

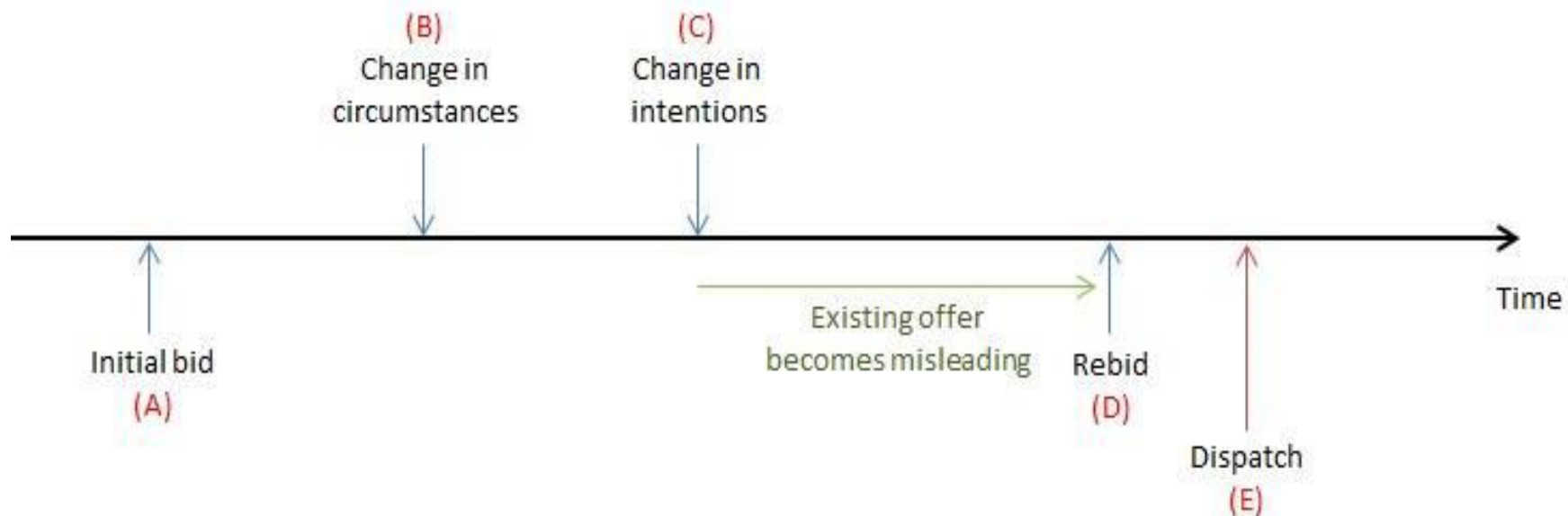
Behavioural elements of the draft rule



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A bid or offer is a continuing representation

The Commission considers that by recasting cl 3.8.22A from an “in good faith” to a “not false or misleading” obligation, bids and offers will be treated as a continuing representation of a generator’s intentions to supply electricity at particular prices.



Summary of the draft rule

The draft rule:

- Enhances the market design principles to emphasise the importance of providing accurate, reliable and timely pre-dispatch information;
- Introduces new civil penalty obligations which:
 - recast the good faith provisions into a prohibition on making false or misleading offers/bids,
 - introduce a requirement that rebids be made as soon as reasonably practicable after becoming aware of the change in circumstances on the basis of which the rebid is made; and
 - introduce a requirement to submit a report to the AER for any rebids made within the late rebidding period
- Introduces provisions to assist a court in any proceedings alleging a breach of the new obligations.

The market design principle in clause 3.1.4(a)(2)

- Rule 3.1.4 sets out the market design principles that Chapter 3 of the NER is intended to give effect to.
- The principle set out in cl 3.1.4(a)(2) is the “maximum level of market transparency in the interests of achieving a very high degree of market efficiency”.
- The Commission believes that this principle ought to be enhanced to include “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”.
- The importance of providing accurate and reliable pre-dispatch information is an integral part of NEM but is not expressly stated elsewhere in the NER.

New obligations

The draft rule introduces the following new obligations into the NER:

- A generator or market participant must not make an offer, bid or rebid that is false, misleading or likely to mislead (cl 3.8.22A(a));
- A rebid must be made as soon as reasonably practicable after the generator or market participant becomes aware of the change in material conditions and circumstances on the basis of which it decides to vary its offer, bid or rebid (cl 3.8.22A(d));
- A generator or market participant must provide a detailed report to the AER in respect of any rebid made within 15 minutes before the commencement of the relevant trading interval (cl 3.8.22(2a)).

Deemed false or misleading behaviour

Without limiting cl 3.8.22A(a), new cl 3.8.22A(b) states that an offer, bid or rebid will be taken to be false or misleading if at the time of making it a generator or market participant:

- does not have a genuine intention to honour; and
- does not have a reasonable basis to represent to other market participants through the pre-dispatch schedule that it will honour

that offer, bid or rebid if the material conditions and circumstances upon which it was based remain unchanged until the relevant dispatch interval (cl 3.8.22A(b)).

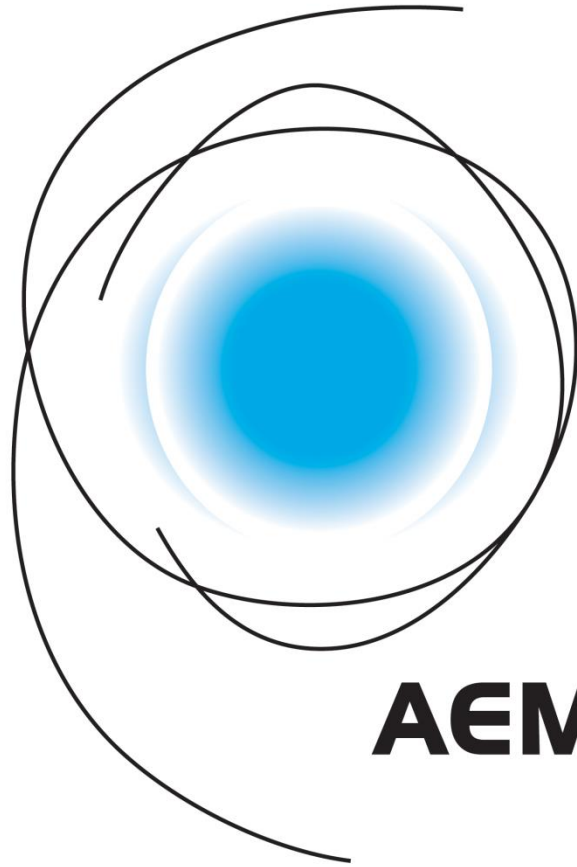
Provisions to assist a court in proceedings for a breach of cl 3.8.22A(a)

- In determining whether there was a reasonable basis to represent to other market participants that the offer/ bid/rebid would be honoured, a court must have regard to the market design principle in cl 3.1.4(a)(2).
- A breach of cl 3.8.22A(a) can be found even if the false or misleading nature of the offer/bid/rebid is ascertainable only by inference from:
 - (1) other offers, bids or rebids made by the generator or market participant, or in relation to which it had substantial control or influence;
 - (2) other conduct (including any pattern of conduct), knowledge, belief or intention of the relevant generator or market participant;
 - (3) the conduct (including any pattern of conduct), knowledge, belief or intention of any other person;
 - (4) information published by AEMO to the relevant generator or market participant;
 - (5) any other relevant circumstances.

Provisions to assist a court in proceedings for a breach of cl 3.8.22A(d)

In any proceeding alleging a breach of cl 3.8.22A(d) (i.e. that a rebid was not made as soon as reasonably practicable after the generator became aware of the change in circumstances on the basis of which it decided to rebid) a court must have regard to:

- the market design principle set out in cl 3.1.4(a)(2); and
- whether the rebid was made in sufficient time to allow reasonable opportunity for other market participants to respond prior to the commencement of the trading interval to which the rebid relates, or the commencement of any dispatch interval within that trading interval.



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