



Bidding in Good Faith

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GDF SUEZ

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Note:

The purpose of this presentation is to raise a number of issues and highlight questions that require consideration in the context of the draft determination and draft rule and to frame discussion during the AEMC's public forum.

This presentation is based on an initial review and does not represent the final view of GDF SUEZ on the draft determination or the draft rule.



Perspectives on the draft determination and draft rule

Key issues

- What is the underpinning objective of the rule change?
- The implications of ‘false, misleading or likely to mislead’?
- Is the proposed change to market design principles 3.1.4(a)(2) necessary?
- How will this practically interact with market events and timeliness of rebids?
- Is the burden of proof clear and reasonable?
- How would the AER / court interpret the draft rule?

The uncertainty and ambiguity as to the effects of the AEMC’s proposal and the AEMC’s draft determination does not clarify participants’ concerns



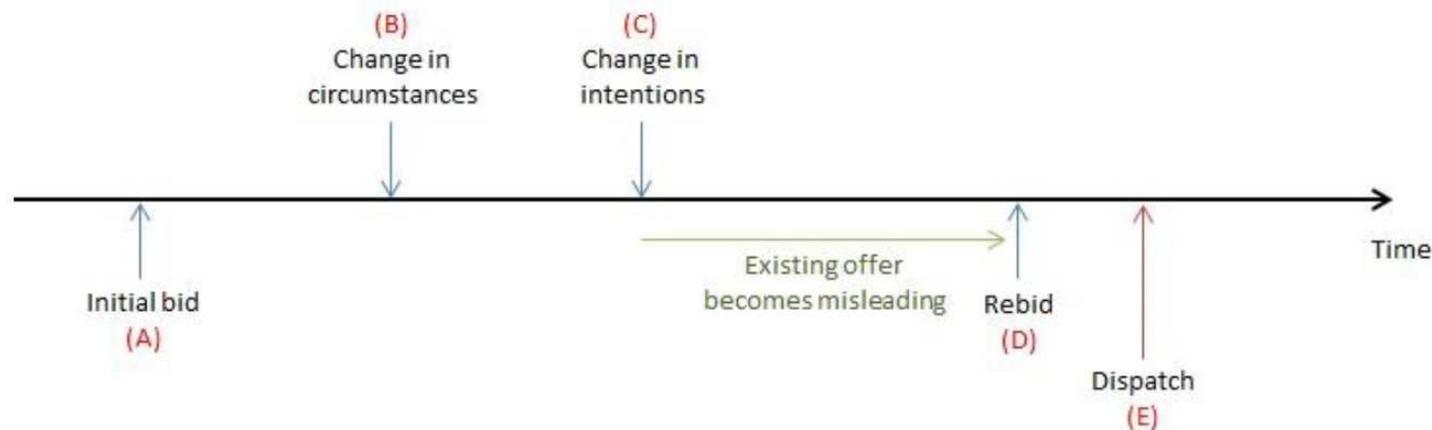
Underpinning objective of the rule change?

- The draft determination has not demonstrated that:
 - the market is not reaching a position of equilibrium;
 - the rule change will deliver price outcomes that differ from those that already reflect fundamental supply and demand conditions in each region;
 - current outcomes are damaging competitive pressures;
 - there are legitimate and timely physical responses that would arrive if the proposed rule change were implemented; and
 - rebidding is undermining the value and purpose of pre-dispatch information.
- The draft determination has highlighted that:
 - late bidding is a misnomer - we have a just in time bidding process which encourages real time bid changes;
 - the 5/30 issue continues to cause concern – a well known threshold issue worthy of separate attention;
 - market structures are responsive to oligopolistic bidding behaviour – as is expected;
 - prices are volatile when generators are uncontracted – as one would expect;
 - uncontracted participants don't like being exposed to high prices – hardly surprising; and
 - regulatory burdens are likely to undermine efficiency – something the AEMC should be opposed to.

Given the rationale for the rule change isn't well supported by evidence it shouldn't be surprising that participants will be confused by likely consequences of the draft rule

Offers, bids and rebids must not be false or misleading

- It remains unclear how this clause is likely to be interpreted in comparison with the 'good faith' obligation.
- Is good faith a higher or lower standard?
- Is 'not false or misleading' a more objective standard based on facts and hard data or just as opaque as good faith?
- In the absence of real or relevant examples it is unclear how the clause is likely to be interpreted and which current behaviours would be in breach.
- How is a participant 'likely to mislead'? The rule seems to imagine a world where all elements are static except the intention of a single participant when in fact multiple participants and multiple factors are changing. Yes, it can be the vibe. Traders are employed to monitor evolving conditions and respond when intentions change.
- When does something become misleading? The AEMC's conceptual approach appears wrong.





Offers, bids and rebids must not be false or misleading (2)

- If a trader has a view that it is 10% likely an event may manifest in a change in intentions does the trader rebid? Or is it only when a trader is 90% certain that an event has changed intentions? 100% confidence can only be achieved after the event, so an actual change, you need to judge events in real time close to actual dispatch and confirm thereafter.
- And what if an event leads to a change in market conditions and a trader doesn't rebid, and then market conditions return to those that aligned with initial bid, can the trader rebid or have they lost the opportunity?
- If material conditions and circumstances remain subjective and open to legal interpretation - what is the benefit of the change from good faith to false and misleading?
- If the rule's objective is for traders bids to reflect real-time intention, then this should be the limits of the rule. Additional 'hooks' may only create further uncertainty and complications.
- Moving to an evidentiary threshold of 'inference' should give cause to reassess the merits of the proposal. How can we infer someone was misleading in such a dynamic market?

The value of these changes is not readily identifiable; however, they give rise to a range of uncertainties for participants



Market design principle

- Energy only market relies on dynamic rebidding – all the time not sometimes.
- Why highlight one aspect or form of information used by one group of participants?
- Is forecast information more important than accurate price outcomes in real time?
- Does the change to the market design principle introduce a subjective assessment regarding intent?
- Information ‘to market participants’, as opposed to just the market? What is more relevant an efficient market or the way information is provided? Could there ever be conflicts?
- ‘in order to allow responses’ in what time frame? Just 15 to 40 minutes not hours or days?
- Is market transparency and efficiency driven by allocative decisions primarily when it relates to forecast information and does that conflict with longer term consumer benefits?
- If a generator doesn’t rebid quickly enough as there is not enough time to allow a participant to respond in the short term does that undermine longer term efficiency?
- What does ‘reliable’ mean? All information is reliable to the extent it is right at a point in time. Is it better to not change inaccurate information as reality emerges or better to have accurate information so it truly reflects supply and demand conditions?
- How will this change direct the considerations of the regulator and the court?

The change to the market design principle is of unclear value

As soon as reasonably practicable and ability to respond

- As soon as reasonably practicable in relation to what? A change in market conditions, the event or intentions?
- Should a market participant be mindful of its position in the market and intentions, the value and importance of timely information to other market participants or the ability of a participant to respond?
- If a participant changes intentions and then rebids but another participant wasn't able to respond does that mean a breach and a conflict with the market design principles?
- If a participant doesn't respond as it is 'too late' will they still be misleading the market as they aren't representing their true intentions? Or is it acceptable as it is more important to be mindful of participants ability to respond?
- Is it usual for market rules to expect participants to show courtesy to each other in making bids? Does this happen in other markets? Is it even efficiency maximising over the longer term?
- Could consumers suffer under a model that doesn't promote participants revealing the price in real time? And why does the determination only have a concern about fast start plant coming on, what about base load not turning on in the first place, both impact dispatch efficiency?
- How can a court assess whether participant A allowed participant B enough time? Are there any obligations on participant B to be ready to respond? Is it sensible to emphasise physical responses which are not efficient?
- Is there a strong policy basis for these changes? Wouldn't better policy engage policy makers and practitioners first?

Basis for these tests seems ill-conceived and not efficiency maximising and leaves too many unanswerable questions



Burden of proof – need for proof ‘upfront’

- The burden of proof is complicated by the draft rule and accompanying reporting arrangements.
- How do the reporting arrangements as drafted impact possible future proceedings?
- Does the requirement to provide such detailed reports suggest the participant has to justify a rebid instead of, as normal legal procedures would require, the regulator having to prove there was a case that should be actioned?
- Places a requirement to provide detailed reports upfront and in effect places the onus on every participant to justify every affected rebid in detail.
- How can a participant ever prove they responded in time to allow a participant to respond, even the limited sub-class of participants the focus of the AEMC’s thinking, and how can a court ever prove they didn’t?
- How can a participant dispute inferences concluded in the minds of others?

Has the AEMC demonstrated that any of these changes will maximise efficiency?



Points of merit

- Understand the value in including assessment of portfolio
- Understand merit of wanting to clarify AER reporting arrangements
- Understand benefit of focussing traders' minds on reasons for a change of intentions
- All issues worthy of discussion
- Favour exploration of issue as a review not as a preferable rule change
- These issues industry and policy makers are capable of lodging as rule changes
- Self-initiated action misses opportunity for alternative beneficial changes to be fully assessed

Issues of policy are best managed during a review or submitted by a separate proponent not self-initiated via the preferred rule power