13 November 2015

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

Submitted online: www.aemc.gov.au

Dear Mr Pierce

ERC0166 – Bidding in good faith

Origin Energy (Origin) appreciates the opportunity to provide comments to the Australian Energy Market Commission (Commission) Second Draft Rule Determination on bidding in good faith. The points raised below focuses on the application of certain key provisions of the draft rule.

Deeming provision

Origin notes the inclusion of clause 3.8.22A(a1) and the introduction of an objective test in the draft rule whereby in *some cases* a generator's intention will not have to be proven for a breach of the rules to be established. Notwithstanding the example given in the draft determination (regarding the observation of a generator's pattern of behaviour), it is not entirely clear that in establishing a breach of the rules, under what circumstances the Australian Energy Regulator (AER) would not be required to prove that the generator did not have a genuine intention of honouring a bid. It would be helpful if this issue is clarified in the Final Determination.

Generally, Origin considers it important that in seeking to determine whether a breach has occurred, the AER should examine both limbs of the deeming provision – i.e. a generator's intention, and the basis on which the bid is made. Both criteria in our view are crucial in determining whether a bid or rebid is false and misleading, and should be considered jointly. Seeking to establish a breach by focusing on one of these criteria in isolation may not provide the complete picture of the circumstances around a particularly rebidding activity.

Clause 3.8.22A(e)(2)

The AEMC acknowledges that the inclusion of clause 3.8.22A(e)(2) has caused some confusion with the initial drafting giving the impression that in making a rebid, a generator would need to take into account the ability for other market participants to respond . Origin welcomes the AEMC's attempt to clarify this issue in the second draft determination by stating that the ability for others to respond is only an aspiration and not a positive obligation on the generator. Nevertheless, Origin is still concerned that the inclusion of this clause (and that it is a mandatory consideration for a court in contemplating a potential breach of the Rules) is likely to unduly prejudice the court when considering if a rebid is made as soon as practical. Implicit in the inclusion of the clause is the notion that, where rebids do not allow for others to respond there is some level of inefficiency, or potential breach. This would be erroneous given the nature of the electricity market's design is such that there will never be an opportunity for all participants to respond in a given trading interval.

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Requirement to keep contemporaneous records

The requirement for generators to keep a contemporaneous record is an improvement on the first draft rule where generators would have been required to provide a report to the AER for all late rebids. The keeping of a contemporaneous record, however, still has the potential to impose a significant compliance burden on generators. This is particularly the case over peak periods when the proportion of late rebids is likely to be greater. The Oakley Greenwood report suggests that the cost and compliance burden could be lowered with the exclusion of physical rebids from the record keeping regime. We would encourage the Commission to further consider exclusions of physical rebids so as to ensure that the record keeping requirements are better targeted, and to minimise compliance costs for participants.

Origin would also welcome a greater level of guidance as to the expected contents of the proposed contemporaneous record. This would help to inform the adequacy of our current trading logs.

Time for implementation

To ensure that there is sufficient time for: the training of staff on the requirements under the new Rule; the hiring of any additional personnel; and crucially the implementation of any required IT changes, Origin suggests that the Final Rule should not take effect no sooner than one year after the publication of the Final Determination. Such a transitional period is not unprecedented - we note that the AEMC allocated more than a year for the recent changes to ramp rates to take effect.

Should you have any questions or wish to discuss this information further, please contact me on (02) 9503 5111 or at steve.reid@originenergy.com.au

Yours sincerely,

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