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Australian Energy Market Commission
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BIDDING IN GOOD FAITH RULE CHANGE: CONSULTATION ON SECOND DRAFT DETERMINATION

Delta Electricity welcomes the opportunity to make a submission in response to the Bidding in Good Faith Rule Change Second Draft Determination (Second Draft Rule) released in September 2015.

Delta Electricity (Delta) is an electricity generator in the National Electricity Market (NEM) with an installed capacity of around 1,320 megawatts that produces electricity from coal, water and biomass. Delta operates Vales Point Power Station on the NSW Central Coast and the hydro-powered Brown Mountain Power Station at Bemboka River on the NSW South Coast. Delta generates around 4 per cent of the electricity needed by consumers in the NEM.

The opportunity to rebid capacity in response to continually changing market and operational conditions is fundamental to the market's ongoing effectiveness. The ability to rebid promotes a competitive price for the provision of electricity to consumers.

Delta supports the current provisions in the National Electricity Rules (Rules) that require generators to make all bids and rebids in good faith. That is, generator bids and rebids should reflect their intention and not be misleading.

The AEMC has identified late rebidding, or more specifically late rebidding undertaken as part of a strategy of behaviour that is aimed at misleading competitors, as the primary justification for the proposed Second Draft Rule. Delta does not agree that this is a material problem in the NEM, nor does Delta agree that the qualitative and quantitative analysis presented by the AEMC supports fundamental changes to the Rules. Furthermore, the measures contemplated in the Second Draft Rule may act as a disincentive to rebid, reducing efficient price discovery in the market.



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Delta's primary concerns are that the proposed Second Draft Rule:

- creates an additional cost and compliance burden for market scheduled generators that is disproportionate to the purported impact of the alleged issues and the potential gains that the Second Draft Rule seeks to achieve;
- requirement for a contemporaneous record introduces overheads that will impede efficient market behaviour that responds to the improved quality of trader's expectations and market information close to dispatch, rather than addressing any identified shortcoming in the Australian Energy Regulator's (AER) information gathering powers; and
- contains provisions that are drafted in a manner that lacks clarity by using phrases inconsistent with the generally understood or accepted use of such phrases in case law or legislation provisions. Furthermore, the scope of 'contemporaneous records' is likely to be resolved by a court on a case by case basis, making development of effective compliance programs challenging.

It is not clear that late rebidding is a material problem in the NEM

It is Delta's view that the cost of strategic very late rebidding is difficult to separate from the underlying limitations imposed on the market by the 5 minute dispatch versus 30 minute (5/30 min) settlement inconsistency.

AEMO's analysis of late rebidding¹ impact identifies that, in 2013, rebids in the last dispatch interval of a 30 minute settlement interval lowered prices in the largest regions (NSW and Vic). Modest rises were observed in Qld, SA and Tas. The total estimated cost of very late rebidding was less than \$10M in 2013, the proportion directly associated with 'strategic' very late rebidding has not been identified. The work undertaken by Ernst & Young to represent the materiality of the issue is greatly simplified. A realistic attempt to assess the impact of late rebidding would attempt to account for legitimate reasons for late rebidding rather than attributing all changes in the last two intervals to strategic rebidding.

The AEMC has not provided evidence that participants are delaying rebids to mislead others and take advantage of the 5/30 min settlement inconsistency.

Market efficiency benefits have not been quantified

The AEMC proposal is based on an 'in principle' assessment that the Second Draft Rule will result in shifts in behaviour that drive more efficient outcomes. Delta is of the view that the expected efficiency gains are likely to be difficult to realise given the 5/30 min settlement inconsistency has a bigger impact, and pre-dispatch accuracy will continue to be impacted by pre-dispatch constraint implementation and demand forecasting errors.

1. AEMO letter to AEMC 18 December 2015 - NEM 5 MINUTE DISPATCH AND 30 MINUTE SETTLEMENT: PRICE IMPACTS FROM LATE REBIDS



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Compliance burden of the proposed contemporaneous records is not trivial

Given that maintaining the proposed contemporaneous record is expected to be substantially more comprehensive than the brief, verifiable and specific reason that participants are currently required to provide with each rebid submitted, the Second Draft Rule will impose a material increase in Delta's costs of participation in the NEM.

Delta expects that greatest costs associated with maintaining a contemporaneous record will arise from:

1. additional resources devoted to the development of systems, and the analysis of data, in order to determine the time at which the relevant event(s) or other occurrence(s) occurred as opposed to when observed by the traders; and
2. development of systems to log, timestamp and reference 'the vast array of potential changes in conditions and circumstances' that may form the content of a detailed contemporaneous record.

In the Second Draft Determination the Commission asserts that the maintenance of a contemporaneous record 'should significantly reduce IT-related compliance costs'. This assertion is hopeful at best, being based on reasoning that significant cost savings would arise from the absence of an explicit obligation to 'collate all the relevant material'.

Further clarification by the AEMC is required to remove uncertainty in legal effect

A generator's ability to develop an effective compliance program is impeded by the uncertainty created by the potential for a court to define the scope of 'contemporaneous records' on a case by case basis.

A number of proposed clauses, including 3.8.22A(a) and (b)(2), appear to use phrases inconsistent with the generally understood or accepted use of such phrases in case law or legislation. The AEMC should:

- clarify scope of proposed clause 3.8.22A(a);
- clarify whether proposed clause 3.8.22A(a) imposes a 'continuing obligation';
- clarify scope of proposed clause 3.8.22A(b)(2); or

amend drafting in order to clarify their scope.

Furthermore, Delta is concerned that generators could technically be in breach of the Second Draft Rule when a genuine error has been made and corrected, even though the intent is not to mislead other market participants. Delta would welcome clarification from the AEMC that fixing errors or testing IT systems would not be classified as a breach.

'Red Tape' is not an appropriate tool to modify participant behaviour

Delta does not believe it is good policy to seek to change participant behaviour by compelling a generator "to consider the trade-off between the necessity of a rebid and the requirement to prepare a detailed contemporaneous record". This approach is inconsistent with the current Government's policies to minimise unnecessary 'Red Tape'.

Further, the need for additional record keeping may mean late rebids that improve the efficiency of the market may not be made. This outcome would be inconsistent with the National Electricity Objective.



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Summary

Delta does not support the AEMC's conclusion that strategic late rebidding is a material problem in the NEM. The proposed Second Draft Rule applies restrictions to a participant's ability to rebid that are unwarranted. In Delta's view the proposed Second Draft Rule will impose increased compliance costs on generators and hinder rebids that improve the efficiency of dispatch.

Questions related to this submission can be addressed to Alister Alford, Manager Regulation, Risk and Strategy by email to Alister.Alford@de.com.au.

Yours faithfully,

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