



29 October 2015

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

Submitted Electronically: ERC0166

Dear Mr Pierce,

Second 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 2nd draft recommendation prepared by the Australian Energy Market Commission (**Commission**) 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 primarily to manage plant issues. In Alinta’s view current rebidding processes and requirements are well understood by the market. However, the changes contemplated in the proposed amending rules may introduce a level of uncertainty as to what constitutes compliant rebidding practices and will impose an additional cost burden on participants responding to normal market price discovery dynamics. Alinta provides comments in the context of these concerns.

Background

In response to the South Australian government initiated rule change request in relation to generators bidding in good faith the Commission published a draft rule change on 16 April 2015 that:

- Replaced the good faith bidding requirement with a prohibition against making false or misleading offers;
- Obligated participants to submit rebids as soon as reasonably practicable after becoming aware of changes in material conditions and circumstances on the basis of which they decide to rebid; and
- Mandated additional detailed reporting to the AER arising from a rebid made within a trading interval or 15 minutes prior to its commencement.

AEMC’s 2nd Draft Determination

Following extensive participant submissions the Commission published a second draft rule change on 17 September 2015 that:

- Provides that participant offers or rebids are deemed to represent their willingness to provide supply at the prices specified and will not be changed unless the participant becomes aware of a change in the material conditions and circumstances upon which the offer or rebid was based;
- Requires that any rebid would need to be made as soon as practicable, rather than as soon as reasonably practicable, after the participant becomes aware of changes in the material conditions and circumstances upon which the offer/bid/rebid was based and subsequently decides to vary it; and
- Replaced the obligation to submit a detailed report of all late rebids to the AER with an obligation to create and preserve a contemporaneous record in relation to late rebids.

Alinta's views on the second draft determination

Alinta continues to hold the view that a material case has not been made by the Commission that late rebidding constitutes an issue of such magnitude that it warrants implementing amended/new rules resulting in participants having to deal with their attendant uncertainty. Changes to administrative arrangements impose a range of costs on participants including the potential requirement to seek independent advice on interpretation of the changes, translation of the changes to internal compliance regimes and training of traders in respect of those changes. In circumstances where civil penalties attach to the changes, the costs to manage such a significant financial risk are not insignificant and constitute a loss of efficiency ultimately borne by customers.

More broadly, Alinta is concerned that the drafting needs further clarification prior to being implemented. Some of the proposed clauses appear to use phrases inconsistently with generally accepted use introducing uncertainties as to interpretation.

Furthermore, Alinta maintains its position that additional reporting requirements of the proposed draft rules are burdensome, will undoubtedly require investment in information capture systems, interpose an additional non-trivial administrative requirement in the bidding process and are a heavy handed response to an issue that has not been demonstrated to materially or systemically impact the efficient operation of the NEM.

Finally, Alinta notes the Commission's decision not to disallow participants' subjective expectations as a reason for a rebid as to have done so may have had the effect of restricting efficient price discovery, a core function of a competitive market. Alinta takes this to mean that changes in material conditions and circumstances, a central element of the proposed draft rule change in relation to decisions to vary bids, encompasses changes in a trader's subjective expectations. This is a welcome decision, one that recognises that the market trades as much on changes in subjective expectations as it does on changes in objective changes in market conditions.

Our specific concerns about the drafting are outlined below.

Clauses 3.8.22A(a) and (a1) Offers, bids and rebids must not be misleading

Clause (a) prohibits a participant making an offer/bid/rebid that is false, misleading or likely to mislead. This replaces the previous requirement that an offer/bid/rebid is made in good faith. New clause (a1), included in the 2nd draft rule, for the purposes of clause (a) deems an offer/bid/rebid to represent to other participants via AEMO published pre-dispatch schedules that an offer/bid/rebid will not be changed unless the participant becomes aware of a change in material conditions and circumstances upon which the offer/bid/rebid are based (**Deemed Representation**).

Alinta seeks clarification whether the intention of clause (a1) in combination with clause (a) is that an offer/bid/rebid will be determined as false, misleading or likely to mislead if a rebid is made in the absence of a change in material conditions and circumstances. If this is the case then clause (a1) of itself can be interpreted as a strict prohibition that acts without reference to whether the participant had a genuine intention to honour the offer/bid/rebid or had a reasonable basis to make the Deemed

Representation. That is, a rebid could breach even if the participant had a genuine intention to honour the rebid and had a reasonable basis for making the Deemed Representation.

Alinta believes this is a significant broadening of the clause 3.8.22A(a) that overshadows clause 3.8.22A(b) - see below - and requests the Commission make clear whether this is an intended or unintended outcome of including clause (a1).

Clause 3.8.22A(b) – rebid deemed to be false or misleading

Alinta notes this is an important clause that deems an offer/bid/rebid to be false or misleading if at the time the participant does not have a genuine intention to honour or does not have a reasonable basis to make the Deemed Representation i.e. it sets out the tests for assessing whether an offer/bid/rebid is false or misleading. Of concern is that the clause is prefaced: “Without limiting paragraph (a)..” which suggests that the Commission contemplates other factors may and will be taken into account in determining whether an offer/bid/rebid is false, misleading or likely to mislead. Alinta requests the Commission provide guidance as to the nature of such other factors with the view to reducing the uncertainty that arises in the minds of traders due to the wording of this clause.

Clause 3.8.22A(d) – rebid as soon as practicable

This clause places an obligation on a participant to make a rebid as soon as practicable after becoming aware of the change in material conditions and circumstances on the basis of which it decides to vary its offer/bid/rebid. Alinta welcomes the Commission’s clarification that the inability of other participants to respond will be neither a necessary nor a sufficient condition to prove a breach of this clause. However, Alinta is concerned about the lack of clarity surrounding what constitutes an acceptable timeframe within which a participant, following a change in circumstances that culminates in a decision to rebid, has to make the rebid such that it satisfies the “as soon as practicable” requirement.

While circumstances as to what is practicable will undoubtedly differ among participants, Alinta considers the Commission should consider clarifying the starting point on which an assessment of whether a rebid was made as soon as practicable. For instance on one interpretation the relevant timeframe could encompass the period between the participant becoming aware of the change conditions and circumstances and the participant’s submission of a rebid. Another interpretation would see that timeframe reduced to the period between when the participant made the decision to rebid and the participant’s submission of a rebid. Alinta believes the position should be the latter. However, given this clause targets the practice of deliberately delaying rebid submissions, it is important the AEMC provides participants with clarity on how the regulator may determine the start of the practicable time period.

Clause 3.8.22(ca) – obligation to maintain a contemporaneous late rebid record

The proposed rule introduces an additional reporting requirement for rebids made during or less than 15 minutes prior to the start of the trading interval to which the rebid applies (**late rebidding period**). Alinta notes that while the 2nd draft rule retains the obligation to make a specified record in relation to the rebid, it is no longer required that it be submitted to the AER as a matter of routine. While industry will no doubt welcome this change, as it relieves industry of the requirement to compile and send the AER about 100,000 late rebid reports¹, Alinta is concerned that the requirement to make a contemporaneous record of the details of each and every late rebid as proposed is too onerous.

The current rule proposes that the record in respect of a rebid made during the late rebidding period include:

- 1) the material conditions and circumstances giving rise to the rebid;

¹ Oakley Greenwood: Generator Cost Assessment report for AMEC: Average number of late rebids by high rebidding entities per year for three years to 2014/15; Table 2 page 11.

- 2) the generator's or market participant's reasons for making the rebid;
- 3) the time at which the relevant event(s) or other occurrence(s) occurred; and
- 4) the time at which the generator or market participant first became aware of the relevant events(s) or occurrence(s).

Rebidding can be a dynamic process especially when commercial risks are elevated at times of high market prices. In Alinta's view the conditions and circumstances underpinning an eventual rebid will evolve over time increasingly indicating a rebid is warranted until a threshold is reached. Because a-priori it is not known whether a rebid will be made or if it is that it will be made prior to or within the late rebidding period then it may be necessary to record conditions as they evolve and come to the attention of the trader so as to be able make a compliant contemporaneous record if required.

Undoubtedly, this will have implications for investment in IT information capture systems² which necessarily will need to be more robust and capable than current rebid information systems used to support internal compliance and the current requirement to send AEMO at the time a rebid is made a brief, verifiable and specific reason for the rebid and the time of the event or other occurrences leading to the rebid.

Oakley Greenwood, in their report, also identifies other costs in the form of additional staff to support the record making process and management review of AER requested reports. In total these costs are not insubstantial and Alinta believes there is scope to reduce the record keeping burden and associated administrative cost impact by:

- 1) Restricting the late rebidding period to intra trading interval rebids (i.e. focus on dispatch intervals that can materially change the time weighted trading interval price – late rebidding period reduces from 40 minutes to 25 minutes);
- 2) Removing item 3) above (i.e. decisions can only be made when information becomes known, not when it becomes available); and
- 3) Filtering the rebids to be reported to non-plant issues (i.e. capture rebids made purely for strategic commercial reasons – the Oakley Greenwood report indicates this reduces reportable rebids by two thirds).

Alinta would welcome the Commission's response to the above recommendations. In Alinta's view, given the difference in industry views as to the nature and extent of the late bidding issue and the posited resultant economic harm, the case for change suggests a proportionate response is required. Adopting the above recommendations will reduce the reporting requirement to a more manageable level and keep costs low.

Should you have queries in relation to this submission, please do not hesitate to contact John Rhodes on telephone (08) 94863306.

Yours sincerely



Michelle Shepherd
General Manager Government and Regulatory Affairs

² Ibid, table 4 page 12 - Oakley Greenwood estimates across the NEM multi-million dollar IT establishment and maintenance costs will be likely.