

23 May 2014

Australian Energy Market Commission  
PO Box A2449  
SYDNEY SOUTH NSW 1235

Dear Sir/Madam

We write to you in relation to the proposed rule change request submitted by the South Australian Minister for Mineral Resources and Energy proposing changes to the re-bidding provisions in the wholesale electricity market.

### **Executive Summary**

Business SA acknowledges the sentiments behind the proposed re-bidding rule change and that there may need to be changes to ensure that re-bidding does not occur at the last minute for pure economic reasons. However, we stress that the outcome is to, as much as practicable, eliminate last minute re-bids for pure economic reasons which essentially have the effect of gaming the market. While this is the outcome, at present we are not convinced that the only solution is to change the rules and that the AER may benefit from other options such as strengthened investigative powers backed up by the ACCC. The proposed rule change should also be used as a vehicle for further dialogue with industry to try and resolve the problem before resorting to an additional regulatory burden.

### **Background**

1. Rising electricity prices are a significant concern for South Australian businesses which have had to absorb price rises of approximately 80% over the past 5 years. This is a particular concern for manufacturers who are typically more energy intensive and also face significant gas prices rises, particularly through to 2016/17. It is well known that wholesale electricity prices in South Australia are subject to more volatility than other jurisdictions and the impact on end users is of particular concern to Business SA. We fully support a deregulated electricity market but that is on the premise that the market regulator, AER, ensure any anti-competitive behaviour which games the market design is appropriately addressed.
2. Business SA notes that neither the proposed rule change nor the AEMC discussion paper provides analysis on the spread of re-bids throughout any given trading period up to the relevant dispatch interval. We have made enquiries of AEMO with respect to this information but had not been able to obtain any comprehensive analysis at the time of writing. From our own inconclusive analysis of the available data, it seems the majority

of rebids are occurring within the last half hour prior to the relevant dispatch interval. This coincides with the period where there are competitive issues for some market participants, including end users, being able to respond to changes in market dynamics, even if they occur for legitimate reasons.

To provide justification for a rule change, the AEMC must first make the underlying data and analysis of re-bidding publically available for review. The subjective reasons for the rule change should be supported by appropriate data to enable stakeholders to comment on whether or not the reasoning behind the rule change appears valid.

3. Business SA notes that the impetus for a rule change emanated from the AER's loss in its case against Stanwell Corporation Limited in 2011. While Business SA does not dispute the validity of this decision, it is worth noting that it was only one decision and that perhaps the existing rules need to be tested further by the courts before the AEMC resorts to a rule change.

Furthermore, there may need to be further consideration of how the ACCC can assist the AER in its investigative efforts where there are allegations of re-bidding outside the good faith provisions. This may include increased powers for the AER to conduct oral examinations.

4. As a rule, Business SA always advocates for an industry led approach to solving any actual or perceived market failures before governments resort to further regulation. The proponent's rule change request is a very good starting point for dialogue between the AEMC and industry and we encourage the AEMC to work with industry to try and establish mechanisms which place the least regulatory burden on the market while at the same time ensuring capacity isn't re-bid at the last minute for pure economic reasons.

Industry has an incentive to work with the AEMC to ensure it develops a practical solution which negates the need for additional or excessive regulation.

### **Who we are**

As South Australia's peak Chamber of Commerce and Industry, Business SA is South Australia's leading business membership organisation. We represent thousands of businesses through direct membership and affiliated industry associations. These businesses come from all industry sectors, ranging in size from micro-business to multi-national companies. Business SA advocates on behalf of business to propose legislative, regulatory and policy reforms and programs for sustainable economic growth in South Australia.

Should you require any further information or have any questions, please contact Rick Cairney, Director of Policy, Business SA on (08) 8300 0060 or [rickc@business-sa.com](mailto:rickc@business-sa.com).

Yours sincerely

**Nigel McBride**  
**Chief Executive Officer**