



## Bidding in good faith

### Final determination released

**The Australian Energy Market Commission has made a final rule to provide clearer guidance about appropriate generator bidding behaviour in the wholesale electricity market.**

#### The Commission's final determination

The final rule amends the relevant provisions in the National Electricity Rules (NER) as follows:

- The current requirement that offers be made in good faith will be replaced by a prohibition against making false or misleading offers.
- Any variations to offers will need to be made as soon as practicable.
- A requirement to preserve a contemporaneous record of the circumstances surrounding late rebids will be introduced.

The Commission's final rule adopts elements of a rule change request submitted by the South Australian Minister for Mineral Resources and Energy, in particular, the requirement that any rebids made to vary an offer to supply the market will need to be made as soon as practicable. The final rule will commence on 1 July 2016.

#### Defining the issues raised in the rule change request

Markets for electricity can be distinguished from other commodity markets by the requirement that supply and demand must be matched continuously. The instantaneous delivery of electricity creates a deadline by which a price for both production and consumption must be determined.

Participation in the National Electricity Market (NEM) requires that generators submit offers to the Australian Energy Market Operator (AEMO) specifying the minimum price they are willing to receive for the generation capacity offered. Following the submission of initial offers, generators may submit "rebids" to shift the capacity they are willing to offer to different prices to allow for changing market conditions.

Being exposed to sudden or uncertain price movements is an inherent aspect of participating in the spot market, reflecting a power system where not everything is foreseeable. Rebidding provides generators with necessary flexibility to adjust their position to accommodate changes in market conditions and to respond to the offers or bids of other market participants. The resulting dynamic process of participants learning and responding to constantly changing market conditions, expectations and the actions of their competitors is an important part of a well-functioning market.

In this market, there will be some rebids made very close to dispatch due to late changes in conditions. However, if generators were to deliberately submit rebids late in the trading interval, they would be withholding information regarding their intentions from the market, which may result in economic harm.

**The Commission has made a final rule to enhance the arrangements that govern the manner in which generators offer electricity to the wholesale market.**

### **Deliberately late rebidding may result in economic harm**

The practice of deliberately late rebidding can decrease confidence in forward information about the market, including AEMO's pre-dispatch forecast. A loss of confidence in the reliability of information can have significant consequences over time. It may discourage retailers and industrial users from producing or even locating in regions that are subject to the behaviour.

Price volatility caused by deliberately late rebidding has the potential to inflate the value of financial hedge contracts. Participants can be effectively compelled to buy hedges at a higher than normal price, or be exposed to wholesale prices that are also higher and less predictable than normal. They may be forced to pay more either way – through wholesale prices or contracts.

This may result in higher costs being passed through to consumers – both households and industry. Non-competitively priced hedge contracts also have the potential to affect retail competition and investments in other sectors of the economy.

### **The changes to the rules – the final rule**

The Commission considers that the current rules make it possible for participants to influence price outcomes to the detriment of other participants, in a way that does not reflect an efficient market.

The current rules require that, when an offer or rebid is made, it must be made in good faith – that is, the generator must have a genuine intention to honour it at the time it is submitted. It is not clearly counter to the existing rules to place an offer which one intends to honour at the time, form an intention to rebid, but then deliberately delay the rebid until close to dispatch in order to prevent other participants from responding.

In order to address this issue, the final rule deems generators' offers as a representation of their willingness to provide supply at the prices they specify. There is also an obligation that any rebid made to vary an offer to supply the market will need to be made as soon as practicable after the material change in conditions that forms the basis of the rebid. The purpose of this obligation is so that the original offer does not become a source of misinformation with respect to the generator's intentions.

Compared to the current requirement that offers be made in good faith, the requirement to not mislead will establish a more objective basis through which the AER, and subsequently a court, may be able to infer a generator's intent. This will assist with the interpretation of and practical application of the rules. The final rule would also allow a court to consider patterns of conduct, for example, repeated late rebidding by a generator.

The final rule will not prevent generators rebidding on the basis of a change in their subjective expectations, provided this occurs as soon as practicable.

### **Additional recording requirements**

The final rule will introduce new information recording requirements for late rebids. For each rebid made during, or less than 15 minutes before the commencement of the trading interval to which the rebid applies, a generator will need to preserve contemporaneous information on the material conditions and circumstances giving rise to the rebid. These records are to be made available to the AER on request.

### **A measured approach**

The Commission has decided to make a final rule that it considers will reduce the deficiencies in the current market framework, while remaining proportionate to the materiality of the issues.

As a result, the final rule represents a measured approach to late rebidding, taking into account the materiality of the problem of participants deliberately withholding information from the market. The Commission considers that any additional compliance costs will be outweighed by the benefits to the market and consumers that the new rule will offer, through having a properly formulated and more enforceable standard of conduct.

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**The final rule will  
commence on 1  
July 2016.**