

Mr John Pierce  
Chair  
Australian Energy Market Commission  
PO Box A2449  
Sydney South

26 May 2014

Dear Mr Pierce

**National Electricity Amendment (Bidding in good faith) Rule 2014  
Consultation Paper**

QGC<sup>1</sup> welcomes the opportunity to provide comment on the National Electricity Amendment (Bidding in good faith) Rule 2014 (the Rule Change request) Consultation Paper prepared by the Australian Energy Market Commission (the Commission). As a major user of electricity (and one of only a small number of large demand-side participants directly involved in the spot market), QGC has unique insights into the operation of the National Electricity Market (NEM). QGC supports efficient, predictable and stable energy markets and we view this consultation process as raising issues that are fundamental to the continued effective operation of the NEM.

The Rule change request proposed by the South Australian Government (the proponent) follows the Federal Court's decision relating to the operation of the "bidding in good faith" provisions (the good faith provisions). The proponent is of the view that the Court's interpretation of the good faith provisions is inconsistent with the original policy intent and that the Rule change would resolve uncertainty and address alleged inefficient market outcomes. There are five key elements of the rule change proposal including:

1. An effective reversal of the onus of proof from the Australian Energy Regulator (AER) onto generators to demonstrate what circumstances had changed to justify the rebid.
2. Defines the "material circumstances" that can give rise to a bid or rebid (i.e. change in Australian Energy Market Operator (AEMO) published data).
3. Provides that the non-fulfilment of a trader's expectation as an inadequate reason to rebid.

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<sup>1</sup> QGC is a subsidiary of the BG Group, a UK-listed energy business with activities in 27 countries. It is a leading natural gas explorer and producer focused on developing its reserves in Queensland for domestic and international supply. QGC is developing the world's first project to convert gas from coal seams into liquefied natural gas - Queensland Curtis LNG (QCLNG). QGC electricity consumption used in gas processing and at fully operation is likely to source approximately 300-400MW of energy from the Queensland transmission grid.

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4. Requires participants to provide the AER with accurate and complete information on request.
5. Allows the AER to assess the intention of a participant (having regard to all relevant rebids).

In considering the proposal QGC outlines its view of the current challenges facing large energy users in the NEM, whether the specific proposal targets these issues and provides a plan for moving forward.

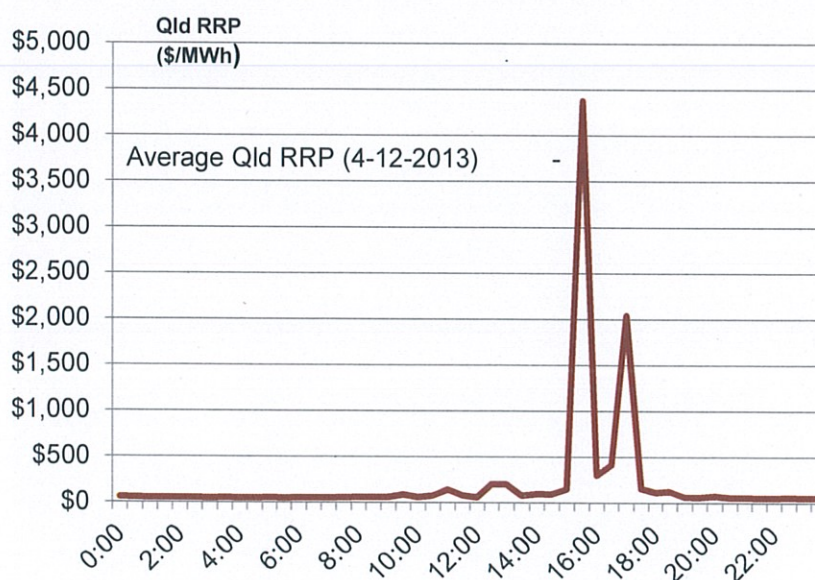
Overall, QGC notes the market is experiencing challenges in terms of its ability to provide efficient short and long-term price signals as well as stable and predictable outcomes on which businesses can base decisions. This is in part due to external factors (e.g. the impact of government policies and the changing market dynamics both on supply and demand). On balance, however, the costs and risks associated with the current proposal are likely to outweigh the benefits. Alternatively, to address these challenges, we recommend the Commission look to initiate (via Ministerial direction) a strategic review of the market design.

### CURRENT MARKET CHARACTERISTICS AND ISSUES

The NEM is currently characterised by seasonal movements in prices (and at times possibly below industry Long Run Marginal Cost (LRMC)), but with periods of severe market volatility with prices approaching the Market Price Cap (MPC). These conditions are driven by a range of factors including falling demand due to external government policies (such as the renewable energy target (RET), subdued economic conditions and excess supply, the presence of vertically integrated players and the commercial pressures on merchant generators to deliver returns and capitalise on opportunities during high demand periods and at times of transmission constraints.

Chart 1 below demonstrates the level of market volatility when on one trading day (4 December 2013) Queensland spot prices (half hour) rose from below \$60/MWh to over \$4000. While this represents one trading day, similar outcomes were observed in January.

**Chart 1: Regional Reference Prices (Queensland) – 4 December 2013**





These conditions generate market uncertainty and potentially expose wholesale electricity consumers to unpredictable market risk, which is difficult and costly to manage. There is also a further issue regarding the ability of the NEM, as it currently operates, to generate efficient short and long-term prices. It is becoming increasingly obvious that the basis for price movements in the NEM are not always reflective of underlying supply and demand fundamentals and other factors (e.g. direct rebidding by generators to support commercial returns) are driving outcomes. This raises the question of the sustainability of the NEM Gross Pool design and its parameters. We are also aware that the Australian Energy Regulator (AER) and other interested parties have made similar observations over recent times.

## RESPONSE TO THE RULE CHANGE PROPOSAL

Notwithstanding these comments, QGC is of the view that the package of changes proposed will not necessarily assist in addressing these concerns and could create more inefficient outcomes. This is for the following reasons:

- **The effective reversal of the onus of proof** (or a shift in the burden of proof to generators) is a significant departure from current practice and is inconsistent with the overall principle of "light-handed regulation" in energy markets. It appears a disproportionate response that is unlikely to materially alter market outcomes. The price volatility that is of concern to QGC is not necessarily directly linked to generators' compliance with the "good faith provisions", but relates to other issues with the market.

In QGC's opinion the reversal of a fundamental norm for the protection of an individual, that is that those that assert must prove, is not appropriate for an offence of this type. The reverse onus should only apply only in exceptional cases such as typically in legislation applying to matters where personal safety of individuals is involved (e.g. health and safety legislation) or areas where there is particular difficulty in getting evidence of wrongdoing and the matter is of a particular threat to society (e.g. bribery or corruption). The reversal of the fundamental protection would not normally occur or be justified in legislation governing commercial or market operations such as the NEM.

If implemented, it would place unnecessary requirements on businesses which increase overall costs (especially around compliance). QGC notes that the change will likely make more difficult the task of finding individuals to take on trading functions. As a participant in the Eastern Australian Energy Markets, QGC would have concerns about the introduction of such measures in the NEM and the potential broader application across other markets.

We note the Commission recommended in April 2013, as an outcome of its consideration of market power in the NEM, that the Standing Council on Energy and Resources (SCER) (now the COAG Energy Council) consider conferring a specific function on the AER to monitor the wholesale electricity market and add accountability mechanisms to the AER's current information gathering powers. QGC would support SCER working with the Commission to assess the viability of introducing such a regime. The current review of the NEM Enforcement Regime also considers changes to penalty provisions for a breach of the "good faith provisions".

- **If rebids can only be made in response to changes in AEMO published data** (price, demand availability etc.) this is likely to limit bidding activity and reduce market efficiency. Generators rebid for various reasons and many fall outside specific changes in Australian Energy Market Operator (AEMO) data. For example, the recent step change in electricity demand has led to market participants forming views from a broader



information set (including internal) than the information provided by AEMO. In some circumstances, participants have access to better quality information, which improves decision-making and promotes more efficient outcomes.

Also excluding the **non-fulfilment of a trader's expectation** as an appropriate reason to rebid would limit a trader's ability to gain important market information and insights. Introducing such measures could result in unintended consequences, creating a situation where traders' base bids on their initial expectations. Due to the level of uncertainty and the inability to respond if expectations are not fulfilled, traders are more likely to formulate more "aggressive" initial bids. The outcome is likely to be prices that are higher than necessary.

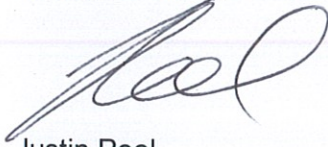
## SUGGESTED WAY FORWARD

QGC does not consider the main elements of the proposed package will enhance the market. Further, incremental changes to market design such as limiting bidding in the final five minutes of a half hour settlement period or altering the settlement arrangements (i.e. move to 5 minute settlements) are also unlikely to provide long-term benefits. There are, however, a number of issues that need to be addressed in terms of market oversight and the level price volatility and we outline a preferred course of action below. We note some of these points fall outside the Commission's direct functions and responsibilities. We, however, encourage the Commission in discussions with other policy stakeholders to raising the importance of the issues and alternative options for reducing the risks created in the market. These actions include:

1. **Improving the provision of information to the AER.** QGC does have concerns if participants are not providing complete information to AER requests. The AER's ability to question the activities of market participants is a key inquiry channel regarding market events and possible non-compliance with the Rules. We support considering improvements to this process.
2. **Enhancing the AER's market monitoring powers** as recommended by the Commission in its 2012-13 review of market power. SCER should be encouraged to consider this matter as a priority and also the potential for raising the penalties (applicable to companies) associated with a breach of the "good faith provisions" as part of the NEM Enforcement Regime Review.
3. **A broad review of market design** is initiated by SCER (and undertaken by the Commission). We would be pleased to participate in shaping this review and provide important insights on issues facing large industrial users and how the international markets in which BG-Group operates address similar problems. This review should be based on enhancing the NEM Objective, but highlighting the need for efficient, stable and predictable price outcomes and creating an environment where risks can be appropriately managed by participants.
4. The impacts for the wholesale electricity market and pricing are explicitly considered in any further market consolidation or sale process of generation assets in the NEM.



QGC would welcome the opportunity to discuss the matters raised in this submission directly with the Commission and questions can be directed to Ms Erin Bledsoe, Regulatory Manager on 07 3364 2621 or at [erin.bledsoe@bg-group.com](mailto:erin.bledsoe@bg-group.com)

A handwritten signature in black ink, appearing to read 'Justin Peel', written in a cursive style.

Justin Peel  
VP Supply & Optimisation