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30 October 2015

John Pierce
Chairman
Australian Energy Market Commission
PO Box A2449
SYDNEY SOUTH NSW 1235

Dear Mr Pierce

Re: Submission on National Electricity Amendment - Bidding in good faith (second draft determination)

The AER welcomes the opportunity to respond to the AEMC's second Draft Determination on Bidding in Good Faith. On balance, the AER supports the AEMC's draft Rule as a means to address identified concerns with late strategic rebidding.

The AEMC's second draft rule addresses key elements identified as areas of concern arising from the *AER v Stanwell* case. It also addresses issues raised by the AER in its submission to the first draft rule, including: strengthening draft clause 3.8.22A(d) (timeliness of response) by removing the word "reasonably"; removing the requirement to satisfy both limbs of clause 3.8.22A(b) in order for an offer, bid or rebid to be deemed as false or misleading; changing the late rebidding report requirement to a contemporaneous record keeping requirement; providing clarity on what an initial offer, bid or rebid represents; and allowing patterns of conduct (amongst other things) to be taken into account when considering a contravention of 3.8.22A(d).

With respect to the late rebidding period, it is defined in the draft rule as "in respect of a trading interval, the period beginning 15 minutes before the commencement of the trading interval". We understand the late rebidding period is a fixed 45 minute period, beginning 15 minutes before the commencement of the relevant trading interval and ending at the end of that trading interval. However, there are some aspects of the second draft determination that may introduce ambiguity to the interpretation of the late rebidding period, in particular the explanation provided in Figure 5.1. The AER

suggests that as part of its final determination, the AEMC remove any doubt about the fixed period of the late rebidding period.

We also consider it important to remind participants that our [Rebidding and Technical Parameters Guideline](#) provides guidance on what action participants should take in the event that they provide information to AEMO (through a bid or rebid) in error. The Guideline also reminds participants that, consistent with our [Compliance and Enforcement Statement of Approach](#), an important consideration of whether to take further enforcement action is whether the participant has cooperated with the AER in relation to the breach (for example by providing evidence that the AER was otherwise unaware of, and taking prompt and effective action to rectify the breach and avoid a recurrence).

We would be pleased to provide further assistance to the AEMC on this important area of work. Please contact Peter Adams, General Manager, Wholesale Markets, on (03) 9290 1465 if you would like to discuss any aspect of this submission.

Yours sincerely



Paula Conboy
Chair
Australian Energy Regulator