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12 February 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 (Options Paper)

The AER welcomes the opportunity to respond to the AEMC's Options Paper on the Rule change in respect of bidding in good faith.

The ability to rebid is critical to the effective operation of the National Electricity Market (NEM), allowing participants to adjust to relevant factors as required.

The Good Faith provision was introduced into the National Electricity Code (now the National Electricity Rules, hereafter "the rules") to improve the reliability of information, including price forecasts, necessary for the efficient operation of a wholesale electricity market such as the NEM. Rebids that are not made in good faith can adversely affect the accuracy of information upon which market participants rely. Indeed, the AER has always maintained that the provision of reliable and transparent information is critical to the efficient functioning of the NEM.

The AER considers that the Federal Court's interpretation of the Good Faith rebidding provision in the *AER vs. Stanwell* case has highlighted that the rule as currently drafted does not restrict the type of behaviour it was introduced to address. The AER still fully supports the SA Minister's rule change proposal. We consider it to be the most effective way to address the shortcomings in the drafting of the current rule and to give the provision the necessary utility.

Specifically the AER considers that if implemented, the SA Minister's rule change proposal would address the problems areas highlighted by the Federal Court's interpretation of the Good Faith provision, including: the subjective nature of a trader's intention; timeliness of response; portfolio bidding; and the provision of accurate and complete data and information to substantiate that a bid or rebid is made in good faith.

Rather than making wholesale changes to the current Good Faith provision, we understand the SA Minister's rule change proposal was intended as a refinement to the clause, to ensure the original policy intent was met. Importantly, also, the SA Minister's rule change proposal would still provide participants with significant flexibility to rebid to changing conditions, something which the AER considers to be critical to the efficient and effective functioning of the NEM.

The AEMC's Options Paper seeks to define the problem or market failure identified by the SA Minister's Rule change request. The Options Paper identifies the specific behaviour to be addressed as generators submitting late rebids where there is an intention to exploit the limited opportunity of others to respond. Consistent with our findings in our May 2014 submission to the AEMC's Consultation Paper, the Options Paper shows that late rebidding has become especially prevalent recently in Queensland and to a lesser extent in South Australia. To this end, the AEMC's Options Paper puts forward two potential policy responses: a behavioural statement of conduct and/or a gate closure mechanism.

We consider that rebidding late in a trading interval to restrict a competitive response is a significant concern, with flow on effects for end users. For this reason, the AER would support the AEMC undertaking further analysis on the impacts of introducing a behavioural statement of conduct and/or a gate closure mechanism on the current market design. This analysis could be undertaken as part of the current consultation process, or upon its completion.

In light of the above, the AER considers that there may be merit in exploring the possibility of introducing a broader behavioural statement of conduct and/or a gate closure mechanism. However, it is important that the current process remains focussed on assessing the SA Minister's original rule change proposal, which the AER considers would greatly assist in improving firmness of participants' bids and offers and ultimately the market's confidence in forecast information.

We would be pleased to provide further assistance to the AEMC as required. If you would like to discuss any aspect of this submission please contact Peter Adams, Acting General Manager, Wholesale Markets, on (03) 9290 1465.

Yours sincerely



Paula Conboy
Chair
Australian Energy Regulator