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Rule Change Proposal: Prioritisation of Tied Controlled Withdrawal Bids

Dear Dr Tamblyn

I am writing to express concern on behalf of the Energy Supply Association of Australia (esaa) regarding the Australian Energy Market Commission's (AEMC) draft determination of 25 February 2010 to reject the 'Prioritisation of Tied Controlled Withdrawal Bids' Rule Change Proposal submitted by the Australian Energy Market Operator (AEMO). Several of esaa's members have responded to the draft decision and we do not seek to elaborate further on their arguments against the draft determination, but rather to express concern regarding the process by which AEMC has arrived at the conclusions of its draft determination.

The Rule Change Proposal seeks to introduce an alternate tie-breaking procedure for withdrawal bids at controllable withdrawal points on Victoria's Declared Transmission System (DTS). Currently, where two or more bids are tied, withdrawals are scheduled on a pro-rated basis. Under the alternate procedure, where two or more bids are tied then withdrawals that are associated with Authorised Maximum Daily Quantity (AMDQ)¹ would be scheduled first with remaining capacity scheduled on a pro-rated basis. As explained by AEMO, this would bring the tie-breaking procedure for controllable withdrawal bids into line with that currently operating for injection bids and is consistent with the existing practise of giving preference during periods of load curtailment to 'equally beneficial' withdrawal or injection bids that are associated with AMDQ.

As detailed by AEMO, extensive consultation on the proposal was conducted by VENCORP during 2008 and the first half of 2009 in the context of the Market and System Operations Rules, which now comprise Part 19 of the National Gas Rules (NGR). Further consultation was also conducted by AEMO in the second half of 2009 prior to submitting the Rule Change Request. AEMO notes, on page 4 of the Rule Change Request, that the proposal is widely supported by participants in Victoria's Declared Wholesale Gas Market, including by all those who are directly impacted by it, and that no participants have directly opposed it. On behalf of market participants, AEMO contended that the Rule Change Proposal would enhance signals for investment in transmission infrastructure and would therefore meet the Rule Making Test applied by AEMC by contributing to the achievement of the National Gas Objective (NGO).

AEMC challenged the view of AEMO and market participants by stating on page i) of the draft determination that “[t]he Commission has decided it should not make the proposed Rule in respect of this Rule Change Request as it is not satisfied, based on the information it has considered to date, that the proposed rule change will or is likely to contribute to the achievement of the NGO”. In arriving at this conclusion AEMC considered that the arguments presented by AEMO with respect to the potential investment benefits of the Rule Change Proposal were not supportable. AEMO has since clarified its arguments in response to the draft determination. Additionally, AEMC considered three elements to the Rule Change Proposal that it deemed relevant to the NGO but that were not considered by AEMO in its Rule Change Request. These include the effect of the proposed Rule on allocative efficiency, market power and risk management.

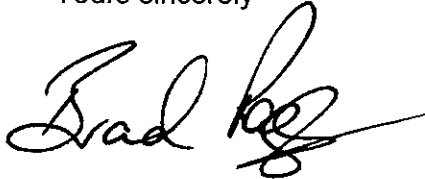
In light of a number of responses to the draft determination that identify some serious misapprehensions in AEMC’s analysis and conclusions, esaa considers that the processes relied upon to inform the draft determination have failed. Obviously, AEMC’s decision to dispense with the first round of consultation on the Rule Change Request is relevant. AEMO’s request to expedite consultation appears appropriate when considered in the context of extensive prior consultation and widespread support for the Rule Change Proposal. However, in choosing to dispense with the first round of consultation it would appear necessary for AEMC to have arrived at a preliminary judgement on the merits of the Rule Change Proposal, the adequacy of the Rule Change Request and the need, therefore, for further consultation. Given AEMC’s decision to reject the Rule Change Proposal, it would appear that the decision to dispense with consultation was not the correct one.

The decision to overrule a Rule Change Proposal that is widely supported by market participants and has been the subject of two years of consultation is a significant undertaking by AEMC. It is concerning, therefore, that the decision was made with the application of a heavy qualifier: ‘based on the information considered to date’. This implies deficiency in AEMC’s processes to gather and analyse evidence and consult with market participants and AEMO. In particular, esaa considers that AEMC should have sought to reconcile information deficiencies and differences in opinion between itself and AEMO prior to making the draft determination. Moreover, the draft determination presented very little by way of analysis or evidence to back up its concern that the Rule Change Proposal could lead to inefficiencies in the allocation of gas at the Culcairn withdrawal point.

While the rule change process allows for stakeholders to express concern in respect of a draft determination, the decision made inevitably signals a presumption that the final determination will reach the same conclusion unless evidence can be presented to overturn the conclusions. Arguably, in a case such as this, where the Rule Change Proposal had been subject to extensive consultation and is widely supported by market participants, it would appear appropriate that any presumption should favour of the proposed Rule.

Notably, this Rule Change Request is the first to be considered by AEMC since the National Gas Law (NGL) and NGR came into effect. AEMC's decision to reject the Rule Change Proposal with such limited consultation and analysis may be considered to have inappropriately "set the tone" for its regulatory approach to Australian gas markets and is therefore of concern to all market participants.

Yours sincerely

A handwritten signature in black ink, appearing to read "Brad Page". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Brad Page
Chief Executive Officer

Cc: The Hon. Martin Ferguson, MP – Chairman, Ministerial Council on Energy

¹ Authorised MDQ or AMDQ Credit Certificates provide limited capacity rights under the market carriage arrangements that operate in Victoria's Declared Wholesale Gas Market.