



Bidding in good faith

Commencement of consultation on rule change request

The AEMC has commenced consultation on a rule change request submitted by the South Australian Minister for Mineral Resources and Energy proposing changes to the manner in which generators may offer electricity to the wholesale market.

The rule change request

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

The National Electricity Rules (NER) require that generators make all bids and rebids in good faith. At the time of making the bid, the generators must have a genuine intention to honour that bid if the material conditions and circumstances upon which the bid is based remain unchanged. The Australian Energy Regulator (AER) is responsible for ensuring compliance with the good faith provisions.

The rule change request proposes changes to the good faith provisions that would reverse the onus of proof from the AER so that generators need to demonstrate what material circumstances had changed that justify their rebid. In addition, the proposed rule would require generators to take into account all existing material circumstances when making a bid and, if there is a change to any of those material circumstances, to reflect those changes in rebids as soon as practicable.

The South Australian Minister for Mineral Resources and Energy (proponent) considers that these changes to the NER would improve the incentive on generators to submit bids promptly that reflect their true intentions at the time of making the bid. This would provide clarity to the interpretation of the good faith provisions and would improve the accuracy and reliability of AEMO's day ahead forecasts of price and demand, consistent with the original policy intent of the provisions.

Proposed assessment framework

The Commission notes that the assessment of the rule change request will need to be undertaken in consideration of the role that rebidding plays in promoting efficient outcomes in the NEM. It will need to recognise that rebidding is a necessary function of the NEM as it provides flexibility for market participants to respond to changes in market conditions. This promotes competition and leads to efficient operation and investment. However, an inability of participants to respond to late rebids may result in price signals that are not reflective of an efficient outcome.

The Commission proposes to define and test the materiality of the problem that has been identified by the rule change request and then assess potential solutions to the problem that would result in net benefits to the market and promote the National Electricity Objective.

In addition to a consideration of the good faith bidding provisions as the appropriate means to address the issues raised, the Commission may consider whether there are alternative approaches based around the design of the market and the bidding process.

A consultation paper has been prepared to facilitate consultation on the key issues in the rule change request. Stakeholders are encouraged to provide any submissions by 22 May 2014.

Submissions on the consultation paper close on 22 May 2014.

A stakeholder forum will be held in Melbourne on 5 May 2014.

Background

The good faith provisions were introduced by the Australian Competition and Consumer Commission (ACCC) under earlier regulatory arrangements in 2002 to address aspects of generator's bidding and rebidding strategies that were of concern to jurisdictional ministers and that were seen as manipulating wholesale price outcomes in the NEM.

The proponent has submitted this rule change request following the Federal Court decision handed down in August 2011 in relation to allegations by the AER that Stanwell Corporation had made a number of rebids that it considered were not in good faith. The proponent considers that the Federal Court's interpretation of the good faith provisions is inconsistent with the original policy intent as considered by the ACCC in 2002.

The ACCC's determination to incorporate the good faith provisions was based on the intention that participants that rely on AEMO forecasts of supply and demand should be provided with some level of assurance that participants intend to honour their bids. Accurate and reliable forecasts provide a basis for market participants to make efficient operational and investment decisions, which leads to efficient wholesale price outcomes in the interests of consumers.

The proponent is concerned that the implication of the Federal Court decision is that, in order to establish an absence of good faith, the AER must prove that the generator had a positive intention not to honour the bid at the time of making the bid. The proponent considers that this places a substantial burden of proof on the AER and undermines the purpose of the good faith bidding provisions as a means to improve the transparency and reliability of AEMO forecasts.

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