



11 June 2015

Mr John Pierce  
Chairman  
Australian Energy Market Commission  
PO Box A2449  
SYDNEY SOUTH NSW 1235

Submitted Electronically: ERC0166

Dear Mr Pierce,

### **Draft Determination - National Electricity Amendment (Bidding in good faith) Rule 2014**

Alinta Energy (**Alinta**) welcomes the opportunity to make a submission in response to the draft recommendation prepared by the Australian Energy Market Commission (**AEMC**) on the proposed National Electricity Amendment (Bidding in good faith) Rule 2014 that was lodged by the South Australian Minister for Mineral Resources and Energy.

Alinta is an active investor in the energy retail, wholesale and generation markets across Australia. Alinta has around 2500 megawatts of generation capacity in Australia (and New Zealand) and a growing retail customer base of over 820,000.

Alinta actively trades in the National Energy Market (**NEM**), notably in the “spot market”, and utilises rebidding for its generation fleet based on asset and market conditions.

### **AEMC’s Draft Determination**

The AEMC’s *more preferable rule change*<sup>1</sup> has recommended a number of changes to the existing rules related to bidding behaviour of generators and the design of the bidding process. These recommendations include:

- Participants must not make offers, bids or rebids that are false, misleading or likely to mislead.
- A bid or rebid would be seen as misleading if, at the time of making the bid or rebid, the participant does not have a genuine intention to honour that bid or rebid if the material conditions and circumstances upon which the bid or rebid are based remain unchanged until the relevant dispatch interval.

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<sup>1</sup> While, the AEMC is entitled to progress more preferable rule changes under section 91A of the National Electricity Law, Alinta is of the view that in this instance, this power has unnecessarily broadened the scope of the rule change proposal, and has in fact altered some of the intentions of the original proponents rule change submission. The AEMC should have rejected the original rule change proposal from the outset as it did not meet the National Electricity Objective, and not proposed a more preferable rule change at all.

- If a participant changes their intentions for dispatch, and wishes to make a rebid to reflect those changed intentions, the participant must make the rebid as soon “as reasonably practicable”.
- The history and patterns of a participants rebids may be used by the Australian Energy Regulator (**AER**) to infer whether a participant has a reasonable basis to represent that it will honour a bid or rebid.
- Removal of the existing limitations on the material circumstances that may give rise to a rebid.
- For each rebid made less than 15 minutes before the commencement of the relevant trading interval, the rebidding participant must provide a report to the AER setting out in detail the reasons for making the rebid at that time.

It is within this context that Alinta provides its views on the AEMC’s draft recommendation.

### **Alinta’s views on the draft recommendation**

Throughout the consultation process, Alinta has maintained that based on the material presented; there is no evidence that rebidding represents a market failure in the NEM or that any material problems are being created by “late rebidding”. Additionally, Alinta maintains the view that the NEM has developed effectively overtime to a stage where it is well equipped to deal with any potential issues associated with rebidding.

Alinta welcomes the rejection by the AEMC in its draft recommendation of several of the more burdensome and extreme options, as presented in previous consultation papers; such as early gate closure and a complete ban of rebidding. Based on the AEMC’s draft recommendation, Alinta agrees with the AEMC’s analysis and supports the following recommendations being enacted into law:

- Replacing the existing good faith provisions, with a new requirement that participants do not make offers or rebids that are false, misleading or likely to mislead.
- Introducing provisions which would allow for a bid or rebid to be seen as misleading if, at the time of making the bid or rebid, the participant does not have a genuine intention to honour that bid or rebid if the material conditions and circumstances upon which the bid or rebid are based remain unchanged until the relevant dispatch interval.
- Removal of the existing limitations on the material circumstances that may give rise to a rebid.

However, Alinta has some concerns around elements of the following recommendations, and requests that the AEMC provide further details of how such proposals could work in practise so as to enable participants to provide informed advice:

- If a participant changes their intentions for dispatch, and wishes to make a rebid to reflect those changed intentions, the participant must make the rebid as soon “as reasonably practicable”.
- The history and patterns of a participants rebids may be used by the AER to infer whether a participant has a reasonable basis to represent that it will honour a bid or rebid.

Finally, Alinta disagrees with the AEMC’s following recommendation:

- For each rebid made less than 15 minutes before the commencement of the relevant trading interval, the rebidding participant must provide a report to the AER setting out in detail the reasons for making the rebid at that time.

These views are outlined further below.

### **Submitting rebids as soon as is “reasonably practicable”**

The AEMC’s draft recommendation seeks to recast participant bids as a continuing representation of their willingness to provide generation capacity at the prices specified. From the moment a participant has formed the intention to make a rebid, their original offer would become misleading if they delay submitting a rebid – subsequently requiring, rebids to be submitted as soon as is “reasonably practicable”.

Broadly, Alinta supports participants submitting rebids in a manner which provides accurate, reliable and timely information to the market. The proposed recommendation generally appears to concur with this principle. However, in a practical sense the enforcement of this provision is less clear, as various participants have substantially different bidding and dispatch systems, meaning the time between the submission of rebids, or the time required to bring generating units into operation/adjusting output levels will undoubtedly vary between participants, and between the type of generation plant in question.

Alinta would appreciate the AEMC providing additional guidance as to how this provision would potentially be assessed in practise. Additionally, Alinta suggests that industry consultation be included when developing the technical guidelines associated with this provision.

### **Inference of generator intent based on history and patterns of rebids**

The AEMC’s draft recommendation introduces provisions which would allow for an inference to be made by the AER (or potentially a court) about a generator’s genuine intention to honour its offer or rebid, based on that generator’s history and patterns of re-bidding behaviour. In practise, Alinta understands this would allow for the AER (or a court) *“to take into account, repeated very late rebidding where the generator has repeatedly failed to honour its offers absent a change in material conditions and circumstances”*.

Alinta considers that these provisions raise some concerns. In practise, these provisions may require the AER to make a subjective assessment of participants bidding behaviour, from the perspective of a third party who is not directly exposed to the market and does not have an intricate knowledge of bilateral commercial arrangements which may be in place. For example, frequent small changes in the wholesale price may be the strike price trigger for a bilateral cap or swap contract, and this could subsequently cause the participant to rebid.

However from the perspective of the AER, the market does not appear to materially change, yet the participant under scrutiny appears to be continually submitting rebids. It would be a detriment to the intent of these provisions, if a participant’s innocuous history of rebid patterns were then used in an assessment by the AER (or a court) in assisting enforcement action for another separate rebidding instance. In short, Alinta would be concerned with the AER taking a subjective assessment of a market participant’s past behaviour, in absence of an understanding of their commercial position.

Given this concern, Alinta would support the AEMC elaborating on how an assessment of a generator’s previous rebidding patterns and history may be undertaken in practise under the proposed provisions.

### **Imposition of additional reporting requirements**

The draft rule introduces new reporting requirements for rebids made during, or less than 15 minutes before the commencement of, the trading interval to which the rebid applies. As part of the new reporting obligations, generators would have to provide a report to the AER setting out in detail the reasons for making the rebid at that specific time. Additionally, a civil penalty would apply to a breach, if a participant failed to submit their report.

Alinta understands that the content and format of the reports will be determined by the AER through their Rebidding and Technical Parameters Guidelines and as such the reports are likely to require the following information:

- In detail descriptions of the nature of the change in market conditions and circumstances which led to the submission of a rebid.
- How the change in market conditions directly related to the generator in question and why those conditions led to a rebid.
- The exact time at which the change in market conditions occurred.
- The exact time at which the participant became aware of the change in market conditions, which led to the decision to submit a rebid.

It is Alinta's view that if the above reporting requirements were deemed necessary at the time of each rebid, this would present an onerous compliance burden.

As has been well documented throughout the consultation process, instances of rebidding are infrequent, and are limited to case by case scenarios often arising from a unique set of conditions in the market such as planned or unplanned transmission outages. There is little evidence of systemic rebidding in the NEM. In particular, the work undertaken by ROAM Consulting and Oakley Greenwood suggests that the occurrence of late rebidding, and rebidding towards the end of the trading intervals, has been a recent phenomenon, occurring within the last two years and predominantly in Queensland. Given this regionalised problem, the case for introducing new reporting obligations for all NEM market participants appears a heavy handed response to a perceived "problem" that has not to date been effectively proven to be of material consequence to the entire market.

As such, Alinta does not consider that "the rebidding problem" is material enough to warrant substantial changes to the NEM wide market reporting obligations. If enacted, additional reporting obligations would simply introduce unnecessary and onerous compliance obligations for traders, the financial costs of which are real and measurable. If enacted this would directly increase the compliance costs of market participants, which would ultimately flow back to consumers for little to no corresponding benefit.

To conclude, Alinta does not consider the draft recommendation has justified the introduction of additional reporting obligations.

### **Conclusion**

Throughout the rule change process, Alinta has maintained that there is no evidence that rebidding represents a market failure in the NEM or that any material problems are being created by "late rebidding".

Nonetheless, as outlined above, broadly Alinta supports the majority of the AEMC's recommendations, however would urge the AEMC to elaborate on how elements of how some components of the draft recommendation could be enforced in practise.

Additionally, Alinta does not support the introduction of additional reporting obligations for rebids within the NEM. Alinta would urge greater consideration of the regulatory compliance costs such a measure would introduce. Such costs create inefficient prices which are ultimately passed on to consumers.



Should you have any queries in relation to this submission, please do not hesitate to contact Fiona Wiseman on, telephone, (08) 9486 3009.

Yours sincerely,

A handwritten signature in black ink that reads "M Shepherd".

**Michelle Shepherd**  
General Manager Government and Regulatory Affairs