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Mr John Pierce
Mr Neville Henderson
Dr Brian Spalding
Australian Energy Market Commission

Lodged electronically: www.aemc.gov.au (ERC0166)

Dear Commissioners,

RE: ERC0166 - National Electricity Amendment (Bidding in good faith) Rule 2014

By way of background InterGen Australia (**InterGen**) is owned by InterGen N.V. and the China HuaNeng Group (**CHG**), China's largest generation company. InterGen and CHG are leading developers and operators of electricity generation facilities worldwide. In Australia, InterGen is the operator and majority owner of the 851MW Millmerran Power Station and a 50% owner of the 850MW Callide C Power Station.

The Australian Energy Market Commission (**AEMC**) has sought stakeholder submissions to the National Electricity Amendment (Bidding in good faith) Rule 2014, dated 13 February 2014 (**Rule change**). The AEMC is specifically seeking stakeholder views on a rule change request submitted by the South Australian Minister for Mineral Resources and Energy (**proponent**) proposing changes to the provisions in the National Electricity Rules (**NER**) that govern the manner in which generators may offer electricity to the wholesale market.

InterGen's position is set out below.

General Comments

The National Electricity Market (**NEM**) is working and further intervention is not necessary.

The key issues raised by this proposed Rule change have been recently reviewed and rejected by the ACCC¹ and the AEMC. The circumstances supporting these previous decisions have not materially changed to warrant proceeding with the proposed Rule change in whole or in part.

¹ Shifting the onus of proof to generators - ACCC, *Amendments to the National Electricity Code – Changes to bidding and rebidding rules*, 4 December 2002, pp. 20-21.

Any change creates substantial costs and risks for generators to the disadvantage of an efficient market.

There has only been one instance of formal investigation into rebidding during the history of the NEM² which resulted in the court dismissing the Australian Energy Regulator's (AER) application.

Accordingly, InterGen contends that the case for a Rule change has not been made and it should be rejected.

Bidding and Rebidding in the context of an Energy only market

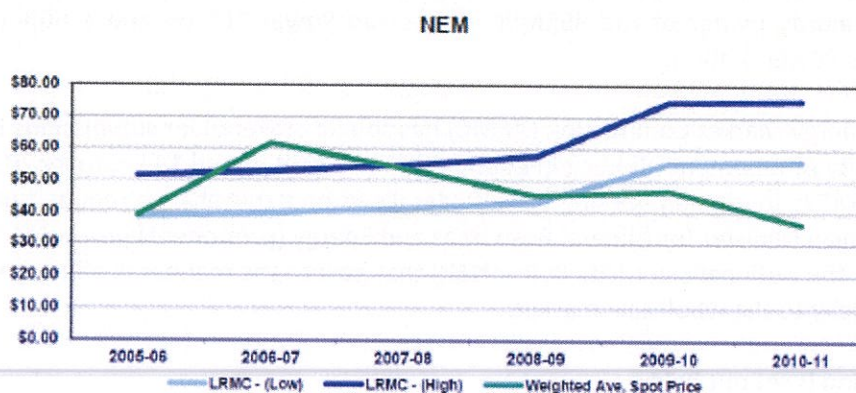
The nature of a healthy energy only market requires that at times there are high spot electricity prices. These high prices reflect both transient scarcity conditions in the market and the need for sufficient pool revenue to recover fixed costs and provide equity returns to investors.

On this basis, the appropriate timescale to review the impact of re-bidding activity on the level of pool prices is at a minimum on an annual basis. This removes the price volatility inherent in dispatch intervals (i.e. every 5-minutes) and allows a clear assessment as to whether there are excessive and systemic economic rents being earned in the NEM. Where on an annual average basis this is not occurring, then the case for increased regulation on price – in whatever form proposed, is weak and seeks only to reduce the efficient operation of the market.

The graph below compares pre-carbon historical NEM prices to LRMC³. It shows that the spot price has been well below estimates of LRMC, indicating that rebidding has not had a detrimental impact in the NEM. Pool prices since the introduction of carbon have generally followed the same trend.

On this basis, there is no root cause to address by the making of this rule change.

Figure 4.1 - Results from draft determination, comparison of LRMC and price



Specific Comments

Provision of Information

The proposed Rule change requires generators to submit accurate and complete information to substantiate that rebids are made in compliance with the good faith bidding provisions⁴. The effect of

² Australian Energy Regulator v Stanwell Corporation Limited

³ AEMC Final Rule Determination, Potential Generator Market power in the NEM 26 April 2013 page31

⁴ AEMC Consultation paper, National Electricity Amendment (Bidding in good faith) Rule 2014 10 April 2014, Page 6 and 7

this requirement is that when requested, generators have only a once off ability to supply relevant information to the AER.

To meet this obligation, generators would necessarily need to compile extensive support material at the time of each rebid. This creates an onerous obligation at significant cost and may lead to more conservative rebidding to the detriment of market efficiency.

Extending good faith rebidding to the generator's portfolio

The proposed Rule change will allow the AER to take into account the generator's entire portfolio when assessing compliance with the good faith provisions⁵. This aspect introduces risk that the AER implies bad faith intention through a misinterpretation of how a generator bids or rebids across their entire portfolio – in effect seeking a cause and effect where none may exist.

In addition, this extension of the good faith reach to the portfolio requires the generator to compile even more extensive documentation of its intention, relevant material and the inter-relationships between plants (both technical and commercial) to support every rebid. In a volatile market, rebids across the portfolio may be occurring at each dispatch interval. In a diversified portfolio there may be no connection between units from one dispatch interval to the next, for example, if rebids are made by plants in different regions, driven by different events. Under these conditions, the generators face an exponentially increasing task to ensure they have accurate and complete documentation to support each good faith bid.

In InterGen's case the Rule change also introduces a further complication due to having substantial control over two separate and independent portfolios. In this instance, the Rule change can infer a bad faith rebid on the basis of a portfolio connection between the plants when in fact none exists.

When to make a rebid

The proposed Rule change requires that generators take into account all known conditions and circumstances when making a bid and, if there is a material change to any of those conditions or circumstances, to then reflect those changes in a rebid as soon as practicable⁶.

Our concern is that "when practicable" timeframe maybe unworkable in practice. For example, a generator may not seek to rebid when a change in material circumstances become known preferring to first wait for confirmation of further events or other triggers. Generators may also wish to delay a rebid for further analysis (especially where there are other non-market plant specific factors to consider).

However, as the Rule change requires that a generator's rebid occur as soon as practicable after the change comes to the participant's attention, this potentially leads a generator to making multiple rebids for the same event. This activity may lead the AER to enquire as to whether the initial rebids were done in good faith. Generators may react to this risk by conservatively rebidding leading to a reduction of efficiency and transparency in the NEM.

⁵ South Australian Minister for Energy, *Rule change request – bidding in good faith provisions*, 13 November 2013, page 12

⁶ *Ibid*, p. 20

Response to Questions

Question 1

Do you consider late strategic rebidding to be the primary issue raised by this rule change request?

InterGen contends that the NEM is workably competitive and that there is no evidence that rebidding has led to, or likely to lead to, sustained wholesale prices above the long run marginal cost of new investments (see graph above). On this basis, late strategic rebidding has had no systemic impact on the market and can be considered an irrelevant issue.

Question 2

Do you consider the NEM trading arrangements of five-minute dispatch and 30-minute settlement to be relevant to the issue of late strategic rebidding? Do you have any views as to how any issues arising could be addressed?

No comment.

Question 3

Do you consider there to be benefits in the proposed rule to reverse the onus of proof onto generators?

InterGen is concerned that the Rule change starts with the premise that all rebids are done in bad faith unless proven otherwise - an outcome that can only be confirmed subsequently by the Courts. As a response, a generator must presume that each rebid carries the substantial risk of being judged in bad faith. This is irrespective of whether the generator sincerely did have "a genuine intention to honour that bid if material circumstances remain unchanged"⁷.

InterGen disagrees with the Rule change proponent's contention that complying with the proposed changes to the good faith provisions "should not require a significant change to existing practices and should therefore not be overly burdensome on the generator"⁸. Given the high penalties associated with a contravention, and the need to provide accurate and complete information when requested, the proponent has significantly trivialised the information substantiation requirement.

This uncertainty could markedly impact the willingness of generators to rebid volumes in response to valid changes in market conditions to the detriment of the efficiency of the market. Further, the proposed Rule change would also make it difficult for generators to retain and/or attract capable and experienced traders due to the substantive increase in personal risk.

InterGen contends that since the ACCC first reviewed⁹ and rejected the reversal of onus concept, there has been no material change to market outcomes to now warrant the making of this rule change. We support the ACCC's argument in that review that reversing the onus of proof will impose significant cost on generators and lead to more conservative bidding and reduced competitive tension in the market.

Question 4

(a) Do you consider that all known conditions and circumstances should be taken into account in generator bids and rebids?

Typically a generator would consider all available information when making a bid and in subsequent rebids when this information changes.

⁷ AEMC Consultation paper, National Electricity Amendment (Bidding in good faith) Rule 2014 10 April 2014, Page 21

⁸ Ibid page 21

⁹ ACCC, *Amendments to the National Electricity Code – Changes to bidding and rebidding rules*, 4 December 2002.

Once a market event occurs, it is not certain that circumstances may not change again. Under the proposed Rule change a generator may be driven to continuously rebid as new information comes to hand. For example, it will be unclear as to when to draw the line against all known conditions and circumstances. This may lead to an inefficient level of rebidding.

To require that all bids and rebids take into account all known conditions and circumstances would therefore seem to necessitate that these bids occur as close as practical to the start of each dispatch interval. It is only at that point that it can be determined that all information relevant to the dispatch interval has been considered.

- (b) Do you consider the proposed rule to be practical and sufficiently clear as to when a generator must rebid following a change in material conditions and circumstances?

No, the proposed Rule change is contrary to how events evolve in the market and presupposes that material change can only occur as discrete events. For example, a generator's rebid may be the response to a series of unrelated but cascading events occurring over an extended period of time. It is not clear under these circumstances when a rebid should have occurred.

- (c) Do you consider that rebids should only be limited to the occurrence of a significant change in conditions and circumstances? If so, how would this be achieved in practice?

InterGen believes that in practice there is not always a clear distinction as to what constitutes a significant change in conditions and circumstances. Given the disparate nature of the NEM, it is unlikely that every change will affect generators in the same way, even those in the same region. The imposition of this limitation may discourage rebids that could have prevented a minor market disturbance from developing in a more complex condition.

Question 5

Do you consider it reasonable that all bids and rebids should be made with reference to published AEMO data?

InterGen considers it unreasonable and overly restrictive to limit bid and rebids only to published AEMO data. It presupposes that good faith bids can only be made when referenced to AEMO data. It reduces the ability of price to reflect all information relevant to the market (i.e. the discovery of privately held information) potentially leading to price distortions.

Typically a generator would have regard to publicly available data as well as its own internal conditions and analyses when determining how it structures its bids. Where rebids are driven by data not currently available in the public domain, these rebids act to increase market efficiency by signaling the existence of information that may be pertinent to all generators (e.g. a generator may have access to a specialty weather service that may be indicating a change not currently reflected in AEMO's data). Transparency is increased when all information is allowed to be freely reflected in bids as it becomes available from any source.

Question 6

- (a) What are your views on any of the options discussed above? Do you consider any of these options or any other options around the design of the bidding process to better address the issues raised in the rule change request?

InterGen supports the previous ACCC analysis which decided against pursuing the options stated. InterGen agrees with the ACCC that the options are likely to result in higher cost to the market and will prevent generators from actively managing risk associated with their plants.

- (b) Are there any approaches used in electricity markets in jurisdictions overseas that could provide insight into the development of options to address issues raised in the rule change request?

InterGen cautions against implementing any approach developed in jurisdictions with a dissimilar market structure to the NEM. Any options must be developed with consideration of the totality of operating within the NEM to ensure it remains consistent with the overall structure in place.

Conclusion

InterGen welcomes the thoroughness of approach undertaken by the AEMC with respect to the proposed Rule Change and we trust that the AEMC will carefully consider the issues we have raised.

InterGen believes the proposed rule change will not result in net benefits to the market and the promotion of the National Electricity Objective. Accordingly, InterGen does not support the Rule change.

Please feel free to contact Mr. Robert Pane on 07 3001 7124 regarding any queries on this submission.

Yours sincerely,



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