 35, 36~~
~~and 41(b) to 41(f)~~ 24(d), 38, 39, 40(a) to 40(c), 42, 45(b) to 45(g) and 75 ~~above~~;
- (b) does not know, and therefore cannot admit, the matters alleged in paragraph ~~26~~
35(a) and (b);
- (c) otherwise denies paragraph ~~26~~ 41.

E.4 ~~E.3~~ Aggregate Market Power

77. ~~[45]~~ As to paragraphs ~~27 and 28~~ 42 and 43 of the statement of claim, Stanwell:

- (a) relies upon the matters pleaded in paragraphs 14, ~~23(d), 31, 32, 35, 38, 39 and 36~~24(d), 38, 39, 42, 46, 47 ~~75~~ above;
- (b) denies the facts alleged as concerns it; and
- (c) does not know and therefore cannot admit the allegations as concern CSE.

F. CONDUCT OF STANWELL AND CSE – 1 JANUARY 2012 TO 6 JUNE 2017

Summary

78. ~~[46]~~ In the premises of the matters set out below Stanwell did not have or engage in the alleged Short-notice Rebidding strategy.

- ~~(a) — Stanwell did not engage in the alleged Late Rebidding strategy;~~
- ~~(b) — Stanwell did not engage in the alleged Early Spiking strategy;~~
- ~~(c) — Stanwell did not know, at the time of making the impugned Rebids, that its volume would be required to meet demand during the alleged Targeted Trading Intervals or alleged Spiking Targeted Trading Intervals;~~
- ~~(d) — 64 of the alleged Targeted Trading Intervals and 11 of the alleged Spiking Targeted Trading Intervals occurred outside of the Conduct Period;~~
- ~~(e) — a further 87 of the alleged Targeted Trading Intervals and 11 of the alleged Spiking Targeted Trading Intervals did not involve Stanwell making any Rebid at all for the Dispatch Intervals allegedly targeted by Stanwell;~~
- ~~(f) — as to the timing of the impugned Rebids;~~

- (i) ~~most of the impugned Late Rebids were in fact made early, with 43% (652) being made prior to the start of the alleged Targeted Trading Interval, a further 13% (193) being made in the first half of the alleged Targeted Trading Interval and a further 5% (79) being made in Dispatch Interval 4 but not taking effect until Dispatch Interval 6;~~
- (ii) ~~only 25 (12%) of the impugned Early Spiking Rebids were made in the Dispatch Interval preceding the alleged Spiking Targeted Dispatch Interval, as alleged in paragraph 33(f) of the statement of claim~~
- (iii) ~~further, only 3 of the impugned Early Spiking Rebids referred to in paragraph 46(f)(ii) above were followed by a further Rebid made in Dispatch Interval 2 of the Spiking Targeted Trading Interval, as alleged in paragraph 33(i) of the statement of claim;~~
- (g) ~~as to the prices offered by Stanwell in the impugned Rebids, in 80% of the Dispatch Intervals of the alleged Targeted Trading Intervals and 84% of the Dispatch Intervals of the alleged Spiking Targeted Trading Intervals, Stanwell was not one of the Marginal Generators.~~

F.1 Short-notice Rebidding

79. [47] As to paragraph 29 44 of the statement of claim:

- (a) Stanwell denies that it had or engaged in ~~either~~ the alleged Short-notice Rebidding strategy ~~Late Rebidding or the alleged Early Spiking strategies;~~
- (b) ~~otherwise Stanwell does not know and therefore cannot admit paragraph 29;~~
- (b) [47(e)] Stanwell's bidding conduct was governed by:

- (i) its corporate objectives and initiatives as set out in Stanwell's Corporate Plan and Statement of Corporate Intent;
 - (ii) its Code of Conduct;
 - (iii) its Compliance and Regulatory Management Policy;
 - (iv) its Compliance and Regulatory Management Procedure;
 - (v) its Trading Risk Management Policy;
 - (vi) obligation-specific compliance procedures including, among other things, Stanwell's policies, procedures and operational strategies;
- (c) [47(d)] Stanwell's operational strategies were to be implemented in line with Stanwell's policies and procedures;
- (d) [47(e)] Stanwell's policies, procedures and operational strategies required compliance with the *National Electricity Law* and the National Electricity Rules (including the good faith rebidding rules);
- (e) [47(f)] Stanwell incentivised its traders to comply with the *National Electricity Law* and National Electricity Rules (including the good faith rebidding rules) by including, as part of their Key Performance Indicators, a requirement to minimise the risk of market operations compliance issues;
- (f) [47(g)] neither the *National Electricity Law* nor the National Electricity Rules precluded Generators from engaging in price-volume trade-offs.

~~F.1—Late Change to Dispatch Offers (Late Rebidding)~~

80. [49] As to paragraph 30(a) 44(a) of the statement of claim:

- (a) Stanwell denies that it targeted the Targeted Trading Intervals or the Targeted Dispatch Intervals for the alleged ~~Late~~ Short-notice Rebidding strategy, as it did not;
- (b) Stanwell denies that it had or engaged in the alleged ~~Late~~ Short-notice Rebidding strategy, as it did not;
- (c) Stanwell admits that it submitted Dispatch Offers for the alleged Affected Targeted Trading Intervals and the alleged Affected Dispatch Intervals;
- (d) the Dispatch Offers submitted by Stanwell were generally prepared:
 - (i) in the month before the trading quarter in which the Dispatch Offer ~~is~~ was made:
 - (A) identifying the volume required to meet Stanwell's Contract Position;
 - (B) identifying the units available to dispatch that contract volume;
 - (C) creating 'default bids' to cover Stanwell's Contract Position;
 - (D) adjusting the default bids to reflect Stanwell's preferred trading position in light of its Contract Position, plant availability and minimum operating levels, and forecast of future prices;
 - (ii) submitting a default dispatch offer to AEMO in accordance with clause 3.8.9 of the National Electricity Rules (**Default Dispatch Offer**) approximately two weeks before the relevant Trading Day;
 - (iii) reviewing that Default Dispatch Offer every day for the two weeks prior to the relevant Trading Day, and adjusting the offer in light of market

conditions, including Stanwell's Contract Position, fuel costs and gross margin, the apparent pricing strategy of other Generators, Stanwell's internal forecasting and the weather forecast;

(iv) reviewing the Default Dispatch Offer at 12pm on the day before the relevant Trading Day, to determine whether it was necessary to re-submit the offer;

(v) submitting a Dispatch Offer by 12.30pm the day before the relevant Trading Day (if necessary);

~~(e) Stanwell does not know and therefore cannot admit that the application of the methodology alleged by the Applicant in its letters of 25 August and 11 October 2021 produces 1,680 Targeted Trading Intervals as alleged;~~

~~(f) of the alleged Targeted Trading Intervals, 64 did not occur during the Conduct Period;~~

(e) ~~[53(a)]~~ Stanwell admits that Stanwell submitted Rebids for the alleged Targeted Trading Affected Dispatch Intervals;

(f) Rebids submitted by Stanwell were:

(i) governed by the instruments pleaded in paragraph 79(b) above;

(ii) required to be made in accordance with Stanwell's policies and procedures;

(iii) save for Rebids designed to correct an error in a previous Bid, submitted in response to a change in material conditions and circumstances;

Particulars

Material conditions and circumstances include those matters pleaded in paragraph 28(b) above.

- (iv) prepared and submitted in accordance with the good faith rebidding rules and in particular Rule 3.8.22 of the National Electricity Rules, which required Stanwell to provide contemporaneously a brief, verifiable and specific reason (BVS Reason) for the Rebid;
- (v) submitted before the actual Dispatch Price was known, such that it could not be known, when the Rebid was submitted, whether it would have the effect alleged in paragraphs 44(a)(i) and (ii) of the statement of claim;

Particulars

The Dispatch Price for a Dispatch Interval was published by AEMO to Market Participants after the commencement of the Dispatch Interval. The Dispatch Price usually differed from the forecast Dispatch Price because of the dynamic nature of the NEM and also because the inputs into the algorithm for calculating the forecast Dispatch Price were different to those used by the Dispatch Algorithm to calculate the actual Dispatch Price, such that, even if all forecast parameters were to eventuate, the Dispatch Price and the forecast Dispatch Price may differ.

~~(h) — it is otherwise impractical to plead separately to each of the alleged Targeted Trading Intervals in the time allowed for the filing of this defence; and~~

~~(i) — otherwise Stanwell does not know and therefore cannot admit paragraph (a);~~

81. In this Defence, the term **Impugned Rebids** refers to the Rebids made by Stanwell that are identified in Table A.1 of the First Ledgerwood Report.

82. [49(g)] Annexure C.1 to this defence identifies, *inter alia*:

- (a) [49(g)(i)] the date and time each ~~Offer~~ and Impugned Rebid and final Rebid made by Stanwell (where that differs from the Impugned Rebid) for each of the alleged ~~Targeted Trading~~ Affected Dispatch Intervals in the Conduct Period was submitted by Stanwell;
- (b) for Dispatch Units that were the subject of the Impugned Rebid:
 - (i) [49(g)(ii)] the price bands (in \$) nominated by Stanwell; and
 - (ii) [49(g)(iii)] the volume of electricity (in MW) offered by Stanwell in each price band.

83. Annexure C.2 to this defence identifies, *inter alia*, the effect of each Impugned Rebid on the Timely Offer or Timely Offers (as the case may be), the demand of the QRNEM in the Affected Dispatch Interval, as well as the number of Competing Queensland Generators that were dispatched in the Affected Dispatch Interval.

Particulars

- (a) As to the Stanwell Rebid referred to in paragraph 2(b) of Annexure E to the statement of claim:

- (i) Stanwell made the Rebid at 12:26:37 on 12 January 2017, for the 12:35 Dispatch Interval which commenced at 12:30:01;
- (ii) the Rebid, as set out in Annexure C.2 to this defence, moved 150MW above the resulting Dispatch Price for the 12:35 Dispatch Interval (before Stanwell knew what that Dispatch Price would be) during which Queensland demand was 8,333MW;
- (iii) during the 12:35 Dispatch Interval seven of the nine Competing Queensland Generators (including CSE) were dispatched; and
- (iv) during the Affected Trading Interval (the 13:00 Trading Interval) other Generators ramped up peaking Dispatch Units and were dispatched in subsequent Dispatch Intervals of the Affected Trading Interval.
- (b) As to the Stanwell Rebid referred to in paragraph 2(d) of Annexure E to the statement of claim:
 - (i) Stanwell made the Rebid at 19:51:28 on 18 January 2015, for the 20:00 Dispatch Interval commencing at 19:55:01;
 - (ii) the Rebid, as set out in Annexure C.2 to this defence, moved 30MW above the Dispatch Price for the 20:00 Dispatch Interval (before Stanwell knew what the Dispatch Price would be) during which Queensland demand was 8,124MW;
 - (iii) during the 20:00 Dispatch Interval:
 - (A) all other Competing Queensland Generators were dispatched;

- (B) Competing Queensland Generators had been dispatched in every Dispatch Interval of the Affected Trading Interval, preceding the 20:00 Dispatch Interval.

84. Not all of the Impugned Rebids were the final Rebid effective in an Affected Dispatch Interval.

Particulars

- The Impugned Rebid at 14:11 on 29 January 2012 preceded Stanwell's final Rebid that was effective in the 14:30 Affected Dispatch Interval at 14:17 that day. The forecast Dispatch Price after the Impugned Rebid at 14:11 but before Stanwell's final Rebid at 14:17 was -\$396/MWh.
- The Impugned Rebid at 16:12 on 10 December 2014 preceded Stanwell's final Rebid that was effective in the 16:25 Affected Dispatch Interval at 16:18 that day. The final Rebid at 16:18 did not withhold capacity but rather moved capacity from price bands above the resulting Dispatch Price to price bands below the resulting Dispatch Price.
- Further details are contained in the expert report of Ian Rose dated 28 February 2023.

85. Stanwell otherwise does not know and therefore cannot admit the facts alleged in paragraph 44(a), having regard to the generality of the allegations pleaded.

86. Further:

- (a) with the exception of Ergon Energy, all other Competing Queensland Generators made Rebids during the Conduct Period that met the criteria for Short-notice

Rebids identified in the First Ledgerwood Report (apart from the criterion that the maker of the Rebid was CSE or Stanwell);

- (b) Stanwell's share of these Short-notice Rebids (18%) was substantially less than its share of Registered Generation Capacity (32%), as tabled below:

| Number of dispatch intervals in which Short-notice Rebids were made during the Conduct Period | | | | | | | | | | | |
|---|-----------------|------------------|----------------------|---------------------|--------------|------------------|-----------------|----------------------|------------|--------------|-------------|
| | <u>Stanwell</u> | <u>CS Energy</u> | <u>Alinta Energy</u> | <u>Arrow Energy</u> | <u>Ergon</u> | <u>ERM Power</u> | <u>Intergen</u> | <u>Origin Energy</u> | <u>OGC</u> | <u>Ratch</u> | <u>Ttl.</u> |
| <u>2012</u> | <u>7</u> | <u>49</u> | <u>0</u> | <u>7</u> | <u>0</u> | <u>0</u> | <u>0</u> | <u>0</u> | <u>1</u> | <u>0</u> | |
| <u>2013</u> | <u>32</u> | <u>65</u> | <u>9</u> | <u>10</u> | <u>0</u> | <u>3</u> | <u>2</u> | <u>8</u> | <u>0</u> | <u>4</u> | |
| <u>2014</u> | <u>36</u> | <u>77</u> | <u>5</u> | <u>2</u> | <u>0</u> | <u>1</u> | <u>14</u> | <u>11</u> | <u>0</u> | <u>0</u> | |
| <u>2015</u> | <u>18</u> | <u>63</u> | <u>2</u> | <u>5</u> | <u>0</u> | <u>10</u> | <u>13</u> | <u>2</u> | <u>0</u> | <u>1</u> | |
| <u>2016</u> | <u>19</u> | <u>62</u> | <u>7</u> | <u>3</u> | <u>0</u> | <u>8</u> | <u>31</u> | <u>2</u> | <u>2</u> | <u>0</u> | |
| <u>2017</u> | <u>10</u> | <u>41</u> | <u>14</u> | <u>5</u> | <u>0</u> | <u>6</u> | <u>20</u> | <u>2</u> | <u>0</u> | <u>0</u> | |
| Total | 122 | 357 | 37 | 32 | 0 | 28 | 80 | 25 | 3 | 5 | 689 |
| Share of Short-Notice Rebidding | | | | | | | | | | | |
| | <u>18%</u> | <u>52%</u> | <u>5%</u> | <u>5%</u> | <u>0%</u> | <u>4%</u> | <u>12%</u> | <u>4%</u> | <u>0%</u> | <u>1%</u> | |
| Share of Registered Generation Capacity across Conduct Period (average of figures in Annexure A) | | | | | | | | | | | |
| | <u>32%</u> | <u>33%</u> | <u>4%</u> | <u>4%</u> | <u>0%</u> | <u>2%</u> | <u>11%</u> | <u>9%</u> | <u>1%</u> | <u>2%</u> | |

87. Further:

- (a) {50(e)(ii)} the movement by Stanwell of capacity to a higher price band would not necessarily affect the Dispatch Price;
- (b) {50(f)(ii)} the offer of capacity at a price above the actual Dispatch Price forms no part of the calculation of the Dispatch Price pursuant to the Dispatch Algorithm and would not affect the Dispatch Price;
- (c) {50(f)(iii)} whether or not the removal of capacity offered at 'lower price bands' as pleaded in paragraph 30(b)(i) 44(a) of the statement of claim would have affected the Dispatch Price would depend on, *inter alia*, where these price bands sat in relation to other Generators' Offers.

88. Stanwell denies paragraph 44(b) of the statement of claim and relies upon the matters pleaded below in paragraphs 89 to 93.
89. Stanwell did not make the Impugned Rebids, nor did it time or delay the Impugned Rebids, expecting and intending the matters alleged in paragraph 44(b) of the statement of claim and neither the matters alleged in items A to E of the particulars, nor the ‘nature, frequency and effect’ of the Short-notice Rebids, justifies this inference being drawn.
90. As to the matters alleged in items A to E of the particulars, these are features of all Generators and are not unique to Stanwell.
91. As to the ‘nature’ of the alleged Short-notice Rebidding:
- (a) almost half of the Impugned Rebids were made between five and 15 minutes before the start of the Affected Dispatch Intervals and thereby afforded competing Generators time to submit a responsive Rebid;

Particulars

Of the Short-notice Rebids that Stanwell is alleged to have made:

- (A) 54% (66 of 122) were made within approximately five minutes of the commencement of the relevant Affected Dispatch Interval (**Impugned D-5 Rebids**);
- (B) 28% (34 of 122) were made between approximately five and ten minutes of the commencement of the relevant Affected Dispatch Interval (**Impugned D-10 Rebids**); and

- (C) 18% (22 of 122) were made between approximately ten and 15 minutes of the commencement of the relevant Affected Dispatch Interval (**Impugned D-15 Rebids**).
- (b) further, as stated in the BVS Reasons, the Impugned Rebids related to one or more of:
- (i) plant or physical change (code 'P');
 - (ii) an AEMO forecast or dispatch change (code 'A'); or
 - (iii) financial or commercial issues (code 'F');

Particulars

Annexure C.2

- (c) other than having been identified by the application of the code in Appendix D of the First Ledgerwood Report to the dataset described in section 11.A of that report, there is nothing common in the 'nature' of the Impugned Rebids;
- (d) Stanwell otherwise relies on the matters pleaded in paragraph 80 above.
92. As to the 'frequency' of the alleged Short-notice Rebidding, the frequency at which Stanwell is alleged to have engaged in that conduct is negligible.

Particulars

The Impugned Rebids affect only 0.02% (122 of 571,392) of the total number of Dispatch Intervals during the Conduct Period.

93. As to the 'effect' of the alleged Short-notice Rebidding, the alleged effect of increasing the Dispatch Price is an anticipated outcome of Rebids made to achieve price-volume

trade-offs, which if made in accordance with the requirements of the National Electricity Rules, are an acceptable and established form of rebidding in the NEM.

94. As to paragraphs 44(b)(i) to (iii) of the statement of claim:

- (a) ~~{64(a)}~~ the Dispatch Algorithm would have regard to Generators' Bids Offers in determining which generating units were instructed to dispatch;
- (b) ~~{54(a)}~~ the Bids Offers submitted by competing Generators in accordance with clauses 3.8.2 and 3.8.5 of the National Electricity Rules would automatically be included in the central dispatch process unless removed by a Rebid;
- (c) ~~{54(b)}~~ if the Bids Offers submitted for central dispatch contained offers of capacity at lower price bands than those offered by Stanwell or CSE in the alleged ~~late~~ Impugned Rebid, AEMO would order the competing Generators offering that lower-priced volume to dispatch it;
- (d) ~~{54(e)}~~ the process described in paragraph 88 to 94(c)(b) above occurred automatically, and did not require competing Generators to 'respond' to the ~~late~~ Impugned Rebid.
- (e) how other Generators and Market Participants (as this term is defined in the National Electricity Rules) might respond to a Rebid would depend, *inter alia*, on how they:
 - (i) ~~{56(g)(i)}~~ had structured their Bids Offers (including price bands, volumes and Ramp Rates); and
 - (ii) ~~{56(g)(ii)}~~ would have reacted to any change in market conditions (including any change in the forecast Dispatch Price or Spot Price) resulting from an earlier Rebid;

- (f) ~~[56(h)]~~ a Generator seeing a higher forecast Dispatch Price or Spot Price:
- (i) including in the premises of the matters pleaded in paragraphs 6(h) and 6(i) above, would not necessarily adjust its bids to increase generation; and
 - (ii) may in fact have taken the opposite course, particularly if the Generator perceived an opportunity to increase the Spot Price further by adjusting its bids to decrease generation, and therefore further increase the Spot Price and produce a positive price-volume trade-off;
- (g) an increase in the Dispatch Price would not logically deter Generators from increasing generation in the Trading Interval but would rather incentivise Generators to increase generation in subsequent Dispatch Intervals and participate in the higher Spot Price for that Trading Interval;
- (h) competing Generators had the opportunity to increase generation in the majority of Affected Trading Intervals alleged against Stanwell;

Particulars

In response to an increased Dispatch Price, competing Generators could increase generation in the subsequent Dispatch Intervals of the same Trading Interval save in respect of a Dispatch Price increase in Dispatch Interval 6. Of the 122 Affected Dispatch Intervals allegedly impacted by Impugned Rebids made by Stanwell, 71 (58%) are in Dispatch Intervals 1 to 5.

- (i) ~~[50(g)(i)]~~ generating units such as fast start hydroelectric plants could physically respond (i.e. synchronise) within ~~one or two minutes~~ a single Dispatch Interval;

- (j) ~~[52(d)]~~ the alleged ~~Targeted~~ Affected Trading Intervals and Affected Dispatch Intervals were or included periods of high demand, further or alternatively high forecast demand;
- (k) ~~[52(e)]~~ during Trading Intervals with high demand, Generators are typically ‘on’ (meaning that some or all of their generating units are operating and available for dispatch) and seeking to take advantage of higher prices;
- (l) in the premises of paragraphs 91(a) and 92(i) to 92(k) above, Stanwell denies that competing Generators were unable to submit a responsive Rebid to the Impugned D-10 Rebids or the Impugned D-15 Rebids;
- (m) in respect of the Impugned D-5 Rebids:
 - (i) ~~[54(d)(i)]~~ any changes in market conditions caused by a Rebid would only be observed at the earliest in the next Dispatch Interval after the Rebid was made;
 - (ii) ~~[54(d)(ii)]~~ a Generator could therefore not respond to such changes within the same Dispatch Interval that the Rebid was made;
 - (iii) in the premises, Stanwell admits that competing Generators would be unable to submit a responsive Rebid to take effect in the first Affected Dispatch Interval for the Impugned D-5 Rebids;
- (n) a competing Generator’s Rebid was capable of affecting the Dispatch Price, even if it offered less capacity than had been affected by Stanwell’s Rebid, depending on where the competing Generator’s Rebid sat in the bid stack;
- (o) during the alleged Affected Dispatch Intervals;

- (i) there was surplus available capacity;
- (ii) the Dispatch Price was not necessarily set according to the higher price band to which Stanwell had shifted capacity;
- (iii) multiple competing Generators dispatched capacity, including peaking Generators;

Particulars

Particulars are provided in the table pleaded at paragraph 104(e) below together with the details in Annexure C.2 of Queensland Generators other than Stanwell that were dispatched in Affected Dispatch Intervals.

- (p) by coordinating generation across multiple Dispatch Units, at least one competing Generator (in addition to CSE) could have ramped up within one Dispatch Interval to supply the affected capacity in the majority of the instances alleged as being Stanwell's Impugned Rebids.

Particulars

Based on the median ramp up rates specified by the Applicant in Annexure D of the statement of claim, competing Generators could ramp up generation across their respective portfolios within one Dispatch Interval by:

- Origin – 249 MW;
- Intergen (non-Callide C) – 10 MW;
- Alinta – 120 MW;

- Shell – 15 MW;
- Arrow – 165 MW;
- Oakey Power Holdings – 110 MW;
- Ergon – 15 MW;
- RATCH-Australia – 95 MW.

95. Stanwell denies paragraph 44(c) of the statement of claim and says that:

- (a) as to the Conduct Period generally:
 - (i) the NEM was a dynamic market;
 - (ii) the circumstances in which a Rebid was permitted to be made were numerous, as pleaded in paragraph 28 above;
 - (iii) the BVS Reasons provided by Stanwell are consistent with Stanwell complying with the good faith rebidding rules and afford no basis for drawing an inference of the nature alleged in the Statement of Claim;
- (b) Stanwell otherwise does not plead to the particulars to paragraph 44(c) or Annexure E and says that it is impractical to plead to the circumstances of each Impugned Rebid and each of the alleged Affected Dispatch Intervals in the time allowed for the filing of this defence; and
- (c) Stanwell will provide further particulars upon the Applicant identifying the subset of impugned Trading Intervals that it nominates the Court examine at the initial trial in this proceeding (**Applicant's Chosen Intervals**), pursuant to paragraph 13 of the orders of Justice Lee dated 19 December 2022.

96. Stanwell does not know, and therefore cannot admit, the allegations in paragraph 44 of the statement of claim in so far as they relate to the conduct of CSE.

50. — ~~As to paragraph 30(b) of the statement of claim:~~

~~(a) — Stanwell denies that it was a ‘pivotal generator’;~~

~~(e) — as to paragraph 30(b)(i):~~

~~(i) — the Respondents’ ability to rebid was constrained, as pleaded in paragraphs 23(d), 35, 36, 37 and 42 above; and~~

~~(ii) — any Rebid submitted within approximately 67 seconds before the start of a Dispatch Interval would not take effect for that Dispatch Interval;~~

~~(iii) — otherwise Stanwell admits the facts alleged;~~

~~(d) — as to paragraph 30(b)(ii):~~

~~(i) — Stanwell denies the facts alleged;~~

~~(iii) — the correct position is that pleaded in paragraphs 23(d), 36, 40, 40 and 41 above;~~

~~(iv) — further, Stanwell did not know, at the time of making the Offers, that it would be required to dispatch any of Stanwell’s Tradeable Capacity;~~

~~(e) — as to paragraph 30(b)(iii):~~

~~(i) — Stanwell denies the facts alleged;~~

~~(iii) — as to the Marginal Generators for the Dispatch Intervals of the alleged Targeted Trading Intervals in the Conduct Period, the Dispatch Price was set (by the Dispatch Algorithm) at a price offered:~~

~~(A) — solely (that is, by a Dispatch Offer in a price band offered by those generating units and no others) by generating units located outside Queensland in 47% of cases (being 4,557 out of the 9,696 Dispatch Intervals);~~

- ~~(B) — solely by non-Stanwell generating units located inside Queensland in 23% of cases (being 2,261 out of the 9,696 Dispatch Intervals);~~
- ~~(C) — by a mix of non-Stanwell generating units located inside and outside Queensland in 10% of cases (being 968 out of the 9,696 Dispatch Intervals);~~
- ~~(D) — by Stanwell's generating units in 13% of cases (being 1,293 out of the 9,696 Dispatch Intervals);~~
- ~~(E) — by a mix of generating units located inside and outside Queensland, including Stanwell generating units, in 5% of cases (being 451 out of the 9,696 Dispatch Intervals);~~
- ~~(F) — by a mix of generating units located inside Queensland, including Stanwell generating units, in 2% of cases (being 166 out of the 9,696 Dispatch Intervals);~~

Particulars

~~Annexure C.3.~~

- ~~(iv) — further, of the 9,696 Dispatch Intervals listed in paragraphs (iii)(A) to (iii)(F) above, 18% (or 1,748) were set by reference to a combination of the Dispatch Prices offered by the above generators and by reference to prices for frequency control ancillary services;~~

Particulars

~~Annexure C.3.~~

- ~~(f) — as to paragraph 30(b)(iv):~~
 - ~~(i) — Stanwell denies the facts alleged for the reasons pleaded above;~~
- ~~(g) — as to paragraph (b)(v):~~
 - ~~(ii) — Generators plan whether to be 'on' or 'off' for a Dispatch Interval or Trading Interval by reference to their bidding objectives and strategies;~~

~~which are typically determined well in advance of the Trading Day, and
which are not known to Stanwell;~~

- ~~(h) Stanwell was, during the Conduct Period, aware of the matters pleaded in paragraph 30(b) of the defence to the extent these matters are admitted in paragraphs (a) to (f) above; but~~
- ~~(i) otherwise Stanwell does not know and therefore cannot admit paragraph (b).~~

51. ~~As to paragraph 30(c) of the statement of claim:~~

- ~~(a) Stanwell admits that AEMO published pre-dispatch market information for the alleged Targeted Trading Intervals (and for all other Trading Intervals);~~
- ~~(b) such information was contained in pre-dispatch schedules published by AEMO;~~
- ~~(c) AEMO published pre-dispatch schedules:~~
 - ~~(i) once every five minutes, for each trading interval in the next hour; and~~
 - ~~(ii) once every half hour, on the half hour, for each 30-minute period up to and including the last 30-minute period of the last Trading Day for which price bands have closed;~~
- ~~(d) AEMO published the pre-dispatch schedules as soon as possible after 12.30pm, but no later than 4pm, on the day prior to the Trading Day to which the schedule related;~~
- ~~(e) Stanwell admits that AEMO determined the pre-dispatch schedules on the basis of Offers of the Generators, among other matters;~~
- ~~(f) pre-dispatch schedules contained the forecast energy consumption, aggregate generating plant availability and projected supply surpluses and deficits for each region in accordance with clause 3.13.4(f) of the National Electricity Rules, but did not indicate which specific Generators would be instructed to dispatch;~~
- ~~(g) Generators were notified (in accordance with clause 3.8.20(j) of the National Electricity Rules) of certain pre-dispatch information relating specifically to their generating units, but were not notified of, or privy to, pre-dispatch information relating to the generating units of other Generators;~~

- ~~(h) — instructions to dispatch were provided to Generators electronically via AEMO's automatic generation control system, shortly after the commencement of each Dispatch Interval to which the dispatch instruction related;~~
- ~~(i) — Generators were not privy to the dispatch instructions given to other Generators;~~
- ~~(j) — the pre-dispatch schedules did include a schedule of forecast Spot Prices;~~
- ~~(k) — a Generator could not draw an inference from forecast demand and the forecast Spot Price as to the extent to which the Generator may be dispatched, because the dynamic nature of the NEM meant that the forecast demand and forecast Spot Price were frequently materially wrong;~~
- ~~(l) — AEMO published information concerning the Trading Day, including the number of Rebids, the times and prices at which Rebids were made, the final Dispatch Offers, actual availability of generating units and actual dispatched generation, the day after the Trading Day; and~~
- ~~(m) — otherwise Stanwell does not know and therefore cannot admit the facts alleged.~~

52. — As to paragraph 30(d) of the statement of claim:

- ~~(a) — Stanwell relies upon paragraphs 51(f) to 51(l) above;~~
- ~~(b) — Generators who were available and had submitted an Offer for a Dispatch Interval:

 - ~~(i) — did not know until shortly after the start of a Dispatch Interval whether they would be required to dispatch; and~~
 - ~~(ii) — would not switch off or ramp down generating units for that Dispatch Interval on the basis of the pre-dispatch schedule, given the reason pleaded in paragraph 51(k) above;~~~~
- ~~(c) — Generators were constrained in their ability to switch off or ramp down their generating units by the Ramp Rates of their generating units, which were in turn affected by the technical limits of the relevant plant;~~
- ~~(i) — Stanwell is not able to plead further to (and does not admit) the allegations as, despite request, the Applicant has failed to identify the competing Generators it~~

~~says who took steps not to dispatch at all (by switching off or ramping down generating units).~~

~~53. As to paragraph 30(e) of the statement of claim:~~

~~(b) Annexure C.1. to this defence identifies, *inter alia*:~~

~~(i) the date and time the last Offer for each of Dispatch Intervals 5 and 6 of the Targeted Trading Intervals was submitted; and~~

~~(ii) the volume of electricity (in MW) offered by the Rebid in each price band;~~

Particulars

~~The volume of electricity offered in each price band was the aggregate of the capped availability for Stanwell's generating units for that price band.~~

~~(c) of the 1,616 alleged Targeted Trading Intervals in the Conduct Period, there were 87 Trading Intervals in which Stanwell did not make any Rebids for either Dispatch Interval 5 and/or Dispatch Interval 6; as pleaded in paragraph 56(c) below, most of the Impugned Late Rebids were in fact made early, rather than late;~~

~~(d) in this Defence, the term **Impugned Late Rebids** refers to the 1,529 final Rebids made by Stanwell that took effect for Dispatch Interval 5 and/or Dispatch Interval 6 of the remaining Targeted Trading Intervals;~~

~~(e) as pleaded in paragraph 56(c) below, most of the Impugned Late Rebids were in fact made early, rather than late;~~

~~(f) it is otherwise impractical to plead separately to each of the alleged Targeted Trading Intervals in the time allowed for the filing of this defence;~~

~~(g) otherwise Stanwell does not know and therefore cannot admit the facts alleged.~~

~~54. As to paragraph 30(f) of the statement of claim:~~

~~(e) Stanwell otherwise does not know and therefore cannot admit paragraph (f)~~

~~55. As to paragraph 30(g) of the statement of claim:~~

- ~~(a) — Stanwell does not know and therefore cannot admit paragraph 30(g)(i);~~
- ~~(b) — Stanwell denies paragraph 30(g)(ii) as the correct position is pleaded in paragraph 50(f) above.~~

97. ~~[56]~~ As to paragraph 34 45 of the statement of claim:

- ~~(a) — Stanwell denies the facts alleged;~~
- (a) ~~[56(b)]~~ Stanwell did not have or engage in the alleged ~~Late~~ Short-notice Rebidding strategy;
- ~~(c) — of the Impugned Late Rebids:~~
 - ~~(i) — 43% (652) were made before the start of the Targeted Trading Interval;~~
 - ~~(ii) — 3% (39) were made in Dispatch Interval 1 of the Targeted Trading Interval;~~
 - ~~(iii) — 4% (54) were made in Dispatch Interval 2 of the Targeted Trading Interval;~~
 - ~~(iv) — 7% (100) were made in Dispatch Interval 3 of the Targeted Trading Interval;~~
 - ~~(v) — 5% (79) were made in Dispatch Interval 4 but did not take effect until Dispatch Interval 6 of the Targeted Trading Interval; and~~
 - ~~(vi) — only 40% (605) were otherwise made in Dispatch Interval 4 or Dispatch Interval 5 of the Targeted Trading Interval;~~

Particulars

Annexure C.2.

- ~~(d) — in the premises, only a minority of the Impugned Late Rebids were:~~
 - ~~(i) — made ‘shortly prior to the commencement of either the fifth or sixth Dispatch Interval of the Targeted Trading Interval’, as alleged in paragraph 30(e) of the statement of claim; or~~
 - ~~(ii) — submitted ‘late’, as alleged in paragraph 30(f) of the statement of claim;~~

- ~~(e) — further, the Impugned Late Rebids do not display a pattern of increasing the prices at which Stanwell was prepared to dispatch electricity;~~
- ~~(f) — of the 1,529 Impugned Late Rebids:~~
 - ~~(i) — 45% (682) were made for reasons related to plant or physical issues (**Plant Rebids**);~~
 - ~~(ii) — 45% (683) were made for reasons related to an AEMO forecast or dispatch change (**AEMO Rebids**);~~
 - ~~(iii) — 5% (72) were made for reasons related to financial or commercial issues (**Financial Rebids**);~~
 - ~~(iv) — 2% (26) were made to correct an error in a previous Rebid (**Error Rebids**);~~
 - ~~(v) — 4% (66) were made for a combination of the above reasons; and~~

Particulars

~~Annexure C.2.~~

- ~~(b) [56(g)] had Stanwell been able to make, and made, the Impugned Late Rebids earlier, the effect on the Dispatch Price or the Spot Price would depend, *inter alia*, on the matters pleaded in paragraphs 94(e) to 94(f) above; how other Generators and Market Participants (as this term is defined in the National Electricity Rules);~~
- ~~(c) [48] Stanwell otherwise does not know, and therefore cannot admit, the allegations in paragraph 45 paragraphs 30, 31 and 32 of the statement of claim in so far as they relate to the conduct of CSE.~~

~~57. — As to paragraph 32 of the statement of claim, Stanwell:~~

- ~~(a) — denies paragraph 32 insofar as it relates to Rebids made by Stanwell;~~
- ~~(b) — repeats paragraphs 23(d) and 49(h) above.~~

F.2 — Early Spiking

~~58. — Stanwell does not know, and therefore cannot admit, the allegations in paragraphs 33, 34 and 35 of the statement of claim in so far as they relate to the conduct of CSE.~~

~~59. — As to paragraph 33(a) of the statement of claim:~~

~~(a) — Stanwell:~~

~~(i) — denies that it targeted the alleged Spiking Targeted Trading Intervals for the alleged Early Spiking strategy, as it did not;~~

~~(ii) — denies that it engaged in the alleged Early Spiking strategy, as it did not;~~

~~(iii) — admits that Stanwell submitted Offers for the Trading Intervals preceding the alleged Spiking Targeted Trading Intervals;~~

~~(iv) — admits that Stanwell submitted Offers for the alleged Spiking Targeted Trading Intervals;~~

~~(b) — the Dispatch Offers submitted by Stanwell were generally prepared as pleaded in paragraph 49(b) above;~~

~~(e) — does not know whether, and does not admit that, the application of the methodology alleged by the Applicant in its letters of 25 August and 11 October 2021 produces 224 Spiking Trading Intervals as alleged;~~

~~(d) — Annexure D.1 to this defence identifies, *inter alia*:~~

~~(i) — the date and time each Offer for the alleged Spiking Targeted Trading Intervals was submitted by Stanwell;~~

~~(ii) — the price bands nominated by Stanwell; and~~

- ~~(iii) — the volume of electricity (in MW) offered by Stanwell in each price band;~~
 - ~~(e) — of the Spiking Targeted Trading Intervals alleged by the Applicant, 11 did not occur during the Conduct Period;~~
 - ~~(f) — it is otherwise impractical to plead separately to each of the alleged Spiking Targeted Trading Intervals or the Trading Intervals preceding the Spiking Targeted Trading Intervals in the time allowed for the filing of this defence; and~~
 - ~~(g) — otherwise Stanwell does not know and therefore cannot admit paragraph (a).~~
60. — As to paragraph 33(b) of the statement of claim:
- ~~(a) — Stanwell denies that it was a ‘pivotal generator’;~~
 - ~~(b) — due to uncertainty of demand and generation, including matters such as changes in the bids of other Generators, physical outages and transmission limits, Stanwell did not know, ahead of time, by how much it would be dispatched in a particular Dispatch Interval;~~
 - ~~(c) — Stanwell admits paragraph (b)(i) and relies upon paragraph 50(a) above;~~
 - ~~(d) — as to paragraph (b)(ii):~~
 - ~~(i) — Stanwell denies the facts alleged;~~
 - ~~(ii) — Stanwell did not know, at the time of making the Offers, how much of its volume would be required to meet demand during the alleged Spiking Targeted Trading Intervals;~~
 - ~~(iii) — the correct position is that pleaded in paragraphs 23(d) and 40 above;~~

~~(iv) — further, Stanwell did not know, at the time of making the Offers, that it would be required to dispatch any of Stanwell's Tradeable Capacity;~~

~~(e) — as to paragraph (b)(iii):~~

~~(i) — Stanwell denies the facts alleged and relies upon paragraphs 50(e)(i) and 50(e)(ii) above;~~

~~(ii) — further, as to the Marginal Generators for the Dispatch Intervals of the alleged Spiking Targeted Trading Intervals in the Conduct Period, the Dispatch Price was set (by the Dispatch Algorithm):~~

~~(A) — in 57% of cases (being 689 out of the 1,212 Dispatch Intervals), solely by generating units located outside Queensland;~~

~~(B) — in 18% of cases (220 Dispatch Intervals), solely by non-Stanwell generating units located inside Queensland;~~

~~(C) — in 9% of cases (110 Dispatch Intervals) by a combination of non-Stanwell generating units located inside and outside Queensland;~~

~~(D) — in 10% of cases (116 Dispatch Intervals), by Stanwell's generating units;~~

~~(E) — in 4% of cases (51 Dispatch Intervals), by a mix of Stanwell generating units and other generating units, not all located inside Queensland;~~

~~(F) — in 2% of cases (26 Dispatch Intervals), by a mix of generating units located inside Queensland, including Stanwell generating units;~~

Particulars~~Annexure D.4.~~

~~(iii) — further, of the 1,212 Dispatch Intervals listed above, in 18% of cases (216), the Dispatch Price was set by reference to a combination of the Dispatch Prices offered by the above generators and by reference to prices for frequency control ancillary services;~~

Particulars~~Annexure D.4.~~

~~(f) — Stanwell denies paragraph (b)(iv) and relies upon paragraphs 50(f)(ii) and 50(f)(iii) above;~~

~~(g) — as to paragraph (b)(v):~~

~~(i) — certain types of generating units were capable of synchronising within one or two minutes as pleaded in paragraph 50(g)(i) above;~~

~~(ii) — Generators plan whether to be ‘on’ or ‘off’ for a Dispatch Interval or Trading Interval by reference to their bidding objectives and strategies, which are typically determined well in advance of the Trading Day, and which are not known to Stanwell as pleaded in paragraph 50(g)(ii) above;~~

~~(h) — Stanwell was, during the Conduct Period, aware of the matters pleaded in paragraph 33(b) of the defence to the extent these matters are admitted in paragraphs (a) to (f) above; but~~

~~(i) — otherwise Stanwell does not know and therefore cannot admit paragraph (b).~~

~~61. — As to paragraph 33(c) of the statement of claim:~~

- ~~(a) — Stanwell admits that AEMO published pre-dispatch market information for the alleged Spiking Targeted Trading Intervals and for the Trading Intervals preceding the alleged Spiking Targeted Trading Intervals;~~
- ~~(b) — such information was contained in pre-dispatch schedules;~~
- ~~(c) — by reason of the matters pleaded in paragraph 51 above, concerning the contents and relevance of the pre-dispatch schedules:~~
 - ~~(i) — Generators were notified (in accordance with clause 3.8.20(j) of the National Electricity Rules) of certain pre-dispatch information relating specifically to their generating units, but were not notified of, or privy to, pre-dispatch information relating to the generating units of other Generators;~~
 - ~~(ii) — AEMO did not otherwise publish pre-dispatch market information indicating that a particular Generator would be instructed to dispatch;~~
 - ~~(iii) — Generators could not be sure whether and to what extent they would be dispatched in a Dispatch Interval until shortly after the commencement of that Dispatch Interval; and~~
 - ~~(iv) — due to the dynamic nature of the NEM, the Spot Price forecast in the pre-dispatch schedule was frequently materially wrong;~~
- ~~(d) — otherwise Stanwell does not know and therefore cannot admit paragraph (c).~~

62. — As to paragraphs 33(d) and (e) of the statement of claim:

- ~~(a) — by reason of the matters pleaded in paragraphs 51(f) to 51(m), 52(a) and 52(e) to 52(i) above, competing Generators:~~

- (i) — could not be sure whether and to what extent they would be dispatched in a Dispatch Interval until shortly after the commencement of that Dispatch Interval; and
- (ii) — were unlikely to place significant weight on the pre-dispatch schedule in deciding whether to switch off or ramp down their generating units;
- (b) — Generators were constrained in their ability to switch off or ramp down their generating units by the Ramp Rates of their generating units, which were in turn affected by the technical limits of the relevant plant;
- (c) — the alleged Spiking Targeted Trading Intervals were or included periods of high demand;
- (d) — the number of Competing Queensland Generators dispatched during the alleged Spiking Targeted Trading Intervals and the number of Competing Queensland Generators dispatched in each Trading Interval across the entire Conduct Period, are set out in the table below:

| No. of Generators dispatched | No. of Trading Intervals (Spiking Targeted) | No. of Trading Intervals (entire Conduct Period) | % of Trading Intervals (Spiking Targeted) | % of Trading Intervals (entire Conduct Period) |
|--------------------------------|---|--|---|--|
| All 9 other generators | 11 | 770 | 5% | 1% |
| 8 of the 9 other generators | 39 | 3,849 | 18% | 4 % |
| 7 of the 9 other generators | 61 | 20,025 | 29% | 21 % |
| 6 of the 9 other generators | 60 | 35,099 | 28% | 37% |
| 5 of the 9 other generators | 22 | 21,155 | 10% | 22% |
| 4 of the 9 other generators | 13 | 12,293 | 6% | 13% |
| 3 of the 9 other generators | 7 | 2,021 | 3% | 2% |
| 2 of the 9 other generators | 0 | 20 | 0% | 0% |
| 1 of the 9 other generators | 0 | 0 | 0% | 0% |
| None of the 9 other generators | 0 | 0 | 0% | 0% |

| No. of Generators dispatched | No. of Trading Intervals (Spiking Targeted) | No. of Trading Intervals (entire Conduct Period) | % of Trading Intervals (Spiking Targeted) | % of Trading Intervals (entire Conduct Period) |
|-----------------------------------|---|--|---|--|
| Total number of Trading Intervals | 213 | 95,232 | | |

(e) — the alleged Spiking Targeted Trading Intervals were characterised by vigorous competition, and Competing Queensland Generators were not prevented or deterred as alleged in the statement of claim;

Particulars

This is to be inferred from the table pleaded in paragraph 62(d) above.

(f) — Stanwell is otherwise unable to plead to the allegations as, despite request, the Applicant has failed to identify the competing Generators it says who took steps not to dispatch at all (by switching off or ramping down generating units);

(g) — otherwise does not know and therefore cannot admit paragraphs 33(d) and 33(e).

63. — As to paragraph 33(f) of the statement of claim:

(a) — Stanwell admits that it submitted Rebids for the alleged Spiking Targeted Trading Intervals;

(b) — Annexure D.1 to this defence identifies, *inter alia*:

(i) — the date and time the last Offer for each of the alleged Spiking Targeted Trading Intervals was submitted; and

(ii) — the volume of electricity (in MW) offered in each price band;

Particulars

~~The volume of electricity offered in each price band was the aggregate of the capped availability for Stanwell's generating units for that price band.~~

- ~~(e) — of the 213 alleged Spiking Targeted Trading Intervals in the Conduct Period, there were 11 Trading Intervals in which Stanwell did not make any Rebids for the alleged Spiking Targeted Dispatch Intervals;~~
- ~~(d) — in the premises of paragraph 63(e) above, there were 202 final Rebids made by Stanwell for the alleged Spiking Targeted Dispatch Intervals in the Conduct Period (alleged Early Spiking Rebids);~~
- ~~(e) — as pleaded in paragraph 68(c) and 68(d) below, of the 202 alleged Early Spiking Rebids, only 25 were made in Dispatch Interval 6 of the Trading Interval preceding the alleged Spiking Targeted Trading Interval, and so were made “shortly prior to the commencement of the first Dispatch Interval of the Spiking Targeted Trading Interval” as alleged in paragraph 33(f) of the statement of claim;~~
- ~~(f) — it is otherwise impractical to plead separately to each of the alleged Spiking Targeted Trading Intervals; and~~
- ~~(g) — otherwise Stanwell does not know and therefore cannot admit paragraph (f).~~

64. — As to paragraph 33(g) of the statement of claim:

- ~~(b) — the Offers submitted by competing Generators in accordance with clauses 3.8.2 and 3.8.5 of the National Electricity Rules would automatically be included in the central dispatch process unless removed by a Rebid;~~

- ~~(c) — if the Offers submitted for central dispatch contained offers of capacity at lower price bands than those offered by Stanwell or CSE in the alleged late Rebid, AEMO would order the competing Generators offering that lower-priced volume to dispatch it;~~
- ~~(d) — the process described in paragraph 54(b) above occurred automatically, and did not require competing Generators 'respond' to the late Rebid;~~
- ~~(e) — Stanwell admits that:
 - ~~(i) — any changes in market conditions caused by a Rebid would only be observed at the earliest in the next Dispatch Interval after the Rebid was made; and~~
 - ~~(i) — a Generator could therefore not respond to such changes with a further Rebid within the same Dispatch Interval that the impugned Rebid was made;~~~~
- ~~(f) — Stanwell otherwise does not know and therefore cannot admit paragraph (g).~~

65. — As to paragraph 33(h) of the statement of claim, Stanwell:

- ~~(a) — does not know and therefore cannot admit paragraph 33(h)(i);~~
- ~~(b) — denies paragraph 33(h)(ii) as the correct position is pleaded in paragraph 50(f) above.~~

66. — As to paragraph 33(i) of the statement of claim:

- ~~(a) — Stanwell admits that it submitted further Rebids for the alleged Spiking Targeted Trading Intervals;~~

- ~~(b) — Stanwell denies that it submitted such further Rebids immediately following the first Dispatch Interval of the Spiking Targeted Trading Interval;~~
- ~~(c) — Annexure D.3 to this defence identifies, *inter alia*:
 - ~~(i) — the date and time the final Offer for the Second Dispatch Interval of each of the alleged Spiking Targeted Trading Intervals was submitted;~~
 - ~~(ii) — the price bands offered by Stanwell; and~~
 - ~~(iii) — the volume of electricity (in MW) offered in each price band;~~~~
- ~~(d) — Stanwell denies that the Second Rebids were made in the manner or at the times alleged in paragraph 33(i) of the statement of claim;~~
- ~~(e) — it is otherwise impractical to plead separately to each of the Second Rebids; and~~
- ~~(f) — otherwise Stanwell does not know and therefore cannot admit paragraph (i).~~

~~67. — As to paragraphs 33(j) and (k) of the statement of claim:~~

- ~~(a) — ‘the short term nature of [a] price spike’ in the first Dispatch Interval of a Trading Interval would not logically deter Generators from increasing generation in that Trading Interval but would rather incentivise Generators to increase generation and participate in the higher Spot Price for that Trading Interval;~~
- ~~(b) — spiking the Spot Price in the first Dispatch Interval of a Spiking Targeted Trading Interval, rather than in a subsequent Dispatch Interval of that Trading Interval:
 - ~~(i) — would give Generators more (rather than less) time to respond for that Spiking Targeted Trading Interval; and~~~~

- (ii) — does not evidence an intention to deter or prevent Generators from competing;
 - (c) — it is unclear what the Applicant intends by referring to the ‘late submission’ of the Second Rebid since paragraph 33(i) of the statement of claim alleges that Stanwell made the Second Rebid ‘immediately’ following the first Dispatch Interval of the Spiking Targeted Trading Interval;
 - (d) — if the Second Rebid were made following the first Dispatch Interval of the Spiking Targeted Trading Interval, then it would not alter Stanwell or the competing Generators’ offers for the second Dispatch Interval of the Spiking Targeted Trading Interval; and
 - (e) — otherwise Stanwell does not know and therefore cannot admit paragraphs (j) and (k).
68. — As to paragraph 34 of the statement of claim:
- (a) — Stanwell denies the facts alleged;
 - (b) — Stanwell did not engage in the Early Spiking strategy;
 - (c) — of the 202 alleged Early Spiking Rebids:
 - (i) — 55% (111) were made in or before Dispatch Interval 1 of the Trading Interval preceding the Spiking Targeted Trading Interval;
 - (ii) — 5% (10) were made in Dispatch Interval 2 of the Trading Interval preceding the Spiking Targeted Trading Interval;
 - (iii) — 5% (11) were made in Dispatch Interval 3 of the Trading Interval preceding the Spiking Targeted Trading Interval;

- (iv) ~~10% (21) were made in Dispatch Interval 4 of the Trading Interval preceding the Spiking Targeted Trading Interval;~~
- (v) ~~12% (24) were made in Dispatch Interval 5 of the Trading Interval preceding the Spiking Targeted Trading Interval; and~~
- (vi) ~~only 12% (25) were made in Dispatch Interval 6 of the Trading Interval preceding the Spiking Targeted Trading Interval;~~

Particulars

Annexure D.2.

- (d) ~~in the premises, only 25 of the alleged Early Spiking Rebids were made:~~
 - (i) ~~‘shortly prior to the commencement of the first Dispatch Interval of the Spiking Targeted Trading Interval’, as alleged in paragraph 33(f) of the statement of claim; or~~
 - (ii) ~~submitted ‘late’, as alleged in paragraph 34 of the statement of claim;~~
- (e) ~~further, the alleged Early Spiking Rebids do not display a pattern of increasing the prices at which Stanwell was prepared to dispatch electricity;~~
- (f) ~~of the alleged Early Spiking Rebids:~~
 - (i) ~~61% (123) were Plant Rebids;~~
 - (ii) ~~23% (46) were AEMO Rebids;~~
 - (iii) ~~6% (13) were Financial Rebids;~~
 - (iv) ~~2% (4) were Error Rebids;~~

(v) ~~8% (16) were made for a combination of the above reasons; and~~

Particulars

~~Annexure D.2.~~

~~(g) further, only 3 of the alleged Early Spiking Rebids referred to in paragraph 68(d) above were followed by a further Rebid made in Dispatch Interval 2 of the Spiking Targeted Trading Interval, as alleged in paragraph 33(i) of the statement of claim.~~

~~69. As to paragraph 35 of the statement of claim, Stanwell:~~

~~(a) denies paragraph 35 insofar as it relates to Rebids made by Stanwell;~~

~~(b) repeats paragraphs 23(d), 66(d) and 68(g) above;~~

~~(c) does not know and therefore cannot admit paragraph 35 insofar as it relates to Rebids made by CSE.~~

G. SHORT-NOTICE REBIDDING – TAKING ADVANTAGE AND PURPOSE **TAKING ADVANTAGE OF MARKET POWER**

G.1 Taking advantage of Market Power

98. Stanwell denies paragraphs 46(a) and (b) of the statement of claim and says that:

(a) the correct position is pleaded in Parts C to F above;

(b) regardless of production capacity or production costs, no Generator knew, when it submitted a Rebid, by how much it or other Generators would be dispatched in a particular Dispatch Interval;

- (c) neither Stanwell's generation capacity nor its production costs gave it insight into which Generators would be dispatched;
 - (d) a Generator's degree of certainty that any of its Residual Supply would be dispatched is a function of the price bands in which it bid such capacity and not a function of its generation capacity or production costs;
 - (e) the extent of financial reward, if any, accrued by a Generator from any increase in the Spot Price following the making of a price-volume trade-off depends upon more than the volume of Residual Supply that the Generator dispatched, including matters of the type pleaded in paragraphs 69(c) and 69(d) above; and
 - (f) the magnitude of the risk of engaging in price-volume trade-offs, and the extent of loss resulting from an unsuccessful attempt, were both functions of the proportion of capacity affected by the price-volume trade-off and not functions of merely a Generator's generation capacity or Tradeable Capacity.
99. Stanwell denies paragraph 46(c) of the statement of claim and relies on the matters pleaded in paragraph 98 above.
100. ~~[70]~~ As to paragraphs ~~36 to 39~~ 47 to 48 of the statement of claim:
- (a) in the premises of the matters pleaded in paragraphs 38, 39, 57, 74 and 98 above,
Stanwell denies the facts alleged;
 - (b) Stanwell did not have or engage in the alleged ~~Late Rebidding strategy or the alleged Early Spiking~~ Short-notice Rebidding strategy;
 - (c) the Impugned ~~Late~~ Rebids were not materially facilitated by any market power Stanwell held;

~~(d) — the alleged Early Spiking Rebids were not materially facilitated by any market power Stanwell held;~~

(d) [70(e)] for most of the Conduct Period:

(i) Stanwell's Contract Position accounted for the majority of Stanwell's available capacity; and

(ii) Stanwell's Tradeable Capacity accounted for a minority of Stanwell's available capacity;

(e) [70(f)] the ability of Generators to make bids and Rebids is a feature of the NEM rather than a product of market power;

(f) [70(g)] further, to the extent that it is alleged that Stanwell's alleged conduct was materially facilitated by the market power of CSE:

(i) Stanwell is not alleged to have taken advantage of any market power of CSE;

(ii) throughout the Conduct Period, Stanwell and CSE were competitors in the NEM;

(iii) by reason of the matters pleaded in (i) to (ii) above, Stanwell's power in the market, and any advantage taken of that power, should be assessed solely by reference to the market power held by Stanwell (that is, not including any power held by CSE).

101. As to paragraph 49 of the statement of claim:

(a) Stanwell denies paragraph 49(a) and says that:

- (i) a Generator was capable of affecting the Dispatch Price even if it Rebid less capacity than Stanwell had moved in a price-volume trade-off; and
 - (ii) whether a competing Generator's Rebid would affect the Dispatch Price would depend on the volume and price of the Rebid relative to Bids made by other Generators;
 - (b) for the reasons pleaded in paragraphs 49 to 54 and 56 above, Stanwell denies the facts alleged in paragraphs 49(b) and 49(c) as they relate to Stanwell.
102. Stanwell denies paragraphs 50 and 51 of the statement of claim, insofar as the facts alleged relate to Stanwell, and relies on the matters pleaded in paragraph 101 above.
103. Stanwell otherwise does not know, and therefore cannot admit, the allegations in paragraphs 46 to 51 in so far as they relate to the conduct of CSE.

G.2 Proscribed purpose (in taking advantage) ~~Taking advantage for a proscribed purpose~~

104. ~~[71]~~ As to paragraphs ~~40 to 42~~ 52 to 53 of the statement of claim:
- (a) Stanwell denies the facts alleged;
 - (b) Stanwell did not have or engage in the alleged ~~Late~~ Short-notice Rebidding strategy ~~or the alleged Early Spiking strategy;~~
 - (c) Stanwell did not submit the Impugned ~~Late~~ Rebids for the purpose or substantial purpose of either deterring or preventing other Generators from: ~~competing to supply electricity in the alleged Targeted Trading Intervals;~~
 - (i) submitting a responsive Rebid likely to result in a price-volume trade-off involving a net loss of revenue for Stanwell; or

- (ii) engaging in competitive conduct in respect of the Affected Dispatch Intervals (this being the apprehended purport of paragraph 52(b) of the statement of claim notwithstanding its reference to ‘TDIs and TTIs’ rather than ‘Affected Dispatch Intervals’);
- ~~(d) — Stanwell did not submit the alleged Early Spiking Rebids for the purpose or substantial purpose of deterring or preventing Generators from competing to supply electricity in the alleged Spiking Targeted Trading Intervals;~~
- (d) ~~[71(e)]~~ efficient competition in the NEM does not require that every Generator be given an opportunity to:
- (i) respond to each and every Rebid made by other Generators; or
- (ii) make a responsive Rebid likely to result in a price-volume trade-off involving a net loss of revenue for Stanwell;
- (e) ~~[52(f)]~~ the number of Competing Queensland Generators (pleaded in paragraph 42(c) above) dispatched during the alleged ~~Targeted~~ Affected Trading Intervals, and the number of Competing Queensland Generators dispatched in each Trading Interval across the entire Conduct Period, are set out in the table below:

| No. of Generators dispatched | No. of Trading Intervals (Targeted <u>Affected</u>) | No. of Trading Intervals (entire Conduct Period) | % of Trading Intervals (Targeted <u>Affected</u>) | % of Trading Intervals (entire Conduct Period) |
|------------------------------|--|--|--|--|
| All 9 other generators | 75 <u>22</u> | 770 | 5 <u>20</u> % | 1% |
| 8 of the 9 other generators | 243 <u>44</u> | 3,849 | 45 <u>41</u> % | 4% |
| 7 of the 9 other generators | 564 <u>28</u> | 20,025 <u>19,983</u> | 35 <u>26</u> % | 21% |
| 6 of the 9 other generators | 470 <u>13</u> | 35,094 <u>34,872</u> | 29 <u>12</u> % | 37% |
| 5 of the 9 other generators | 474 <u>1</u> | 21,155 <u>21,392</u> | 44 <u>1</u> % | 22% |
| 4 of the 9 other generators | 73 <u>0</u> | 42,304 <u>12,318</u> | 5 <u>0</u> % | 13% |
| 3 of the 9 other generators | 23 <u>0</u> | 2,024 <u>2,028</u> | 4 <u>0</u> % | 2% |

| No. of Generators dispatched | No. of Trading Intervals (Targeted Affected) | No. of Trading Intervals (entire Conduct Period) | % of Trading Intervals (Targeted Affected) | % of Trading Intervals (entire Conduct Period) |
|--|--|--|--|--|
| 2 of the 9 other generators | 0 | 20 | 0% | 0% |
| 1 of the 9 other generators | 0 | 0 | 0% | 0% |
| None of the 9 other generators | 0 | 0 | 0% | 0% |
| Total number of Trading Intervals | 1,616 <u>108</u> | 95,232 | 100% | 100% |

- (f) ~~{52(g)}~~ the alleged Targeted Trading Intervals were characterised by vigorous competition, and Competing Queensland Generators were not prevented or deterred as alleged in the statement of claim;

Particulars

This is to be inferred from the table pleaded in paragraph ~~52(f)~~ 104(e) above.

- (g) ~~{52(h)}~~ further, Generators may be ‘off’ (meaning that some or all of their generating units are made unavailable for dispatch) or operating at reduced capacity for reasons unconnected with price, including a shortage of fuel, fuel prices, scheduled maintenance, unscheduled outage, technical characteristics or commercial decisions in relation to plant and human error;
- (h) ~~{71(f)}~~ as to CSE, the matters relied on by the Applicant do not give rise to the inference that CSE had or engaged in the alleged ~~Late~~ Short-notice Rebidding strategy ~~or the alleged Early Spiking strategy~~ or made impugned Rebids for the purpose of deterring or preventing competitors.

H. CAUSATION

Summary

105. ~~{72}~~ In the premises of the matters set out below:

- (a) Retailers sold customers electricity at prices determined by the contracts between the Retailers and their customers;
- (b) for particular customers, at particular times during the Claim Period, Retailers were required to charge their retail customers on standard contracts fixed prices (also known as Notified Prices);
- (c) Notified Prices were not directly linked to the Spot Price, but were determined based on price simulations using stochastic supply and demand modelling and historical data;
- (d) Market Contracts were not required to offer Notified Prices, did not, to Stanwell's knowledge, contain clauses allowing Market Wholesale Costs to be passed through, and were often offered at a substantial discount to Notified Prices to encourage customers to switch Retailers.

H.1 Retail Customers purchasing from QRNEM Retailers

106. ~~{73}~~ As to paragraph 43 54 of the statement of claim, Stanwell:

- (a) admits that at all material times, Retailers sold electricity to the Energex distribution region, the Ergon distribution region and the Essential Energy network distribution region;
- (b) otherwise denies paragraph 43 54 as the distribution areas were:
 - (i) for the Energex distribution region: the Cities of Brisbane, Caloundra, Gold Coast, Ipswich, Logan and Redcliffe, the whole of the Shires of Beaudesert, Caboolture, Kilcoy, Laidley, Maroochy, Noosa, Pine Rivers and Redland,

and parts of the Shires of Boonah, Cooloola, Crows Nest, Esk, Gatton, Kilkivan and Tiaro, as delineated on Map ELEC/SEQ001 held by the Department of Natural Resources, Mines and Energy;

- (ii) for the Ergon distribution region: the areas described in Schedule 1 of distribution authority No. D01/99 (and excluding the areas described in Schedule 2 of distribution authority No. D01/99);
- (iii) for the Essential Energy network distribution region: the town of Goondiwindi and parts of the Shires of Balonne, Inglewood, Stanthorpe, Tara and Waggamba, as delineated on Map ELEC/NPR002 held by the Department of Natural Resources, Mines and Energy.

107. [74] As to paragraph 44 55 of the statement of claim:

- (a) Stanwell admits that at all material times, retail consumers of electricity in the State of Queensland could purchase electricity from a Retailer under different classes of contracts;
- (b) prior to 1 July 2015, retail consumers could purchase electricity from a Retailer under either a “standard retail contract” or a “negotiated retail contract”;
- (c) from 1 July 2015, small customers (as defined in s 5 of the *National Energy Retail Law (Queensland)*) could only purchase electricity from a Retailer under either a “standard retail contract” or a “market retail contract”;
- (d) from 1 July 2016, in the Energex distribution region, Retailers were able to set the price of electricity under standard retail contracts;

- (e) from 1 July 2019, small customers (as defined in s 5 of the *National Energy Retail Law (Queensland)*) on standard retail contracts could purchase electricity at the default market offer price set by the Australian Energy Regulator;
- (f) otherwise Stanwell denies paragraph 44 55 of the statement of claim, because the true position is as set out above.

108. ~~{75}~~ Stanwell admits paragraph 45 56 of the statement of claim.

H.2 Notified prices under standard contracts

109. ~~{76}~~ As to paragraph 46 57 of the statement of claim:

- (a) Stanwell admits that at certain times, in the State of Queensland, prices that a Retailer could charge its retail customers on standard contracts were fixed (these being Notified Prices ~~as defined in the statement of claim~~);
- (b) the periods in which a Retailer could charge its retail customers on standard contracts Notified Prices were:
 - (i) in the Energex distribution region:
 - (A) for large business customers, prior to 1 July 2012;
 - (B) for small customers, prior to 1 July 2016;
 - (ii) in the Ergon distribution region – at all material times; and
 - (iii) in the Essential Energy network distribution region – from 1 July 2019;
- (c) otherwise Stanwell denies paragraph 46 57, because the true position is as set out above.

110. [77] As to paragraph 47 58 of the statement of claim:

- (a) Stanwell denies the facts alleged as a more accurate statement of how Notified Prices were determined is pleaded below;
- (b) during the Claim Period, Notified Prices were determined by the Queensland Competition Authority based, in part, upon an estimate of ‘wholesale energy costs’ undertaken by ACIL Allen Consulting;
- (c) ACIL Allen Consulting ~~states that it~~ estimated wholesale energy costs by:
 - (i) preparing a ‘stochastic demand model’ to simulate hourly demand for each of the tariff profiles, across a range of different weather conditions;
 - (ii) preparing a ‘stochastic outage model’ to simulate hourly power station availabilities;
 - (iii) running simulations of hourly pool prices in ACIL Allen Consulting’s electricity model, ‘PowerMark’, using inputs from the models described in sub-paragraphs 110(c)(i) and 110(c)(ii) above;
 - (iv) analysing publicly available contract data to estimate contract prices; and
 - (v) applying fixed contract volumes at particular prices across the simulations to simulate a hedging strategy for the hypothetical Retailer;
- (d) in the premises pleaded above, ACIL Allen Consulting’s estimate of wholesale energy costs, and the QCA’s determination of Notified Prices, were based upon simulated prices, and not the actual Spot Price in the QRNEM or the actual cost of hedging;
- (e) Notified Prices also included a component for ‘network costs’, representing the

cost of transporting electricity through the transmission and distribution networks, and ‘retail costs’, representing an allowance for retail operating costs and retail margin;

(f) network costs:

- (i) were typically the largest component of the price charged to retail customers; and
- (ii) had no, or no material, relationship to the Spot Price, the costs associated with hedging, or the alleged ~~Late Rebidding or the alleged Early Spiking Strategies~~ Short-notice Rebidding strategy.

Particulars of (f)

The components of Notified Prices in the QCA’s Final Determination of Notified Prices for 2014/2015 (the first year of the Claim Period) are as follows.

The QCA set a flat rate tariff of 25.341c per kWh (carbon-inclusive) for residential customers, of which energy costs comprised less than 40%.

The 25.341c figure comprised:

- 12.64c for network charges (49.9%);
- 10.082c for energy costs (39.8%);
- 0.036c for an ‘SRES Cost Pass Through’ (<1%);
- 1.376c for a ‘Margin’ (5.4%); and
- 1.207 for ‘Headroom’ (4.8%).

~~Of the~~ The 10.082c figure for energy costs; included 8.438c were for 'Wholesale energy' costs and 0.979c were for 'Other energy' costs. The 'Other energy' costs included costs relating to the large-scale renewable energy target, the small-scale renewable energy scheme, NEM participation fees and ancillary service charges and prudential requirements.

The 8.438c figure for wholesale energy costs included 2.212c for the carbon tax (which was repealed on 17 July 2014, prior to the commencement of the six-year period pleaded in paragraph 1 of the statement of claim).

Particulars of the equivalent figures for subsequent years of the Claim Period will be provided upon request.

H.3 Prices under market contracts

111. ~~[78]~~ As to paragraph 48 59 of the statement of claim:

- (a) Market Contracts:
 - (i) did not, to Stanwell's knowledge, typically contain a clause allowing for the pass-through of Market Wholesale Costs; and
 - (ii) were often offered at a substantial discount to the default market offer to encourage customers to switch Retailers;
- (b) Stanwell admits paragraphs (a), (b) and (c);
- (c) Stanwell does not know and therefore cannot admit paragraph (d).

H.4 Standing offers / default market offers

112. ~~[79]~~ As to paragraph 49 60 of the statement of claim:

- (a) standing offers did not typically contain a clause allowing for the pass-through of Market Wholesale Costs;
- (b) Stanwell admits paragraph (a);
- (c) Stanwell does not know and therefore cannot admit paragraph (b).

113. ~~[80]~~ As to paragraph ~~50~~ 61 of the statement of claim:

- (a) the prices under default market offers were also ~~based upon~~ influenced by network costs, environmental costs and retail costs;
- (b) network costs, environmental costs and retail costs had no or no material, relationship to the Spot Price, the costs associated with hedging, or the alleged ~~Late Rebidding or alleged Early Spiking Strategies~~ Short-notice Rebidding strategy;
- (c) Retailers often offered Market Contracts at a substantial discount to the default market offer to encourage customers to switch Retailers; and
- (d) otherwise Stanwell admits the facts alleged.

H.5 Consumers purchasing directly from the Spot Market

114. ~~[81]~~ Stanwell admits paragraph ~~51~~ 62 of the statement of claim.

H.6 Purchasers under a power purchase agreement

115. ~~[82]~~ As to paragraph ~~52~~ 63 of the statement of claim:

- (a) there is no standard form of power purchase agreement;

- (b) there is no standard formula or approach for determining prices under power purchase agreements;
- (c) some purchasers of electricity under a power purchase agreement pay a price derived from the capital and operating costs of the generator plus a margin;
- (d) otherwise Stanwell does not know and therefore cannot admit the facts alleged.

H.7 Effects of Short-notice Rebidding ~~Gaming Strategies~~—~~Spot Price inflation, inflation of hedging costs, Notified Price inflation, and Wholesale Cost inflation~~

116. [83] As to paragraph ~~53~~ 64 of the statement of claim:

- (a) Stanwell denies the facts alleged;
- (b) the proper calculation of any loss (all of which is denied) would require the Applicant to identify the impact (if any) that the timing, volume and price of the Impugned ~~Late~~ Rebids and the ~~alleged Early Spiking Rebids~~ had on the Dispatch Price and Spot Price in the Affected Dispatch Intervals and the Affected Trading Intervals respectively, and on hedging costs.

117. In the premises of paragraphs 97 and 116 above, Stanwell does not admit paragraph 65 and denies paragraph 66 of the statement of claim.

Spot Price volatility

118. [84] Stanwell denies paragraphs ~~54 and 55~~ 67 and 68 of the statement of claim.

H.8 Inflation of Notified Prices

119. [85] Stanwell denies paragraph ~~56~~ 69 of the statement of claim.

H.9 Inflation of Market Wholesale Costs

120. ~~{86}~~ Stanwell denies paragraph ~~57~~ 70 of the statement of claim.

H.10 Inflation of prices under Default Market Offers

121. ~~{87}~~ Stanwell denies paragraph ~~58~~ 71 of the statement of claim.

I. LOSS AND DAMAGE

I.1 The Applicant's loss and damage

122. ~~{88}~~ As to paragraphs ~~59 and 60~~ 72 and 73 of the statement of claim, Stanwell:

- (a) admits that the Applicant purchased electricity from Ergon Energy Queensland Pty Ltd during the Claim Period;
- (b) otherwise does not know and therefore cannot admit the facts alleged.

123. ~~{89}~~ Stanwell denies paragraph ~~61~~ 74 of the statement of claim.

I.2 Paragraph 1(a)(i) group members

124. ~~{90}~~ Stanwell does not know and therefore cannot admit paragraphs ~~62, 63, 65, 67 and 69~~ 75, 76, 78, 80 and 82 of the statement of claim.

125. ~~{91}~~ Stanwell denies paragraphs ~~64, 66, 68 and 70~~ 77, 79, 81 and 83 of the statement of claim.

I.3 Paragraph ~~1(b)~~ 1(a)(ii) group members

126. ~~{92}~~ Stanwell does not know and therefore cannot admit paragraph ~~71~~ 84 of the statement of claim.

127. {93} Stanwell denies paragraph 72 85 of the statement of claim.

I.4 Paragraph 1(e) 1(a)(iii) group members

128. {94} Stanwell does not know and therefore cannot admit paragraph 73 86 of the statement of claim.

129. {95} Stanwell denies paragraph 74 87 of the statement of claim.

I.5 Paragraph 1(d) 1(a)(iv) group members

130. {96} Stanwell denies paragraph 75 88 of the statement of claim.

I.6 Paragraph 1(e) 1(a)(v) group members

131. {97} Stanwell denies paragraph 76 89 of the statement of claim.

J. DEFINED TERMS IN THE STATEMENT OF CLAIM

132. {98} Stanwell does not plead to the Defined Terms in Annexure A of the statement of claim (the **Glossary**), as the definitions are not advanced by the Applicant as allegations of material fact, but says that:

- (a) the term ‘Dispatch Algorithm’ was defined by the National Electricity Rules to mean the algorithm used to determine Central Dispatch developed by AEMO in accordance with Rule 3.8.1(d) (and not Rule 3.8.7 as stated in the Glossary);
- (b) the term ‘Dispatch Interval’ was defined in Chapter 10 of the National Electricity Rules as ‘A period defined in clause 3.8.21(a1) in which the dispatch algorithm is run in accordance with clause 3.8.21(b)’;

- (c) 'Dispatch Offers' were not limited to notices submitted 'the day preceding the day to which the Dispatch Offer relates' (as stated in the Glossary), because Rule 3.8.9 of the National Electricity Rules permitted Generators to submit a dispatch offer in respect of a specified future trading day at any time, which could be varied at any time prior to the deadline for submissions of dispatch offers for a trading day determined by the AEMO timetable;
- (d) as to the term 'Dispatch Price', Rule 3.9.2(d) of the National Electricity Rules says that the 'dispatch price at a regional reference node represents the marginal value of supply at that location and time, this being determined as the price of meeting an incremental change in load at that location and time in accordance with clause 3.8.1(b)'; and
- (e) as to the term 'Generator':
 - (i) 'Generators' were required to be registered as Generators with AEMO; and
 - (ii) Rule 2.2.5 of the National Electricity Rules provides for a further category of electricity generators referred to as 'Non-Market Generators', whose generation was capable of influencing supply and demand in the Market.

Date: 17 March 2023



Signed by
Lawyer for the First Respondent

This pleading was settled by Mr S Doyle QC, Mr J Sheahan QC, Mr P Franco QC with Ms M Barnes of Counsel.

Amendments to this Amended Defence were settled by Mr S Doyle KC, Mr P Franco KC with Ms J Menzies of counsel.

Certificate of lawyer

I Kathryn Finlayson certify to the Court that, in relation to the defence filed on behalf of the First Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 17 March 2023

A handwritten signature in blue ink, appearing to read 'K. Finlayson', is positioned above a horizontal dotted line.

Signed by Kathryn Finlayson
Lawyer for the First Respondent

ANNEXURE A

REGISTERED CAPACITY OF GENERATORS WITH GENERATING UNITS IN THE QRNM

| Generator | Power Stations (units where applicable) | <u>Generation Type</u> | Registered capacity (MW) 2012 | Registered capacity (MW) 2013 | Registered capacity (MW) 2014 | Registered capacity (MW) 2015 | Registered capacity (MW) 2016 | Registered capacity (MW) 2017 |
|--|---|------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|
| Scheduled and Semi-Scheduled Generators | | | | | | | | |
| Stanwell | Barron Gorge (1 and 2) | <u>Hydro</u> | 4,007.00 | 3,862.00 | 3,862.00 | 3,862.00 | 3,862.00 | 3,862.00 |
| | Kareeya (1 to 4) | <u>Hydro</u> | | | | | | |
| | Mackay GT | <u>Gas</u> | | | | | | |
| | Stanwell (1 to 4) | <u>Coal</u> | | | | | | |
| | Swanbank E GT | <u>Gas</u> | | | | | | |
| | Collinsville (1 to 5) ¹ | <u>Coal</u> | | | | | | |
| | Tarong (1 to 4) | <u>Coal</u> | | | | | | |
| | Tarong North | <u>Coal</u> | | | | | | |
| CSE | Callide C (3 and 4) (50%) | <u>Coal</u> | 4,044.00 | 4,044.00 | 4,044.00 | 4,044.00 | 4,044.00 | 4,044.00 |
| | Callide B (1 and 2) | <u>Coal</u> | | | | | | |
| | Kogan Creek | <u>Coal</u> | | | | | | |
| | Wivenhoe (1 and 2) | <u>Hydro</u> | | | | | | |
| | Gladstone (1 to 6) | <u>Coal</u> | | | | | | |
| Origin Energy | Mt Stuart (1 to 3) | <u>Oil</u> | 1,143.00 | 1,143.00 | 1,143.00 | 1,143.00 | 1,143.00 | 1,143.00 |
| | Darling Downs | <u>Gas</u> | | | | | | |
| | Roma (7 and 8) | <u>Gas</u> | | | | | | |
| <u>Alinta Energy</u> Braemar Power Project | Braemar (1 to 3) | <u>Gas</u> | 504.00 | 504.00 | 504.00 | 504.00 | 504.00 | 504.00 |
| <u>Arrow Energy</u> | Braemar 2 (5 to 7) | <u>Gas</u> | 519.00 | 519.00 | 519.00 | 519.00 | 519.00 | 519.00 |

¹ Collinsville's registered capacity has only been included as part of Stanwell's registered capacity between January and June 2012.

| Generator | Power Stations (units where applicable) | Generation Type | Registered capacity (MW) 2012 | Registered capacity (MW) 2013 | Registered capacity (MW) 2014 | Registered capacity (MW) 2015 | Registered capacity (MW) 2016 | Registered capacity (MW) 2017 |
|--|---|-----------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|
| Braemar 2 | | | | | | | | |
| InterGen | Millmerran (1 and 2) | <u>Coal</u> | 1,272.00 | 1,272.00 | 1,272.00 | 1,272.00 | 1,272.00 | 1,272.00 |
| | Callide C (3 and 4) (50%) | <u>Coal</u> | | | | | | |
| Ratch Australia | Collinsville (1 to 5) ² | <u>Coal</u> | 428.00 | 242.00 | 242.00 | 242.00 | 242.00 | 242.00 |
| | Townsville (Yabulu and Yabulu 2) | <u>Gas</u> | | | | | | |
| Oakey Power Holdings | Oakey (1 and 2) | <u>Gas</u> | 282.00 | 282.00 | 282.00 | 282.00 | 282.00 | 282.00 |
| QGC | Condamine A | <u>Gas</u> | 144.00 | 144.00 | 144.00 | 144.00 | 144.00 | 144.00 |
| Ergon Energy | Barcaldine | <u>Gas</u> | 55.00 | 48.00 | 37.00 | 37.00 | 37.00 | 37.00 |
| Total Registered Capacity of Scheduled and Semi-Scheduled Generators (MW) | | | 12,398.00 | 12,059.50 | 12,049.00 | 12,049.00 | 12,049.00 | 12,049.00 |

² Collinsville's registered capacity has only been included as part of Ratch Australia's registered capacity between July and December 2012. It was retired in December 2012.

ANNEXURE B.1

REGISTERED CAPACITY OF STANWELL'S GENERATING UNITS

| Stanwell unit | Registered unit capacity (MW) 2012 | Registered unit capacity (MW) 2013 | Registered unit capacity (MW) 2014 | Registered unit capacity (MW) 2015 | Registered unit capacity (MW) 2016 | Registered unit capacity (MW) 2017 |
|--|------------------------------------|------------------------------------|------------------------------------|------------------------------------|------------------------------------|------------------------------------|
| Scheduled and Semi-Scheduled Generators | | | | | | |
| Barron Gorge 1 | 30.00 | 30.00 | 30.00 | 30.00 | 30.00 | 30.00 |
| Barron Gorge 2 | 30.00 | 30.00 | 30.00 | 30.00 | 30.00 | 30.00 |
| Kareeya 1 | 21.00 | 21.00 | 21.00 | 21.00 | 21.00 | 21.00 |
| Kareeya 2 | 21.00 | 21.00 | 21.00 | 21.00 | 21.00 | 21.00 |
| Kareeya 3 | 21.00 | 21.00 | 21.00 | 21.00 | 21.00 | 21.00 |
| Kareeya 4 | 21.00 | 21.00 | 21.00 | 21.00 | 21.00 | 21.00 |
| Mackay GT | 30.00 | 30.00 | 30.00 | 30.00 | 30.00 | 30.00 |
| Stanwell 1 | 350.00 | 365.00 | 365.00 | 365.00 | 365.00 | 365.00 |
| Stanwell 2 | 350.00 | 365.00 | 365.00 | 365.00 | 365.00 | 365.00 |
| Stanwell 3 | 360.00 | 365.00 | 365.00 | 365.00 | 365.00 | 365.00 |
| Stanwell 4 | 350.00 | 365.00 | 365.00 | 365.00 | 365.00 | 365.00 |
| Swanbank E GT | 385.00 | 385.00 | 385.00 | 385.00 | 385.00 | 385.00 |
| Tarong 1 | 350.00 | 350.00 | 350.00 | 350.00 | 350.00 | 350.00 |
| Tarong 2 | 350.00 | 350.00 | 350.00 | 350.00 | 350.00 | 350.00 |
| Tarong 3 | 350.00 | 350.00 | 350.00 | 350.00 | 350.00 | 350.00 |
| Tarong 4 | 350.00 | 350.00 | 350.00 | 350.00 | 350.00 | 350.00 |
| Tarong North | 443.00 | 443.00 | 443.00 | 443.00 | 443.00 | 443.00 |
| Collinsville 1 ³ | 32.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Collinsville 2 | 32.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Collinsville 3 | 32.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Collinsville 4 | 33.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Collinsville 5 | 66.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Stanwell Total Registered Unit Capacity of Scheduled and Semi-Scheduled Generators (MW) | 4,007.00 | 3,862.00 | 3,862.00 | 3,862.00 | 3,862.00 | 3,862.00 |

³ Collinsville was retired in December 2012. The registered capacity of Collinsville units is attributed to Stanwell between January and June 2012. From July 2012 to December 2012, the registered capacity of Collinsville units is attributed to Ratch Australia and is not accounted for in this annexure.

| Stanwell Unit | Registered unit capacity (MW) 2012 | Registered unit capacity (MW) 2013 | Registered unit capacity (MW) 2014 | Registered unit capacity (MW) 2015 | Registered unit capacity (MW) 2016 | Registered unit capacity (MW) 2017 |
|---|---|---|---|---|---|---|
| Non-Scheduled Generators | | | | | | |
| Kareeya 5 | 7.00 | 7.00 | 7.00 | 7.00 | 7.00 | 7.00 |
| Wivenhoe Small Hydro | 4.70 | 4.70 | 4.70 | 4.70 | 4.70 | 4.70 |
| <i>Stanwell Total Registered Unit Capacity of Non- Scheduled Generators (MW)</i> | 11.70 | 11.70 | 11.70 | 11.70 | 11.70 | 11.70 |
| | | | | | | |
| <i>Stanwell Total Registered Unit Capacity (MW)</i> | 4,018.70 | 3,873.70 | 3,873.70 | 3,873.70 | 3,873.70 | 3,873.70 |

ANNEXURE B.2

MAXIMUM CAPACITY OF STANWELL'S GENERATING UNITS

| Stanwell unit | Maximum unit capacity (MW) 2012 | Maximum unit capacity (MW) 2013 | Maximum unit capacity (MW) 2014 | Maximum unit capacity (MW) 2015 | Maximum unit capacity (MW) 2016 | Maximum unit capacity (MW) 2017 |
|---|---------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|
| Scheduled and Semi-Scheduled Generators | | | | | | |
| Barron Gorge 1 | 33.00 | 33.00 | 33.00 | 33.00 | 33.00 | 33.00 |
| Barron Gorge 2 | 33.00 | 33.00 | 33.00 | 33.00 | 33.00 | 33.00 |
| Kareeya 1 | 22.00 | 22.00 | 22.00 | 22.00 | 22.00 | 22.00 |
| Kareeya 2 | 22.00 | 22.00 | 22.00 | 22.00 | 22.00 | 22.00 |
| Kareeya 3 | 22.00 | 22.00 | 22.00 | 22.00 | 22.00 | 22.00 |
| Kareeya 4 | 22.00 | 22.00 | 22.00 | 22.00 | 22.00 | 22.00 |
| Mackay GT | 34.00 | 34.00 | 34.00 | 34.00 | 34.00 | 34.00 |
| Stanwell 1 | 385.00 | 385.00 | 385.00 | 385.00 | 385.00 | 385.00 |
| Stanwell 2 | 385.00 | 385.00 | 385.00 | 385.00 | 385.00 | 385.00 |
| Stanwell 3 | 385.00 | 385.00 | 385.00 | 385.00 | 385.00 | 385.00 |
| Stanwell 4 | 385.00 | 385.00 | 385.00 | 385.00 | 385.00 | 385.00 |
| Swanbank E GT | 385.00 | 385.00 | 385.00 | 385.00 | 385.00 | 385.00 |
| Tarong 1 | 385.00 | 385.00 | 385.00 | 385.00 | 385.00 | 385.00 |
| Tarong 2 | 385.00 | 385.00 | 385.00 | 385.00 | 385.00 | 385.00 |
| Tarong 3 | 385.00 | 385.00 | 385.00 | 385.00 | 385.00 | 385.00 |
| Tarong 4 | 385.00 | 385.00 | 385.00 | 385.00 | 385.00 | 385.00 |
| Tarong North | 480.00 | 480.00 | 480.00 | 480.00 | 480.00 | 480.00 |
| Collinsville 1 to 5 ⁴ | 190.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| Stanwell Total Maximum Unit Capacity of Scheduled and Semi-Scheduled Generators (MW) | 4,323.00 | 4,133.00 | 4,133.00 | 4,133.00 | 4,133.00 | 4,133.00 |

| Stanwell Unit | Maximum unit capacity (MW) 2012 | Maximum unit capacity (MW) 2013 | Maximum unit capacity (MW) 2014 | Maximum unit capacity (MW) 2015 | Maximum unit capacity (MW) 2016 | Maximum unit capacity (MW) 2017 |
|--|---------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|
| Non-Scheduled Generators | | | | | | |
| Kareeya 5 | 7.00 | 7.00 | 7.00 | 7.00 | 7.00 | 7.00 |
| Wivenhoe Small Hydro | 5.00 | 5.00 | 5.00 | 5.00 | 5.00 | 5.00 |
| Stanwell Total Maximum Unit Capacity of Non-Scheduled Generators (MW) | 12.00 | 12.00 | 12.00 | 12.00 | 12.00 | 12.00 |

⁴ Collinsville was retired in December 2012. The maximum capacity of Collinsville units is attributed to Stanwell between January and June 2012. From July 2012 to December 2012, the maximum capacity of Collinsville units is attributed to Ratch Australia and is not accounted for in this annexure.

| | | | | | | |
|---|----------|----------|----------|----------|----------|----------|
| <i>Stanwell Total Maximum Unit Capacity (MW)</i> | 4,335.00 | 4,145.00 | 4,145.00 | 4,145.00 | 4,145.00 | 4,145.00 |
|---|----------|----------|----------|----------|----------|----------|

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ANNEXURE C.1

Annexure C.1 identifies, for each Timely Offer or Impugned Rebid in the Affected Trading Intervals alleged against Stanwell for the alleged Targeted Trading Intervals:

- The Affected Targeted Trading Interval (column ~~B~~ A);
- The Dispatch Interval within the Affected Targeted Trading Interval to which the information in columns C and following relate (column ~~A~~ B);
- The individual generating unit within Stanwell's portfolio (column C);
- Whether or not the bid was the final bid for that generating unit (column D);
- Whether or not the bid was a Default Dispatch Offer or Dispatch Offer (called 'DAILY') or a Rebid (column E);
- The date and time the bid was submitted (column F);
- The maximum availability for that generating unit (column G);
- The price bands submitted by Stanwell (columns H to Q);
- ~~The availability of the generating unit in each price band (columns R to AA);~~
- The capped availability of the generating unit in each price band (columns ~~AB to AK~~ R to AA).

Rows 873 and 878 of Annexure C.1 identify Stanwell's final Rebid, made at 16:18, that was effective in the 16:25 Affected Dispatch Interval on 10 December 2014. The relevant Impugned Rebid for the 16:25 Affected Dispatch Interval was made by Stanwell earlier at 16:12.

ANNEXURE C.2

SUMMARY OF IMPUGNED REBIDS

Annexure C.2 identifies, for each of the Impugned Rebids:

- The date and time of the Rebid;
- The Affected Dispatch Interval alleged by the Applicant;
- The time between the Rebid and the commencement of the Affected Dispatch Interval;
- The effect of the Rebid on Stanwell's previously offered price (expressed as a % increase to the volume weighted average price of Stanwell's available portfolio capacity);
- The explanation for the Rebid that was contemporaneously provided to AEMO;
- The one-letter Rebid code that was contemporaneously provided to AEMO;
- The (actual) Dispatch Price for the Affected Dispatch Interval;
- The (actual) demand for the QRNEM in the Affected Dispatch Interval;
- Stanwell's minimum load requirements in the Affected Dispatch Interval;
- The Queensland Generators (other than Stanwell) who were dispatched in the Affected Dispatch Interval; and
- The Dispatch Units the subject of the Rebid.

~~FINAL REBIDS FOR DISPATCH INTERVALS 5 AND 6 OF TARGETED TRADING INTERVALS~~

~~Annexure C.2 identifies, for each final Rebid for each of Dispatch Intervals 5 and 6 of the alleged Targeted Trading Intervals:~~

- ~~• The date and time of the Dispatch Interval (column A);~~
- ~~• The Dispatch Interval within the Targeted Trading Interval to which the information in columns D and following relate (column B);~~
- ~~• The date and time of the Targeted Trading Interval (column C);~~
- ~~• The date and time the bid was submitted (column D);~~
- ~~• The time remaining between the submission of the bid and the end of the Targeted Trading Interval (column E);~~
- ~~• The reason for the Rebid, as submitted to AEMO (column F);~~
- ~~• The explanation for the Rebid, as submitted to AEMO (column G);~~

- ~~The volume weighted average price of the Rebid, across all generating units in Stanwell's portfolio (column H);~~
- ~~The volume weighted average price, across all generating units in Stanwell's portfolio, prior to the Rebid (column I);~~
- ~~The change in volume weighted average price resulting from the Rebid (column J);~~
- ~~The actual demand in the QRNEM (column K);~~
- ~~Stanwell's maximum availability as alleged by the Applicant (column L);~~
- ~~CSE's maximum availability as alleged by the Applicant (column M);~~
- ~~The maximum availability of generating units located in Queensland (other than CSE) as alleged by the Applicant (column N);~~
- ~~The capacity required from either Stanwell or generating units located outside Queensland (column O, being the demand in column K less the maximum availability of CSE and other Competing Queensland Generators as alleged by the Applicant—columns M and N);~~
- ~~Stanwell's minimum load requirements (column P);~~
- ~~The identity or class of the Marginal Generator/s (columns Q to V);~~
- ~~Whether the Spot Price was partly set by the price for ancillary services, rather than being set wholly by reference to the energy prices offered by the Marginal Generators in columns P to V (column W);~~
- ~~The number of Queensland Generators (other than Stanwell or CSE) who were dispatched (column X).~~

ANNEXURE C.3

**MARGINAL GENERATOR INFORMATION FOR THE ALLEGED AFFECTED
~~TARGETED~~ TRADING INTERVALS**

Annexure C.3 identifies for the alleged Affected ~~Targeted~~ Trading Intervals:

- The date and time of the Dispatch Interval (column A);
- The Dispatch Interval within the Affected ~~Targeted~~ Trading Interval to which the information in columns D and following relate (column B);
- The date and time of the Affected ~~Targeted~~ Trading Interval (column C);
- The date and time the bid was submitted (column D);
- The identity or class of the Marginal Generator/s (columns E to J).
- ~~Whether the Spot Price was partly set by the price for ancillary services, rather than being set wholly by reference to the energy prices offered by the Marginal Generators in columns E to J (column K).~~

ANNEXURE D.1**BIDS AND REBIDS FOR SPIKING TARGETED TRADING INTERVALS**

Annexure D.1 identifies, for each Offer or Rebid for the alleged Spiking Targeted Trading Intervals:

- The Dispatch Interval within the Targeted Trading Interval to which the information in columns C and following relate (column A);
- The Targeted Trading Interval (column B);
- The individual generating unit within Stanwell's portfolio (column C);
- Whether or not the bid was the final bid for that generating unit (column D);
- Whether or not the bid was a Default Dispatch Offer or Dispatch Offer (called 'DAILY') or a Rebid (column E);
- The date and time the bid was submitted (column F);
- The maximum availability for that generating unit (column G);
- The price bands submitted by Stanwell (columns H to Q);
- The availability of the generating unit in each price band (columns R to AA);
- The capped availability of the generating unit in each price band (columns AB to AK).

ANNEXURE D.2

~~FINAL REBIDS FOR DISPATCH INTERVAL 1~~
~~OF SPIKING TARGETED TRADING INTERVALS~~

Annexure D.2 identifies, for each final Rebid for each of the alleged Spiking Targeted Dispatch Intervals (i.e. the first Dispatch Interval of each Spiking Targeted Trading Interval):

- ~~The date and time of the Dispatch Interval (column A);~~
- ~~The Dispatch Interval within the Targeted Trading Interval to which the information in columns D and following relate (column B);~~
- ~~The date and time of the Targeted Trading Interval (column C);~~
- ~~The date and time the bid was submitted (column D);~~
- ~~The time remaining between the submission of the bid and the end of the Spiking Targeted Trading Interval (column E);~~
- ~~The reason for the Rebid, as submitted to AEMO (column F);~~
- ~~The explanation for the Rebid, as submitted to AEMO (column G);~~
- ~~The volume weighted average price of the Rebid, across all generating units in Stanwell's portfolio (column H);~~
- ~~The volume weighted average price, across all generating units in Stanwell's portfolio, prior to the Rebid (column I);~~
- ~~The change in volume weighted average price resulting from the Rebid (column J);~~
- ~~The actual demand in the QRNEM (column K);~~
- ~~Stanwell's maximum availability as alleged by the Applicant (column L);~~
- ~~CSE's maximum availability as alleged by the Applicant (column M);~~
- ~~The maximum availability of generating units located in Queensland (other than CSE) as alleged by the Applicant (column N);~~
- ~~The capacity required from either Stanwell or generating units located outside Queensland (column O, being the demand in column K less the maximum availability of CSE and other Competing Queensland Generators as alleged by the Applicant—columns M and N);~~
- ~~Stanwell's minimum load requirements (column P);~~
- ~~The identity or class of the Marginal Generator/s (columns Q to V);~~

- ~~Whether the Spot Price was partly set by the price for ancillary services, rather than being set wholly by reference to the energy prices offered by the Marginal Generators in columns P to V (column W);~~
- ~~The number of Queensland Generators (other than Stanwell or CSE) who were dispatched (column X).~~

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ANNEXURE D.3**~~FINAL REBIDS FOR DISPATCH INTERVAL 2
OF SPIKING TARGETED TRADING INTERVALS~~**

~~Annexure D.3 identifies, for the second Dispatch Interval of each alleged Spiking Targeted Trading Intervals:~~

- ~~• The Dispatch Interval within the Targeted Trading Interval to which the information in columns C and following relate (column A);~~
- ~~• The Targeted Trading Interval (column B);~~
- ~~• The individual generating unit within Stanwell's portfolio (column C);~~
- ~~• Whether or not the bid was the final bid for that generating unit (column D);~~
- ~~• Whether or not the bid was an Offer (called 'DAILY') or a Rebid (column E);~~
- ~~• The date and time the bid was submitted (column F);~~
- ~~• The maximum availability for that generating unit (column G);~~
- ~~• The price bands submitted by Stanwell (columns H to Q);~~
- ~~• The availability of the generating unit in each price band (columns R to AA);~~
- ~~• The capped availability of the generating unit in each price band (columns AB to AK).~~

ANNEXURE D.4**MARGINAL GENERATOR INFORMATION FOR THE ALLEGED SPIKING
TARGETED TRADING INTERVALS**

~~Annexure D.4 identifies for the alleged Spiking Targeted Trading Intervals:~~

- ~~• The date and time of the Dispatch Interval (column A);~~
- ~~• The Dispatch Interval within the Targeted Trading Interval to which the information in columns D and following relate (column B);~~
- ~~• The date and time of the Targeted Trading Interval (column C);~~
- ~~• The date and time the bid was submitted (column D);~~
- ~~• The identity or class of the Marginal Generator/s (columns E to J);~~
- ~~• Whether the Spot Price was partly set by the price for ancillary services, rather than being set wholly by reference to the energy prices offered by the Marginal Generators in columns E to J (column K).~~

ANNEXURE E

GOOD FAITH REBIDDING RULES

For the period from the commencement of the Conduct Period to 30 June 2016, the good faith rebidding rules provided, *inter alia*, as follows:

3.8.22A Variation of offer, bid or rebid

- (a) A Scheduled Generator ... must make a dispatch offer, dispatch bid or rebid in relation to available capacity and daily energy constraints in good faith.
- (b) In paragraph (a) a dispatch offer, dispatch bid or rebid is taken to be made in good faith if, at the time of making such an offer, bid or rebid, a Scheduled Generator ... has a genuine intention to honour that offer, bid or rebid if the material conditions and circumstances upon which the offer, bid or rebid were based remain unchanged until the relevant dispatch interval.
- (c) A Scheduled Generator, Semi-Scheduled Generator or Market Participant may be taken to have contravened paragraph (a) notwithstanding that, after all the evidence has been considered, the intention of the relevant Generator or Market Participant is ascertainable only by inference from:
 - (1) the conduct of the relevant Generator or Market Participant;
 - (2) the conduct of any other person; or
 - (3) the relevant circumstances.

Note This clause is a rebidding civil penalty provision for the purposes of the National Electricity Law. (See clause 6(2) of the National Electricity (South Australia) Regulations.)

...

3.8.22 Rebidding

...

- (c) A Scheduled Generator ... must provide:

...

- (2) to AEMO, at the same time as the rebid is made:
 - (i) a brief, verifiable and specific reason for the rebid; and
 - (ii) the time at which the event(s) or other occurrence(s) adduced by the relevant Generator ... as the reason for the rebid, occurred; and

Note

This clause is classified as a civil penalty provision under the National Electricity (South Australia) Regulations. (See clause 6(1) and Schedule 1 of the National Electricity (South Australia) Regulations.)

- (3) to the AER, upon written request, in accordance with guidelines published by the AER from time to time under this clause 3.8.22 and in accordance with the Rules consultation procedures, such additional information to substantiate and verify the reason for a rebid as the AER may require from time to time.

Note

This clause is classified as a civil penalty provision under the National Electricity (South Australia) Regulations. (See clause 6(1) and Schedule 1 of the National Electricity (South Australia) Regulations.)

For the period from 1 July 2016 to the end of the Conduct Period, the good faith rebidding rules provided, *inter alia*, as follows:

3.8.22A Offers, bids and rebids must not be false and misleading

- (a) A Scheduled Generator ... must not make a dispatch offer, dispatch bid or rebid that is false, misleading or likely to mislead.
 - (a1) For the purposes of paragraph (a), the making of a dispatch offer, dispatch bid or rebid is deemed to represent to other Generators or Market Participants through the pre-dispatch schedules published by AEMO that the offer, bid or rebid will not be changed, unless the Generator ... becomes aware of a change in the material conditions and circumstances upon which the offer, bid or rebid are based.
 - (b) Without limiting paragraph (a), a dispatch offer, dispatch bid or rebid is deemed to be false or misleading if, at the time of making such an offer, bid or rebid, a Scheduled Generator ...:
 - (1) does not have a genuine intention to honour; or
 - (2) does not have a reasonable basis to make;
 the representations made by reason of paragraph (a1).
 - (b1) In any proceeding in which a contravention of paragraph (a) is alleged, in determining whether a Scheduled Generator ... made a dispatch offer, dispatch bid or rebid that was false, misleading or likely to mislead, a court must have regard to the market design principle set out in clause 3.1.4(a)(2).
- (c) A Scheduled Generator ... may be taken to have contravened paragraph (a) notwithstanding that, after all the evidence has been considered, the false or misleading character of the dispatch offer, dispatch bid or rebid (including either of the matters referred to in subparagraphs (b)(1) and (2)) is ascertainable only by inference from:
 - (1) other dispatch offers, dispatch bids or rebids made by the Generator or Market Participant, or in relation to which the Generator or Market Participant had substantial control or influence;
 - (2) other conduct (including any pattern of conduct), knowledge, belief or intention of the relevant Generator or Market Participant;

- (3) the conduct (including any pattern of conduct), knowledge, belief or intention of any other person;
 - (4) information published by AEMO to the relevant Generator or Market Participant; or
 - (5) any other relevant circumstances.
- (d) A rebid must be made as soon as practicable after the Scheduled Generator ... becomes aware of the change in material conditions and circumstances on the basis of which it decides to vary its dispatch offer or dispatch bid.
- (e) In any proceeding in which a contravention of paragraph (d) is alleged, in determining whether the Generator ... made a rebid as soon as practicable, a court must have regard to:
- (1) the market design principle set out in clause 3.1.4(a)(2); and
 - (2) the importance of rebids being made, where possible, in sufficient time to allow reasonable opportunity for other Market Participants to respond (including by making responsive rebids, by bringing one or more generating units into operation or increasing or decreasing the loading level of any generating units, or by adjusting the loading level of any load) prior to:
 - (i) the commencement of the trading interval to which the rebid relates; or
 - (ii) the commencement of any dispatch interval within that trading interval.
- and may have regard to any other relevant matter, including any of the matters referred to in sub-paragraphs (c)(1) to (5).

Note

This clause is a rebidding civil penalty provision for the purposes of the National Electricity Law. (See clause 6(2) of the National Electricity (South Australia) Regulations.)

3.8.22 Rebidding

...

- (c) A Scheduled Generator ... must provide:

...

- (2) to AEMO, at the same time as the rebid is made:
 - (i) a brief, verifiable and specific reason for the rebid; and
 - (ii) the time at which the event(s) or other occurrence(s) adduced by the relevant Generator ... as the reason for the rebid, occurred; and

Note

This clause is classified as a civil penalty provision under the National Electricity (South Australia) Regulations. (See clause 6(1) and Schedule 1 of the National Electricity (South Australia) Regulations.)

Clause 3.8.22(c)(2) applies in respect of any rebid submitted during the late rebidding period.

- (3) to the AER, upon written request, in accordance with guidelines published by the AER, such additional information to substantiate and verify the reason for a rebid (including any record made under paragraph (ca)) as the AER may require from time to time.

Note

This clause is classified as a civil penalty provision under the National Electricity (South Australia) Regulations. (See clause 6(1) and Schedule 1 of the National Electricity (South Australia) Regulations.)

- (ca) A Scheduled Generator, Semi-Scheduled Generator or Market Participant who makes a rebid during the late rebidding period must make a contemporaneous record in relation to the rebid, which must include a record of:
 - (i) the material conditions and circumstances giving rise to the rebid;
 - (ii) the Generator's or Market Participant's reasons for making the rebid;
 - (iii) the time at which the relevant event(s) or other occurrence(s) occurred; and
 - (iv) the time at which the Generator or Market Participant first became aware of the relevant event(s) or other occurrence(s).

Notes

Clause 1.9 applies to records made under paragraph (ca).

This AEMC will be recommending to the COAG Energy Council that this clause be classified as a civil penalty provision under the National Electricity (South Australia) Regulations.

Clause 3.1.4 provided that, *inter alia*:

This Chapter 3 is intended to give effect to the following market design principles:

...

- (2) maximum level of market transparency in the interests of achieving a very high degree of market efficiency, including by providing accurate, reliable and timely forecast information to Market Participants, in order to allow for responses that reflect underlying conditions of supply and demand;