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Australian Energy Market Commission
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Bidding in good faith – Draft Determination

The Energy Supply Association of Australia (esaa) welcomes the opportunity to make a submission to the Australian Energy Market Commission (AEMC) on the Bidding in good faith rule change.

The esaa is the peak industry body for the stationary energy sector in Australia and represents the policy positions of the Chief Executives of 37 electricity and downstream natural gas businesses. These businesses own and operate some \$120 billion in assets, employ more than 59,000 people and contribute \$24.1 billion directly to the nation's Gross Domestic Product.

As has consistently been affirmed by all parties, volatility in the spot price is an inherent and necessary feature of a market with the characteristics of the National Electricity Market (NEM). Flexibility is essential for maintaining a reliable system given the range of factors that impact on the dynamics of both demand and supply of electricity. As the AEMC has noted in the course of assessing this rule change, “an efficient functioning market need not provide an efficient price outcome in each and every dispatch interval. The iterative process of price discovery involves a dynamic process of participants learning and reacting to their competitors' action.”

The AEMC is of the view that some of the current volatility is due to late strategic rebidding. Work commissioned by the AEMC indicates that “since 2007 the occurrence of late rebidding, and timing of rebids towards the end of trading intervals, has been a recent phenomenon, occurring within the last two years and predominantly in Queensland and to some extent in South Australia.”

Analysis undertaken by the Australian Energy Market Operator (AEMO), where the actual data from the last two dispatch intervals (DIs) was replaced with the average of the first four DIs, suggested that late rebidding can both raise and lower the price. But in no region was there a significant divergence.

AEMO analysis - impacts on annual average prices due to late rebids by year and region (\$/MWh)

Year	NSW	QLD	SA	TAS	VIC
2010	\$0.08	-\$0.06	-\$0.04	-\$0.17	-\$0.02
2013	\$0.03	-\$0.22	-\$0.40	-\$0.03	\$0.08

Based on the information provided it is still not clear that late rebidding presents a material problem to the NEM, given that restricting bidding in a competitive market is not costless but undermines market efficiency in its own way. While the AEMC believes there is a problem, they do not consider that the rules are an effective means to compensate for factors outside of the rules, such as a non-competitive industry structure. As such, the AEMC has focused on giving effect to the original intent of the good faith provision, rather than wholesale changes to the market rules.

Essentially the type of behaviour the AEMC is seeking to prevent is deliberate late rebidding, with the intention to deny other market participants the ability to respond. The AEMC is of the view “deliberately delaying making such a rebid until close to dispatch, in order to limit the opportunity for potential responses from other participants, is not clearly counter to the existing rules.” The esaa agrees with the Commission that deliberately withholding a rebid is not desirable behaviour and should be prevented.

While the AEMC has proposed a number of changes to the rules to achieve this end, the key difference between the existing and proposed rule is the prohibition on delayed rebidding (sub-section 3.8.22A(d)). This provision requires a generator to make a rebid:

as soon as reasonably practicable after the Scheduled Generator, Semi-Scheduled Generator or Market Participant becomes aware of the change in material conditions and circumstances on the basis of which it decides to vary its dispatch offer or dispatch bid.

The current provisions only require a generator to act in good faith *at the time of* making a bid/rebid. Sub-section (d) now places an obligation on a generator to change their bid “as soon as reasonably practicable” once they have decided a rebid is necessary. This would ensure a generator’s bids are a true representation of their intentions.

As the AEMC wants to prevent strategic rebidding that is undertaken with the intent to prevent other generators responding, it is at one level understandable why the Commission has proposed sub-section 3.8.22A(e), in addition to sub-section (d). That said, we would argue that not only is sub-section (e) superfluous once a generator has an obligation under sub-section (d) to rebid as soon as possible, it runs the risk of creating a conflicting obligation.

Sub-section (e) requires the court to take account of one of the market design principles and whether other generators were able to respond to a rebid, when

assessing the behaviour of a generator. Sub-section (d) frames a generator's obligation internally, to act once they have formed a judgement. This approach requires the generator to act on information completely within its control. Sub-section (e) is framed with reference to other market participants. Leaving aside our previous concerns of how one would define who should be allowed to respond, it is not clear how a generator should respond if they have formed a view a rebid is necessary, but one or more market participants would not be able to respond if a rebid was lodged. We also question the benefit of cross referencing a single market design principle.

The esaa does not support any additional reporting requirements. At no point in this process has it been demonstrated that information collection provisions were an issue. The Australian Energy Regulator already has extensive information collection powers, as such it is not clear there are any benefits from an additional reporting requirement, but there will be additional costs.

The esaa finds it worrying that the Commission suggested one of the rationales for the new reporting requirement is to "require the generator to consider the trade-off between the necessity of the rebid and the requirement to provide a report". Using administrative costs to dissuade a generator from rebidding is not only poor policy, it is unlikely to dissuade the targeted behaviour. Increasing administrative costs may stop a generator rebidding incremental changes, reducing efficiency, but is unlikely to deter actions with malicious intent.

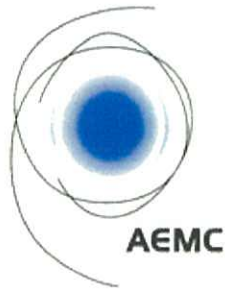
Based on the arguments above, we have set out some proposed changes to the draft rule in **Attachment A**.

Any questions about our submission should be addressed to Fergus Pope, by email to fergus.pope@esaa.com.au or by telephone on (03) 9205 3107.

Yours sincerely



Kieran Donoghue
General Manager Policy



Draft National Electricity Amendment (Bidding in good faith) Rule 2015

under the National Electricity Law to the extent applied by:

- (a) the National Electricity (South Australia) Act 1996 of South Australia;
- (b) the Electricity (National Scheme) Act 1997 of the Australian Capital Territory;
- (c) the Electricity - National Scheme (Queensland) Act 1997 of Queensland;
- (d) the Electricity - National Scheme (Tasmania) Act 1999 of Tasmania;
- (e) the National Electricity (New South Wales) Act 1997 of New South Wales;
- (f) the National Electricity (Victoria) Act 2005 of Victoria; and
- (g) the Australian Energy Market Act 2004 of the Commonwealth.

The Australian Energy Market Commission makes the following Rule under the National Electricity Law.

John Pierce
Chairman
Australian Energy Market Commission

Draft National Electricity Amendment (Bidding in good faith) Rule 2015

1 Title of Rule

This Rule is the *Draft National Electricity Amendment (Bidding in good faith) Rule 2015*.

2 Commencement

This Rule commences operation on [COMMENCEMENT_DATE].

3 Amendment of the National Electricity Rules

The National Electricity Rules are amended as set out in Schedule 1.

Schedule 1 Amendment to the National Electricity Rules

(Clause 3)

[1] Clause 3.1.4 Market Design Principles

Omit clause 3.1.4(a)(2), and substitute:

- (2) maximum level of *market* transparency in the interests of achieving a very high degree of *market* efficiency, including by providing accurate, reliable and timely forecast information to *Market Participants*, in order to allow for responses that reflect underlying conditions of supply and demand;

[2] Clause 3.8.22 Rebidding

Omit clause 3.8.22 in its entirety, and substitute:

3.8.22 Rebidding

- (a) Prices for each *price band* that are specified in *dispatch bids*, *dispatch offers* and *market ancillary service offers* are firm and no changes to the price for any *price band* are to be accepted under any circumstances.
- (b) Subject to clauses 3.8.3A, 3.8.7A, 3.8.19(a) and 3.8.22A, a *Scheduled Generator*, *Semi-Scheduled Generator* or *Market Participant* may submit a *rebid* to vary:
 - (1) its *available capacity*, *daily energy constraints*, *dispatch inflexibilities* and *ramp rates of generating units*, *scheduled network services* and *scheduled loads*; and
 - (2) the *response breakpoints*, *enablement limits* and response limits of *market ancillary services*,

previously notified in a *dispatch offer*, a *dispatch bid* or a previous *rebid*.
- (c) A *Scheduled Generator*, *Semi-Scheduled Generator* or *Market Participant* must provide:
 - (1) all *rebids* to *AEMO* electronically unless otherwise approved by *AEMO*;

Note

This clause is classified as a civil penalty provision under the National Electricity (South Australia) Regulations. (See clause 6(1) and Schedule 1 of the National Electricity (South Australia) Regulations.)

- (2) to *AEMO*, at the same time as the *rebid* is made:

- (i) a brief, verifiable and specific reason for the *rebid*; and
- (ii) the time at which the event(s) or other occurrence(s) adduced by the relevant *Generator* or *Market Participant* as the reason for the *rebid*, occurred;

Note

This clause is classified as a civil penalty provision under the National Electricity (South Australia) Regulations. (See clause 6(1) and Schedule 1 of the National Electricity (South Australia) Regulations.)

Note

Clause 3.8.22(c)(2) applies in respect of any *rebid* submitted during the *late rebidding period*.

~~(2a) to the *AER*, in respect of any *rebid* made during the *late rebidding period* (unless an exemption granted under paragraph (ca) applies), a more detailed report (a *late rebid report*), to be submitted within the time after the *rebid* specified in, and otherwise to be prepared in accordance with, guidelines published by the *AER*, explaining:~~

- ~~(i) the material conditions and circumstances giving rise to the *rebid*;~~
- ~~(ii) the *Generator's* or *Market Participant's* reasons for making the *rebid*;~~
- ~~(iii) the time at which the relevant event(s) or other occurrence(s) occurred; and~~
- ~~(iv) the time at which the *Generator* or *Market Participant* first became aware of the relevant event(s) or other occurrence(s); and~~

Note

This AEMC will be recommending to the COAG Energy Council that this clause be classified as a civil penalty provision under the National Electricity (South Australia) Regulations.

- (3) to the *AER*, upon written request, in accordance with guidelines published by the *AER*, such additional information to substantiate and verify the reason for a *rebid* as the *AER* may require from time to time.

Note

This clause is classified as a civil penalty provision under the National Electricity (South Australia) Regulations. (See clause 6(1) and Schedule 1 of the National Electricity (South Australia) Regulations.)

- ~~(ca) The AER may, in accordance with guidelines published by the AER, exempt a *Scheduled Generator*, *Semi-Scheduled Generator* or *Market Participant*, or a class of *Generators* or *Market Participants*, from the obligation to submit a *late rebid report* under paragraph ~~(c)(2a)~~, subject to such conditions as the AER deems appropriate.~~
- (d) The AER must provide information provided to it in accordance with paragraph (c)(2a) or (c)(3) to any *Scheduled Generator*, *Semi-Scheduled Generator* or *Market Participant* that requests such information, except to the extent that the information can be reasonably claimed to be *confidential information*.
- (e) The guidelines referred to in paragraphs ~~(c)(2a)~~, (c)(3) and ~~(ca)~~ must be developed in accordance with the *Rules consultation procedures* and must include:
 - (1) the amount of detail to be included in the information provided to AEMO under paragraph (c)(2);
 - ~~(1a) the format and prescribed content of the *late rebid reports* to be provided to the AER under paragraph (c)(2a);~~
 - ~~(1b) criteria for the AER to grant any exemption under paragraph ~~(ca)~~ from the requirement to provide a *late rebid report*; and~~
 - (2) procedures for handling claims by *Scheduled Generators*, *Semi-Scheduled Generators* or *Market Participants* in accordance with paragraph (d) or clause 3.8.19(b)(2) that the information provided to the AER by such *Generators* or *Market Participants* under those clauses is *confidential information*.
- (f) The AER must *publish* the guidelines developed under this clause 3.8.22 and may amend such guidelines from time to time.
- (g) AEMO must:
 - (1) subject to the *Scheduled Generator*, *Semi-Scheduled Generator* or *Market Participant* complying with paragraphs (c)(1) and (c)(2)(i) and (ii), accept the *rebid*; and
 - (2) *publish*, in accordance with clause 3.13.4(p), the time the *rebid* was made and the reason provided by the *Scheduled Generator*, *Semi-Scheduled Generator* or *Market Participant* under paragraph (c)(2)(i).

[3] Clause 3.8.22A Variation of offer, bid or rebid

Omit clause 3.8.22A in its entirety and the heading, and substitute:

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.
- (b) Without limiting paragraph (a), a *dispatch offer*, *dispatch bid* or *rebid* is taken 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; and
 - (2) does not have a reasonable basis to represent to other *Market Participants*, through the *pre-dispatch schedules* published by *AEMO*, that it will honour,

that offer, bid or *rebid* if the material conditions and circumstances upon which the offer, bid or *rebid* are based remain unchanged until the relevant *dispatch interval*.

~~(b1) In any proceeding in which a contravention of paragraph (a) is alleged, in determining whether a *Scheduled Generator*, *Semi-Scheduled Generator* or *Market Participant* had a reasonable basis to represent to other *Market Participants* that it would honour a *dispatch offer*, *dispatch bid* or *rebid*, a court must have regard to the market design principle set out in clause 3.1.4(a)(2).~~

- (c) A *Scheduled Generator*, *Semi-Scheduled Generator* or *Market Participant* may be taken to have contravened paragraph (a) notwithstanding that, after all the evidence has been considered, the false or misleading character of the *dispatch offer*, *dispatch bid* or *rebid* (including the absence of either of the matters referred to in subparagraphs (b)(1) and (2)) is ascertainable only by inference from:
 - (1) other *dispatch offers*, *dispatch bids* or *rebids* made by the *Generator* or *Market Participant*, or in relation to which the *Generator* or *Market Participant* had substantial control or influence;
 - (2) other conduct (including any pattern of conduct), knowledge, belief or intention of the relevant *Generator* or *Market Participant*;
 - (3) the conduct (including any pattern of conduct), knowledge, belief or intention of any other person;
 - (4) information published by *AEMO* to the relevant *Generator* or *Market Participant*; or
 - (5) any other relevant circumstances.

(d) A *rebid* must be made as soon as reasonably practicable after the *Scheduled Generator*, *Semi-Scheduled Generator* or *Market Participant* becomes aware of the change in material conditions and circumstances on the basis of which it decides to vary its *dispatch offer* or *dispatch bid*.

~~(e) In any proceeding in which a contravention of paragraph (d) is alleged, in determining whether the *Generator* or *Market Participant* made a *rebid* as soon as reasonably practicable, a court must have regard to:~~

~~(1) the market design principle set out in clause 3.1.4(a)(2); and~~

~~(2) whether the *rebid* was made in sufficient time to allow reasonable opportunity for other *Market Participants* to respond (including by making responsive *rebids*, by bringing one or more *generating units* into operation or increasing or decreasing the *loading level* of any *generating units*, or by adjusting the *loading level* of any *load*) prior to:~~

~~(i) the commencement of the *trading interval* to which the *rebid* relates; or~~

~~(ii) the commencement of any *dispatch interval* within that *trading interval*.~~

Note

The AEMC will be recommending to the COAG Energy Council that clause 3.8.22A continue to be classified as a rebidding civil penalty provision for the purposes of the National Electricity Law. (See clause 6(2) of the National Electricity (South Australia) Regulations.)

[4] Chapter 10 New Definitions

In chapter 10, insert the following definitions in alphabetical order:

~~*late-rebid report*~~

~~A report provided by a *Scheduled Generator*, *Semi-Scheduled Generator* or *Market Participant* to the *AER* pursuant to clause 3.8.22(c)(2a).~~

~~*late-rebidding period*~~

~~In respect of a *trading interval*, the period beginning 15 minutes before the commencement of the *trading interval*.~~

[5] Chapter 10 Substituted definitions

In chapter 10, substitute the following definition:

rebid

A variation to a bid or offer made in accordance with clause 3.8.22(b).
