

**DETERMINATION OF THE MARKET SURVEILLANCE AND COMPLIANCE PANEL  
MSCP/2008/D3**

---

**Market Surveillance and Compliance Panel (“MSCP”)**

Professor Lim Chin  
Mr Lee Keh Sai  
Mr TPB Menon

**Date of Determination**

16 June 2008

**Party**

Energy Market Company Pte Ltd (“EMC”)

**Subject**

Failure to offset interest earned against EMC’s Administrative Costs

---

**Applicable Rule(s) in the Singapore Electricity Market Rules**

1. Section 5.13.9 of Chapter 7

Monies in the EMC bank accounts at the end of each year which have been earned from interest on funds in the EMC bank accounts and which are not attributable to any incomplete settlement process or outstanding settlement dispute shall be used to off-set the EMC’s administrative costs referred to in section 4.2.1 in the following year.

2. Chapter 4.2.1 of Chapter 7

The EMC shall recover its administrative costs in any given EMC fiscal year by means of the imposition of fees on each applicable market participant, market support services licensee and other person. Subject to sections 4.2.2, such fees shall be levied in such manner, at such times, in such amounts and on such market participants, market support services licensees and other persons as may be specified in:

- 4.2.1.1 the schedule of fees approved by the Authority for that EMC fiscal year and referred to in section 11.1.5 or 11.1.6 of Chapter 2, as the case may be; or
- 4.2.1.2 the schedule of fees referred to in section 11.1.5.2(a) of Chapter 2 prepared by the EMC for that *EMC* fiscal year on the basis of the methodology approved by the Authority pursuant to section 11.1.5 of Chapter 2 for that *EMC* fiscal year.

3. Section 5.13.8 of Chapter 7

If the EMC holds or has under its control after five business days from receipt in the EMC settlement clearing account amounts which it ought properly to have paid to market participants, such market participants shall be entitled to interest on such amounts at the default interest rate from the date on which the EMC commenced to improperly hold or have such amounts under its control to the date on which such amounts are paid to the relevant market participants.

4. Chapter 8 - Definition

Default interest rate: means the rate calculated as the base lending rate that the bank where EMC's bank accounts are maintained charges for commercial loans to its best and most creditworthy commercial customers plus 2%.

**Facts and Circumstances**

5. On 2 February 2007 EMC submitted a self-report alleging breach of section 5.13.9 of Chapter 7 of the Singapore Electricity Market Rules ('the market rules') that EMC had not offset annual EMC administrative costs with the interest earned from money held in EMC Bank Accounts in accordance with the market rules. In the same report, EMC also said that it would provide more details to the MAU when EMC was appropriately advised on the tax and legal considerations in applying the market rules. Additional details were provided by EMC on 9 May 2007.
6. EMC had accrued interest earned in the National Electricity Market of Singapore ("NEMS") settlement account held with a bank since market start on 1 January 2003. Interest earned on balances in the NEMS settlement account had been accumulated since 1 January 2003, but the interest earned in financial years 2002/2003 to 2005/2006 were not used to off-set EMC's administrative costs in the relevant financial years 2003/04 to 2006/2007.
7. In a letter dated 2 February 2007, EMC said that it had since become aware of section 5.13.9 of Chapter 7 of the market rules that requires interest earned in the NEMS settlement account to be used to off-set the EMC administrative costs in the following year.
8. On 30 April 2007, EMC distributed the interest earned in financial years 2002/2003 to 2005/2006 to twelve market participants by way of a one-off payment. EMC also stated that it would off-set the interest earned for financial year 2006/2007 in accordance with the market rules by way of an offset of the administrative costs for financial year 2007/08.
9. The 12 market participants were: Keppel Electric Pte Ltd, Keppel Merlimau Cogen Pte Ltd, National Environment Agency, PowerSeraya Ltd, SembCorp Cogen Pte Ltd, SembCorp Power Pte Ltd, Senoko Power Ltd, Senoko Energy Supply Pte Ltd, Seraya Energy Pte Ltd, SP Services Ltd, Tuas Power Ltd, and Tuas Power Supply Pte Ltd.
10. EMC said that it had calculated the payments so that the interest would be distributed to market participants in the same proportion as it would have been if EMC's administrative costs had been allocated to the market participants according to EMC's fee methodology (i.e. each market participant's share of the fees for each day should be equal to the proportion of total energy traded by that market participant in that day).

11. In addition to the above payment, EMC had also paid to each market participant the additional compound interest that was accumulated year-on-year while the amount was withheld in the NEMS settlement account. Furthermore, EMC said it had paid ex gratia "default interest" to each market participant as compensation for EMC's oversight.
12. The composition of all payments and the amount owed to each market participant had been verified by an external auditor Ernst and Young.
13. EMC provided the breakdown of its payout to the 12 market participants as follows:

Refund of interest	\$355,066.06.
Refund of interest on interest	\$13,909.44
Payment of default interest	\$14,080.53
Total payout	\$383,056.03

14. EMC had also consulted with the Inland Revenue Authority of Singapore (IRAS) on the most appropriate way to account for GST on the interest refund and had notified the respective market participants of the appropriate treatment of such payments made to them.
15. EMC further said that it would be reviewing the existing market rules, as the obligations pertaining to refund of interest earned in the NEMS settlement account are unclear and ambiguous. It said that the existing provisions dealing with interest earned in the EMC Bank Accounts appear to be left over from when the market rules were amended, prior to market start, when sections relating to the form and function of the EMC Settlement Reserve Account were removed. EMC believed that the inter-relating rules pertaining to refund of interest earned were not appropriately deleted or modified. EMC said that it would be making submission through the rules change process to suggest amendments to remove ambiguity and to propose allocation of interest earned to the market participants in the most equitable manner. However, EMC did not indicate that any of the above ambiguities in the rules had led to the breach of section 5.13.9 of chapter 7.
16. EMC said it trusted that the panel would take into consideration that this incident was due to an oversight and EMC had done its best to minimize the effect and impact on its failure to comply with the market rules. EMC said it remained committed to continually updating and reviewing its processes to ensure that errors and omissions are avoided.

### **Determination**

17. The MSCP had on 30 October 2007 sent a letter to EMC informing it that the MSCP was of the view EMC was prima facie in breach of the market rules for its failure to use the interest earned from financial years 2002/2003 to 2005/2006 in NEMS settlement account to offset EMC's administrative cost in the following years and inviting EMC to submit written representations. EMC replied that it would not be making representations.
18. The MSCP determined on the basis of the facts referred to above that EMC breached section 5.13.9 of Chapter 7 of the market rules.

19. Although there was no significant impact to the wholesale electricity markets as the relevant amounts had been returned to the market participants, EMC had not demonstrated that it had exercised due diligence as market operator in complying with its obligations under the market rules. The MSCP was of the view that the breach could have been avoided if EMC had exercised due diligence.
20. Therefore, the MSCP determined that the appropriate action to be taken was to issue a financial penalty of \$10,000 against EMC. The MSCP also orders the payment by EMC of costs in the sum of \$2,000.

A handwritten signature in black ink, appearing to read 'Lim Chin', with a horizontal line extending to the right from the end of the signature.

Lim Chin  
for Chair, Market Surveillance and Compliance Panel