



Australian Energy Market Commission

SECTION 108A REPORT

Bidding in good faith

Rule Proponent

Minister for Mineral Resources and Energy (South Australia)

16 April 2015

**RULE
CHANGE**

Purpose of report

The Australian Energy Market Commission (AEMC or Commission) is required under section 108A of the National Electricity Law (NEL) to publicly report on rules not made within 12 months of the publication of the notification of the commencement of the rule change process.

This report relates to the *Bidding in good faith* rule change request which is expected to be completed approximately 15 months from the date that the AEMC formally initiated the rule change process.

Background

On 10 April 2014, the AEMC commenced consultation on a rule change request submitted by the South Australian Minister for Mineral Resources and Energy proposing changes to the provisions in the National Electricity Rules (NER) that require generators to bid in good faith.

The provisions require that generators make all bids and rebids in good faith such that, at the time of making the bid, the generators must have a genuine intention to honour that bid if the material conditions and circumstances upon which the bid is based remain unchanged. The Australian Energy Regulator (AER) is responsible for ensuring compliance with the good faith provisions.

The rule change request proposes changes that would recast the good faith provisions in the negative such that generators would be required to demonstrate what material circumstances had changed as the basis for their rebid. In addition, the proposed rule would require generators to take into account all existing material circumstances when making a bid and, if there is a change to any of those material circumstances, to reflect those changes in rebids as soon as practicable.

These proposed changes are intended to provide clarity to the interpretation of the good faith provisions and improve the accuracy and reliability of AEMO forecasts, consistent with what the proponent considers to be the original policy intent of the provisions.

On 18 December 2014, the AEMC published an options paper to facilitate consultation on the rule change request. The purpose of the options paper was to discuss the outcomes of analysis undertaken for the Commission, to test stakeholders' views on a number of alternative potential options identified to address the rule change request, and to continue the assessment of the proposed rule.

On 16 April 2015, the AEMC made a more preferable draft rule to amend the good faith provisions. Under the draft rule:

- the current requirement that offers be made in good faith would be replaced by a prohibition against making false or misleading offers;
- the obligation not to mislead the market would need to be met by generators on an ongoing basis through a requirement that any variations to offers be made as soon as practicable; and
- additional reporting requirements would be imposed on variations to offers made close to dispatch.

Reason for the final rule determination not being made within 12 months

The final rule determination on the *Bidding in good faith* rule change request was not made within 12 months of the publication of the initiation of the rule request notice under section 95 of the NEL as a result of the detailed and complex nature of the rule change request and the additional round of consultation that was undertaken.

The rules that relate to the generator bidding process are fundamental to the operation of the NEM and the promotion of efficient price outcomes in the interests of consumers, and changes to these rules have the potential to significantly affect participants. As a consequence, the Commission's assessment of the rule change request to date has required a broad consideration of the issues raised, including those related to the bidding behaviour of generators and the design of the bidding process. The assessment has also involved an investigation of the materiality of the issues and the extent to which they have impacted on market outcomes.

On 31 July 2014, the Commission decided to extend the period of time to consider the rule change request under section 107 of the National Electricity Law. The Commission considered the extension necessary due to the complexity of issues raised by the rule change request, as reflected in the extensive stakeholder submissions on the consultation paper and views expressed at the stakeholder forum held in May 2014. The Commission considered there to be value in adding an extra stage of consultation with stakeholders to the normal rule change process prior to the publication of the draft determination.

Time for making final rule determination

The Commission intends to publish a final determination on the rule change request by 23 July 2015.