



9 June 2015

Mr John Pierce
Chairman
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Dear Mr Pierce

RE: DRAFT RULE DETERMINATION - NATIONAL ELECTRICITY AMENDMENT (BIDDING IN GOOD FAITH) RULE 2015 (REFERENCE: ERC0166)

ERM Power Limited (ERM Power) welcomes the opportunity to respond to the Commission's *Draft Rule Determination - National Electricity Amendment (Bidding in good faith) Rule 2015*.

ERM Power strongly supports the Commission's Draft Rule Determination. In its Draft Determination the Commission clearly identifies the problems with the structure and wording of the existing rule provisions and suggests reasonable and enforceable measures to address these problems. We agree with the Commission's analysis and recommendations in full. As we stated in our submission to the Commission's Options Paper, while we acknowledge that price volatility is part of an effectively competitive market, if prices are regularly pushed to the market price cap in an otherwise oversupplied wholesale environment then there is reason to question whether the market is operating as intended. This is particularly because previously un-forecast high prices occurring late within a trading interval cannot be economically responded to by the market itself.

We note that the proposed approach in the Draft Rule Determination recasts clause 3.8.22A from an 'in good faith' obligation per bid to a focus on the capacity to mislead of *all bids and rebids* 'as a continuing representation of a generator's honest intentions to supply electricity at particular prices' (p. 8). This is a logical approach which closes a gap in the NER compared to other electricity markets' rules and provides the regulator with meaningful enforcement measures. It is also consistent with Corporations Law, Consumer Law and likely community expectations.

The proposed approach also provides for increased reporting to the regulator where a rebid is made during, or less than 15 minutes before the commencement of, the trading interval to which the rebid applies. In this circumstance the rebidding generator must advise the change in material conditions and circumstances giving rise to the rebid, reasons for the rebid, and justification that the rebid was made as soon as reasonably practicable. We also note that, under the proposed clause the AER will also be able to grant a reporting exemption to a Market Participant (or a class of Market Participants). ERM Power supports this proposed provision.

In practice, the vast majority of rebids made within the new late rebidding reporting period will be for a plant related issue. Plant related rebids are required by the AER's *Rebidding and Technical Parameters Guideline* to have a designated Category P – Plant submitted as part of the rebid reason at the time the rebid is submitted. The cause of a plant related rebid is random and generally unforeseen by the registered participant until the plant issue manifests in real time dispatch. The participant generally has no choice with regard to either timing or magnitude of the impact.

As a result, ERM Power recommends that the proposed clause 3.8.22 (c) (2a) be amended to allow an exemption from the new reporting requirement for all rebids consistent with Category P – Plant. The drafting for this could be along the lines of the below, where the underlined and struck out words are new:

...to the AER, in respect of any *rebid* made during the *late rebidding period* (unless an exemption ~~granted~~ under paragraph (ca) or (cb) applies).....

(cb) A Scheduled Generator, Semi-Scheduled Generator or Market Participant is not required to provide a late rebid report to the AER if the reason for the rebid was a technical issue relating to plant owned, operated or controlled by the Scheduled Generator, Semi-Scheduled Generator or Market Participant to which the rebid related.

If this is not allowed for, the compliance burden for generators will be onerous, and for reasons not related to the late rebidding problem to be solved. Late rebidding reports for issues already covered by Category P – Plant will provide little if any additional or substantive information to the AER regarding the cause of the rebid. For example, the brief verifiable reason of *P Unit Trip* provided at the time a rebid is submitted is substantive and unambiguous in its own right, requiring a generator to provide an additional report to the AER in these instances adds no value whatsoever to the process. In the event the AER questions the validity or otherwise of a Category P – Plant rebid, the AER retains the right to request additional information from the participant under Clause 3.8.22 (3).

We appreciate that the AER could grant an exemption under proposed clause 3.8.22(ca) consistent with our suggested amendment above. However, the AER exemption process will obviously take some time and does not have a certain outcome. It would be preferable to hard wire the above relatively narrow exemption into the Rules.

If you have any queries about this submission please contact me on the number below.

Yours sincerely,

[signed]

Dr Fiona Simon

General Manager, Regulatory Affairs

03 9214 9318 - fsimon@ermpower.com.au