

Bidding in Good Faith Draft Determination

AEMC public forum 18 May 2015



SEBASTIEN HENRY & CATHY PHILIPP
SENIOR ADVISER & SENIOR LAWYER
AUSTRALIAN ENERGY MARKET COMMISSION

The rule change request

- The South Australian Government's rule change request explores potential inefficiencies in market outcomes created through generator bidding strategies.
- The request identifies the good faith bidding provisions in the NER as the appropriate means to address these issues
 - in particular the requirement for generators to bid in accordance with their genuine intentions and to bid on the basis of significant and quantifiable changes in material conditions and circumstances.

The AEMC's assessment of the rule change request

- The AEMC has undertaken an extensive assessment of the issues raised by this rule change request, including an extra stage of consultation with the publication of an options paper in late 2014.
- The decision was made to undertake an extended assessment as:
 - the issues raised relate to the bidding process which is fundamental to the operation of the NEM and the promotion of efficient price outcomes;
 - the rule change request has elicited a wide variation in views with some stakeholders potentially significantly affected by the proposed changes; and
 - there is a range of potential options available to address the rule change request.

The draft rule

- The ability of participants to learn and react to the actions of their competitors is an important part of an efficient functioning market.
- Rebidding drives competitive outcomes that reveal prices reflective of underlying demand and supply conditions, leading to efficient operation and investment over the long term.
- The assessment of the rule change request and the development of the draft rule has required us to consider:
 - the flexibility that rebidding provides to participants to adjust their position to accommodate changes in market conditions and to respond to the offers of other participants; and
 - the extent to which the rebidding process can also compromise the ability of the market to arrive at an efficient outcome when rebids are made close to dispatch.

Behavioural elements of the draft rule

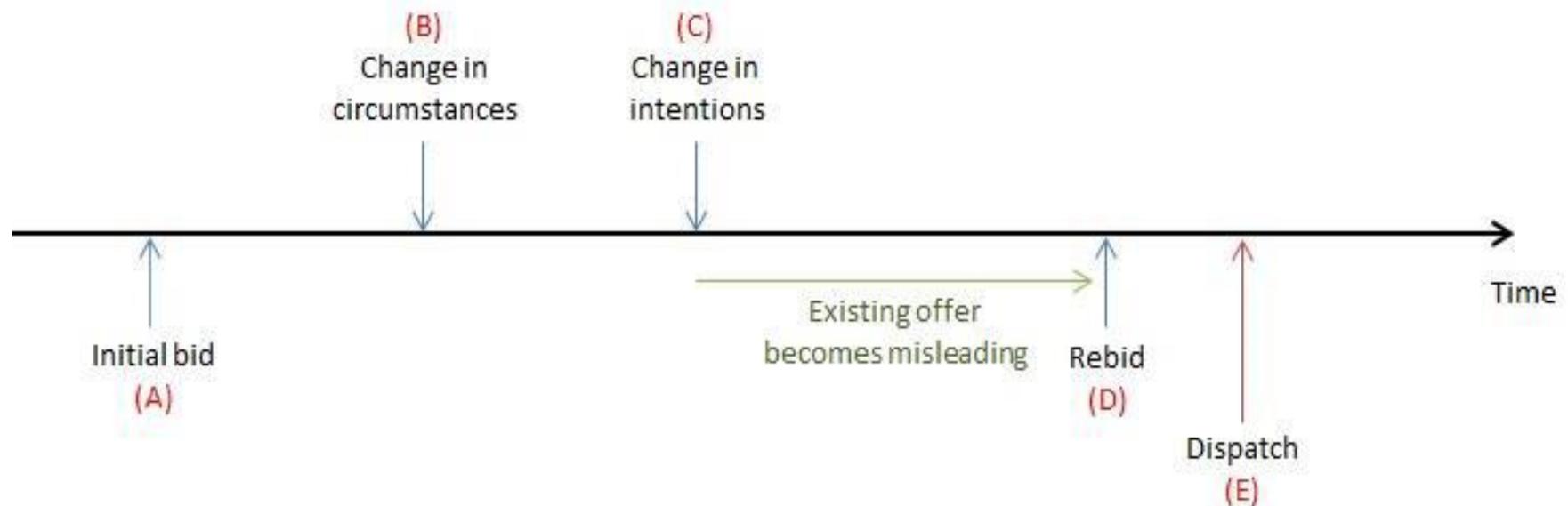


The current good faith provisions may not address the behaviour of concern

- Good faith provisions prohibit generators from submitting bids and rebids they do not intend to honour/are incapable of honouring.
- However, they may not prohibit a generator from changing its intentions (as a result of a change in material conditions/circumstances) but then deliberately delaying rebidding until close to dispatch when there is limited opportunity for others to respond.
- This is because the assessment of whether a bid is made in good faith is based on the generator's intentions at the time it was submitted. A generator may have a genuine intention to honour its initial offer, and a genuine intention to honour a subsequent late rebid.
- As long as a generator has a genuine intention to honour its bid or rebid at the time it is made then it will be made in good faith.

A bid or offer is a continuing representation

The Commission considers that by recasting cl 3.8.22A from an “in good faith” to a “not false or misleading” obligation, bids and offers will be treated as a continuing representation of a generator’s intentions to supply electricity at particular prices.



The draft rule

The draft rule:

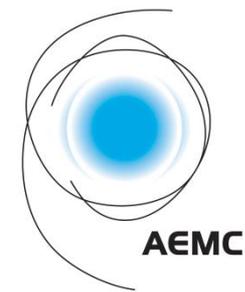
- Enhances the market design principles to emphasise the importance of providing accurate, reliable and timely pre-dispatch information to market participants;
- Introduces new civil penalty obligations which:
 - recast the good faith provisions into a prohibition on making false or misleading offers, bids or rebids (or those that are likely to mislead);
 - introduce a requirement that rebids be made as soon as reasonably practicable after becoming aware of the change in material conditions and circumstances on the basis of which the rebid is made; and
 - introduce a requirement to submit a report to the AER for any rebids made within 15 minutes before the relevant trading interval.
- Introduces provisions to assist a court in any proceedings alleging a breach of the new obligations.

Prohibition on false or misleading offers/bids

- New clause 3.8.22A(a) provides that a generator or market participant must not make an offer, bid or rebid that is false, misleading or likely to mislead.
- Without limiting paragraph (a) above, cl 3.8.22A(b) states that an offer, bid or rebid will be taken to be false or misleading if at the time of making it a generator or market participant:
 - does not have a genuine intention to honour; and
 - does not have a reasonable basis to represent to other market participants through the pre-dispatch schedule that it will honour that offer, bid or rebid if the material conditions and circumstances upon which it was based remain unchanged until the relevant dispatch interval.

Rebids to be made as soon as reasonably practicable

- Clause 3.8.22A(d) provides that a rebid must be made as soon as reasonably practicable after the generator or market participant becomes aware of the change in material conditions and circumstances on the basis of which it decides to vary its offer, bid or rebid.
- In any proceeding alleging a breach of cl 3.8.22A(d), a court must have regard to:
 - the market design principle set out in cl 3.1.4(a)(2); and
 - whether the rebid was made in sufficient time to allow reasonable opportunity for other market participants to respond prior to the commencement of the trading interval to which the rebid relates, or the commencement of any dispatch interval within that trading interval.



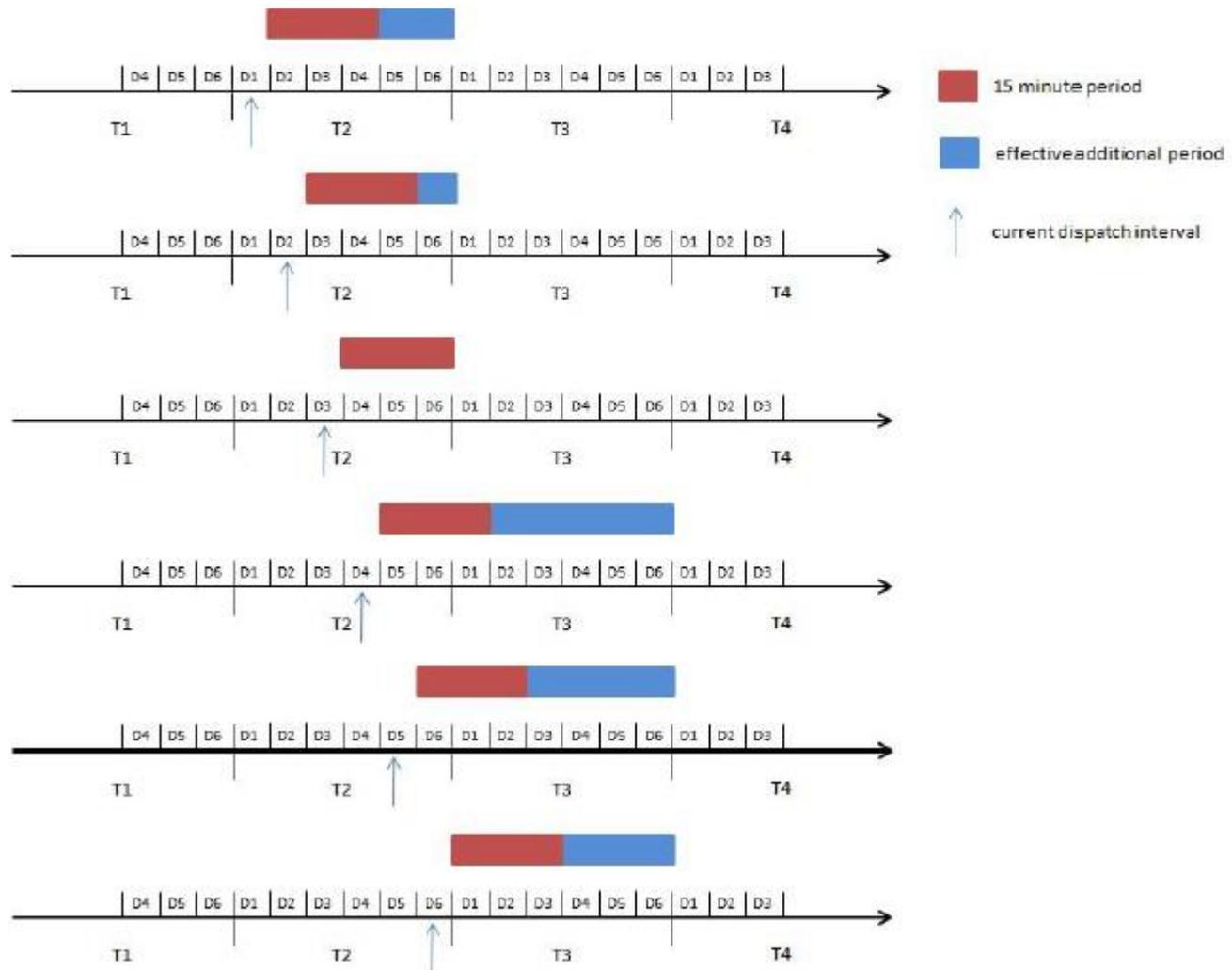
Reporting requirements



Reporting requirements

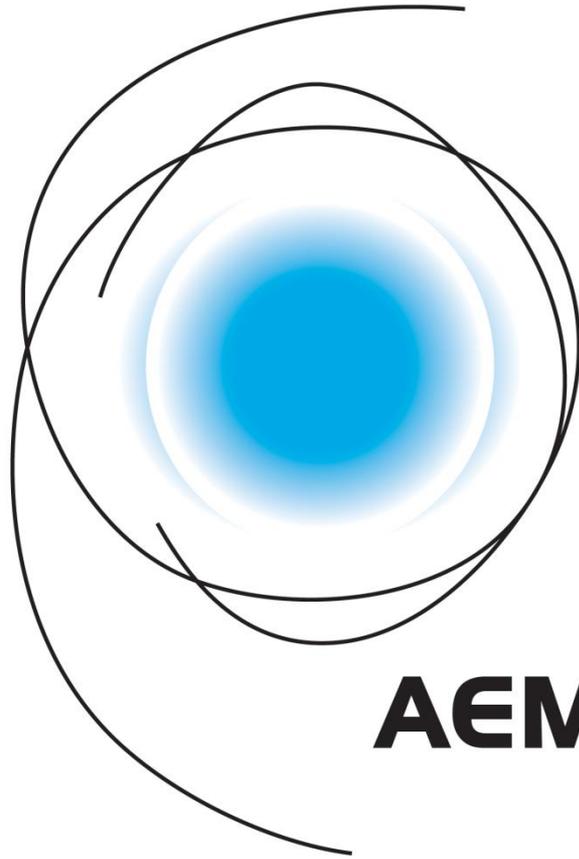
- The draft rule would introduce a requirement for generators to submit a report to the AER for rebids made close to dispatch.
- The report would require the rebidding generator to identify the change in material conditions and circumstances giving rise to the rebid.
- Reports would be required for each rebid submitted during, or less than 15 minutes prior to the commencement of, the trading interval to which the rebid applies
- In practice, the reporting period will vary depending on the dispatch interval in which the rebid is submitted.

The effective reporting period would vary between 15 and 40 minutes



Reporting guidelines and exemptions

- The AER's Rebidding and Technical Parameters Guideline would specify:
 - details of the specific content and format of the reports; and
 - the timeframes in which reports would need to be submitted.
- The AER would be permitted to exempt the reporting requirement in relation to certain rebids



AEMC