



FOR A BETTER WORLD

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Attention:

Mr John Pierce
Dr Brian Spalding
Mr Neville Henderson

Australian Energy Markets Commission
Level 6, 201 Elizabeth Street
Sydney NSW 2000

Lodgment via: AEMC Web page

REF CODE: ERC0166

Dear Commissioners,

Re: Rule Change Proposal – SA Govt – Bidding in Good Faith

Please find attached Visy Industries Australia's submission in response to the South Australian Government's rule change proposal relating to good faith bidding in the National Electricity Market.

Sincerely,

(Royce DeSousa)

General Manager – Energy & Sustainability, Visy

Executive Summary

Visy strongly agrees with the underlying premise of, and motivation for, the SA Govt's rule change proposal which is that, over the life of the NEM and continuing to date, there have been a number of instances of generator bidding activity which have not been in good faith resulting in a materially deleterious impact on competition and on the efficacy and efficiency of the market.

However, Visy is not certain that piece-meal alterations to the existing good faith provisions, themselves a consequence of the identification of questionable generator bidding activity by the ACCC and NECA over a decade ago, will be effective in addressing the cause of the SA Govt's underlying concern. Part of the concern with adopting a modification to the existing concept of "good faith" within the Rules is that it is far broader than either the common meaning of the term or the frequent use of term in numerous unrelated legislative instruments and contractual arrangements. In addition, the interpretation of the NER good faith definition in the *Stanwell* case re-affirmed this. In this context, use of the existing good faith definition albeit while seeking to extend its purview is likely to be ineffective in seriously addressing inappropriate bidding behaviour.

Notwithstanding this, Visy sees that there have been past and recent instances of uncompetitive market outcomes caused by generator bidding activity which could be assessed not to be in "good faith" in a common sense. Visy believes there is clear evidence of such activity in a recent context in the Queensland region of the NEM. The impact for average price outcomes in Queensland, both in spot markets and secondary/contract markets, has been material, as has the impact on competition. Additionally, Visy believes that such bidding activity and the resulting market outcomes are in clear conflict with a number of the National Electricity Objectives.

As a large energy user, Visy accepts that there will be price extremities within the NEM due to genuine supply and demand constraints and recognises that rebidding, in general sense, is necessary for an effective and efficient market. To be clear, Visy acknowledges participants' legitimate interests to maximize profitability. However, the Rules should be written in such a way that ensures that re-bidding activity, for example, is not allowed to occur in a manner which is at the expense of the market being competitive, efficient and allowing new entrants to participate when appropriate.

One of the major causes of concern for Visy is extreme pricing events which are the result of so-called "late strategic re-bidding" which leaves, at best, 5 minutes notice of the price spike – this phenomenon, of itself, is sufficient to damage competition because it eliminates the possibility for other market participants, including fast-start generation and also the demand side to be able respond.

Visy's contention is that there is not only clear evidence of late strategic re-bidding in the recent Queensland context but that the data demonstrates a concerted effort to ensure the re-bidding and resulting price extremity is as "late" as possible.

Visy does not accept that the following generator re-bidding activity is in good faith, in a common sense:

- Late strategic re-bidding with the likely effect, or indeed the intention of, preventing genuine response from other market participants, or for that matter, the demand side

- Exploitation of transmission constraints to unilaterally drive extreme price outcomes
- Re-bidding that results in extreme market pricing which is not reflective of a genuine supply and demand constraint at the time
- Re-bidding that seeks to prevent competition from generators in other market regions.

The NER must be altered to address such activity which has occurred and does occur.

While Visy is not convinced that the SA Govt rule change would be effective in mitigating all cases of unacceptable generator bidding activity, we do support the intent, and as such do not subject to the passage of these changes.

However, Visy believes a number of other reforms to the market and the Rules governing its operation should be considered to more effectively address improper re-bidding activity, including the following:

- “lock-out” of re-bids relating to Dispatch Intervals which commence less than 30 minutes after the time of the re-bid -
 - fast-start generation and some users are prevented from responding to prices resulting from current late strategic re-bidding which often comes with less than 5 minutes or no notice – 30 minutes may be a feasible response time for some fast-start generation,
 - a 30 minute “lock-out” is not as extensive as the 3 hour and 3 Trading Interval (1.5 hour) lock-outs previously considered by NECA and the ACCC in 2001 and 2002 and should pose less concern about the ability of the NEM to run efficiently and securely,
 - generators with a demonstrably legitimate safety or system security reason for rebidding within this timeframe would be excused;
- Remove the current qualified definition of “good faith” in the Rules such that a common definition of the term is applied
- Introducing an element of NECA’s original rule change proposal in 2001 into the Rules to deal with this phenomenon: disallowing conduct with the purpose or likely effect of materially prejudicing the efficient and competitive functioning of the market
- Increased powers available to the AER to monitor, identify and report on and warn generators of re-bidding activity which has the intention or likely effect of materially impairing competition in the market

If re-bidding activity which is the subject of the SA Govt’s rule change request is left unaddressed, and which has occurred in history not only in Queensland but also in other NEM regions such as South Australia, NSW and Tasmania, participants and consumers alike should be concerned that the concept of a competitive and efficient market will be under severe threat.

In relation to the aim of an efficient and competitive market, but unrelated to the SA Govt’s rule change proposal canvassed in this submission, it’s imperative that the essence of the AER’s ramp rate rule change proposal, also before the AEMC presently, is adopted. In particular, Visy believes that technical capability of individual generators, or at least a reasonable portion thereof, by the basis of ramp rate requirements of the Rules.

Introduction

Visy and End-Users

Visy Industries Australia (Visy) is a large energy consumer with recycling and packaging manufacturing operations across the National Electricity Market (NEM) and Australia, as well as in other countries. Visy employs 5,000 people in Australia, and as a highly trade-exposed manufacturer, is sensitive to global competition – energy costs are a key part of that sensitivity.

Visy takes some indirect exposure to the wholesale electricity spot market and monitors NEM activity and price outcomes. As a user, Visy has been concerned with market outcomes from time to time and we note that our concern is mirrored by many other users, both large and small, and whether exposed to the spot market, or not – spot prices impact wholesale contract markets both directly and indirectly and ultimately, retail prices are also impacted. In short, inefficient spot prices outcomes affect the entire electricity-consuming sector of the economy and society.

At a time when the competitiveness of industry and manufacturing in Australia is already under pressure due to, for example, steeply rising electricity network prices, we should be wary that serious wholesale market imperfections do not threaten to put further strain on job-intensive industry, potentially to critical breaking point.

Demand Side Response and Fast-start Peaking Generation

As explained above, Visy is a partially “spot-exposed” customer - as such it is prepared with (a) well-equipped manufacturing capability and control systems, and (b) with information systems including third party market intelligence, to curtail its load in response to extreme market price events. However, as with response to any market, a signal and notice of the extreme price event must have occurred for a response to be possible and effective. Through practice and experience, Visy has determined its ability to effectively and safely curtail its largest loads within 15 to 30 minutes from the time of first observation of extreme price – 10 minutes in the best case.

Other consumers, even those who do not ordinarily take spot exposure, maybe capable of delivering a Demand Side Response (DSR) in the form of load curtailment to the market by virtue of commercial arrangements with their energy suppliers. In this case, still, notice is required for the response to be possible. Our understanding is that other industrial consumers of electricity across a range of sectors are capable of curtailment response times between 10 and 30 minutes.

Analogously to DSR, fast-start market generators necessarily have a response time following notice of extreme price to which they would respond, which is dictated by the technical constraints of the generating units. Ramp up to nominal load of state of the art fast-start gas turbine generator plant is, in the best case, 10

minutes, and more typically up to 30 minutes¹ - note that this range of response times is similar to DSR capability.

A number of government agencies including the AEMC, have long sought DSR as an important part of an efficient and competitive market.

The concern in relation to behaviour identified by the SA Govt is that many of the price outcomes in question come within a timeframe which is clearly too short for any credible DSR or fast-start generation – for example, less than 5 minutes.

Volatility in the market

As in all markets, we cannot expect that there will be no volatility. Extreme price events, when they are linked with genuine supply and demand constraint, are a symbol of an effective market under transient stress.

As an example, the Victorian region experienced extreme pricing on the 14th, 15th, 16th and 17th of January this year (2014) due to a confluence of weather-related extreme demand and a genuine shortage of available generation.

Volatility, of itself, is not the concern and users have to be prepared that the market will deliver legitimate outcomes such as those seen in mid-January this year.

SA Govt Rule Change Proposal

Visy acknowledges the rule change request lodged by the proponent, the South Australian Government (SA Govt) which is directed at ensuring generator bidding and re-bidding in the NEM is in good faith with the overarching aim of a market which is efficient and competitive for the sake of consumers and market participants alike.

As highlighted by NEM Ministers in 2002, the SA Govt succinctly raised its concerns with:

“generator bidding and rebidding strategies that [are] inconsistent with an efficient, competitive and reliable market, such as those not made in good faith, the blatant economic withdrawal of generation and the gaming of technical constraints.”²

¹ Visy refers to publicly available technical specifications for current generation fast start gas turbines marketed by major turbine manufacturers, Siemens and GE

² Letter from The Hon Tom Koutsantonis MP (SA) to AEMC Chairman, Mr. John Pierce – 13th December 2013, lodging the SA Govt’s rule change request

The Rule Change Proposal and the NEO

In posing the question of whether the SA Govt rule change proposal is necessary in the context of the National Electricity Objectives (NEO), the Australian Energy Markets Commission (AEMC), in its consultation paper³ on the proposal, has distilled a number of key criteria effectively set by the NEO, including:

1. Pre-dispatch prices provide price transparency and operational and investment certainty to market participants
2. Efficient price signals for investment
3. Provision of accurate and reliable information which allows for responses which are in line with underlying conditions of supply and demand
4. Efficient wholesale price outcomes with reduced supply costs in the short term, peak capacity requirements in the longer term, resulting in the lowering of price of electricity to consumers.

As stated by the AEMC, there should be material and clearly identifiable market failures which are the contemplated by the proposal, for the proposal to have a legitimate basis. The above criteria provide the prism through which to assess this question.

Market Failures Targeted by the SA Govt Proposal

It's Visy's view that over the history of the NEM, there have been a number of market failures, implied by the SA Govt proposal, in a number of NEM regions – specifically, South Australia, Tasmania and NSW.

Further, Visy believes there is very clear and current evidence of the generator bidding behaviour in the Queensland region which is represents another kind of bidding activity contemplated by the proposal.

Queensland market outcomes – 2013 and 2014

Since late 2012, preceded by the “macro-withdrawal” of generation capacity from the Queensland market, a large number of “price spike events” or “extreme price events” have been observed to occur.

With regard to the “NEO criteria” spelt out above, it is not the frequency of occurrence of price spike events, per se, that are of primary relevance but rather the manner in which those events occur and, more precisely, their timing.

Distribution of “extreme price events” within Trading Intervals

Noting the distribution of 5-minute prices in the Queensland market above \$1,000/MWh (“extreme price events”) since January 2013 in Figure 1, it can be seen that extreme price events occurring in the last Dispatch (5-minute) Interval within relevant Trading (30-minute) Intervals are represented far more highly than all other intervals.

³ Consultation Paper – National Electricity Amendment (Bidding in good faith) Rule 2014: AEMC

Spot range		Dispatch interval						Sum
\$/MWh		1	2	3	4	5	6	
\$1,000	\$3,000	27	19	17	25	24	44	156
\$3,000	\$5,000	-	2	-	-	1	1	4
\$5,000	\$7,000	2	1	1	1	1	3	9
\$7,000	\$9,000	5	2	2	2	3	3	17
\$9,000	\$11,000	-	-	1	1	1	6	9
\$11,000	+	7	3	5	4	14	22	55
Total		41	27	26	33	44	79	250

Figure 1: Qld “4 & 5 digit” Spot Price Events - Frequency Distribution by Dispatch Interval Jan-13 to Apr-14

The sheer volume of extreme price events in this period, which is itself unique, can be said to be statistically significant – this means that the skewing of extreme price results to last Dispatch Intervals can be said to be a statistically representative result and not capable of being defined as a “chance occurrence.”

In its consultation paper, the AEMC has described short timeframe rebidding activity such as that described here as “late strategic rebidding”

This leads Visy to the unavoidable conclusion that the skewing of extreme prices to the very last dispatch intervals in relevant trading intervals is the result of deliberate action by certain generators in the Queensland region.

Note that price spikes in the last dispatch interval give a maximum of 5 minutes (and typically less than this given time required for real time market information to be disseminated) warning to potential responders.

As highlighted, credible Demand Side Response can react within between, in the best case, 10 minutes in the best case and 30 minutes response time

The relevance of the above conclusion, with reference to the NEO criteria, is that the market has failed because response from credible generation (market participants) and load (customers) is not physically possible resulting in uncompetitive outcomes driven by too few participants.

“Time of day” and Electricity Demand – Correlation with Extreme Prices?

Another feature of recent price extremities in Queensland is a lack of strong correlation between extreme price and system demand for electricity. A number of price spikes have occurred at times where demand has not been extreme – eg Saturday night; 10pm; Low demand.

These occurrences hint to significant market power of generators whose bids have resulted in the extreme prices where demand is low and significant available generation exists in the market at the time.

Observant and alert participants and consumers are typically unable to respond to such events because they are not expected with reference to external indicators – eg weather, system demand, generator shortfall.

No warning in pre-dispatch

Again in the context of timing, the vast majority of price extremities in Queensland over the period indicated above, have come with little or no warning in pre-dispatch forecasts.

This itself indicates that the price extremities are the result of short term re-bidding. Additionally, the lack of visibility of potential price volatility does not allow a diligent participant, or user, to be prepared to respond.

5-minute “price bursts”

In relation to the data set referred to above, the bulk of price extremities lasted for one (1) Dispatch Interval only. As is clear from the discussion on fast start generators the demand side above, credible response was not physically possible in these “5-minute only” instances.

Transmission and Interconnector Constraints

Many instances of generator rebidding in Queensland which have been correlated with extreme price over this past year 18 months have referred to “interconnector constraints,” “transmission constraints” or “transmission failures” in rebid reasons furnished to the Australian Energy Markets Operator (AEMO).

What is concerning is the use of these reasons in a large number of circumstances where the relevant generator either did not feature in the constraint equation for the relevant interconnector or transmission element and/or was not materially electrically proximate to the transmission element – in these cases, it is difficult to accept that the generating unit in question was materially technically affected by the transmission outage or constraint.

That is to say the interconnector or transmission line constraint, as real as it may have been, rather than being a genuine *technical reason* for the rebid was more likely used as a tool to drive an extreme market price.

As the National Electricity Code Administrator (NECA) Code Change Panel wrote in its paper on generator rebidding strategies as early as 2001⁴, “exploiting transmission constraints and engineering the calling of inappropriately high-priced bids” constitutes objectionable rebidding behaviour.

Concept of a “truly national market”

The long sought objective for the NEM has been that it become a “truly national market” in which generators across the NEM can compete, irrespective of the region in which they are location.

Of course there are some practical impediments to this concept in that “infinite” interconnect capacity between regions comes at a price.

⁴ “Generators’ bidding and rebidding strategies and their effect on prices – Volume 1”: NECA Code Change Panel, September 2001

Notwithstanding that, it's Visy's concern that the events in Queensland have frequently resulted in the islanding of the Queensland region, even in cases where cheaper generation has been readily available in the neighbouring state of NSW and with no genuine engineering constraint to interconnect capacity.

In an intra-regional basis, the same phenomenon plays out where local transmission constraints have been used to shut out competing generation.

In the context of the National Market concept, it is concerning to see strategic rebidding resulting in the prevention of viable and cheaper plant in neighbouring states being dispatched to the state in which the rebidding generator is located.

Market Price Cap

Visy's related concern is with the Market Price Cap (MPC) of some \$13,100/MWh. Notwithstanding studies as to the value of lost load in the past and also as to the cost of new entrant generation, it's difficult to see the current MPC setting as reasonable and appropriate.

Visy believes that, unfortunately, this extreme figure is being exploited in very short duration to exact damaging price impacts to the market (or significant impacts on the relevant generators trading book).

A more appropriate figure, properly valuing lost load and properly identifying the highest cost of credible new entrant generation, which is likely to be a "4-digit" price in Visy's estimation, may lead to more rational bidding behaviour in the market.

QLD 2013-2014: Conclusions with Respect to NEO Criteria

The manner and timing of the multiple extreme price events in Queensland as outlined above lead Visy to a conclusion that all of the NEO criteria have been breached.

In particular:

- Clear, timely and transparent information about imminent price extremities has not been available to other participants and credible "DSR consumers"
- No efficient price signals for new investment have been given – while extreme prices have occurred which might in a normal market be indicative of the need for new entrants, in the Queensland instances,
 - significant existing capacity which can be restarted at relatively short notice has been mothballed
 - potential new entrants, particularly fast start generators who might normally be attracted by extreme but transient pricing, will almost certainly be dissuaded due to the *inability of existing fast start participants to respond* to the price extremities.

- That is to say, there are significant, perhaps overwhelming, barriers to entry for potential new entrants, notwithstanding that repeated high prices might provide an apparent economic signal for new entrants
- Wholesale price outcomes have evidently not been efficient –
 - with reference to not only spot prices, but also to secondary market/contract prices, pricing in the Queensland region are out of kilter with its comparable neighbour, NSW
 - whereas both regions are largely powered by black coal generation with similar fuel cost, Queensland contract prices have recently outstripped NSW prices (not to mention Victorian prices) by between \$10/MWh to \$20/MWh depending on the contract
 - this is a highly material difference and is not only at odds with the history of price parity between the States but is also not explicable by the comparison of generation mix in each State – as the AEMC identified in its consultation paper, the materiality of cost impacts of the activity in question is important in determining whether market efficiency has been seriously impaired
 - the excessive MPC enabling severe price impacts to be extracted in short timeframes (5 minutes) is exacerbating the aforementioned inefficiencies

Note that in relation to statements made by Visy above as to fact regarding pricing, events and outcomes in the Queensland market, Visy is happy to furnish the AEMC with further data to aid in considering the veracity of our assertions, if required.

Concerns with other Regions at other times

Whilst this submission has focused anecdotally on the Queensland market during 2013 and 2014, the SA Govt proposal and NECA report and rule change proposal before it have identified conduct in other regions at other times which has similarly run contrary to the National Electricity Objectives.

SA Govt Proposed Rule Change Effectiveness

While agreeing with the motivation for the proposal, Visy is uncertain whether the proposed rule changes will be effective in mitigating the kind of behaviour identified as being not in good faith.

As the SA Govt has pointed out, notwithstanding the intent of NECA and ACCC to address genuine concerns with rebidding activity not being in good faith, the original good faith bidding rule⁵, has arguably been ineffective in stamping out rebidding which is not in good faith.

⁵ Rule 3.8.22A of the National Electricity Rules (the Rules)

Good faith definition

Firstly the current Rule is proscriptive in defining the term “good faith” in a manner which has the effect of allowing a great range of generator conduct and motivation to be considered in good faith which is much broader than the common use of the words “good faith.” While being highly proscriptive, the definition is unfortunately vague and incapable of precise definition.

Specifically the Rule proscribes that a generator has rebid in good faith if:

- at the time of the rebid, it had a genuine intention to honour that rebid
- if the *material conditions* and *circumstances* upon which the rebid were based remain unchanged until the relevant dispatch interval

As highlighted by the SA Govt, the current Rule does not specify what types of *conditions* are relevant, what types of *circumstances* are relevant, nor what the measure of *materiality* of those conditions and circumstances ought to be.

The Stanwell case

Additionally, the Federal Court in the *Stanwell* case,⁶ in interpreting the definition of good faith in the Rule, interpreted circumstances very broadly to include the state of mind of the Stanwell trader in question.

Since states of mind are by nature, subjective, the result of this interpretation by the Federal Court could be said to allow a subjective interpretation of the meaning of good faith, incapable of reference back to objective standards of acceptable conduct.

NECA original proposal regarding good faith definition

It is pertinent to note, that NECA rightly foresaw, back in 2001, that proscriptive definition of the term good faith was not only unnecessary, but would also leave the good faith rule prone to being ineffective. The NECA Code Panel noted in its 2001 report⁷:

“The Panel does not consider that good faith should be defined in the Code. It is a commonly used term in legislation and contractual arrangements and therefore there is a significant body of precedent as to its meaning.”

“The Panel considers that any attempt to define good faith would significantly detract from the effectiveness and scope of the proposal.”

The rule change implemented by the Australian Competition and Consumer Commission (ACCC) in 2002 did ultimately include a proscriptive definition of the term.

⁶ *Australian Energy Regulator v Stanwell Corporation Limited (2011)*

⁷ “Generators’ bidding and rebidding strategies and their effect on prices – Volume 1”: NECA Code Change Panel, September 2001

Unfortunately, NECA's foresight on this issue proved to be correct and it's Visy's belief that the proscriptive definition has significantly contributed to the ineffectiveness of the Rule since its implementation.

The SA Govt Proposal in the context of the definition of good faith

The proposal seeks to adjust the definition in some ways – for example, removal of the word “conditions” from the definition; specifying non-fulfilment of a trader's subjective expectation as a result of a rebid as not forming an acceptable reason for the rebid (as a direct consequence of the Stanwell case).

However, these adjustments do not sufficiently ameliorate the flaws in the underlying definition of good faith.

Therefore, any alteration to the good faith bidding Rule which uses the current definition, for the reasons provided above, will be ineffectual in addressing the targeted behaviour.

SA Govt Proposal – Onus of Proof

The AEMC indicates in its consultation paper that the changes suggested by the SA Govt may result in a reversal of the onus of proof that generator rebidding has been in good faith.

To the extent that this is the case, it is questionable whether a reversal of onus of proof in some cases is appropriate since it connotes that the generator must demonstrate its innocence in all instances.

As a matter of a general principle of law, but also because the SA Govt has recognised that much day-to-day rebidding activity is legitimate, Visy contends that such a reversal, to the extent this is an element of the proposal, is not necessarily appropriate.

In any case, since the underlying definition of good faith is not adequate, at least in the context of NECA's assessment in 2001, reversing the onus of proof linked to this ill-defined term may have limited effect.

It should be noted that, while the NECA itself suggested a shift in onus of proof, this position was ultimately not supported by the ACCC.

SA Govt Proposal – rebidding on the basis of published AEMO data

The proponent has sought to require that there be an objectively observable, significant, and quantifiable reason used as the basis of all rebids. While the premise of this suggestion is acknowledged by Visy, our concern is that such a requirement may be ineffective – as an example “transmission constraints” are currently used as reasons by some generators as the basis for rebidding in some circumstances, independent of whether the transmission constraint is indeed relevant in any material sense to the generator in question, apart from being used as a tool to drive high or extreme prices – the problem here is that the concept of materiality comes in again and is susceptible to varying interpretation as pointed out by the SA Govt itself.

Alternative Approaches – Generator bidding in good faith

While Visy is not convinced about the likely effectiveness of the SA Govt suggested rule alterations as outlined above, it still strongly supports the underlying basis of and reason for the proposal and, as such, does not object to the rule change being implemented.

However, Visy believes that the AEMC, in considering possible variants to the SA Govt proposed rule change which would yield the same result intended by the SA Govt, should give consideration to the likely effectiveness of the following alternatives.

30 minute “lock-out” of rebids, subject to safety/security

As recognised by NECA and ACCC in history and the SA Govt in its rule change proposal, rebidding is a necessary element of an efficient market which can respond dynamically to changing circumstances.

In its consultation paper⁸, the AEMC also points out that:

“rebidding facilitates the iterative process of price discovery as generators are provided with the necessary flexibility to adjust their position to accommodate changes in the market, including the actions of other market participants.”

Constraints on ability to rebid should therefore not be considered lightly.

The AEMC however, in its consultation paper, has rightly pointed out that a lock-out of rebids has been implemented in other wholesale electricity markets around the world as a means of limiting undesirable rebidding. And as the AEMC goes on to say:

“late strategic rebidding may prevent an efficient outcome as participants may still have an incentive to respond but do not have sufficient time to undertake the necessary rebid prior to the dispatch interval.”

The ACCC itself considered a “lock-out” period of 3 Trading Intervals (effectively 1.5 hours)⁹ and NECA considered a lock-out of period of 3 hours.

Ultimately the ACCC assessed that this prohibition would result in inefficient production outcomes and likely higher spot prices due to the market not being able to respond as dynamically in these timeframes as it would otherwise be able to do.

Visy accepts that a lock-out of bids of long timeframe is not necessarily appropriate and could have the unintended effect of reducing the responsiveness of the market to changing circumstances. However, Visy’s contention is that late strategic rebidding in the 5 to 30 minute timeframe materially impairs the competitive

⁸ Consultation Paper – National Electricity Amendment (Bidding in good faith) Rule 2014: AEMC

⁹ Application for authorisation – National Electricity Code: ACCC – December 1997

nature of the market by, in particular, preventing the response of credible generation alternatives and demand side response – this seems also to be the assertion of the AEMC as outlined above.

As indicated earlier in this submission, credible fast-start generation and demand side curtailment can be effective with response times of between 10 minutes (best case) and 30 minutes (typical, best practice).

It's Visy's contention that, a lock-out of rebidding within 30 minutes prior to a relevant Dispatch Interval is not unnecessarily constrictive to generators (it is much shorter than the 1.5 hour and 3 hours flagged by the ACCC and NECA respectively) but could also ensure that the severe late strategic rebidding is curtailed.

In saying this, Visy recognises that there may still be legitimate grounds for rebidding even within the 30 minute boundary, being the safety in relation to the operation of the generating unit which is the subject of the rebid, or system security. These legitimate grounds, and these grounds only, should be considered as acceptable exemptions to the lock-out.

As suggested by the AEMC, a lock-out of rebids maybe avoided for *downward* price rebids since this is the generators prerogative and such rebids cannot, by nature result in an uncompetitive outcome.

Good Faith definition

To the extent the good faith definition remains a focus of rule modification, a common use definition of the term “good faith” should be adopted. As per the NECA recommendation highlighted earlier, there is sufficient definition of this term at law to warrant that no proscriptive definition is needed.

Disallowance of conduct with purpose or effective of prejudicing competition

As also proposed by NECA in 2001¹⁰, an addition to the Rules which disallows conduct with the purpose, effect or likely effect of materially prejudicing the efficient and competitive functioning of the market should be considered. This would mirror the broad provisions of the Competition and Consumer Act (2010) Cth but lend specific application in the context of the NEM.

In essence the “good faith” provision is tied in with this concept and it will be advantageous to include such a provision, to fortify the existing good faith provision, noting its lack of practical effectiveness to date.

AER monitoring and other powers

To aid in the attainment of the aim to ensure generator bidding is in good faith, the Australian Energy Regulator (AER) should be armed with appropriate powers. Its existing powers are insufficient in this regard and the following powers should be considered:

¹⁰ “Generators’ bidding and rebidding strategies and their effect on prices – Volume 1”: NECA Code Change Panel, September 2001

- increased powers to monitor rebidding and to investigate rebidding activity which it has reason to believe may not be in good faith (in a common sense) or which it has reason to believe may have the purpose or effect, or likely effect of impairing the efficient and competitive functioning of the market – appropriate surveillance powers should be coupled to this power.
- powers to report on instances of rebidding which it has found to have had the purpose or effect, or likely effect of prejudicing the efficient and competitive functioning of the market and the ability to issue warnings to generators in this regard