

A few
words.



16 June 2015

Mr John Pierce
Chairman
Australian Energy Market Commission
PO Box A2449
SYDNEY NSW 1235
via email: aemc@aemc.gov.au

Dear Mr Pierce,

Bidding in Good Faith Rule Change – Draft Determination

Thank you for the opportunity to respond to the *Bidding in Good Faith Rule Change – Draft Determination* (the Draft Rule), which, in general terms: replaces the requirement to bid in 'good faith' with a requirement not to make false or misleading bids; adds further specific provisions that deem bids and rebids to be misleading in certain situations; and introduces a new requirement for generators to submit a report to the AER for all rebids made 15 to 45 minutes before the relevant dispatch interval.

AGL has a power generation portfolio of over 10,000 MW, which consists of base, peaking and intermediate generation plant, spread across thermal and renewable energy sources. Accordingly, AGL has a strong interest in any proposed change to the rules governing trading requirements in the National Electricity Market (NEM). AGL supports an efficient and well-functioning electricity spot market, which bidding and rebidding arrangements are an integral part of.

It is clear that the capability to rebid generation in the NEM is a critical market feature that allows wholesale market participants to continually adjust pricing in response to changing market conditions, technical plant constraints and changes to fuel and other inputs.

General comments

AGL considers that any substantive changes to the existing rebidding arrangements should be justified against a material negative market impact, and that any changes should clearly contribute to the achievement of the National Electricity Objective.

AGL largely considers that the current 'good faith' rebidding arrangements have provided significant, material benefits to the NEM since market commencement. Further, AGL contends that the current rebidding settings have contributed to market transparency by allowing participants to effectively respond to changes in market conditions, whilst also providing efficient economic signals to the market overall.

However, AGL notes the AEMC's concerns raised in the Draft Rule that incidents of 'strategic late rebidding behaviour by generators has the potential to result in inefficient price outcomes'. AGL does not contest that these events have occurred

but considers that the proposed solutions to these events are likely to create a net disbenefit to the market, as the proposed amendments negatively impact market efficiency by diminishing the opportunity for effective action on the part of traders. Further, AGL considers that the proposed changes introduce significant uncertainty for market participants as to the Draft Rule's eventual interpretation. Such uncertainty is also likely to constrain efficient actions on the part of market participants.

Finally, the Draft Rule is making significant changes to address an issue that is at the moment largely attributable to the current market structure in one jurisdiction. Addressing this isolated issue in the way proposed in the Draft Rule runs the risk of diminishing efficient rebidding being undertaken by the market more broadly.

Accordingly, AGL considers that there is little merit to the proposed changes as outlined in the Draft Rule

Specific comments

The significance of inefficient rebidding on overall market outcomes has not been clearly demonstrated against what would be a significant and disruptive change to the NEM. As noted in AGL's submission to the AEMC rebidding Options Paper, extreme caution must be exercised before pursuing any change to the rules that may negatively impact the realisation of efficient price outcomes in the market.

Should a case for change be made, AGL suggests that, the proposed clause 3.8.22A(a) taken from the Draft Rule may be effective in targeting problematic rebidding behaviour:

3.8.22A(a) A Scheduled Generator, Semi-Scheduled Generator or Market Participant must not make a dispatch offer, dispatch bid or rebid that is false, misleading or likely to mislead.

AGL is concerned that the remaining sections of the Draft Rule rely on a series of subjective statements, which have largely unpredictable interpretations, and would make operating in the NEM uncertain and complex. For example, AGL considers that it would be inappropriate for any rule change to pair the objective assessment of misleading or false behaviour with subjective elements such as a participant's *knowledge, beliefs and intentions*.

Reporting requirements

AGL questions whether a reporting requirement, which may limit participant behaviour, is consistent with the National Electricity Objective. AGL contends that the requirement to provide the AER with a 'detailed' report on any rebid made 15 to 45 minutes before the relevant dispatch interval is both unnecessary and would substantially increase regulatory burden. AGL also notes that generators are already required to provide contemporaneous explanations for rebids to AEMO, as required by clause 3.8.22(c)(2), and that the AER has powers to request *additional information to substantiate and verify the reason for a rebid* - clause 3.8.22(c)(3).

Accordingly, AGL suggests that requiring participants to lodge a separate detailed report each time a rebid occurs, within the identified window, would increase participant costs for little overall benefit. Costs would be incurred both in terms of

inefficient NEM outcomes, as generators may be dissuaded from making rebids during the reporting time (which the AEMC incorrectly note may be a positive outcome), and direct costs to generators due to the added compliance and administrative burden. For example, AGL can complete over 200 rebids within the reporting period each week. Given the possibility that each report could be used in a legal setting and hence require legal oversight, the cost of each report may be in the order of \$1000 (once prepared and cleared legally) - this could amount to a significant addition in reporting costs for AGL each year.

AGL considers that an alternative, workable approach, would be to firm up requirements for recording information for each rebid. This would be a lower cost approach that would also give the AER confidence that relevant information is available should it wish to initiate any further action.

Further information on AGL's analysis of each proposed amendments is provided in Attachment A.

In conclusion, AGL does not support substantive changes being made to the existing 'good faith' rebidding requirements because a) we do not see there is a case for change and b) the changes are not consistent with the NEO. However, we have analysed the Draft Rule and identified that clause 3.8.22A(a) could be effective – should the AEMC determine that a change is warranted and that the change would contribute to the achievement of the NEO.

If you have any questions in relation to this submission please contact Kirsten Hall, Wholesale Market Adviser, on (03) 8633 6688 or at khall@agl.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Simon Camroux'.

Simon Camroux
Manager Wholesale Regulation

Attachment A – AGL detailed commentary on the Draft Rule.

Rule Ref	Proposed Rule	AGL's Position
3.1.4 (2)	'maximum level of market transparency in the interests of achieving a very high degree of market efficiency, <i>including by providing accurate, reliable and timely forecast information to Market Participants, in order to allow for responses that reflect underlying conditions of supply and demand</i> '	<p>AGL does not support the proposed additions to the market design principle.</p> <p>There is no evidence that there is a prevailing issue. AGL considers that market participants already provide accurate, reliable and timely information to the market reflective of supply and demand conditions.</p> <p>AGL also contends that requiring market participants to act in a manner that '<i>allow[s] for responses</i>' runs counter to the general principles of a competitive market framework.</p>
3.8.22 (c)(2a)	in respect of any rebid made during the late rebidding period [...] a detailed report is to be submitted to the AER.	<p>As detailed in our cover letter, AGL does not support the adoption of the reporting requirements, as it will likely dampen efficient, and appropriate, bidding behaviour.</p> <p>Substantial information provision requirements are already in place in the rules and any significant change, such as forced reporting, will only increase participant costs for little overall benefit.</p> <p>However, AGL notes that rather than requiring the reporting of each rebid within the identified window, it would be sufficient to require that participants adequately record such actions.</p>
3.8.22A(a)	A Scheduled Generator, Semi-Scheduled Generator or Market Participant must not make a dispatch offer, dispatch bid or rebid that is false, misleading or likely to mislead.	<p>If the AEMC proves the need to make changes to the current settings, AGL would support this clause.</p> <p>AGL considers that the terms "false, misleading and intention to mislead" appear in other related laws and may allow for a more consistent and predictable legal application.</p>
3.8.22A(b)	<p>[...] does not have a genuine intention to honour; and</p> <p>does not have a reasonable basis to represent to other Market Participants, through the pre-dispatch schedules published by AEMO, that it will honour,</p> <p>that offer, bid or rebid if the material conditions and circumstances upon which the offer, bid or rebid are based remain unchanged until the relevant dispatch interval.</p>	<p>AGL does not support this change.</p> <p>The proposed clauses 3.8.22A (b) and (c) are likely to make it very difficult for participants to understand allowable behaviour, as a ruling would rest on the interpretation of subjective behaviour.</p>
3.8.22A(b1)	In any proceeding in which a contravention of paragraph (a) is alleged, [...] a court must have regard to the market design principle set out in clause 3.1.4(a)(2)	<p>This clause should not be adopted.</p> <p>AGL considers that requiring a court to have specific regard to the market design principle is unnecessary and could lead to unintended court rulings as:</p> <ol style="list-style-type: none"> a court will already have regard for the intended functioning of the NEM when considering behaviour; and

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		<p>b) the clause could require a court to assess whether each and every rebid contributed to the efficiency of the NEM, when in reality the efficiency of the NEM is based on many interlinking factors.</p>
3.8.22A(c)	<p>[...] contravention of paragraph (a) [...] is ascertainable by inference from:</p> <p>(1) other dispatch offers, dispatch bids or rebids made by the Generator or Market Participant, or in relation to which the Generator or Market Participant had substantial control or influence;</p> <p>(2) other conduct (including any pattern of conduct), knowledge, belief or intention of the relevant Generator or Market Participant;</p> <p>(3) the conduct (including any pattern of conduct), knowledge, belief or intention of any other person;</p> <p>(4) information published by AEMO to the relevant Generator or Market Participant; or</p> <p>(5) any other relevant circumstances.</p>	<p>AGL does not support this change.</p> <p>The proposed clauses 3.8.22A (b) and (c) are likely to make it very difficult for participants to understand allowable behaviour, as a ruling would rest on the interpretation of subjective behaviour.</p> <p>In regards to clause 3.8.22A(c)(1), AGL is concerned that a court may take a much broader interpretation of the term 'substantial control or influence' than what is intended by the AEMC in its drafting. Specifically, AGL understands that the AEMC intends for the rule to capture portfolio-wide behaviour. However, firstly, AGL considers that clause 3.8.22A(a) does not preclude consideration of a generator's portfolio and secondly, the phrases substantial control and influence could be interpreted as covering broader market conditions rather than simply a generator's portfolio, which could lead to unintended interpretations of the rule.</p>
3.8.22A(d)	<p>A rebid must be made as soon as reasonably practicable after the Scheduled Generator, Semi-Scheduled Generator or Market Participant becomes aware of the change in material conditions and circumstances on the basis of which it decides to vary its dispatch offer or dispatch bid.</p>	<p>AGL does not support this change.</p> <p>Defining 'reasonably practicable' would be open to interpretation and does not provide clarity to market participants as to what is allowable.</p>
3.8.22A(e)	<p>In any proceeding in which a contravention of paragraph (d) is alleged, in determining whether the Generator or Market Participant made a rebid as soon as reasonably practicable, a court must have regard to:</p> <p>(1) the market design principle set out in clause 3.1.4(a)(2); and</p> <p>(2) whether the rebid was made in sufficient time to allow reasonable opportunity for other Market Participants to respond.</p>	<p>This clause should not be adopted.</p> <p>Clause 3.8.22A (e) is unworkable as it inappropriately requires traders to consider the ability for others to respond. This is not a suitable proposition for a competitive market – participants should act based on their own self-interest (and in accordance with the rules) and not on whether they have allowed sufficient opportunity for others to also respond. For example, should a trader, seeing a forced physical outage in the market, hold off rebidding plant while they provide other market participants with a 'reasonable opportunity' to respond? Further, how could a trader have practical, working knowledge of what another market participant's response time to an issue is?</p> <p>Finally, this proposal introduces a significant degree of uncertainty for electricity traders, and internal compliance practices, in what the court will interpret as 'reasonable opportunity'.</p>