



29 October 2015

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

Dear Mr Pierce

**RE: SECOND 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 second *Draft Rule Determination - National Electricity Amendment (Bidding in good faith) Rule 2015*.

**About ERM Power Limited**

ERM Power is an Australian energy company that operates electricity generation and electricity sales businesses. Trading as ERM Business Energy and founded in 1980, we have grown to become the fourth largest electricity retailer in Australia, with operations in every state and the Australian Capital Territory. We are also licensed to sell electricity in several markets in the United States. We have equity interests in 497 megawatts of low emission, gas-fired peaking power stations in Western Australia and Queensland, both of which we operate.

**General comments**

As with our previous submissions to this process, we strongly support the changes proposed by the Commission. Given the urgency of the issues we would like to see process concluded and rule changes made. We note that we are now facing another summer with the possibility of a repeat of what we saw in Queensland last summer.

However, we do note that the second draft rule reflects some drafting improvements and believe this draft rule to be better than the previous version. The main difference between the first draft rule and the second draft rule is that the obligation on generators under proposed clause 3.8.22(c)(2a) to submit a report to the AER on each rebid made during the late rebidding period has been replaced with a requirement to instead make a contemporaneous record under clause 3.8.22(ca). ERM Power is comfortable with this change.

**PASA availability**

While this is a late amendment, we would like to suggest an addition that should be simple to implement for the Commission. Generators not only put in bids for dispatch but also put in offers relating to future availability that contribute to system planning and price outcomes: these are Projected Assessment of

System Adequacy (PASA)<sup>1</sup> offers. Participants are currently free to make PASA offers which may be as misleading for the performance of the NEM and the associated financial markets as the market participant bidding behaviour of concern to date. We suggest that market participants' PASA offers should be treated with the same rigour as dispatch bids. This is to provide for a consistent approach to the range of generator inputs to the market.

We note that the current wording of Clause 3.8.22A only covers dispatch periods; PASA periods are currently not included. ERM Power believes that 3.8.22A should also cover PASA availability offers, and could be amended with insertions as shown in the underlined sections below:

**3.8.22A Offers, bids and rebids must not be false or misleading**

(a) A *Scheduled Generator, Semi-Scheduled Generator* or *Market Participant* must not make a PASA availability offer, dispatch offer, dispatch bid or rebid that is false, misleading or likely to mislead.

(a1) For the purposes of paragraph (a), the making of a PASA availability offer, dispatch offer, dispatch bid or rebid is deemed to represent to other *Generators* or *Market Participants* through the medium term PASA, short term PASA, pre-dispatch schedules published by AEMO that the offer, bid or *rebid* will not be changed, unless the *Generator* or *Market Participant* becomes aware of a change in the material conditions and circumstances upon which the offer, bid or *rebid* are based.

(b) Without limiting paragraph (a), a PASA availability offer, dispatch offer, dispatch bid or rebid is deemed to be false or misleading if, at the time of making such an offer, bid or *rebid*, a *Scheduled Generator, Semi-Scheduled Generator* or *Market Participant*:

(1) does not have a genuine intention to honour; or

(2) does not have a reasonable basis to make;

the representations made by reason of paragraph (a1).

(b1) In any proceeding in which a contravention of paragraph (a) is alleged, in determining whether a *Scheduled Generator, Semi-Scheduled Generator* or *Market Participant* made a PASA availability offer, dispatch offer, dispatch bid or rebid that was false, misleading or likely to mislead, a court must have regard to the market design principle set out in clause 3.1.4(a)(2).

A definition of PASA availability offer would be inserted as follows:

*PASA availability offer* – an offer for *physical plant capability* for the *medium term PASA* or *short term PASA* made in accordance with Clause 3.7.

## Analysis of costs and benefits

ERM Power supports the cost-benefit analysis in the revised draft determination. This analysis clearly demonstrates a significant benefit to consumers from the proposed rule changes.

We contend that most generators already maintain some form of database of rebid reasons and the underlying cause/reason for a rebid. Maintaining a contemporaneous record for a rebid submitted during the proposed late rebidding period as set out in the proposed rule is not a significant or unwarranted

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<sup>1</sup> PASA is a reserve outlook published by AEMO for both the short and medium term, as covered by Clause 3.7 of the National Electricity Rules. Short Term PASA (ST PASA) is a seven-day half-hourly reserve outlook which AEMO publishes every two hours. Medium Term PASA (MT PASA) is a two-year daily peak reserve outlook which AEMO publishes at least once per week. Market participants are required by the Rules to provide input to AEMO to allow it to meet its obligations.

increase in the current regulatory burden. Accordingly, the time required for market participants to implement the required internal procedural changes should not be considered by the Commission to require a lengthy delay in commencement of the new rules.

Given that the marginal costs and implementation requirements for these proposed rule changes are not likely to be significant, and any delay to implementation of the proposed rules will result in additional economic loss to consumers, ERM Power believes these rule changes should be implemented as soon as practical, and certainly no later than 1 July 2016.

Please contact me if you would like to discuss this submission further.

Yours sincerely,

[signed]

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