Queensland Energy Class Action

Claim Summary

Piper Alderman has been investigating anomalous spikes in the spot price of electricity in the Queensland region of the National Electricity Market (**NEM**) from 2013 through to 2019.

From our research we believe it can be shown that certain price spikes have been caused by Queensland's State owned electricity generators, Stanwell Corporation Limited and CS Energy Limited adopting "gaming" strategies in their supply of electricity. By gaming of the system the generators create artificial scarcity of supply in the NEM, inflate electricity prices for consumers and prevent other generators from competing for market share.

In our view this conduct amounts to a contravention of section 46 of the *Competition and Consumer Act 2010* (Cth) because the generators are misusing their market power for the purpose of deterring or preventing a person from engaging in competitive conduct in the NEM.

We believe this conduct has caused significant losses to everyday consumers of electricity in Queensland by increasing the price of this essential service. This Qld Energy Class Action proposes to prove this conduct and recover that loss and damage for all consumers within the region.

Who are the defendants to the class action?

The defendants to the action are Stanwell Corporation Limited (**Stanwell**) and CS Energy Limited (**CSE**).

Stanwell and CSE operate most of the black coal generating units in the Queensland region of the NEM, meaning they are largely responsible for supplying the minimum level of demand on an electrical grid over a span of time. This is the "baseload" for Queensland electricity consumption.

Stanwell and CSE are responsible for roughly 70% of the electricity dispatched into the NEM, meaning they yield a significant amount of market power.

Both entities are Government Owned Corporations, being public companies limited by shares and regulated by the *Corporations Act 2001* (Cth). Each GOC has two shareholding ministers who hold the shares on behalf of the State.

Stanwell: https://www.stanwell.com/home-stanwell/

CSE: https://www.csenergy.com.au/

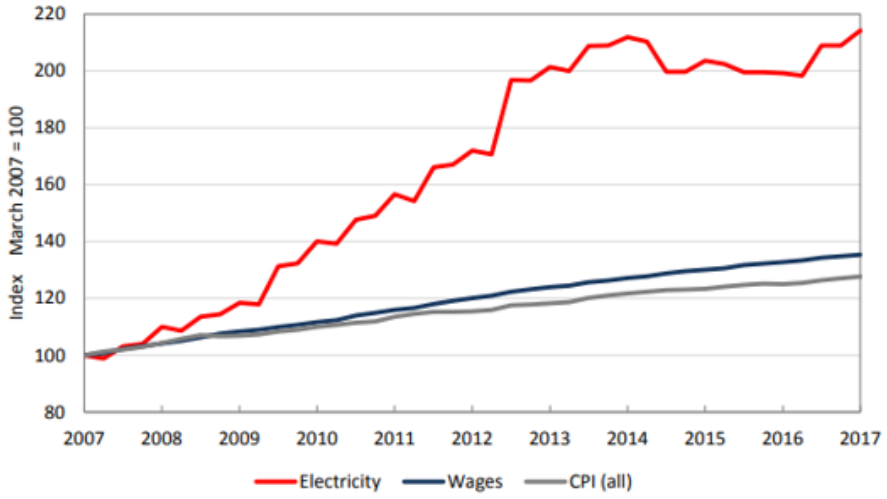
What is the significance of this class action?

Since 2007, Australian retail electricity prices have increased faster than any other OECD country, with Queensland prices having increased faster than any other State or Territory.

In the past decade, Australian retail electricity prices have increased by approximately 80-90%. The size of these price increases have not been matched by any other areas of the economy, nor in national wage growth.

It is our belief that the defendants have been misusing their market power to artificially increase electricity prices in the Queensland region of the NEM which has caused significant increases in the cost of living for all residents and business owners in the State.

CPI for electricity compared with other sectors and wage growth.



Source: ABS, Consumer Price Index 6401.0 and ABS, Wages Price index 6345.0, Australia.

What is the NEM?

The NEM is a wholesale electricity market in which generators sell electricity and retailers buy it to on-sell to consumers.

For more information on the NEM follow this link: https://aemo.com.au/-/media/files/electricity/nem/national-electricity-market-fact-sheet.pdf

Who is the Australian Energy Market Operator (AEMO)?

The Australian Energy Market Operator (**AEMO**) was established in 2009 to manage the NEM. AEMO operates the electricity systems in the NEM, ensuring that Australian consumers always have access to secure and reliable energy.

For more information on AEMO follow this link: https://aemo.com.au/en

How is electricity priced in the NEM?

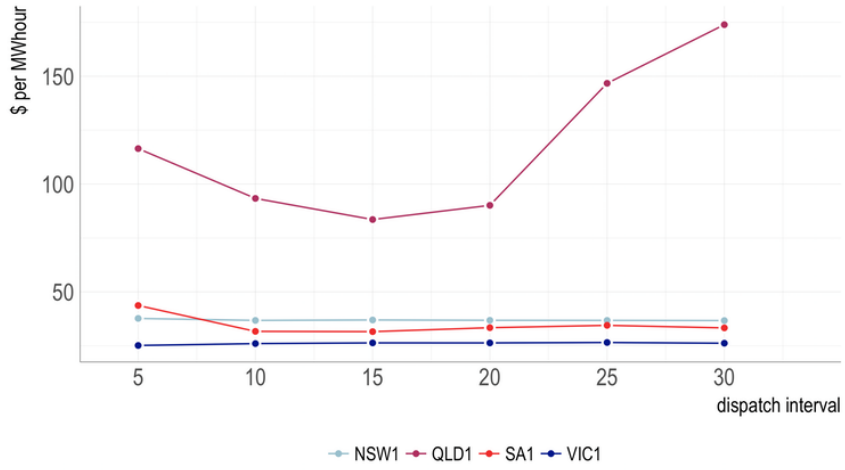
Generators like Stanwell and CSE participate in the NEM by selling all of the electricity they produce into a centralised market place where supply and demand are matched instantaneously.

The buying and selling price for electricity is set through a form of bidding auction.

The objective of the NEM is to secure the lowest prices for electricity supply from the generators in a competitive environment. The spot market rules require generators to make bids that are offers to supply a volume of electricity at whatever price they choose within permitted boundaries, and the market operator, AEMO selects the cheapest bids until the load is met.

The auction occurs every 5 minutes of every hour of every day. These 5 minute periods are called dispatch intervals. The dispatch intervals are banded together into 30 minute blocks called trading intervals. The highest bid price of any electricity dispatched in a dispatch interval becomes the price of electricity for that 5 minute window. The prices for each of the dispatch intervals in the 30 minute period are then averaged and that becomes the spot price for that 30 minute trading interval . That is the price paid by the electricity retailers to every generator who dispatched electricity in that trading interval, regardless of what they bid.

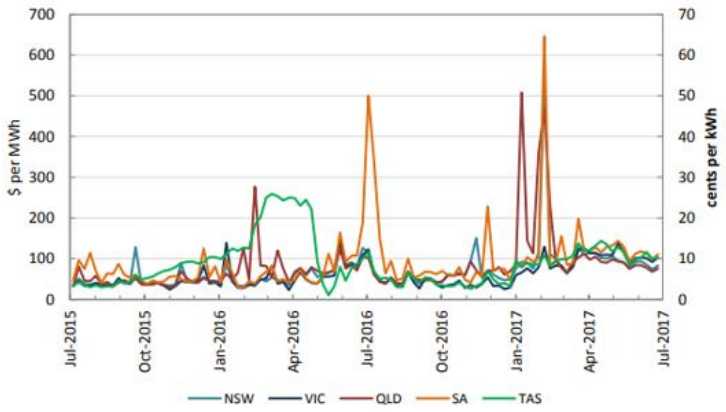
Average price by dispatch interval, January 2015



What is the spot price?

The spot price is the current price in the marketplace (such as the NEM) at which a given asset (such as electricity) can be bought or sold for immediate delivery.

Weekly volume weighted average spot prices from April 2015 to April 2017, nominal values.



Source: AER wholesale statistics, https://www.aer.gov.au/wholesale-markets/wholesale-statistics

What is Gaming?

Gaming is a bidding strategy used by generators to create extreme, artificial spikes in the price of electricity offered for sale in the spot market. The spikes are caused by the bidding strategy alone, and are unrelated to the physical features of the market such as supply or demand. The strategy ensures that electricity offered for sale at an extreme price is purchased by the market operator, even though less expensive generation would otherwise have been available.

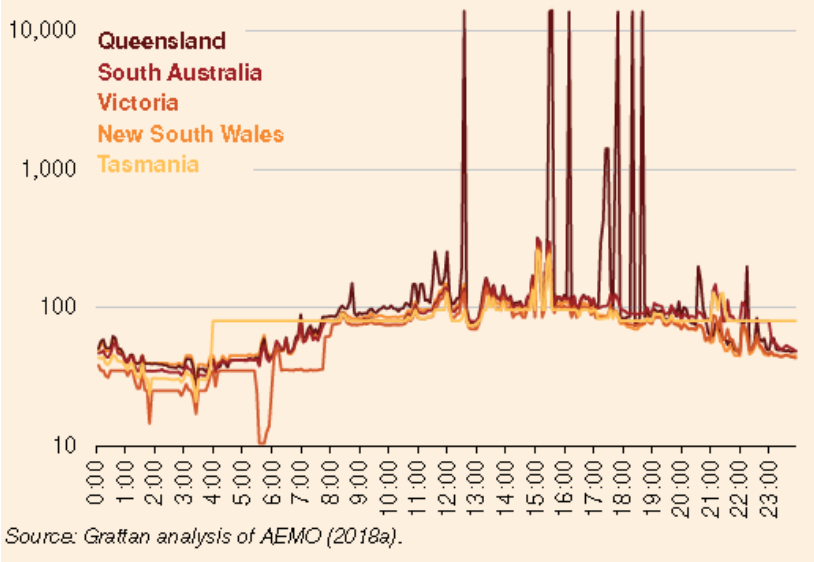
Gaming can result in:

(a) higher wholesale market prices, through dispatch of more expensive generation;

(b) greater volatility in wholesale market prices; and

(c) higher forward contract prices which raises the cost of hedging.

12 January 2017 has been described by the Grattan Institute as "*a day of games*". The figure below shows the five minute dispatch interval price by State for 12 January 2017. In Queensland there were 7 dispatch intervals at or near the market cap of $14,200 per megawatt hour, while most dispatch intervals were around $100 per megawatt hour in the other NEM regions



Source: Grattan analysis of AEMO (2018a).

What have the regulators and experts said?

The Grattan Institute identifies the fact that strategic bidding behaviour is not reflective of supply and demand conditions but instead indicates a "gaming" of the system.

The Australian Competition and Consumer Commission (ACCC) has conducted an extensive inquiry into electricity prices in Australia. It has observed that on average the coal generators in Queensland set prices 65% to 70% of the time between July 2013 and March 2018.

In July 2018 the Grattan Institute released its report on the performance of the NEM. It concluded that some generators were engaging in what it called "bidding games" and those bidding games were particularly acute in Queensland. For example, according to the Grattan Institute, price fluctuations caused by bidding games added $825m to the value of electricity traded in the NEM in 2017 and $673m of that was in Queensland.

In response to media scrutiny, the Queensland government directed Stanwell on 6 June 2017 to cease gaming its bids. The ACCC has observed that following the direction the conduct virtually ceased by both Stanwell and CSE, despite the instruction being directed only to Stanwell. As such the $673m figure seems to represent only 5 months of the behaviour.

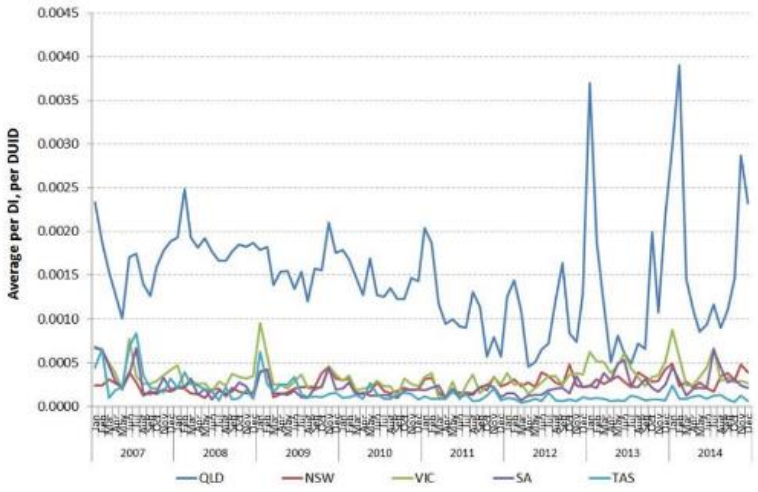
What is the purpose of rebidding?

The purpose of rebidding is to establish an efficient and fair pricing process. Rebidding in five minute intervals enables market participants and consumers to take advantage of short term pricing signals or changes in the market. The intention of this process is to create a competitive environment in the NEM that promotes efficiency.

This process however, incentivises electricity generators to bid strategically. Strategic rebidding would include rebidding close to a given dispatch interval to prevent other supply or demand-side participants to respond.

In other words, rebidding has enabled generators to 'game' the NEM.

Regional comparison of late rebidding that shifted capacity to price bands above $300/MWh.



What is the issue with rebidding?

The issue with rebidding is that it has increased wholesale electricity prices in Queensland. The Queensland Productivity Commission (QPC) reported in 2015-2016 that rebidding had provided electricity generators with the market power to dramatically change prices for electricity already consumed.

What is market power?

Market power has been described as the ability to raise prices above supply costs without competitors taking away customers over time. It has also been described as the ability to act in a market without competitive restraint.

What is misuse of market power?

Misuse of market power, as relevantly defined during the claim period, occurs when a company with a substantial degree of market power takes advantage of that power to deter or prevent competitive conduct.