



16 June 2015

Mr John Pierce
Chairman
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 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 (AEMC or Commission) draft rule determination on bidding in good faith.

Materiality of the problem

Origin continues to maintain that any issues associated with late rebidding have not been proven to be systemic or having a significant adverse impact on overall market efficiency. With this in mind it is crucial that any increased regulatory activity in this area is proportionate to the issues at hand. Much of the concern around late rebidding is confined to particular jurisdictions and Origin agrees with the Commission that rules are not an effective means of dealing with outcomes primarily driven by market structure. As we explain below, Origin is concerned that certain aspects of the draft rule represent a disproportionate response to any perceived problems around late rebidding.

Application of the draft rule

Origin considers that clause 3.8.22A(e) of the draft rule is unreasonable, impractical and likely to result in inefficient market outcomes. Imposing a requirement for rebids to be made in sufficient time to allow a reasonable opportunity for other participants to respond is out of step with the practical operation of the National Electricity Market (NEM) and runs the risk of limiting legitimate rebidding. Origin has concerns as to how the rule could be applied in practice in that it is not clear for example, what generation technology should be considered in responding to a rebid. Should a trader consider: the responsive capability of a hydro or gas peaking plant or a baseload generator; or whether a unit is synchronised with the grid; or the time required to synchronise and ramp-up? In any case we consider it unreasonable that a generator should be required to consider such factors in making a rebid, and as such clause 3.8.22A(e) should be removed.

There is likely to be an inherent level of ambiguity in the application of clause 3.8.22A(d) in that consideration of what is reasonably practicable would be imprecise and dependent on individual circumstances. For example factors such as internal governance arrangements, and the response to a physical failure of a source of supply could result in a disconnect between the observation of a change in market circumstances and a decision to rebid in response. The draft determination should have regard to such situations to assist in the interpretation and application of the rule.

The draft rule removes the safe harbour that currently exists under the good faith provision.

We consider the safe harbour should be retained as it reduces the level of uncertainty in how a rule may be applied by demonstrating what behaviours are likely to comply with the rule requirement. This assists business compliance programs by enabling managers to educate and inform traders of what is acceptable and likely to comply with a rule requirement and what is not. This becomes more difficult if a trader is educated and informed on the basis of what not to do in order to comply with a rule requirement.

We do not consider retaining a safe harbour under clause 3.8.22A(b) would materially change the meaning or enforceability of the false or misleading. As indicated above, the benefit of retaining a safe harbour is in how the rule is incorporated in practice within business compliance programs to ensure participants comply with the rule and promote the efficient operation of the market. A suggested rewording of 3.8.22A(b) is attached in appendix A.

Reporting

A case for the imposition of an additional reporting requirement has not been made. The AER already has existing powers¹ to require participants to provide written information on request and it has not demonstrated that these powers are insufficient in investigating any potential breaches of the rebidding provisions. It is also not clear that the proposed additional reporting requirements will be an improvement on the status quo and it is our view that it will increase the compliance burden for participants by capturing all late rebids. This is likely to result in more conservative bidding strategies and consequently inefficient spot market outcomes.

Should you have any questions or wish to discuss this information further, please contact Ashley Kemp on (02) 9503 5061 or ashley.kemp@originenergy.com.au.

Yours sincerely,



Steve Reid
Manager – Wholesale Regulatory Policy
Energy Risk Management

¹ Clause 3.8.22(c)(3)

1. Materiality of the problem

Origin continues to maintain that the AEMC has not demonstrated that late rebidding has had a significant adverse impact on the market. Analysis undertaken for the Commission has indicated that the incidence of late rebidding has generally been in decline over the past few years with the exception of a few jurisdictions. Additionally the Australian Energy Market Operator (AEMO) has also shown that the financial impact of late rebidding in these jurisdictions is immaterial.²

2. Application of the draft rule

2.1 Reasonable time practicable

There is likely to be an inherent level of ambiguity in the application of the draft rule. In particular an assessment of whether a rebid is made as soon as reasonably practicable would be imprecise given that what is deemed reasonable is likely to change on a case-by-case basis and be dependent on individual circumstances. We discuss some of these issues below:

Physical change in availability of a supply source

There are a range of physical plant, and broader business considerations, outside of the NEM that can impact the timing of a rebid and therefore what may be considered reasonable and practicable. The failure of a gas supply source and subsequent return to service, for example, could create ambiguity between a change in conditions and making a decision. The initial failure would constitute a change in material conditions and a decision to rebid generation would be required. What is unclear, however, is the time the supply source would return to service and at what rate the gas will flow. These factors directly impact any decision and timing of a rebid as more 'firm' information becomes available closer to when the gas supply source returns to service and generation may be rebid back into the market.

Businesses internal governance procedures

Internal governance procedures may also dictate how soon a trader can rebid in response to a change in circumstances based on the priorities of separate Trading and Generation divisions. Where a unit experiences a boiler tube leak, for example, there could be a range of issues to consider. If the leak occurs during a heat wave a decision would have to be made on whether to operate the unit at a lower level. This would need to balance any potential commercial impacts with any longer term implications for the operation and maintenance of the unit. These are a potentially competing priorities that could require time to be resolved by management within Trading and Generation before a decision and rebid could be ultimately be made.

Incremental changes in market conditions and circumstances

The changing market conditions and circumstances that may inform a decision to rebid could be based on a range of incremental changes within a broader market scenario. What could be considered reasonably practicable in this instance is unclear as any decision could be expected to be based on the fulfilment or non-fulfilment of subjective expectations that would inevitably become clearer closer to dispatch.

² For Queensland in 2010 prices were \$0.06MWh higher and for South Australian and Queensland in 2013 prices were \$0.40MWh and \$0.22MWh higher than would have been the case had the volatility not occurred.

While these uncertainties may be clarified by a court determination, we consider the Commission could clarify the wording in the draft rule to minimise uncertainties around the basis of what is as reasonable as practicable as measured from the time of a change or when a decision is made. We discuss these issues further below, and consider it crucial that the Final Determination provides some guidance.

2.2 Allowing participants time to respond to a rebid

Origin does not consider the ability of other participants to respond to a late rebid should be considered by a court in determining whether a bid has been made as soon as reasonably practicable. Inherent in the design of the market is that there will always be one participant that is the last to rebid within a trading interval. Analysis provided to the Commission identified the iterative price discovery process within a defined and fixed period invariably has a last bidder. This is not unique to the NEM with auctions across a range of industries observing a last late rebid.³ Consequently, Origin considers the Commission should remove the proposed clause 3.8.22A(e).

In practice, it is uncertain as to what type of generation technology should be considered by a trader as being able to respond to a late rebid. For example, should a trader consider the responsive capability of a hydro or gas peaking plant or a baseload coal generator? Or, should a trader only consider generating units that are currently synchronised with the grid or consider the time required for a hydro or gas peaking peak to synchronise and ramp-up in response to a late rebid? These are key considerations for the Commission as to how the draft rule could be applied in practice.

In addition, given the increase in high rate of change generation in the market due to the increase in renewable generation, there is a growing requirement for the market to be able to respond flexibly.

2.3 Safe harbour provision

The proposed false or misleading prohibition removes the safe harbour provision under the current good faith bidding requirement. A safe harbour is important in enabling businesses to develop compliance programs to educate and inform traders as to what bidding behaviour is likely to comply with the rule requirement and what is not. This has broader implications for the efficient operation of the market as participants have greater certainty as to the conduct that would not be deemed to be false or misleading. To this extent it is easier to educate and inform on the basis of what is acceptable or desirable rather than what limiting advice to what is prohibited.

We consider the safe harbour provision should be retained to enhance certainty as to how the false or misleading provision will be applied. We consider this could be achieved by recasting the false or misleading prohibition in the positive such that a bid will not be considered false or misleading if it the participant has a genuine intention to honour the bid at the time it was made. We do not consider that the suggested change to the false or misleading provisions are materially different to the proposed changes to the good faith provisions with participants still required to have a genuine intention to honour bids. See Appendix A for a suggested rewording of clause 3.8.22A(b) to retain a safe harbour.

³ Regulatory Policy Institute 2014, 'Bidding in energy-only wholesale electricity markets,' November 2014, United Kingdom.

3. Reporting

The Commission has not demonstrated a deficiency with the AER's existing powers to compel participants to provide additional information to substantiate and verify the reason for a rebid. In our view the case for the imposition of an additional reporting requirement has therefore not been made. If there is found to be some shortcoming in the existing arrangements, Origin considers more appropriate for the AEMC to look to address these directly. Imposing a blanket reporting requirement on all participants is counter-productive. Additionally the current approach where the AER has the power to request information by exception is likely to be more powerful than a reporting regime that is all encompassing.

The proposed additional reporting requirement imposes a significant compliance burden on participants, disproportionate to any perceived problem from late rebidding. This could invariably lead to inefficient market outcomes as traders become increasingly preoccupied with compiling reports rather than monitoring and responding to changing market conditions to optimise the efficient dispatch of generating units.

Rebids for a Physical or technical reason

The proposed reporting requirement is unreasonable and impractical given the large number of rebids that occur within a late rebid period to enable a generator to follow dispatch instructions. Physical or technical bids, for example, inherently occur within a late rebid period in order to respond to a change and comply with dispatch instructions and avoid receiving a non-conformance notice. There are numerous reasons that result in examples of physical or technical rebids that are likely to occur within a late rebid period, including: a unit failure or loss of mills or fans; status of air or water cooling equipment; high ambient conditions limiting plant output; or the application of a constraint on a generating unit. Physical or technical bids are common, especially during summer where high temperatures lead to high ambient conditions. This suggests the proposed reporting requirements are disproportionate and poorly targeted for generators operating in the NEM.

Appendix A:

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 **not** 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.