BIDDING IN GOOD FAITH
SECOND DRAFT DETERMINATION

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1 Executive Summary

Stanwell strongly supports rebidding rules which require honest and timely provision of information to the market.

Stanwell strongly supports the intent of the second draft rule in clarifying that rebids must not be deliberately delayed to the detriment of competition. Market participants must be confident that all parties are acting with integrity and in accordance with all relevant laws.

Rebidding is essential for the safe and efficient operation of the electricity market. Rebids occur for numerous reasons including updated weather and demand forecasts, changes in plant conditions and in response to competitor activity. Rebids can also occur at any time including immediately prior to dispatch. We welcome the Australian Energy Market Commission (Commission) reaffirming the importance of rebidding in order to ensure safe and efficient market outcomes.

Not withstanding our overall support for the second draft rule, we consider there are three implementation issues which require further attention in order to ensure unintended consequences do not arise. These are:

1. No provision for honest and reasonable errors;
2. Removal of "reasonably" from the drafting; and
3. Conflicting requirements of the draft rule

1. No provision for honest and reasonable errors

The second draft rule neglects to include a provision for the correction of honest and reasonable bidding errors in a transparent matter as occurs under the existing rules. This is an untenable situation given the level of the potential penalty to both the individual trader and the generation business for an honest rebidding mistake. Moreover it is easily avoided. The inclusion of a defence in cases of a reasonable mistake of fact would be consistent with the Australian Consumer Law.

2. Removal of "reasonably" from the drafting

Stanwell opposes the Commission's decision to remove the word "reasonably" from the requirement for generators to rebid as soon as reasonably practicable, after they become aware of a material change in conditions or circumstances.

In other contexts, the Federal Court has observed that "practicable" refers to something which is capable of being done. The addition of 'reasonably' can, in some cases, qualify this obligation by inviting consideration of what is appropriate or suitable to the purpose of the legislation. As discussed in our submission, there are examples of where the exclusion of "reasonably" may lead to a reduction in market transparency, especially when traders would otherwise prioritise the information most likely to be of significance to the market.

3. Conflicting requirements of the draft rule

The second draft rule proposes to measure both the reaction time of the trader following a market change and how long that reaction occurs before the auction closes. In measuring both "from" and "to" the second draft rule creates ambiguity as traders wanting to provide updated representations of their intent in a transparent and timely manner must also consider whether their competitors will be able to react.

We do not accept that the rule can give statutory guidance to a court but not impact the practices of market participants. Prudent market participants will consider all provisions of a law in assessing their compliance. Not to do so would be reckless.

Inappropriate language and poor analysis in the draft determination

While Stanwell support the intent of the proposed rule change we are concerned by the language of and analysis in the draft determination.

The language used in the second draft determination – as distinct from the second draft rule – has lead to poorly informed, even misleading media coverage with negative impact on Stanwell's reputation despite our strong record of compliance and ethical conduct.

The case for the Commission's proposed rule change does not depend on finding that there is a strategy of deliberate delay – the proposed rule is appropriately designed to address the potential for such a strategy to exist. Generators should not stand accused of such misconduct in the absence of any actual evidence that it has occurred. Stanwell urges the Commission to make this clear in its final determination.

Stanwell has a very strong ethical and compliance focus and does not feel that this is reflected in the second draft determination which negatively references Queensland baseload generators.

At Stanwell we are confident that our rebids are timely and represent genuine intention. We have negotiated both wholesale and retail arrangements in good faith with many industrial customers over an extended period of time and have consistently supported Queensland industries and customers, providing both short and long term prices capable of acceptance.

2 Strengths and weaknesses of the second draft rule

Stanwell strongly supports the intent of the second draft rule in clarifying that rebids must not be deliberately delayed to the detriment of competition. Market participants must be confident that all parties are acting with integrity and in accordance with relevant laws.

We reiterate our support for the Commission's proposal to have the rebidding rules apply to all elements of a rebid rather than being restricted to available capacity and daily energy constraints.

We also support the proposal to ensure that information presented to the market is robust and timely.

Rebidding is essential for the safe and efficient operation of the electricity market. Rebids occur for numerous reasons including updated weather and demand forecasts, changes in plant conditions and in response to competitor activity. Rebids can also occur at any time including immediately prior to dispatch. We welcome the Commission reaffirming the importance of rebidding in order to ensure safe and efficient market outcomes.

> *Rebidding by participants, including rebids made very close to the time of dispatch, is a necessary component of the market. Rebidding provides generators with the flexibility to adjust their position to accommodate changes in market conditions and to respond to the offers or bids of other participants.* [1]

Not withstanding our overall support for the second draft rule, we consider there are three implementation issues which require further attention in order to ensure unintended consequences do not arise. These are

1. No provision for honest and reasonable errors;
2. Removal of "reasonably" from the drafting; and
3. Conflicting requirements of the draft rule

2.1 No provision for honest and reasonable errors

Stanwell has previously identified that the proposed change from "in good faith" to "must not mislead" requires an explicit allowance for honest and reasonable mistakes. We are concerned that the second draft determination not only fails to include this reasonable measure but explicitly considers its adverse impact to be desirable.

> *Whether a contravention was committed intentionally or not is a matter that goes only to the quantum of penalty.* [2]

Under the existing provisions, a trader who makes an honest and reasonable mistake is encouraged to rectify it and alert the market to the existence of the error. The Australian Energy Regulator (AER) rebidding guidelines recognise that an offer can have honest intent, but contain an error, and encourages the rectification of that error through a rebid with an 'E' designation. This informs both the market and the regulator that an error has occurred and results in the highest possible level of transparency.

The second draft determination overwrites this approach. A rebid which contains an error in relation to the dispatch of the relevant unit is 'likely to mislead' as it does not, by definition, represent the intention of the trader. It is conceivable that when such an error is identified a

[1] Bidding in Good Faith second draft determination, summary page ii.
[2] ibid, page 46.

trader might be conflicted as to whether to enter a correcting bid, as this would be tantamount to an admission of a breach of the "must not mislead" provision in relation to the last rebid.

Regardless of what processes are put in place, errors cannot be completely eliminated. The current rules and AER guidelines encourage the prompt rectification of such errors, thereby encouraging the very transparency that the Commission supports through the new market design principle at clause 3.1.4(a)(2). It is ironic, to say the least, that the Commission would replace this with a new rule that might cause market participants to think twice about whether their interests are best served by rectifying errors.

This is an untenable situation given the level of the potential penalty to both the individual trader and the generation business for an honest rebidding mistake. Moreover it is easily avoided. The inclusion of a defence in cases of a reasonable mistake of fact would be consistent with the Australian Consumer Law, where such defence applies (under section 207) in the case of a prosecution for false or misleading representations. We submit that a similar defence is appropriate in the context of the prohibition under clause 3.8.22A(a), and have suggested a clause to give this effect (based on the Australian Consumer Law defence) in attachment A.

2.2 Removal of "reasonably" from the drafting

Stanwell opposes the Commission's decision to remove the word "reasonably" from the proposed new requirement for generators to rebid as soon as reasonably practicable[3], after they become aware of a material change in conditions or circumstances.

The Commission has previously provided the following diagram to explain the rationale for the new requirement to rebid as soon as [reasonably] practicable, with the intention being to minimise the time between the formation of an intent to rebid (C) and the rebid being presented to the market (D). The second draft rule refers to the point at which a trader becomes aware of a change in circumstances (somewhere between (B) and (C)) as the starting point for the measurement of whether the rebid at (D) was made as soon as [reasonably] practicable.

Figure 4.1 A misleading dispatch offer

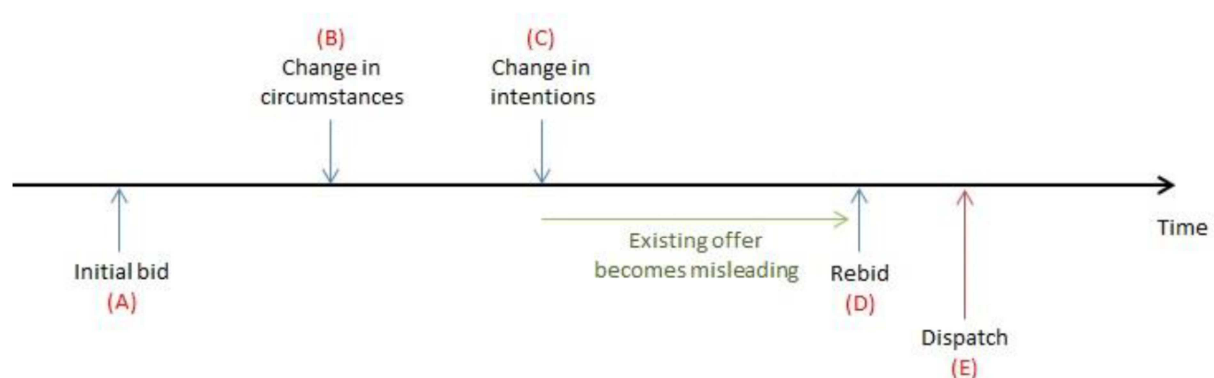

Figure 1. AEMC representation of a bid which becomes misleading through inaction

In other contexts, the Federal Court has observed that "practicable" refers to something which is able to put into practice and which can be effected or accomplished[4], (ie. something

[3] We note that subsequent to the publication of the second draft rule the Commission has indicated that it proposes to also remove the word "reasonably" from clause 3.8.22A(e). Stanwell's response applies to both clauses equally.

which is capable of being done). The addition of 'reasonably' can, in some cases, qualify this obligation by inviting consideration of what is appropriate or suitable to the purpose of the legislation.

Stanwell's previous submission refers to a number of examples of when a rebid may be 'practicable' but not 'reasonably practicable' in a short timeframe after a trader becomes aware of information. The distinction is particularly relevant during periods which are likely to be of greatest interest to the regulator – first thing in the morning and periods of great variability (high demand, intermittent constraints etc). Under both scenarios the trader is likely to become aware of a number of changes at the same point in time but may *reasonably* prioritise analysis of the closest dispatch or trading period first.

Having made a decision in relation to the most prompt period the trader must decide whether to enter that rebid, then formulate a further rebid in relation to later time periods, or also analyse those later time periods and incorporate the actions into a single bid. Separate bids will mean that the change in intention for the prompt period is presented to the market with maximum time for competitive response but may prejudice the ability to enter a rebid in relation to later time periods. A rebid for a later time period may be *practicable* but *unreasonable* in the circumstances given the prioritisation of the earlier period. The existence of a rebid for an earlier period - in response to a change published at the same time as the reason for the desired rebid for a later period - would potentially prove the trader guilty only of giving reasonable priority to the information most likely to be of high value to the market. Delaying the rebid for the most prompt periods in order to incorporate analysis of later periods may overcome this but be viewed as a deliberate delay of the information most critical to the market.

More generally, NEM traders operate in a dynamic environment with a number of competing requirements, and it is likely to be "reasonable" that from time to time those other demands will delay a rebid from what is technically attainable, or practicable, especially where the rebid applies to a time period well into the future. By contrast, rebids with immediate or near immediate effect are unlikely to be "reasonably" delayed by those competing requirements. For example a delay in considering the impact of a change to the weather forecast for tomorrow afternoon until after a meeting, phone call or alternative conversation may be reasonable, but a changed weather forecast for a few minutes or hours time would be likely to receive immediate prioritisation.

2.3 Conflicting requirements of the draft rule

The second draft rule imposes three considerations on a trader when entering a bid:

1. the requirement to not mislead;
2. the requirement to act as soon as [reasonably] practicable; and
3. the requirement to, where possible, allow reasonable opportunity for other *Market Participants* to respond

In the presence of the first two conditions the third condition is unnecessary. If a rebid represents the intent of the trader and is provided to the market rapidly in response to a change in material conditions and circumstances it should be immaterial when the changes take effect. The presence of the third condition only serves to increase uncertainty as it implies that what is [reasonably] practicable depends on capabilities outside the control of the party taking action.

[4] eg. see *Snedden v Minister for Justice for the Commonwealth of Australia* [2014] FCAFC 156 at [116]

Additionally, as discussed in Stanwell's submission to the first draft determination, it goes against the rationale for competitive markets to expect a generator to consider a competitor's ability to respond when contemplating a rebid. The second draft determination implies that a trader may need to log that they have considered the ability for others to respond in order to determine whether they have acted as soon as [reasonably] practicable.

Despite the change in drafting on the third condition above, the retention of this element in order to provide statutory guidance to the court imposes compliance with this provision on the generator and consideration of this by the regulator. Prudent market participants will consider all provisions of a law in assessing their compliance. Not to do so would be reckless.

The Commission has stated that clause 3.8.22A(d) (the requirement to rebid as soon as [reasonably] practicable) is trying to address instances of "*deliberately delaying rebidding until other market participants cannot respond*"[5]. If clause 3.8.22A(e) ("[reasonably] practicable" is determined by whether sufficient time has been allowed for other *Market Participants* to respond) is retained it should be redrafted to reflect this. That is, clarifying that the concern is the intent to deliberately delay rebidding so others can't respond, rather than just whether a participant can respond or not. We have made a suggestion for how the rule could be structured in Attachment B.

Stanwell's suggested drafting is consistent with the Commission's statement that *"the inability of other participants to respond will be neither a necessary nor sufficient condition to prove a breach of the obligation to rebid as soon as practicable"*[6].

Alternatively, the Commission should remove clause 3.8.22A(e) from the final rule.

2.4 Other drafting comments

The proposal to have all elements of a bid[7] covered by the rebidding provisions is beneficial. In addition, the identified loophole which potentially allows deliberate rebid delays in order to preclude competition is worth closing despite Stanwell's view that it was unlikely to be used by sophisticated participants in the wholesale market. The Oakley Greenwood cost estimates on this element appear broadly reasonable[8], confirming that action to address this technical deficiency is relatively low cost and worth pursuing.

A number of the other proposed changes – such as the explicit allowance for inference of intent from patterns of behaviour and whole of portfolio actions, and the change from "in good faith" to "must not mislead" - appear to be negligible changes with limited benefit but also limited cost, subject to the three alterations discussed above.

We also support the esaa submission to the second draft determination which references a number of other concerns with the specific drafting of the proposed rule.

[5] Second draft determination, page 48.

[6] Second draft determination, page 48

[7] Under the existing provisions Market participants must make an offer, bid or rebid in relation to available capacity and daily energy constraints in good faith. The second draft rule extends this to all offers, bids and rebids.

[8] Stanwell considers that the cost for option 3 is significantly underestimated but accepts the order of magnitude estimates for options 2.

3 Language and analysis in the draft determination

While Stanwell agrees with the proposed rule change in principle – subject to the issues above – we have significant concerns relating to the analysis performed and the conclusions drawn on generator behaviour during this process.

The Oakley Greenwood estimation of generator costs shows a very moderate cost estimate for the proposed changes which could easily have been rationalised with reference to the improved technical capability of the second draft rule. It is therefore highly disappointing that the Commission has relied on inflammatory, unfounded statements and contortions of already unsustainable analysis to underpin the rationale for the second draft determination.

3.1 Modelling produces insupportable results

Stanwell was surprised that the Commission requested quantitative analysis on the effects of "deliberate late rebidding" on contract prices by EY/ROAM, given:

1. the difficulty in identifying any "deliberate late rebidding" to date (as opposed to rebidding which occurs close to dispatch in response to emergent information); and
2. the difficulty mapping any specific spot market event to its impact on the forward curve.

We believe most trading and middle office teams in the NEM are likely to have performed similar price analysis in the past and come to the same conclusion: all spot prices influence forward prices, but not in a clearly definable way.

Unsurprisingly (given the unachievable brief and the rushed timeframe) the EY modelling contains material weaknesses in both qualitative and quantitative terms. The analysis relies on linear regression models to estimate the impact of an arbitrary assumption on a highly complex dataset. While arguably economically elegant, this approach clearly fails any test of reasonableness given that it proposes that a $1.68/MWh[9] cap payout in Q112 could have been reduced by $1.80/MWh had certain events been removed. Similarly unsupportable results are found in quantitative results for the other quarters.

Qualitatively the report is also concerning due to the apparent willingness to distort findings and logic to reach a predefined conclusion. The EY modelling follows an earlier ROAM Consulting report to the AEMC which determined that:

- Rebidding is correlated to high demand (section 6.2)
- Rebidding is correlated to low import headroom (section 6.3)
- Rebidding is correlated to forced outages (section 6.4, 6.5)
- Rebidding is correlated to constraints binding (section 6.6).
- Rebidding is correlated to high prices being forecast in PD (section 6.7)
- Rebidding is correlated to low import headroom being forecast in PD (section 6.8).
- Rebidding is correlated to high prices (section 7.4.1)
- The type of rebidding is not correlated[10] to pool prices (section 7.4.2) and
- most variables were correlated to most other variables (high demand, low import headroom, high prices etc) [11]

[9] Note that the EY analysis references the closing price of the futures contract on the last trading day, rather than the actual cap outcome. For Q112 this creates a price of $1.68 rather than the $1.65 ultimately settled. Similar discrepancies exist for each period analysed, peaking at 17c/MWh in Q115.

[10] "*These results suggest that the relationship between the type of late rebidding and pool price outcomes is highly variable and not consistently significant*", ROAM page 42.

The ROAM report was explicit that the findings were of correlation rather than causality[12], however EY contend that:

> *Both the previous ROAM Consulting work and the current analysis have shown that late rebidding has the potential to create "price spikes".*

If this were true, based on the ROAM results above, one would also need to conclude that late rebidding has the potential to cause high demand, forced outages and predispatch forecasts published before the late rebidding occurs. Clearly this is not the case.

3.2 Poor clarity of language used creates confusion and conflation of issues

In our response to the first draft rule Stanwell suggested that the Commission use precise language when discussing the proposed rule change. We are concerned to find the second draft determination continues the use generic terminology – in this case "deliberate late rebidding" – when addressing highly specific issues. The combination of the issues and the moniker are inappropriate – at a minimum, all rebidding should be deliberate, regardless of when it occurs.

The proposed imposition of a new requirement for rebids to be made as soon as [reasonably] practicable is to prevent rebidding which is unnecessarily *delayed*. The proposed imposition of additional record keeping requirements for rebids occurring close to dispatch appears to narrow the focus to rebids which are *delayed* until *late in the auction process,* implying the relevant reference should be *delayed* rather than *deliberate* late rebidding.

Late (in the auction) rebidding can be considered to have two components - *Delayed late rebidding* and *late rebidding in response to emerging changes in material conditions and circumstances*. Removing the potential for *delayed late rebidding* is something Stanwell supports while *late rebidding in response to emerging changes in material conditions and circumstances* is critical in enabling the energy only market to work efficiently.

Due to the Commissions' use of imprecise language, this distinction is not adequately made despite its critical importance to the second draft rule.

The Commission has determined (in draft) that it is appropriate to amend the rules to expressly require rebids to be made as soon as practicable in order to avoid the possibility that deliberate delays are used to restrict competition. While the analysis commissioned by the Commission is not definitive as to the link between the timing of rebids and wholesale market outcomes (eg. see EY at page i), and while Stanwell considers that there are several aspects of the proposed rule which should be modified, overall Stanwell supports this rule change.

Stanwell would have expected the Commission to have robust evidence before asserting that untoward conduct exists in the NEM. Instead, it appears the Commission has based these claims on nothing more than submissions from stakeholders who insist they must be true. There is no indication that the Commission has made its own inquiries of generators, or that it has referred these claims to the AER. Despite this, generators (particularly in Queensland) have been left with misleading and inflammatory media coverage of unsupported claims of improper behaviour.

The Commission has explained that its rule is designed to address improperly delayed late rebidding. The case for the Commission's proposed rule change does not depend on finding that there is a strategy of deliberate delay – only that such a strategy may be possible under

[11] ROAM Consulting report to AEMC *Analysis of rebidding in the NEM*, 17 October 2014, Page 32

[12] "These relationships only suggest that the variables are correlated and cannot determine whether there is any causal relationship between rebidding and price outcomes." ROAM Consulting report to AEMC *Analysis of rebidding in the NEM*, 17 October 2014.

the current rules. Generators should not stand accused of such misconduct in the absence of any actual evidence that it has occurred. Stanwell urges the Commission to make this clear in its final determination.

3.3 Overstatement of modelling results

The second draft determination refers to the EY modelling when rationalising the need for the proposed rule change, but creates distortions in doing so. The determination:

- compares results across different concepts;
- restates the findings incorrectly; and
- fails to account for the underlying meaning of the information

The EY analysis

> *…assumes that the additional price volatility that occurs in these [the 5th and 6th] dispatch intervals (in comparison with the level of volatility in the first four dispatch intervals) is the result of strategic late rebidding.*[13]

While there are three disclaimers listed in the EY report there appears to be no consideration given to the distinction between *strategic rebidding* in response to late emerging information and a strategy of *delayed* rebidding *late* in the auction process. The comparison of analysis across such distinctions as displayed in the second draft determination is extremely problematic.

This is further compounded by the Commissions restatement of EY's findings. In short, EY calculated the difference between actual contract prices and a theoretical outcome (in $/MWh), then multiplied this figure by the *open interest* at the start of the relevant quarter to determine an impact in dollars ($).

> *Using methods described above for estimating the impact of the removal of **strategic late rebidding** indicates that historical contract payouts could have decreased substantially. If the removal of this behaviour resulted in a similar decrease in the market's expectations of price volatility in Queensland then this could result in significant savings in contracting costs. However, this is underpinned by a number of assumptions and limitations which may overstate or understate the net effect of the removal of **strategic late rebidding** on market volatility. Furthermore, this analysis does not in any way consider whether the potential reduction in contract prices is a beneficial outcome, given that some element of **strategic bidding is a necessary feature of the energy only market design**. [emphasis added]*[14]

The second draft determination summarises the EY report as

> *Overall, the additional expenditure on ASX traded caps and base futures caused by deliberate late rebidding over this time period [Q414 and Q115] has been estimated at $103.8 million.*[15]

Clearly the Commission has drawn a direct equality between EY's definition of *strategic late rebidding* and *deliberate late rebidding* which is inconsistent with the proposed rule change as it relates to *delayed late rebidding.*

The figure used in the Commission's summary is also misleading in a number of ways. The figure quoted is the difference in spot and therefore contract outcomes for a period - as measured at the end of that period - referenced to financial contracts entered into before that

[13] *Investigating the impact of late rebidding on the contract market*, EY, 11 September 2015, page 22.
[14] ibid page 28-29.
[15] Second draft determination, page 77.

period. These financial contracts are entered into precisely to avoid the uncertainty of spot market outcomes. The $103.8 million is the opportunity cost foregone (under certain assumptions) by the sellers of contracts for summer 2014/15 in Queensland. It would only be “additional expenditure” if the contracts were not hedges offset by generation – and Stanwell can confirm that many of the contracts were indeed hedges.

Figure 2 shows the daily closing price for the Queensland Q115 baseload contract for the 18 months leading up to that period as well as the three months during which spot prices were set. While trading of financial products during the spot period is possible, most hedge transactions are executed prior to the period in order to manage risk for both parties. During this forward hedging period the Q115 contract varied within an almost $30/MWh range but entered January 2015 only $0.16/MWh higher than the market’s expectations 18 months earlier.

The chart is also marked to show days where Stanwell sold a contract covering this period – whether a Q1 specific contract or a longer period such as Calendar Year 2015. It is clear that Stanwell provided significant, consistent liquidity to the contract market throughout the hedging period as well as balancing transactions during the spot period. It is also notable that almost every contract sold by Stanwell in relation to Q115 resulted in an opportunity cost to Stanwell – that is the ultimate spot outcome was above the price at which we sold.

Similar charts could be constructed for other periods, and while the spot outcomes for those periods may vary significantly the hedging behaviour is likely to be quite consistent.

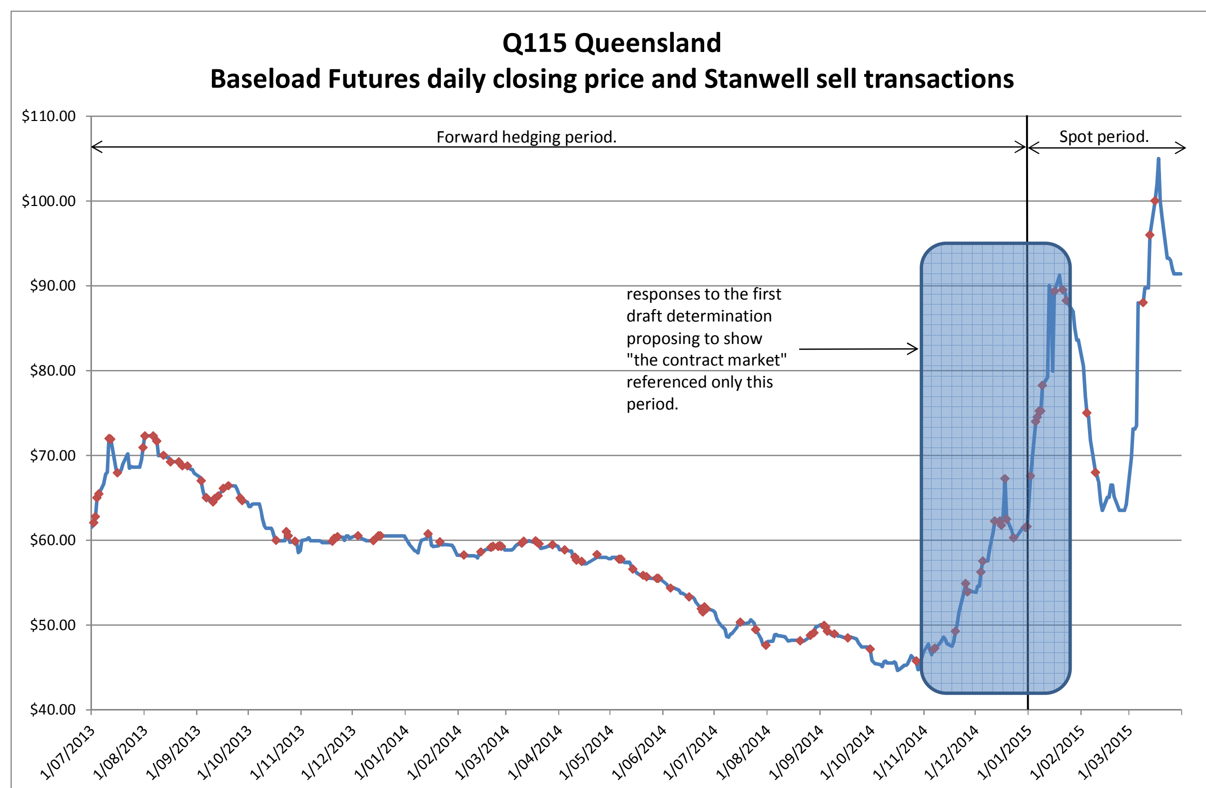

Figure 2. Stanwell provides significant, consistent liquidity to purchasers of hedge and retail contracts.

The figure for summer 2014/15 is also inflated when compared to previous periods specifically because so many contracts had been written. The notional impact of EYs late rebidding model on Q1 2014 was $11.1/MWh compared to $7.3/MWh for Q1 2015, however, the impact in dollars in the later period was almost double for caps and 50 per cent higher for baseload futures. This implies that the impact on consumers was significantly diluted through the rational use of hedges.

Had the Commission referred to the $/MWh increase in future contract prices produced by EY's modelling the only issue would have been the quality of the modelling. That is, had the modelling been specifically in relation to delayed late rebidding and quantitatively robust, increases in future contract prices due to inappropriate rebidding would indeed represent an inefficient cost to consumers and other market participants. However, the Commission chose to re-state EY's analysis in dollar terms and has created an inaccurate representation as a result.

This overstatement of EYs findings is particularly disappointing given the generally positive nature of the proposed rule change and Oakley Greenwood's low cost estimate for implementation[16].

3.4 Bias against Queensland (and to a lesser extent South Australia)

The second draft determination and associated consultant reports repeatedly refer to events "in Queensland, and to a lesser extent South Australia" when indicating that there is a causal link between deliberate and strategic "late rebidding" and harm to participants and consumers via inefficient price volatility.

In the second draft determination, this leads to prejudicial statements such as "*…to date,* ***material harms*** *from* ***deliberate late rebidding*** *have been concentrated in* ***particular jurisdictions*** *while others have remained relatively unaffected [emphasis added]"*[17]. The Commission's choice of language is inappropriate as it conflates three concepts to reach a conclusion greater than the sum of its parts:

1. Significant losses can accrue quickly to unhedged participants in the wholesale market;
2. Rebidding close to dispatch is correlated to high prices; and
3. High prices have been concentrated in particular jurisdictions in recent years

However, this does not imply material harms from deliberate (delayed) late rebidding.

The higher correspondence of rebidding and high prices in some regions is due to a greater occurrence of high prices rather than the causal relationship assumed in the second draft determination. That is, in a region such as NSW which has exhibited cap payouts of zero, $0.60/MWh and $0.11/MWh for the last three calendar years it is unlikely that you would find a correlation between high prices and anything, let alone a specific thing (rebidding). By contrast in a region with cap payouts strongly correlated to high demand, low import headroom, constraints and predispatch volatility it is hardly surprising to find a correlation between high prices and rebidding close to dispatch - but this does not imply a causal relationship, nor a direction should such a causal relationship exist.

There is significant evidence that rebidding close to dispatch is likely to be caused by changes in market conditions close to dispatch and hence not "deliberately delayed". Certainly the publicly available AER price event reports from summer 2014/15 provide an extensive list of rebids which would be considered "late" under the draft determination but which reference events very close to the time of the rebid. Further, for most periods, in most regions, there is rebidding occurring close to dispatch regardless of whether price is high or low – that is, rebidding close to dispatch is normal for most participants as newer, relatively certain information becomes available.

It is notable in this respect that AEMO publish two distinct predispatch datasets. Thirty (30) minute predispatch is published for an entire trading day, every half hour at the trading interval (30 minute) resolution. Five (5) minute predispatch is published every five minutes for a rolling one hour window at the dispatch interval (five minute) resolution. It is common for these predispatch solutions to vary significantly – even when published concurrently –

[16] *Generator Cost Assessment,* Oakley Greenwood, September 2015, Table 4
[17] Second draft determination, page 26.

and this provides a significant information resource to market participants, however, there is little scope to use this information in a manner that does not create a "late" rebid.

Figure 3 shows the disparity between these predispatch sources - published at the same time by AEMO – even on a quiet day. Comparing the two trading intervals for which both data sources exist, five minute predispatch (P5 rows) shows demand consistently below 30 minute predispatch (the bottom two rows) in Queensland, but consistently above 30 minute predispatch in NSW. Despite this the majority of prices are forecast by P5 are below P30 in both states. It is hardly surprising that traders presented with such a rich source of new information would at least consider rebidding to adjust their position.

Refresh		QLD MW	NSW MW	QLD $	NSW $
Target	12:05	6,346	8,507	$49.50	$44.93
Output	12:05				
P5	12:05	6,346	8,507	$49.50	$44.93
	12:10	6,353	8,514	$46.60	$41.98
	12:15	6,331	8,509	$46.24	$41.98
	12:20	6,335	8,510	$46.25	$41.98
	12:25	6,315	8,516	$46.24	$41.98
	12:30	6,329	8,540	$46.25	$41.98
	12:35	6,322	8,529	$46.22	$41.96
	12:40	6,323	8,537	$46.24	$41.97
	12:45	6,351	8,536	$46.55	$41.98
	12:50	6,356	8,547	$46.55	$41.98
	12:55	6,347	8,546	$46.24	$41.98
	13:00	6,358	8,558	$46.55	$41.98
	12:30	6,385	8,485	$49.50	$43.93
	13:00	6,430	8,515	$49.50	$41.97

Figure 3. Stanwell internal representation of AEMO pre-dispatch data, 26 October 2015.

Stanwell has previously provided significant analysis regarding the correlation between high price and either or both of high demand and binding constraints in recent years[18]. This analysis is supported by the original ROAM Consulting report[19] but appears to have been dismissed by the Commission, to the detriment of its findings.

Despite being interconnected, each State faces its own distinct supply-demand situation which drives price outcomes. The demand side is highlighted by Figure 4 below which provides a stark contrast between the increase in demand in Queensland and the reduction in demand in other States, most notably NSW and Victoria.

[18] Stanwell response to first draft determination, Bidding in good faith rule change request, June 2015.
[19] *Analysis of rebidding activity in the NEM*, ROAM Consulting report to AEMC, 17 October 2014.

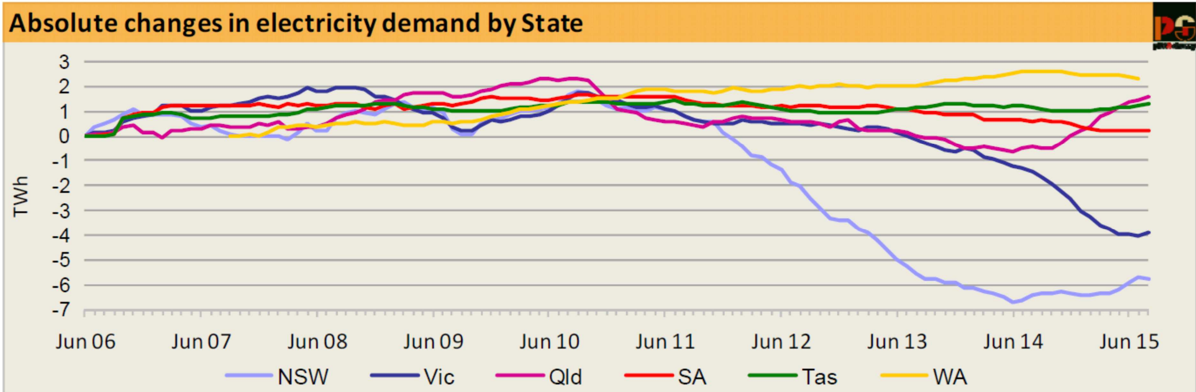

Figure 4. Absolute change in grid consumed energy, by region. Pitt & Sherry Cedex, September 2015.

Figure 5 below shows the supply side of the Queensland market. Increased pressures on the supply side came to bear in Queensland from 2012 with generator decisions to retire or mothball plant following an extended period of sub-economic returns. 2014/15 also saw the first reduction in the availability of low cost "ramp" gas for electricity generation in response to the emerging LNG industry.

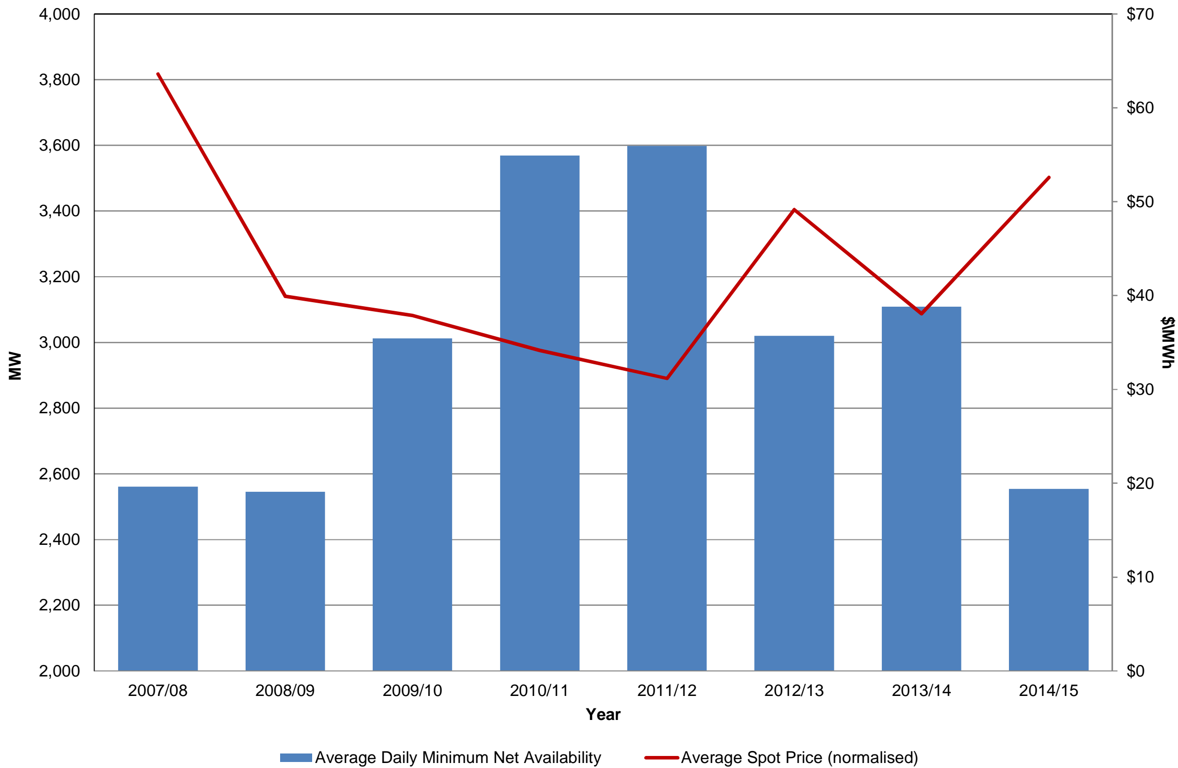

Figure 5. Queensland spot price (adjusted for inflation and Carbon) vs generation reserve margin.

While the Commission appears to have accepted the position put to it by some parties – that there is a structural problem with generator ownership in Queensland – this is not supported by any evidence or analysis presented to date.

While reference has been made in a number of forums to the common ownership of Stanwell and CS Energy by the Queensland Government as being an influence on price outcomes, these companies operate under independent boards and compete in the market in the same manner as any other two companies.

Similarly, market share of installed capacity in Queensland in recent years has been very similar to that in NSW when accounting for announced closures, mothballing and longstanding operational regimes. Indeed the most notable difference between Queensland

and the other NEM regions is the lack of vertical integration which, while rational, is not typically a defining feature of the design of a competitive market. It may also imply that generators in other States are not acting as typical "generators".

Queensland		New South Wales		Victoria	
Operator	**Market share (%)**	**Operator**	**Market share (%)**	**Operator**	**Market share (%)**
CS Energy	34%	AGL Energy	31%	AGL Energy	26%
Stanwell	28%	Origin Energy	25%	GDF Suez	22%
InterGen (Australia)	12%	Snowy Hydro Ltd	19%	Snowy Hydro	18%
Origin Energy	10%	EnergyAustralia	12%	EnergyAustralia	13%
Arrow Energy	5%	Delta Electricity	9%	Origin Energy	5%

Source: AEMO Regional Generation Information, 31 July 2015.
Adjusted for announced closure/long term mothballing of Collinsville, Redbank, Wallerawang, announced medium term closure of Tarong unit 2 and Swanbank E, and 5 unit operation at Gladstone

Figure 6. Generation market share by region

3.5 Bias against baseload generation

The second draft determination and associated consultant reports display an unhealthy bias against "*generators that are online and regularly being dispatched*"[20]. They explicitly consider that "*bidding behaviour by these [baseload] generators can entrench market outcomes that are more in line with their commercial interests.*"[21] while high cost generators rebidding volume to lower prices – including at a loss – is "efficient".[22]

The Commission expressing such an asymmetrical view implies that it is appropriate and has had the impact of encouraging further poorly informed commentary on the subject. A highly visible example of such activity is the EUAA media release which occurred on the day of the publication of the second draft determination. This release contained baseless claims of wrongdoing on behalf of specific generators. In addition, other industry associations and media published similarly baseless statements, some quoting (or mis-quoting) the Commission.

The Oakley Greenwood analysis (extracted below) indicates that "late rebidding" from baseload generators, particularly in Queensland, has been quite stable, in direct contradiction to the Commission's claims in the second draft determination[23]. By contrast "late rebidding" by peaking and intermediate plant increased sharply in the most recent financial year, likely in response to the increase in high prices (both actual and forecast).

[20] Second draft determination, page 21.
[21] Second draft determination, page 21.
[22] *Analysis of rebidding in the NEM*, ROAM Consulting, 17 October 2015. *"high pre-dispatch forecasts consistently result in an increased likelihood of generators submitting bids to lower price bands. This indicates an efficient response to the market signal that the region is short of low cost capacity in the near future. This bidding behaviour could indicate responses such as gas turbines starting to prepare their units to generate."*
[23] Second draft determination, page 27.

Summary of late rebids - all classifications	2012/13	2013/14	2014/15	Summary of late rebids - excluding "plant" rebids	2012/13	2013/14	2014/15
CS Energy	18,349	18,080	18,517	CS Energy	3,922	4,364	3,834
Stanwell	6,493	4,888	5,746	Stanwell	3,672	3,171	3,910
Millmerran	4,100	2,573	3,850	Millmerran	114	106	429
Arrow Energy	2,422	1,868	3,761	Arrow Energy	997	805	1,022
QGC Sales	914	814	1,158	QGC Sales	42	55	31
ERM Power	-	420	1,488	ERM Power	-	264	588
RTA Yarwun	233	160	548	RTA Yarwun	233	160	548
Ergon Energy	101	20	58	Ergon Energy	101	20	58
	32,612	28,823	35,126		9,081	8,945	10,420
				Proportion of late rebids relating to plant			
				Total	72%	69%	70%

Figure 7. extract from Oakley Greenwood report. "Late rebidding" by predominantly Qld generators.

We strongly urge the Commission to revert to evidence-based commentary rather than fuelling uninformed debate.

4 Start date for the proposed rule change

Implementing the proposed rule change requires sufficient lead time to allow for a number of processes to be completed:

- The addition and significant revision of civil penalty provisions (including the rebidding penalty provision) will require approval by the COAG Energy Council
- The proposed rule change will require compliance training and the updating of compliance guidelines, particularly related to the new rebidding penalty and record keeping provisions.
- Time is required to develop new - or update existing - record keeping tools to allow compliance with the proposed rule. The cost of these changes will depend on the timeframe allowed, however Stanwell's initial estimate is that a minimum of six (6) months of IT development will be required for our systems due to their bespoke nature and integration with other business software. This is consistent with the advice provided to Oakley Greenwood.

As Stanwell does not hold excess IT capacity idle, this work could not be started immediately without significant disruption to our existing pipeline of work. Assuming a November 2015 determination and December 2015 COAG endorsement, we consider it unlikely that meaningful work could commence before Q2 2016, and preferably Q3 2016. While some of the IT and compliance processes can occur in parallel, there will be a requirement for some compliance training to occur once the IT changes are completed.

We encourage the Commission to place due consideration on these requirements when determining the start date for the proposed rule change.

Attachment A: Proposed defence in cases of a reasonable mistake of fact:

(c1) In any proceeding in which a contravention of paragraph (a) is alleged, it is a defence if the *Scheduled Generator*, *Semi-Scheduled Generator* or *Market Participant* proves that the contravention was caused by a reasonable mistake of fact, including a mistake of fact caused by reasonable reliance on information supplied by another person.

(c2) However, paragraph (c1) does not apply in relation to information relied upon by the *Scheduled Generator*, *Semi-Scheduled Generator* or *Market Participant* that was supplied to the *Scheduled Generator*, *Semi-Scheduled Generator* or *Market Participant* by another person who was, at the time when the contravention occurred, a director, employee or agent of the *Scheduled Generator*, *Semi-Scheduled Generator* or *Market Participant*;

(c3) If a defence provided by paragraph (c1) involves an allegation that a contravention was due to reliance on information supplied by another person, the *Scheduled Generator*, *Semi-Scheduled Generator* or *Market Participant* is not entitled to rely on that defence unless:

(1) the court gives leave; or

(2) the *Scheduled Generator*, *Semi-Scheduled Generator* or *Market Participant* has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the *AER* a written notice giving such information as the *Scheduled Generator*, *Semi-Scheduled Generator* or *Market Participant* then had that would identify or assist in identifying the other person.

Attachment B: Proposed statutory guidance to the court:

(e) In any proceeding in which a contravention of paragraph (d) is alleged, in determining whether a *Generator* or *Market Participant* made a *rebid* as soon as [reasonably] practicable, a court must have regard to whether the Generator or Market Participant delayed a rebid for the purpose of limiting the opportunity for other Market Participants to respond (including by making responsive rebids, by bringing one or more generating units into operation or increasing or decreasing the loading level of any generating units, or by adjusting the loading level of any load) prior to;

(i) the commencement of the trading interval to which the rebid relates; or

(ii) the commencement of any dispatch interval within that trading interval.

and may have regard to any other relevant matter, including the market design principle set out in clause 3.1.4(a)(2) and any of the matters referred to in sub-paragraphs (c)(1) to (5).