

5 November 2015

Mr John Pierce
Chair, Australian Energy Market Commission
Level 6, 201 Elizabeth Street
Sydney NSW 2000

Lodged via www.aemc.gov.au

Dear Mr Pierce,

RE: National Electricity Amendment (Bidding in good faith) Rule 2014

GDF SUEZ Australian Energy (GDFSAE) appreciates the opportunity to make a submission in response to the National Electricity Amendment (Bidding in good faith) Rule 2014 Second Draft Determination (the draft rule) and the Australian Energy Market Commission's (AEMC) efforts to readdress the significant concerns raised by industry in relation to the initial draft determination (first draft determination).

GDFSAE's position remains that rules around bidding and rebidding are critical to the design of the National Electricity Market. GDFSAE welcomes changes that improve or clarify existing arrangements but remains critical of proposals that have the effect of undermining flexibility in how participants operate or reduce volatility which is an inherent and necessary feature of the National Electricity Market.

Similarly, GDFSAE's view remains that the purpose of rules around bidding and rebidding should be focused on the permissible actions that a participant can take when responding to the market and should not introduce highly subjective concerns or prioritise secondary objectives.

And again, while the AEMC and interested stakeholders have affirmed the importance of volatility and flexibility, the commitment to these principles can only be judged via the content of the National Electricity Rules and not general supporting commentary. Any proposal and subsequent rule changes that sought to preference one form of market outcome over another, for instance disincentivising rebids or bids (together referred to as 'bids' forthwith) that create price volatility, would represent a fundamental move away from the existing market design.

In this regard, given the scope of changes that have been proposed over the course of this discussion, GDFSAE remains disappointed with the level, quality and accuracy of evidence put forward by the AEMC to justify the range of changes that have been proffered. In GDFSAE's view, there is little evidence to suggest late rebidding is driving inefficient outcomes over the long term or that short term inefficiencies derived from the market's design (all designs create threshold issues) are of such significance to warrant significant change. The ongoing absence of a basic cost benefit analysis is indicative of this absence of justification for many aspects of the first draft determination which continues to be the case for elements of the second draft determination.

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Summary of GDFSAE's position on the first draft determination

GDFSAE agreed with a number of aspects of the first draft determination.

- GDFSAE supported in-principle the move to a behavioural statement characterised as an obligation on generators not to make offers or bids that are “false, misleading or likely to mislead” as a replacement of the existing requirement to bid in “good faith”.
- GDFSAE agreed that consideration of matters, as listed in the then draft clause 3.8.22A, including any pattern of conduct, should be relevant to the consideration of whether bids are false or misleading.
- GDFSAE supports in-principle the clarification that a bid “must be made as soon as reasonably practicable” as provided in 3.8.22A(d).

GDFSAE expressed strong concerns with the remaining aspects of the first draft determination.

- GDFSAE did not support the additional reporting obligations to be placed on generators.
- GDFSAE did not support a delegation of powers to the Australian Energy Regulator to develop additional guidelines for the purpose of further reporting on bidding.
- GDFSAE did not support elevating the role of the market design principle in consideration of an offer or bid and therefore strongly recommends the removal of clause 3.8.22A(b1).
- GDFSAE recommended the removal of 3.8.22A(e) and did not support the elevation of the market design principles or other participants ability respond as the primary considerations the court *must* have regard to in assessing whether a bid was made as soon as reasonably practicable.

Second draft determination

GDFSAE supports the submission of the Energy Supply Association of Australia as follows.

- Clause 3.8.22A(a1) interpretation remains unclear and potentially creates a strict liability independent of clause (a). GDFSAE require AEMC advice on the specific purpose of this clause and the obligations it would impose on GDFSAE operations.
- Clauses 3.8.22(a) and 3.8.22(b) create confusion, in that it is unclear which circumstances (a) covers that are not covered by (b). The AEMC must be precise in regard to the intention of each clause so GDFSAE understands the issues the AEMC is attempting to address with its drafting.
- Clause 3.8.22A(b)(2) introduces uncertainty with regard to the term ‘reasonable grounds’ and how that differs from clause (b)(1). If the clauses do not have a separate meaning than the rationale for two clauses is not apparent.
- Clause 3.8.22(e) still introduces the subjective issue of other market participants. GDFSAE has previously stated this concept is both unclear and has not been justified by the AEMC. It remains unclear how a court would need to consider this.
- It is unclear, pursuant to clause 3.8.22A(d), how the time it takes for a generator to reach a conclusion on making a rebid will be considered in the context of “as soon as practicable”.

- GDFSAE remains sceptical of the value of the need to record additional information, and notes the Australian Energy Regulator's existing powers. Further, as the AEMC is aware there are significant costs associated with changing existing reporting arrangements.

Conclusion

GDFSAE welcomes the AEMC's work in this area and especially supports the AEMC use of a second draft determination to allow further and more fulsome discussion with industry and stakeholders. GDFSAE agrees that the AEMC should not hesitate to issue further guidance and update its position on the basis of further discussions. An extended consultation period should always be favoured over regulatory outcomes that are not fit for purpose.

On that note, GDFSAE remains unconvinced about the manner in which the AEMC has sought to frame these new obligations and is particularly concerned that the AEMC's policy position, regardless of the disputed case for change, is likely to increase uncertainty. From a position of first principles, this is not a supportable outcome for industry and will further undermine the weakening investor support for the National Electricity Market energy only design that is continuing to be challenged on a number of policy fronts.

GDFSAE welcomes further discussions and engagement with the AEMC and is available to discuss these matters. In that regard, should you have any queries in relation to this submission please do not hesitate to contact me on, telephone, 03 9617 8415.

Yours sincerely,



Jamie Lowe
Head of Regulation