



27 May 2014

Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Lodged online: www.aemc.gov.au

Bidding in Good Faith rule change proposal – consultation paper

The Energy Supply Association of Australia (esaa) welcomes the opportunity to make a submission to the AEMC on the Bidding in Good Faith rule change proposal consultation paper.

The esaa is the peak industry body for the stationary energy sector in Australia and represents the policy positions of the Chief Executives of 34 electricity and downstream natural gas businesses. These businesses own and operate some \$120 billion in assets, employ more than 51,000 people and contribute \$16.5 billion directly to the nation's Gross Domestic Product.

The esaa does not support the proposed rule change and has a number of concerns with the substance of the proposed rule change to good faith bidding and the lack of evidence provided to demonstrate a need for change.

No evidence of a problem

In the absence of any substantive evidence that late strategic rebidding is widely occurring and materially impacting market operation and outcomes, the issue raised in the rule change is largely hypothetical.

The simple fact that the 'gates' need to be closed at some point means the theoretical risk of late strategic bidding will always exist. There will always be a bid that is the last bid, regardless how far ahead of time the gates are closed. In some cases, the 'last bid' might be received by the Australian Energy Market Operator (AEMO) immediately prior to the cut-off time for any additional rebids. If the gates were closed earlier all that would be achieved is a reduction in efficiency, as all information would not be taken into account up until the time of the transaction.

While the last "strategic rebidder" may theoretically gain a level of transient market power, other market participants will respond over time, as each trading period does not happen in isolation. Each dispatch interval feeds into a relevant trading interval, hourly experience, day, month, years informing the behaviour of all market participants.

Late rebidding is needed to ensure efficient market operation, as participants respond to volatile demand and pricing signals. Rebidding enables participants to

respond to situations such as network congestion or tight supply / demand conditions. It is in these sorts of situations that it is desirable that participants are able to adjust their bids, as they respond to a dynamically changing outlook.

While there are options to limit the scope for late rebidding, all involve costs, which have been previously shown to outweigh any benefits. These options were considered in 2002 by the Australian Competition and Consumer Commission (ACCC) and rejected. The rule change does not offer any reason why the original conclusions of the ACCC are no longer valid. If restrictions are placed on rebidding it would lead to inefficiencies in the National Electricity Market (NEM), and ultimately, higher costs to consumers.

In addition to the lack of evidence that rebidding is a problem, market participants in the NEM have demonstrated a strong compliance record, borne out by the Australian Energy Regulator (AER) Quarterly compliance reports, the low proportion of rebids that trigger investigation and the extremely high proportion of such rebids that are resolved following a simple information request.

Reversal of the onus of proof

The rule change does not technically reverse the onus of proof, but that would be the outcome in practice, as generators would have to prove their innocence to the regulator prior to a case being brought against them. This would set a worrying precedent of 'guilty until proven innocent', which when combined with the maximum civil penalty under the National Electricity Law (NEL) of \$1 million per breach and the personal liability would make traders more reluctant to rebid. This would result in less efficient market outcomes, as the amount of rebids to 'fine tune' participants' positions in the market will be curtailed.

Generators already need to provide brief, verifiable reasons for their rebids. Generators must also provide the AER, upon request, information it needs to assess and enforce compliance with any provision of the NEL.

Issues with the proposed test

The criteria proposed to assess whether a rebid was done in good faith ignores practical and commercial issues, making implementation nearly impossible. The rule change would limit traders' ability to rely on their considered views of legitimate issues, create uncertainty around the timing and appropriate triggers for rebidding and fails to recognise the vast array of information that informs bidding.

The esaa believes it is necessary to retain the existing rule, which allows rebids to be made in response to changes in conditions and circumstances, to ensure that the market traders are able to utilise their skills and experience in trading in the NEM to bring about efficient market outcomes. This proposal also overlooks the fact that a trader's reasonable expectation of how other market participants might respond to changing market dynamics is an important mechanism that enables the market dynamics to move towards an efficient outcome.

The proposal is unclear when the requirement to rebid would arise, both with respect to timing and materiality. While there will be circumstances where a single event will require a trader to rebid, there will also occasions when the need to change a bid will be the result of a series of incremental changes, where each constituent part would not appear to have a material impact. The rule change request would seem to limit a trader's scope to make rebids based on incremental change and raises the issue at what point they would have to rebid by.

The existing Rebidding Guidelines already require traders to highlight the time of the event or occurrence. As such, traders have the appropriate incentive to rebid as soon as practicable to demonstrate that they are bidding in good faith. Including a specific reference to "as soon as practicable" is unlikely to be an improvement on the current requirements and could create legal ambiguity.

Information Sources

The rule change suggests that rebids should only be allowed if there is a change in AEMO's forecasts. This is an extremely narrow and unrealistic view of the market and fails to recognise that traders rely on a range of data, both from internal and external sources, when formulating their bids. If a trader had to rely just on changes to AEMO forecasts to justify a rebid it would severely limit their scope to change their bids in light of changes in their other sources of information, ultimately leading to sub-optimal outcomes. In addition, this approach overlooks the fact that traders will make bids based on their expected outcomes for demand and other variables. A trader may need to rebid even if a forecast is accurate, as their initial bids were based on the assumption that the forecast would be incorrect.

Any questions about our submission should be addressed to Fergus Pope, by email to fergus.pope@esaa.com.au or by telephone on (03) 9205 3107.

Yours sincerely



Kieran Donoghue
General Manager, Policy