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Chris Spangaro
Senior Director
Australian Energy Market Commission
Sydney



Submitted online via: www.aemc.gov.au/Contact-Us/Lodge-a-submission?nodeid=24839

Your ref: ERC0166

Dear Mr Spangaro

Submission in response to the Australian Energy Market Commission's (AEMC) draft determination on wholesale market participants bidding in good faith

The Public Interest Advocacy Centre (PIAC) thanks the AEMC for the opportunity to provide comment on its draft determination for the bidding in good faith rule change process (the Draft Determination). The current process is examining the arrangements under which electricity generators make bids into the wholesale market settlement system operated by the Australian Energy Market Operator (AEMO). The rule change proposal for this review was submitted by the South Australian Minister for Mineral Resources and Energy, as the appointed Minister to advance rule change processes identified by and agreed to by all Australian jurisdictions through the Council Of Australian Governments (COAG) Energy Council.

The AEMC has not accepted the rule change proposal, but has instead made a 'more preferable draft rule which adopts elements' of the South Australian Minister's proposal.¹ PIAC supports the intent of the proposed rule change and the AEMC's Draft Determination to strengthen the provision about the intent of wholesale supplier bidding behaviour.

Outcomes in the wholesale market and the need for a change to current arrangements

The final price paid by residential electricity consumers is made up of components determined in three markets (wholesale, network and retail). The market for network services is a natural monopoly, meaning economic regulation is used to try and impose the rigour of competitive pressure on the operation of suppliers. The wholesale and retail markets are more competitive, with suppliers having a significant degree of freedom to set their own prices. Nonetheless, the wholesale and retail energy markets are heavily regulated, under the extensive provisions in the National Electricity and Gas Laws and Rules (NEL/NGR/NER/NGR) and the National Energy Retail Rules (NERR).

Wholesale trading of electricity National Energy Market (NEM) occurs between a price cap of \$12,500/MWh and minus \$1,000/MWh. This huge range, and the possibility of negative prices, are designed to send strong signals to suppliers about when more or less generation capacity is needed in the market. The AEMO settlement system also allows suppliers to change their bid for the price at which their output will be supplied to the market regularly. It is through repeated interactions and changes of position amongst market participants that the wholesale market is expected to reach its "equilibrium".

However, the premise of the rule change proposal is that after circumstances in the market change (for example, total demand increases or decreases) suppliers delay making rebids in order to improve their own outcomes. For example, suppliers may delay making a rebid until just before a trading interval ends (and the price for that interval is set), in order to 'limit the opportunity for potential responses from other

¹ AEMC, 2015, *Information sheet: Bidding in good faith*, 1.

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participants'.² This can lead to poor outcomes for buyers in the wholesale market. For example, where a supplier does not lower the asking price due to increased available supply until just before dispatch, the buyer may not be able to resubmit their own, lower, offer.

PIAC shares the concern of the rule change proponents that the current provisions that a bid must be made in good faith do not always drive good outcomes for consumers. PIAC believes that the majority of rebids observed in the NEM, and the significant price fluctuations, are features of an effective wholesale market. Nonetheless, where a generator has made one bid (in good faith) and then its circumstances change (the amount of supply is has available to dispatch to the market increases), it will again make a decision to rebid, which will also be in good faith. However, as noted by the AEMC, during the time between when a decision is made to rebid and that rebid is submitted, 'the existing offer becomes misleading'.³ If such behaviour seeks to take advantage of the end of trading intervals, the market will not be able to function effectively.

Where it occurs, PIAC agrees with ERM power that 'deliberately targeting the end of a trading interval for the purpose of avoiding a competitive response is unreasonable'.⁴ In PIAC's opinion, such behaviour represents 'gaming' of the wholesale market. However, PIAC also accepts that any business is entitled (and should be expected) to seek to maximise its profit in any way that the law allows. PIAC notes, for example, the assertion from GDF Suez that 'late bidding is a misnomer' and that 'just in time bidding' contributes to 'market structures [that] are responsive to oligopolistic bidding behaviour – as is expected'.⁵

PIAC, therefore, supports the efforts of the COAG Energy Council and the AEMC to change the law governing bidding behaviour in the wholesale market. Further, PIAC supports the proposal in the Draft Determination, to replace current provisions with 'a prohibition against making false or misleading offers'.⁶ PIAC takes the view that such a provision is likely to improve outcomes for consumers in the wholesale market.

Recommendation

PIAC recommends that the AEMC make a Final Determination that places a requirement on generators to not make false or misleading offers to the wholesale market.

Once again, PIAC thanks the AEMC for the opportunity to provide comment on the Fact Sheet. If you would like any further information, please do not hesitate to contact me, or Oliver Derum, Senior Policy Officer in PIAC's Energy and Water Consumers' Advocacy program, on 02 8898 6518, or oderum@piac.asn.au.

Yours sincerely



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² Ibid 2.

³ Ibid.

⁴ McKay, D, 2015, *ERM Power presentation to bidding in good faith forum*, slide 9. Available at: <http://www.aemc.gov.au/Rule-Changes/Bidding-in-Good-Faith>

⁵ Lowe, 2015, *GDF Suez presentation to bidding in good faith public forum*, slide 4. Available at: <http://www.aemc.gov.au/Rule-Changes/Bidding-in-Good-Faith>

⁶ AEMC, above n 1, 1.