

Mr John Pierce
Chairman
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Market Design and Regulatory Affairs

Your ref. ERC0166
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Swindon, UK, 22 October 2015

Dear Mr Pierce

Second Draft Determination: National Electricity Amendment (Bidding in Good Faith) Rule 2014

RWE Supply & Trading (RWEST) very much welcomes the opportunity to comment on AEMC's second draft rule determination in respect of the National Electricity Amendment (Bidding in Good Faith) Rule 2014.

RWEST agrees with the AEMC that the second draft rule will better contribute to the achievement of the National Electricity Objective than the existing rule and the proposed rule. The prohibition on false and misleading bids and offers, the requirement for timely rebidding and the associated record keeping and evidential standards represent a significant improvement over both the current rule and the proposed rule.

RWEST supports the amendments to the text in the second draft determination. In particular, the separation of the "intent to honour" and the "reasonable basis" tests provides a significant improvement in the ability to effectively enforce the provisions. As AER has noted, it will usually be difficult to prove an absence of intent. For the provisions to have any effect, therefore, it is crucial that evidence can also be drawn from the prevailing circumstances and patterns of behaviour. The clarification of the nature of the representation - that bids will not be changed absent changes in material conditions and circumstances - also provides greater certainty on the nature of the representation and the potential breaches.

RWEST would, however, suggest that the text of the prohibition is modified to clarify further the "ongoing representation" made by bids and offers. As AEMC notes in its reasoning "*If a generator were to change its intentions for dispatch, and decided to make a rebid to reflect its changed intention, then its existing offer (and its representation to the market) would become misleading until it actually made such a rebid*".¹ As the text stands it would capture a failure to make the rebid as soon as practicable, but does not actually render the original bid false or misleading. Instead both clauses 3.8.22(A)a ("*must not make*") and 3.8.22(A)b

¹ Page 49, Draft Rule Determination; National Electricity Amendment (Bidding in Good Faith) Rule 2015, AEMC, 17 September 2015.

(“at the time of making such an offer, bid or rebid”) appear to apply only when the bids and offers are first made. The text could therefore be strengthened further by explicitly referencing the ongoing nature of the representation as follows.

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 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 dispatch offer, dispatch bid or rebid is deemed **to be an ongoing representation** to other Generators or Market Participants through the 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. Draft National Electricity Amendment (Bidding in good faith) Rule 2015

(b) Without limiting paragraph (a), a 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).

RWEST also believes that the late rebid logs should be published rather than just being available to AER on request. While the provisions represent an incremental improvement in allowing AER to better scrutinise late rebids, they are not sufficient to ensure wider market understanding and scrutiny of the fundamental drivers and pattern of late rebids. We see little additional cost or downside in the routine reporting or publication of this information and disagree with the views set out in the Generator Cost Assessment. Nearly all of the cost will be driven by the need to build and populate a late rebid log. With the log in place, the incremental cost of disseminating that log to AER or more widely is virtually zero.

As outlined in our responses to the Options Paper² and First Draft Determination³, RWEST remains of the view that the prohibition on false and misleading offers and bids should form part of a wider framework for market

² RWEST Submission to Options Paper: National Electricity Amendment (Bidding in good faith) Rule 2014, RWEST, 6 February 2015.

³ RWEST Submission on Draft Rule Determination: National Electricity Amendment (Bidding in Good Faith) Rule 2015, 10 June 2015

integrity and transparency to require routine disclosure of inside information and to adopt market conduct rules that cover both the physical and financial markets.

I hope RWEST's comments are helpful in finalising the rules and please do not hesitate to contact me if you would like to discuss any aspect of our response further.

Yours sincerely



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