

**Petreski, Sonya**

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**From:** Fox, Gavin  
**Sent:** Thursday, 14 May 2020 1:02 PM  
**To:** Fox, Gavin  
**Subject:** Comments from AER staff on draft letter [SEC=UNCLASSIFIED]  
**Attachments:** Letter to Minister Frydenberg - Qld Generation -July 2017.DOCX; Letter to Minister Frydenberg - Qld Generation -July 2017.DOCX.tr5

**UNCLASSIFIED**

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**From:** Adams, Peter <peter.adams@aer.gov.au>  
**Sent:** Wednesday, 19 July 2017 1:45 PM  
**To:** Fox, Gavin <gavin.fox@aer.gov.au>  
**Subject:** A few comments and suggestions from me [SEC=UNCLASSIFIED]

Just reduced a few references to structure and added a bit about what not illegal

See what you think

Cheers

Peter

## Peter Adams

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 Please consider the environment before printing this email

The AER acknowledges the traditional owners and custodians of Country throughout Australia and recognises their continuing connection to the land, sea and community. We pay our respects to them and their cultures; and to their Elders past, present and future.

19 July 2017

Hon Josh Frydenberg MP  
Minister for the Environment and Energy  
Parliament House  
CANBERRA ACT 2600

Dear Minister

Thank you for your recent letter where you expressed concern about the bidding behaviour of Queensland generators and asked whether the AER requires additional powers to respond to these bidding practices.

As you are aware, the National Electricity Market ~~wholesale market~~ design relies on competition between generators to deliver efficient market outcomes for consumers. However, if appropriate structural arrangements are not in place and ~~there is not this~~ competitive tension between generators ~~is limited~~, there is a ~~stronger ability~~ greater potential for generators to for the exercise of market power ~~and driving~~ up the prices that consumers pay for electricity.

Queensland has a more concentrated generation sector than any other NEM region, with the exception of Tasmania. In Queensland, state owned corporations Stanwell and CS Energy control around 65 per cent of generation capacity. This concentrated market structure is a key driver of ~~the~~ market outcomes we ~~have seen at times are seeing~~ in Queensland ~~at present~~. It means that Stanwell and /or CS Energy must be dispatched at almost any level of demand.

~~This concentrated market~~ Such a structure also exacerbate~~s~~ ~~the impacts of recent market conditions we have seen in Queensland, such as during~~ periods of record demand and network limitations ~~between Queensland and New South Wales with neighbouring regions~~. ~~Without competitive tension in the region, these generators have the ability, through their bidding and rebidding strategies, to take advantage of these conditions and increase prices should they wish to do so.~~

As highlighted in your letter, the recent 'Bidding in Good Faith' Rule change explicitly prohibits false or misleading bids. We will actively pursue circumstances where we consider that the information provided to the market by generators is false or misleading.

~~However, the issue we see in Queensland is primarily a structural one.~~ The ability of generators ~~in Queensland~~ to influence prices by offering capacity at high prices

# Released under FOI

(economic withholding) - or presenting less capacity (physical withholding) are not against the Electricity Rules. This behaviour is also unlikely to be inconsistent with Competition law. Competition will only ever deliver better outcomes for consumers if appropriate structural arrangements are established first. Where structural impediments create significant market power, no form of energy market which relies on competition will be fully effective.

~~and by economic withholding results from the prevailing concentrated market structure. Minor changes to bidding and rebidding rules are unlikely to prevent generators with market power from pushing up wholesale prices.~~

Nonetheless, a number of enhancements to the AER's existing 'enforcement toolkit' could give us a greater capacity to understand and report on drivers of generator behaviour and respond to issues we see in the market. In particular, a power for the AER to gather oral evidence (equivalent to ~~the ACCC's~~ section 155 of the ACL power) would significantly enhance our capacity to conduct investigations into potential breaches of the Electricity Rules. This was recommended in the COAG Energy Council's Enforcement Review but not acted upon.

Similarly, clarity around our ability to obtain information and data – including contract market data – would support the AER's ability to undertake a range of market monitoring and reporting functions, such as our new role reporting into the effectiveness of wholesale market competition.

While these initiatives would not provide a 'magic-silver bullet' to ~~the-any~~ structural issues ~~we are observing~~ in the market, they would support a better understanding of market behaviour and provide the AER with an enhanced ability to respond to issues we see in the market. We consider that this could play an important role in providing on-going business and consumer confidence in the operation of our markets.

Should you or your staff require any further information in regards to matters raised in this letter, please do not hesitate to contact me on (03) 9290 1419 or Michelle Groves, the AER CEO on (03) 9290 1423.

Yours sincerely,

Paula W. Conboy  
Chair



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19 July 2017

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Minister for the Environment and Energy  
Parliament House  
CANBERRA ACT 2600

Dear Minister

Thank you for your recent letter where you expressed concern about the bidding behaviour of Queensland generators and asked whether the AER requires additional powers to respond to these bidding practices.

As you are aware, the National Electricity Market design relies on competition between generators to deliver efficient market outcomes for consumers. However, if appropriate structural arrangements are not in place and competitive tension between generators is limited, there is a greater potential for the exercise of market power driving up the prices that consumers pay for electricity.

Queensland has a more concentrated generation sector than any other NEM region, with the exception of Tasmania. In Queensland, state owned corporations Stanwell and CS Energy control around 65 per cent of generation capacity. This concentrated market structure is a key driver of market outcomes we have seen at times in Queensland. It means that Stanwell and /or CS Energy must be dispatched at almost any level of demand. Such a structure also exacerbated the impacts of recent periods of record demand in Queensland and network limitations with neighbouring regions.

As highlighted in your letter, the recent 'Bidding in Good Faith' Rule change explicitly prohibits false or misleading bids. We will actively pursue circumstances where we consider that the information provided to the market by generators is false or misleading.

However, the ability of generators to influence prices by offering capacity at high prices (economic withholding) or presenting less capacity (physical withholding) are not against the Electricity Rules. This behaviour is also unlikely to be inconsistent with competition law.

Competition will only ever deliver better outcomes for consumers if appropriate structural arrangements are established first. Where structural impediments create

# Released under FOI

enduring market power, no form of energy market which relies on competition will be fully effective.

Nonetheless, a number of enhancements to the AER's existing 'enforcement toolkit' could give us a greater capacity to understand and report on drivers of generator behaviour and respond to issues we see in the market. In particular, a power for the AER to gather oral evidence (equivalent to section 155(1)(c) of the *Competition and Consumer Act 2010*) would significantly enhance our capacity to conduct investigations into potential breaches of the Electricity Rules. This was recommended in the COAG Energy Council's Enforcement Review but not acted upon.

Similarly, clarity around our ability to obtain information – including contract market data – would support the AER's ability to undertake a range of market monitoring and reporting functions, such as our new role reporting into the effectiveness of wholesale market competition.

While these initiatives would not provide a 'silver bullet' to any structural issues in the market, they would support a better understanding of market behaviour and provide the AER with an enhanced ability to respond to issues we see in the market. We consider that this could play an important role in providing on-going business and consumer confidence in the operation of our markets.

Should you or your staff require any further information in regards to matters raised in this letter, please do not hesitate to contact me on (03) 9290 1419 or Michelle Groves, the AER CEO on (03) 9290 1423.

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