Australian Energy Market Commission

RULE CHANGE

CONSULTATION PAPER

National Electricity Amendment (Bidding in good faith) Rule 2014

Rule Proponent

Minister for Mineral Resources and Energy (South Australia)

10 April 2014

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About the AEMC

The Council of Australian Governments (COAG), through its then Ministerial Council on Energy (MCE), established the Australian Energy Market Commission (AEMC) in July 2005. In June 2011, COAG established the Standing Council on Energy and Resources (SCER) to replace the MCE. The AEMC has two main functions. We make and amend the national electricity, gas and energy retail rules, and we conduct independent reviews of the energy markets for the SCER.

Executive summary

This consultation paper has been prepared by the Australian Energy Market Commission (AEMC or Commission) to facilitate public consultation on a rule change request submitted by the South Australian Minister for Mineral Resources and Energy (proponent) proposing changes to the provisions in the National Electricity Rules (NER) that govern the manner in which generators may offer electricity to the wholesale market.

Bidding in good faith

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 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 NER requires that generators make all bids and rebids in good faith such that, 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 good faith provisions were introduced by the Australian Competition and Consumer Commission (ACCC) 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 Australian Energy Regulator (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 rule change request

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.

The rule change request proposes changes to the good faith provisions that would reverse the onus of proof from the AER onto generators to demonstrate what material circumstances had changed as the basis for 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 proponent considers that these changes to the NER would impose a greater incentive on generators to submit bids promptly that reflect their true intentions at the time of making the bid. This would improve the accuracy and reliability of AEMO forecasts, consistent with the original policy intent of the good faith provisions.

The Commission's 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, which promotes effective competition and leads to efficient outcomes. 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 (NEO).

This paper has been prepared to facilitate public consultation on the rule change request. Stakeholders are encouraged to provide any submissions by 22 May 2014. Further details can be found on the AEMC's website.

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1 Introduction

On 17 December 2013, the South Australian Minister for Mineral Resources and Energy (proponent) submitted a rule change request to the Australian Energy Market Commission (AEMC or Commission) proposing changes to the provisions in the National Electricity Rules (NER) that require generators to bid in good faith.

The proponent has submitted this rule change request in response to the Federal Court decision handed down in August 2011 between the Australian Energy Regulator (AER) and Stanwell Corporation. The proponent is concerned that the Federal Court decision has introduced uncertainty around the operation of the bidding in good faith provisions and highlighted issues in relation to the implementation of the original policy intent.

On 10 April 2014, the Commission published a notice under section 95 of the National Electricity Law (NEL) setting out its decision to commence the rule change process in relation to this rule change request.

This consultation paper has been prepared to facilitate public consultation on the rule change request, and to seek stakeholder submissions on the rule change request.

This paper:

- sets out a summary of, and a background to, the rule change request submitted by the South Australian Minister for Mineral Resources and Energy;
- identifies a number of questions and issues to facilitate the consultation on this rule change request; and
- outlines the process for making submissions.

2 Background

This chapter sets out relevant background and provides context in which to assess the issues raised in the rule change request.

2.1 Rebidding in the NEM

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 generation volume offered. Bids allow generators to specify a range of prices for different levels of generation output. Initial bids must be submitted to AEMO by 12:30pm for the following day and must set out the volume of generation offered in up to ten price bands for all 48 half-hour trading intervals.

Following the submission of initial bids, generators may shift volume between price bands through a process known as rebidding. Rebidding provides flexibility for generators to respond to shifting market conditions, such as changes in demand, plant availability, or network constraints, and provides a mechanism for the wholesale price of electricity to more accurately reflect the balance of supply and demand at the time of dispatch.

Rebidding can be undertaken at any time following the submission of the initial bid up until the relevant five-minute dispatch interval. The only timing constraint on the submission of rebids is a practical limitation of approximately three or four minutes for rebids to be incorporated in the NEM dispatch process and reflected in the dispatch merit order.

2.2 The good faith provisions

The good faith bidding provisions were incorporated into the National Electricity Code (the Code) in 2002 by the Australian Competition and Consumer Commission (ACCC).[1] The changes were made to the Code following the submission of applications by the National Electricity Code Administrator (NECA) under Part VII of the Trade Practices Act 1974 (TPA).[2]

NECA's application to insert the good faith provisions followed expressions from NEM Ministers that they opposed generator bidding strategies that were inconsistent with

1 The ACCC's responsibility for authorising changes to the Code reflects earlier regulatory arrangements in the NEM. The provisions contained in the Code were transferred to the NER at its inception in July 2005. The AEMC has responsibility for administering and determining changes to the NER.

2 ACCC, *Amendments to the National Electricity Code – Changes to bidding and rebidding rules*, 4 December 2002.

an efficient, competitive and reliable market, such as those not made in good faith, the "blatant" economic withdrawal of generation, and the gaming of technical constraints.[3]

The changes introduced clause 3.8.22A to the NER which provides that all market participants must make rebids in good faith. A rebid is taken to be made in good faith if, at the time of making the rebid, the market participant has a genuine intention to honour that rebid if the material conditions and circumstances upon which the rebid was based remain unchanged until the relevant dispatch interval.[4] A breach of clause 3.8.22A attracts a maximum civil penalty of $1 million.

In addition to clause 3.8.22A, clause 3.8.22 requires participants to submit a brief, verifiable and specific reason to AEMO at the time of the rebid, and provide any other substantiating information as required by AEMO. AEMO publishes the timing and reasons for all rebids.

NECA's application for authorisation to change the Code was based on its view that the changes would:[5]

- improve the reliability of pre-dispatch forecast prices in each dispatch interval, which would assist generators to plan the operation of their plant; and
- address aspects of generator's bidding and rebidding strategies that were of concern, and that were claimed to have been the cause of short-term price spikes experienced in the NEM.

Specifically, NECA proposed that the changes to the Code would alleviate:

- instances where rebids were made too close to the relevant dispatch interval for a competitive demand-side response, in particular where rebids were made in response to information or events about which the relevant parties had significant prior knowledge; and
- instances where rebids led to significant price volatility in response to relatively small changes in demand.

In authorising changes to the Code, the ACCC noted that restrictions on the ability to rebid, or the imposition of incentives not to rebid, could lead to less efficient outcomes and potentially higher prices, as compliance costs were recouped through generators' bids. Restrictions could result in less competitive price outcomes leading to inefficient dispatch of generation. However, the ACCC noted that the good faith bidding proposal did not constitute a restriction on rebidding as it only required that

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3 The acting South Australian Minister for Energy noted this in a letter to the ACCC dated 6 September 2002, www.registers.accc.gov.au.

4 The good faith bidding provisions were initially incorporated in the Code and were transferred at the inception of the NER in July 2005.

5 ACCC, *Amendments to the National Electricity Code – Changes to bidding and rebidding rules*, 4 December 2002, p. 1.

generators' bids must be honoured should all circumstances remain unchanged and did not limit or restrict generators' bidding strategies.

To enforce the requirement for generators to bid in good faith, NECA also proposed a change to clause 3.8.22A to shift the onus of proof to generators. In the case of a potential breach, a generator would be required to demonstrate that its bid or rebid was indeed its genuine intention at the time it was made. This contrasted with the situation where the onus would be on NECA to establish that the bid or rebid constituted a breach.[6]

The ACCC did not authorise shifting the onus of proof to generators, arguing that the proposal had the potential to impose significant costs on participants and was not consistent with the Code objective 'to provide a regime of light-handed regulation'.[7]

2.3 The Federal Court case - AER v Stanwell

The first and only judicial consideration of the obligation on a generator to make bids or rebids in good faith was in the case of *Australian Energy Regulator v Stanwell Corporation Limited*. On 30 August 2011, the Court ruled in favour of Stanwell and dismissed the AER's application.

The AER alleged that on 22 and 23 February 2008, traders at Stanwell made a number of rebids that were not in good faith. The AER considered that the rebids were not made in good faith because, in each case, they were made with the intention that if the dispatch price did not rise sufficiently as a result of the rebid, Stanwell would make a further rebid for the relevant trading interval. In the AER's view, the rebids were not accompanied by an intention that they would be honoured absent a change in material conditions and circumstances.

The AER argued that the reference to material conditions and circumstances in clause 3.8.22A(b) of the NER meant that a rebid is not made in good faith if it is based on objective conditions and circumstances for which there is not a material change. The AER noted that over the period of two days, there were eight separate rebids made by traders at Stanwell that did not result in a material change in dispatch price and that subsequent rebids for the same trading interval demonstrated that the original bids were not made in good faith.

In arriving at its decision, the Court noted that all relevant conditions and circumstances upon which a rebid is based should be taken into account rather than focusing on individual elements. The Court treated the traders' subjective expectations as part of the material conditions and circumstances upon which a rebid could be based. As such, the non-fulfilment of the trader's subjective expectation could be considered as lawful justification for another rebid.

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6 The responsibility to determine breaches of the good faith bidding provisions was transferred to the AER in July 2005.

7 ACCC, *Amendments to the National Electricity Code – Changes to bidding and rebidding rules*, 4 December 2002, pp. 20-21.

The Court accepted the position put forward by Stanwell that a rebid could be considered to be made in good faith if it reflected the trader's intentions of what they were prepared to dispatch at the time of making the rebid. The Court noted that a trader contemplating the possibility of making a further rebid, if their expectations were not met, did not demonstrate an absence of good faith, and that a subsequent rebid for the same trading interval did not automatically infer that the trader did not intend to honour the first rebid.

Ultimately, the Court ruled that in order for the AER to establish an absence of good faith, it must prove that the trader, at the time of making the rebid, had a positive intention to resile from that rebid.

3 Summary of the rule change request

This chapter provides a summary of the proponent's rule change request.

3.1 Overview

The proponent considers that the Federal Court's interpretation of the good faith bidding provisions is inconsistent with the original policy intent of the provisions as defined at the time of the ACCC's 2002 determination.

The proponent notes that the ACCC's determination to incorporate the good faith provisions was based on the intention that participants that rely on pre-dispatch forecasts should be provided with some level of assurance that participants intend to honour their bids. The proponent considers that initial bids or rebids that are made without an intention for them to be honoured undermines the reliability of pre-dispatch forecasts and hinders effective and competitive demand and supply side responses.

The proponent considers that the proposed rule would resolve the uncertainty that has been introduced through the inconsistency in the interpretation of the provisions. The proposed changes to the NER would:[8]

1. reverse the onus of proof onto generators to demonstrate that rebids have been made in good faith. Clause 3.8.22A(b) would be amended as:

   > "a dispatch offer, dispatch bid or rebid is taken not to be made in good faith ~~if~~unless, at the time of making such an offer, bid or rebid, a scheduled generator, semi-scheduled generator or market participant has a genuine intention to honour that offer, bid or rebid if the material ~~conditions and~~ circumstances upon which the offer, bid or rebid ~~were~~ was based remain unchanged until the relevant dispatch interval."

2. provide that a variation to a bid or rebid must not be made unless it is in response to a significant and quantifiable change in price, demand or other data published by AEMO and must be made as soon as practicable after the change comes to its attention;

3. provide that the non-fulfilment of a trader's subjective expectation as the result of a rebid is not a change that justifies another rebid;

4. insert a requirement for participants to provide the AER with accurate and complete data and information on request to substantiate compliance; and

8 South Australian Minister for Energy, *Rule change request – bidding in good faith provisions*, 13 November 2013, pp. 10-14.

5. allow the AER to assess the intention of a participant by having regard to all of the bids and rebids that the participant has substantial control over.

3.2 Issues raised by the rule change request and the effect of the proposed rule

This section sets out the proponent's concerns relating to the implications of the Federal Court decision on the interpretation of the good faith bidding provisions and the changes to the NER proposed to address these concerns.

3.2.1 Genuine intentions

Expectations of a rebid

The proponent is concerned that the outcome of the Federal Court decision is that the AER, in order to establish an absence of good faith, must demonstrate that the trader, at the time of making a rebid, had a positive intention to resile from the rebid even if there was no material change in conditions or circumstances.

The proponent notes that the implication of this is that, in order for the AER to establish an absence of good faith, they would need information regarding the individual trader's state of mind at the time of making the rebid. Therefore, even if the trader makes a rebid that is not in good faith, it would be difficult for the AER to prove that the trader never intended to honour that rebid.

The proponent notes the Federal Court's position that all relevant conditions and circumstances upon which a rebid is based should be taken into account rather than focusing on individual elements. This includes the trader's subjective expectation as to the effect of the rebid. As such, the Federal Court determined that the non-fulfilment of a trader's expectation would be lawful justification for another rebid.

The proponent considers the implication of this is that a constant dispatch price could be considered as a change in circumstances and therefore that, as currently drafted, the good faith bidding provisions cannot prevent or hinder repeated attempts by a trader to cause price spikes by shifting capacity into higher price bands. The proponent considers that this interpretation of the good faith bidding provisions is not in line with the original policy intent of the provisions to improve the reliability of pre-dispatch forecasts as an important component of the design of the NEM.

Reverse onus of proof

To address these concerns the proponent proposes to recast the good faith bidding provisions in the negative such that a rebid is taken not to be made in good faith unless, at the time of making the bid, the generator has a genuine intention to honour that bid if material circumstances remain unchanged.[9]

9 Ibid, p. 11.

The proponent considers that, by recasting the good faith bidding provisions in the negative, the AER would be able to more effectively determine the intentions of the trader at the time of making a rebid. The proponent considers that starting from the position that rebids are not made in good faith would reverse the onus of proof from the AER onto generators and would place the trader in a position where they would be required to demonstrate what their intentions were at the time of making the rebid.

The proponent considers that the proposed rule has benefits as it would mean that if a generator made a rebid without an observable material change in circumstances, then it would require the generator to demonstrate what material circumstances had changed as the basis for their rebid. The proponent considers that, if a generator makes a rebid without an intention to honour that rebid, then this approach is more likely to reveal that the generator has not acted in good faith.

The rule change request also proposes to include a separate note under clause 3.8.22A(e) to make clear that if a generator makes a rebid on the basis of certain expectations, and those expectations are not met, then this would not be considered as lawful justification for making a further rebid for the same trading interval.

In support of this change, the proponent considers that the term "material conditions and circumstances" should be changed to "material circumstances" as it is potentially unclear as to whether material conditions may refer to the conditions subjectively viewed by the trader.

Provision of information

The proponent notes that the Federal Court also considered the trader's testimony regarding their intentions as part of the material conditions and circumstances and that this testimony was not consistent with information provided to the AER prior to the Court case. Therefore, the proponent considers that the ability of the Federal Court to draw on the trader's testimony as new information means that, under the current rules, the AER is not provided with accurate and complete information with which to assess compliance with the good faith provisions and to determine the actual intentions of the generator.

The rule change request has proposed the addition of a rule to require generators to submit complete and accurate information if requested by the AER to substantiate that any rebids are made in compliance with the good faith bidding provisions.[10] This change to the NER has been proposed to ensure that the AER is provided with all relevant information with which to establish its case prior to Court proceedings. The proponent proposes to strengthen this change by expanding the list of matters under clause 3.8.22A(c) that can be used to determine the intentions of the generator. This includes not just referring to the intention of the generator, but also the knowledge or belief of the generator and any other person.

In addition, the rule change request proposes that the AER be able to take into account a generator's bidding behaviour in relation to its entire generating portfolio when

10 Ibid, p. 13.

assessing compliance with the good faith provisions.[11] Currently, the existing good faith provisions relate to individual generating units. As such, compliance with the provisions must be assessed on a unit by unit basis and bids and rebids must be assessed against the previous offer for that unit. The proponent considers that this amendment would allow the AER to assess the intention of a generator or market participant by inference from all of the bids and rebids that it makes across all generating assets for which it has a substantial control or influence.

3.2.2 Known conditions and circumstances

The proponent also has concerns regarding instances when generators have made rebids on the basis of information that was known at the time of a previous bid or failed to make a rebid within a reasonable period of the generator becoming aware of the change in material conditions and circumstances.

The proponent considers that, in order for participants to reasonably be able to rely on pre-dispatch forecasts, generators should be required to take into account all existing material conditions and circumstances when making a bid and, if there is a change to any of those material conditions or circumstances, to reflect those changes in rebids as soon as practicable.[12]

The proponent notes that generators currently have an incentive to rebid very close to the relevant dispatch interval in order to limit the time available for other supply or demand-side participants to respond. In a number of instances, the change in market conditions that was noted as the reason for the rebid was known ahead of time.

The proponent highlights that, the closer a rebid occurs to the relevant dispatch interval, the fewer the number of participants that can respond within the time available and that there are no limitations in the NER that govern the proximity in time to a dispatch interval that a generator may rebid. The only time limitation is a practical one created by the ability for the NEM dispatch engine to incorporate generator bids in the dispatch merit order. This typically imposes a restriction of approximately three or four minutes for rebids to be submitted before the relevant dispatch interval.

High prices that are caused by generators rebidding volume into high price bands close to the dispatch interval have the potential to create price signals that may not be reflective of the underlying supply-demand dynamics in the market if they do not provide sufficient time for other generators or market customers to respond.

The proponent considers that requiring rebids to be made as soon as practicable after the trader becomes aware of new information will improve the reliability of pre-dispatch forecasts and allow other market participants time to develop an appropriate response.

11 Ibid, p. 12.

12 Ibid, pp. 11-12.

3.2.3 Materiality

The proponent has also raised concern that there is a significant degree of ambiguity around the definition of the term "material" which is used to limit when a rebid occurs. A wide interpretation of what constitutes a material condition and circumstance implies a large number of circumstances under which a participant may rebid.

The proponent considers there should be an objectively observable and quantifiable reason used as the basis for rebids and that a minor change in circumstances should not be considered justification for a rebid. It notes that the AER has on a number of occasions observed rebids in circumstances where demand and capacity were at close to forecast levels.

The rule change request proposes to introduce a requirement for participants to vary their bids only in response to a significant and quantifiable change in price, demand or other data published by AEMO in respect of the relevant trading interval.[13] A significant change in the data published by AEMO is proposed to be included as a justifiable reason for a rebid to occur.

The proponent considers that this will maintain the flexibility for generators to adjust their positions in response to changes in the market. However, the proposed rule would limit these changes to events that are significant and quantifiable, including network constraints, changes in demand and changes to plant availability. The proponent believes this will provide a greater level of certainty to market participants that generators will bid in accordance with their expectations at the time of making a bid or rebid.

13 Ibid, pp. 13-14.

4 Assessment framework

The chapter sets out the Commission's proposed framework for assessing the rule change request.

4.1 NEO assessment

The Commission's assessment of this rule change request must consider whether the proposed rule promotes the National Electricity Objective (NEO) as set out under section 7 of the National Electricity Law (NEL) as follows:

> "The objective of this law is to promote efficient investment in, and efficient operation and use of, electricity services for the long-term interests of consumers of electricity with respect to:
>
> (a) price, quality, safety, reliability and security of supply of electricity; and
>
> (b) the reliability, safety and security of the national electricity system."

Based on a preliminary assessment of this rule change request, the Commission considers that the relevant aspects of the NEO for further consideration are the efficient investment in and operation of electricity services with respect to the security and reliability of the national electricity system and the price of supply of electricity.

The Commission proposes to test the contribution of the proposed rule to the promotion of the NEO through consideration of the following propositions:

- The reliability and accuracy of pre-dispatch forecasts provides price transparency, and operational and investment certainty to market participants. This leads to efficient price signals for investment and enhances the security and reliability of the electricity system in the long-term interests of consumers of electricity.
- The provision of accurate and reliable information to participants in a timely fashion allows for responses which are in line with the underlying conditions of supply and demand. This leads to efficient wholesale price outcomes and reduces short-term supply costs and peak capacity requirements in the longer-term, thereby lowering the price of electricity to consumers.

4.2 Assessment approach

The rule change request explores potential inefficiencies in market outcomes created through generator rebidding strategies. The request identifies the good faith bidding provisions in the NER as the appropriate means to address these issues, in particular the requirement for generators to bid in accordance with their genuine intentions and

to bid on the basis of material changes in conditions and circumstances as soon as reasonably practicable.

The practicalities and merits of the proposed rule will be tested as part of the assessment framework and the Commission proposes to consider the issues raised in the rule change request within the broader context of the role that rebidding plays in the NEM.

The Commission proposes to base the assessment framework on four steps as follows.

1. *Defining the problem or market failure that has been identified by the rule change request*

   The Commission considers that, in order to determine the effect of the proposed rule, the first step in the assessment framework is to define the problem or market failure that has been identified in the rule change request.

   The Commission recognises that an inherent level of price volatility exists in the NEM due to the shape of the supply curve and fluctuating demand, and that this volatility is necessary for generators to recover investment costs and to incentivise new investment.

   However, concerns are raised by the proponent that generators engaging in late strategic rebidding practices provides insufficient time for participants to respond which may reduce the predictability and efficiency of wholesale price outcomes and lead to higher risk management costs for consumers.

   Further, that an inability of participants to respond efficiently to short-term price signals may limit the extent to which price outcomes accurately reflect conditions of supply and demand and underlying cost structures, and that a lack of transparency in price outcomes may hinder long-term investments.

   These concerns raised by the proponent are a useful basis from which to determine the extent of the problem or market failure.

2. *Assessing the materiality of the problem*

   The next step in the assessment framework will be to test the materiality of the problem. This will involve an assessment of the costs that the issue creates for market participants and how these costs flow through to impact consumers in the long-term.

   Determining the materiality of the problem may comprise both qualitative and quantitative assessments of the costs to market participants and may involve a degree of market modelling and analysis, depending on the nature of the problem identified.

3. *Given the materiality, identifying potential solutions to the problem*

   In consideration of the extent and materiality of any problems that are identified, the next step in the assessment framework will be to determine potential

solutions. The Commission's assessment will include the proposed changes to the good faith bidding provisions as one potential solution as well as a range of alternative potential solutions.

The development of any potential solutions 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 supply, demand and price. This process of price discovery provides efficient operational and investment signals and promotes effective competition.

While the rule change request proposes a regulation based approach, the Commission may consider whether there are alternative approaches based around market design and the bidding process. This is discussed further in section 6.2.

4. *Determining whether any potential solutions would result in net benefits to the market and promote the NEO*

Any potential solutions developed by the Commission will need to result in net benefits to the market and promote the NEO.

In consideration of the development of potential solutions, the Commission is conscious that, while rebidding strategies have the potential to contribute to inefficient market outcomes, focusing too heavily on short-term rebidding practices might impact on longer run investment incentives in the NEM.

Rebidding gives rise to legitimate price signals for investment, such as the benefits of building to alleviate network constraints. The price setting process should be sufficiently transparent such that investors have certainty that price signals are generally reflective of supply and demand conditions in the NEM. The Commission would be concerned about any solutions that give too much weight to short-term efficiency concerns at the expense of dynamic efficiency by undermining the incentive to innovate and invest over the long-term.

5 Rebidding in the NEM

This chapter provides a discussion of the issues identified in the rule change request in the broader context of the role of rebidding in the NEM and the importance of competition and price signals in supporting efficient outcomes for consumers.

5.1 The role of rebidding

An objective of introducing competition to the wholesale electricity sector is to decentralise operational and investment decisions away from governments and regulators to parties with commercial incentives. In a competitive energy market environment, price signals provide the incentives to guide participants' actions, such as how they should run their plant, when maintenance should be carried out and when and what type of technology to invest in. Profit and capital market discipline provide incentives to minimise risk.

The NEM is designed so that generators earn revenue for the energy they produce and short-term dispatch and long-term investment decisions are driven primarily by wholesale market prices. As such, the efficacy of the price signal is critical to market participants making efficient decisions.

Rebidding provides generators with the necessary flexibility to adjust their position to accommodate changes in the market. Rebidding provides a means for market participants to respond to short-term price signals, which promotes a more competitive outcome leading to economically efficient operation and investment, and supply of electricity over the long-term.

5.1.1 The role of rebidding in short-term dispatch

Generators are required to submit initial price/quantity offers for each 30-minute trading interval in up to ten price bands to AEMO by 12:30pm the day before trading day.[14] Rebids may be submitted up until the start of the relevant five-minute dispatch interval by moving capacity between the nominated price bands, in response to changing market conditions.

Rebidding provides the necessary flexibility to achieve an economically optimal dispatch arrangement of generation in the short-term. For instance, a coal-fired generator may rebid capacity into lower price bands to maintain a minimum level of output in response to falling demand. This ensures that, to the extent possible, the wholesale price of electricity reflects the balance of supply and demand at dispatch.

Rebidding may also be used by generators to manage an unplanned outage. If a unit trips and is offline, the generator may rebid its remaining capacity into lower price

14 We note that scheduled load also submit bids to AEMO and can make rebids. However, this paper focuses on issues raised in the rule change request, which relate to the behaviour of generators engaging in rebidding.

bands to ensure that it is able to cover any contractual obligations. Moving capacity into lower price bands provides the generator with an opportunity to dispatch greater output from existing generation units. Without this ability, there is the likelihood that demand will be met from higher priced generators. In this fashion, rebidding can promote productive efficiency by facilitating the least cost mix of generation to meet demand, given the market and network conditions.

Rebidding facilitates the iterative process of price discovery as generators are provided with the necessary flexibility to adjust their position to accommodate changes in the market, including the actions of other market participants. From 12.30pm the day before up until the relevant dispatch interval, generators may tailor their offers in response to new developments and pre-dispatch prices.[15] An economically efficient outcome is realised when, for a given set of market conditions, there is no incentive for individual participants to adjust their position.

5.1.2 The role of rebidding in long-term investment

In a workably competitive market such as the NEM, price signals provide the incentive for the development of the optimal amount and type of investment in generation capacity.[16] Flexible spot prices are essential for maintaining a reliable system given the range of factors that impact on the dynamics of both demand and supply of electricity.

For any given pattern of demand over time, there will be an associated optimal mix of generation technologies. Whenever the wholesale price is above the marginal cost of production for a particular generation type, that generator is recovering a portion of its fixed costs and investment costs. The expected level of these payments over time will determine whether it is economic to enter the market.

Spot price volatility is an inherent and necessary feature of a market such as the NEM and prices that occur at times of scarcity must be high enough and occur frequently enough to attract sufficient new investment in supply when needed. Prices that are consistently above variable operating costs and towards the long run marginal cost of new generation capacity indicates to potential new entrants that it is profitable to invest in new capacity. In this manner, bidding promotes efficient price outcomes that reflect conditions of supply and demand and provides a mechanism to signal the need for new investment.

Different types of new entrant generation technologies vary with respect to their underlying operating costs and fixed costs. As such, the ability of the spot price to vary in response to changes in supply and demand promotes dynamic efficiency by

15 AEMO issues five-minute and 30-minute pre-dispatch forecasts at regular intervals that include demand and price.

16 In a workably competitive market it is expected that firms display profit maximising behaviour, seeking the widest possible margin between prices and their underlying costs. Pricing behaviour is disciplined by the threat of new suppliers entering the market in response to price signals and consumers exercising choice.

providing a price signal that encourages the optimal least-cost mix of new entrant generation.

5.2 Issues with rebidding

This section discusses the issues associated with rebidding in the NEM and provides a broader context to consider the issues raised in the rule change request.

5.2.1 Price volatility driven by rebidding strategies

The proponent notes that generators currently have an incentive to rebid very close to the relevant dispatch interval in order to limit the time available for other supply or demand side participants to respond. This form of late strategic rebidding can result in high prices and excess volatility under conditions of tight supply and demand.

An inherent level of volatility exists in the NEM due in part to the shape of the supply curve and variability of demand. However, an inability of participants to respond to late rebids may result in price signals that are not reflective of an efficient outcome.

Generally speaking, the efficiency of price outcomes is likely to be enhanced in circumstances where market participants are least constrained in their ability to respond to the actions of other participants. Trading arrangements that provide participants with the opportunity to frequently and incrementally adjust their position in response to the changing market position of other participants are more likely to lead to an efficient price outcome. An optimally efficient outcome should generally be expected to occur when, for a given set of market conditions, individual participants do not have an incentive to further adjust their price/volume offers.

However, the ability of the market to arrive at an efficient outcome may be compromised by participants engaging in late strategic rebidding. Late strategic rebidding may prevent an efficient outcome as participants may still have an incentive to respond but do not have sufficient time to undertake the necessary rebid prior to the relevant dispatch interval. Over a sustained period, late strategic rebidding can lead to higher wholesale spot price volatility. This may increase the costs of hedging required to manage price risk and may result in higher prices for consumers.

Late strategic rebidding may also reduce the transparency and predictability of spot price outcomes. Time constraints that prohibit the ability of market participants to respond to the actions of others may mean that a competitive supply or demand side response cannot be assumed, thereby making it difficult for market participants to forecast spot prices, further reducing the efficiency of market outcomes.

A lack of transparency in the drivers of spot prices may particularly impact on demand side response if participants are unable to make an economic decision that is based on the potential value of providing a demand response and are therefore less motivated to actively engage in the market.

In the short-term, late strategic rebidding has the potential to cause productive efficiency losses if high cost plant is dispatched ahead of other plant in the post price spike dispatch intervals. In many instances, technical limitations of fast-start generators may mean that they are unable to be dispatched at short notice and if they are dispatched may have minimum operating times which may require them to keep generating after the price spike.

Over the long-term, the purpose of the market as a mechanism to encourage efficient investment may be undermined. Dynamic efficiency may be compromised if distorted price signals encourage new entrant generation of a type that is not optimal.

The Commission has previously used the term 'transient pricing power' to refer to instances where certain generators are able to increase prices above costs at times of tight supply and demand.[17] The Commission considers that transient pricing power is an inherent feature of a workably competitive market such as the NEM and is not synonymous with late strategic rebidding. While both involve a transient ability to increase prices above estimated costs for short periods of time, transient pricing power does not preclude the occurrence of competitive demand and supply side responses.

Transient pricing power is only a concern if it occurs frequently enough and to a significant magnitude that it leads to wholesale prices that are sustained above the long-run marginal cost of new generation capacity and that barriers to entry exist that prevent or increase the costs of new investment.

The ability of participants to disproportionately influence price outcomes is always likely to be possible in circumstances where bids and rebids must be received by a specific point in time. However, the Commission notes that there are other aspects of the design of the NEM bidding process and trading arrangements that exist which may exacerbate the incentive for generators to engage in late strategic rebidding. This is discussed further in section 5.2.2.

Box 5.1 Rebidding in the Alberta wholesale electricity market[18]

Alberta, a province in Canada, operates a wholesale electricity market that is similar in design to the NEM. The Market Surveillance Administrator (MSA), which regulates and supervises the market in Alberta, notes that the framework places principal reliance on competitive market forces to achieve an efficient market, including investment in generation.

The MSA points out that the Alberta wholesale electricity market achieves short term efficiency if the least cost resources are dispatched to meet demand, and no additional benefits could be realised from trade between generators and consumers. Under a theoretical framework, this would be achieved if all

17 For further information see: AEMC 2013, *Potential Generator Market Power in the NEM – final rule determination*, 26 April 2013, Sydney, p. 19.

18 Market Surveillance Administrator, *Offer behaviour enforcement guidelines for Alberta's wholesale electricity market*, 14 January 2011.

generators offered at short-run marginal cost and price was set by the marginal generator.

However, the MSA considers that giving too much weight to short-term efficiency concerns can "chill the incentive to innovate or invest" and may harm long-term efficiency. In this respect, the MSA conclude that conduct inconsistent with short-term efficiency can be acceptable so long as there is a corresponding benefit to long-term efficiency from the forces of competition.

With respect to rebidding, the MSA sees the transient ability of generators to increase prices above costs, as legitimate individual profit maximising behaviour. Noting that, in a workably competitive market, this is constrained by other generators' responses and "there is no expectation that a market participant can exert significant control over market outcomes".

Lastly, the MSA notes the importance of closely monitoring market conditions in order to identify evidence of "sufficient market power" that could create a barrier to entry for potential competitors.

Question 1

Do you consider late strategic rebidding to be the primary issue raised by this rule change request?

5.2.2 Five-minute dispatch and 30-minute settlement

The Commission considers that the design of the NEM bidding process and trading arrangements may be a contributing factor to the issues that the rule change proponent is seeking to address. Specifically, the difference between five-minute dispatch and 30-minute settlement may provide a potential incentive for generators to engage in late strategic rebidding.

Current trading arrangements

The NEM dispatch engine calculates the optimal dispatch arrangement of generating plant every five minutes. Generation is dispatched to meet demand with the highest bid price setting the five-minute dispatch price. However, the price that generators receive for energy produced, and on which the market is settled, is calculated as the time-weighted average of the six five-minute dispatch prices over the 30-minute trading interval.

This disparity in market pricing may provide an incentive for generators to bid in a manner that achieves their commercial objectives but is not necessarily reflective of the underlying conditions of supply and demand at the time of dispatch.

Generally speaking, the incentives are created through the occurrence of dispatch prices in one or two dispatch intervals that are significantly higher than the prices in the remaining dispatch intervals of the trading interval.

For example, a very high dispatch price at the start of a trading interval can create an incentive for generators to rebid volumes into very low price bands for the remaining dispatch intervals. Generators engaging in this behaviour are seeking to place their plant at the bottom of the dispatch merit order and thereby maximise generation volume exposed to the trading interval price, which will be calculated as an average that includes the very high price in the first dispatch interval. Fast-start generators may also be dispatched in response to the price spike in the first dispatch interval, only for the prices across the remaining dispatch intervals to materially fall.

While the price signal could be said to be working, in that the availability of generation is increased in response to the price spike, there may be inefficiencies if fast-start plant is unable to recover their costs as payment is based on the lower 30-minute average price.

Conversely, a generator may attempt to spike the price of the last or second last dispatch interval of a trading interval in order to increase the 30-minute average price. Generators will generally achieve this by rebidding generation volume into higher price bands and are likely to be successful if they undertake the rebid close to the relevant dispatch interval in order that other market participants have insufficient time to initiate a supply or demand-side response.

While rebidding volume into higher price bands may mean that the generator runs the risk of being dispatched for a lower generation volume, a price spike in the last dispatch interval will increase the 30-minute average price and the revenue received for the prior five dispatch intervals of the trading interval. If successful, retailers and large users will be faced with paying the resultant higher 30-minute price, without an opportunity to dispatch their own generation or initiate demand response to decrease their exposure.

Implications and previous considerations

Settlement based on the average of five-minute dispatch prices may limit the ability of a fast-start generator to offer price-reflective hedge products to the market. This may reduce market efficiency by increasing the costs of hedging to market participants which may result in higher pass-through costs to customers. Further, behaviour of this form that results in unnecessary market volatility and reduces spot price predictability may further increase the risk premium on hedge products.

The Commission notes that issues associated with the five-minute dispatch and 30-minute settlement arrangements were considered by the National Electricity Market Management Company (NEMMCO) in 2002.[19] NEMMCO concluded that, at the time, there were no options available to address the issue that provided a net positive benefit

19 NEMMCO, *5-minute dispatch and 30-minute settlement issue – draft final report*, 19 June 2002.

to the NEM.

Question 2

Do you consider the NEM trading arrangements of five-minute dispatch and 30-minute settlement to be relevant to the issue of late strategic rebidding? Do you have any views as to how any issues arising could be addressed?

6 Options to address any identified issues

This chapter discusses a number of aspects of the rule change request which may provide further insight into the merits of the proposed rule.

This chapter also discusses the potential for alternative options to be explored that are based on the design of the market and the bidding process, which may also address the issues identified in the rule change request.

6.1 The proposed rule and the design of the good faith provisions

The Commission's assessment of the rule change request will consider both the nature and extent of the issues identified and the practicality and merits of the proposed rule. Of particular note, the Commission has identified a number of aspects of the proposed rule for further assessment. This includes a consideration of the proposal to reverse the onus of proof onto generators by recasting the good faith bidding provisions in the negative, the requirement for generators to rebid as soon as reasonably practicable on the basis of a change in material circumstances, and the practicality of rebidding only on the basis of data published by AEMO.

6.1.1 Reversing the onus of proof

The proposed rule recasts the good faith bidding provisions in the negative such that a rebid is taken not to be made in good faith unless, at the time of making the bid, the generator has a genuine intention to honour that bid if material circumstances remain unchanged.

The proponent considers that, by starting from the position that rebids are not made in good faith, this would reverse the onus of proof from the AER onto generators. A generator that could not reasonably identify a material change in circumstances as justification for their rebid would suggest that the generator had not acted in good faith.

In addition, the rule change request proposes to include a separate note under clause 3.8.22A(e) to make clear that if a generator makes a rebid on the basis of certain subjective expectations, and those expectations are not met, then this would not be considered as lawful justification for making a further rebid for the same trading interval.

The proponent considers that a rebidding generator should readily be able to identify an objective and justifiable cause for any rebids it submits to AEMO. While the proponent notes that this would require generators to keep information to substantiate that their rebidding practices have complied with the good faith provisions, it contends that this should not require a significant change to existing practices and should therefore not be overly burdensome on the generator.

Further, the proponent considers that the amendments should in no way prevent participants from rebidding where there is a genuine need to do so and that the proposed changes would still provide participants with the flexibility necessary to adjust their positions to accommodate changes in the market.

The requirement that the onus of proof be shifted to generators was originally proposed by NECA as part of its application to the ACCC for changes to the Code in 2002. While the ACCC determined to introduce the current good faith bidding provisions in response to NECA's application, it did not support shifting the onus of proof to generators.[20]

The ACCC argued that the proposal had the potential to impose significant costs on participants if they were called upon to defend themselves and was not consistent with the Code objective 'to provide a regime of light-handed regulation'. Further, the ACCC raised concern that the costs may encourage participants to bid and rebid more conservatively leading to less flexibility in the market, which may on occasion reduce competitive responses.

The ACCC considered it not unreasonable that a substantive case should be required to be built before making allegations, rather than the accused party having to prove it acted prudently before a case is made against them. While not supportive of the reverse onus of proof clause, the ACCC did see value in providing the powers necessary to build a case to prosecute behaviour that breaches the good faith bidding provisions.

Shifting the onus of proof to generators would imply that a generator has automatically bid without good faith unless the generator can provide records that prove otherwise. This raises the possibility that a generator may be found to have breached the bidding in good faith provisions simply because it failed to provide satisfactory records, despite the fact that it may actually have had a genuine intention to honour its bid.

An assessment of the practicality or feasibility of such a change in the rules would necessarily require a consideration of the wider precedent in law of the use of reverse onus of proof and the extent to which it is appropriate to apply this in the instance of bidding in the NEM.

Question 3

Do you consider there to be benefits in the proposed rule to reverse the onus of proof onto generators?

20 ACCC, *Amendments to the National Electricity Code – Changes to bidding and rebidding rules*, 4 December 2002.

6.1.2 Rebids to reflect all known conditions and circumstances

The proponent considers that, in order for participants to reasonably be able to rely on pre-dispatch forecasts, generators should be required to take into account all existing material conditions and circumstances when making a bid or rebid and, if there is a change to any of these material conditions and circumstances, to reflect those changes in rebids as soon as reasonably practicable.

The proponent notes that generators currently have an incentive to rebid in close proximity to the relevant dispatch interval in order to limit the time available for other supply and demand-side participants to respond. In a number of instances, the change in market conditions that was noted as the reason for the rebid was known ahead of time and sometimes even at the time of a previous bid or rebid.

Period of time

While the proponent considers that a change in material conditions and circumstances should be reflected in a generator's rebids in order to maintain the accuracy of pre-dispatch forecasts, there may be some ambiguity as to the period of time in which the generator would be required to reflect changes in their bids. The rule change request is not sufficiently clear as to the length of the period of time that could be considered as 'reasonably practicable'.

It may be possible that, without further clarity, market participants may perceive different periods of time as reasonable. This is because the period of time that a generator may practically require to form a response strategy and undertake a rebid may be influenced by a number of factors, including:

- the trader's time to develop a response strategy and formulate rebids;
- the generating company's internal processes for approving changes to bidding strategies; and
- the ability to dynamically incorporate changes based on rebids that other generators may be undertaking on the basis of the same change in material conditions and circumstances.

It is possible that a generator may identify a number of related events upon which to change its bidding strategy. If these events occur sequentially then this raises a question as to which individual event should be referenced as the period of time from which a rebid must be submitted. For example, whether the period of time is referenced from the most recent relevant event or a specific event of the trader's choosing which they consider to be the most relevant to their changed bidding strategy. An analogy can be drawn from equity markets where a series of related but sequential events may lead to a shift in the share price of a particular listed company. It is not until a specific threshold price is reached that traders may wish to submit an order to buy or sell the stock.

Materiality

The proponent has also raised concern that there is a significant amount of ambiguity around the definition of the term "material" which is used to limit when a rebid occurs and that participants should not be able to justify significant rebids based on minor changes in circumstances.

However, it is possible that a generator may identify a number of related events which taken together represent a material change in conditions and circumstances. The generator may not consider it appropriate to respond to a single change in material conditions and circumstances and may only consider it necessary to change its bidding strategy on the basis of a combination of events or once a threshold level for a specific market parameter has been reached. This may require a number of events to occur such as changes in demand, reductions in plant availability, network limitations, etc, all of which may be small or immaterial but sufficient on aggregate for the generator to significantly change their bidding strategy.

An inability for generators to rebid on the basis of minor changes in market conditions may suggest a requirement for some level of proportionality to be considered between the rebid that is made and the change in conditions or circumstances that is identified as justification for the rebid.

Question 4

(a) Do you consider that all known conditions and circumstances should be taken into account in generator bids and rebids?

(b) Do you consider the proposed rule to be practical and sufficiently clear as to when a generator must rebid following a change in material conditions and circumstances?

(c) Do you consider that rebids should only be limited to the occurrence of a significant change in conditions and circumstances? If so, how would this be achieved in practice?

6.1.3 Rebidding on the basis of published AEMO data

The proponent considers there should be an objectively observable, significant, and quantifiable reason used as the basis for all rebids. The rule change request proposes to introduce a requirement for participants to vary their bids only in response to a significant and quantifiable change in price, demand or other data published by AEMO in respect of the relevant trading interval.

The proponent reasons that rebids based on a change in conditions and circumstances could be objectively observed which would improve the transparency of the bidding process and more easily distinguish those bids that are made in good faith from those

that are not. Further, rebids based on quantifiable data enhances the ability to determine the extent to which a change in material conditions and circumstances could be objectively considered as material.

There may be some concerns relating to the requirement that rebids may only be made with reference to publicly available AEMO data. There exists a range of data that is not published by AEMO that is relevant to the activities of generators in the NEM and which could reasonably considered as justification for a rebid. For example, a generator may wish to rebid volume into different price bands in response to a significant change in its contract position. Alternatively, a generator may consider that a sudden change in forecast weather conditions may not be accurately reflected in AEMO's demand forecast. In this case, the generator may rebid on the basis of its own expectations of the effect of weather on demand, even if AEMO's forecast of demand has not changed materially.

Indeed, it is the wide range of sources of information that traders may draw on which provides the incentive for traders to pursue commercial objectives, thereby creating a competitive market environment and improving the efficiency of price outcomes.

Question 5

Do you consider it reasonable that all bids and rebids should be made with reference to published AEMO data?

6.2 Options based on market design and the bidding process

As discussed in section 4.2, as part of the assessment framework, the Commission proposes to consider the nature of the problem or issue that the rule change request is intended to address. While the rule change request has proposed a change to the good faith bidding provisions, the Commission considers that, in consideration of the exact nature of any problem identified, there may be alternative options that have the potential to contribute further to the achievement of the NEO. This may include options based on the design of the market and the bidding process.

A number of alternatives to the existing rules regarding rebidding have been proposed in the past. Indeed, at the conception of the NEM, and the first drafting of the Code, there was some deliberation around the extent to which rebidding would be allowed as part of the NEM design.[21] The ACCC noted that allowing unrestricted rebidding up until the time of dispatch had the potential to impose costs on customers, where generators rebid quantities into higher price bands within a timeframe such that customers or other generators would be unable to respond to the price changes. The ACCC noted that this form of rebidding activity was not in contravention of the TPA which prohibited the misuse of market power.

21 ACCC, *Applications for authorisation – National Electricity Code*, 10 December 1997, pp. 60-69.

The ACCC was concerned that the use of rebidding for anti-competitive behaviour would most likely be last minute shifting of generation volume into higher price bands or withdrawal of capacity from the market. Ultimately, the ACCC determined that there was a higher cost to the market of not allowing rebidding up until the time of dispatch and determined that the dynamic nature of the supply of electricity meant there had to be flexibility in the bidding process to cover the contingency that plant may become unavailable, or extra plant may be required.

However, in making its determination, the ACCC considered a number of options that would have placed restrictions on rebidding in order to avoid the possibility of anti-competitive behaviour.

- *Disallow rebidding of generation volume into different price bands within three trading intervals prior to dispatch*

  This option would have prevented generators making rebids to move generation capacity to different price bands within three trading intervals (1.5 hours) of the relevant dispatch interval. The objective of imposing such a restriction would be to provide a window for unscheduled generation or unscheduled load to respond to the last bid made before the relevant dispatch interval occurs.

  The ACCC decided against pursuing this option as it would likely impose significant costs upon market participants in the form of higher spot prices (in some instances), inefficient production outcomes, increased risk management costs to some generators and possible costs arising from discouraging demand-side participation in the market.

  Indeed, arguments against this option are made in the rule change request noting that placing restrictions on rebidding close to dispatch does not recognise that there may be changes in market conditions and circumstances close to dispatch where it is appropriate to respond through rebidding. The rule change request advocates linking the timeliness of the response to when the generator or market participant became aware of the change in market circumstances.

  The Commission notes that a number of international energy markets make use of some form of time restriction on the ability of participants to submit bids and rebids prior to dispatch.

- *Only allow rebidding that has the effect of depressing spot prices*

  A further option considered by the ACCC was that rebids into lower price bands should be allowed up until the time of dispatch, and the rebidding restriction of three trading intervals would only apply to rebids that shifted generation volume into higher price bands.

  The ACCC noted that this option had the benefit of allowing generators to rebid in response to unit outages. However, the ACCC determined not to adopt this option as it did not address the issue of generators declaring plant unavailable, where such rebids could be used to manipulate spot price outcomes. Further,

other legitimate rebids would be disallowed including rebidding of hydro or gas-fired plant in response to changing market conditions, so that the electricity produced is utilised at times of peak demand. It was considered that this would introduce inequity into the treatment of generators based on their technical characteristics.

- *Only allow rebidding for bona fide technical reasons*

  This option required that rebids only be made for bona fide technical reasons. Generators would be prohibited from rebidding generation volume into different price bands or withdrawing capacity for economic reasons. The ACCC also decided not to pursue this option on the grounds that substantiation of rebidding 'bona fides' may not be practicable, as technical justifications for rebids could easily be manufactured in response to commercial incentives. The ACCC also considered that this option did not take into account the fact that valid non-technical reasons may exist for rebidding and that such rebidding may be beneficial to the market.

Ultimately, the ACCC determined to allow rebidding with a condition of market monitoring that would assess the impact of rebidding activity on spot market price outcomes.[22] The ACCC's determination obliged NECA to monitor variations in prices and prepare quarterly reports for the ACCC and the public that identified and reviewed any significant price variations. The ACCC considered that the information accumulated through the market monitoring process would drive possible market reforms into the future.

Question 6

(a) What are your views on any of the options discussed above? Do you consider any of these options or any other options around the design of the bidding process to better address the issues raised in the rule change request?

(b) Are there any approaches used in electricity markets in jurisdictions overseas that could provide insight into the development of options to address issues raised in the rule change request?

22 ACCC, *Amendments to the National Electricity Code – Changes to bidding and rebidding rules*, 4 December 2002, pp. 5-6.

7 Lodging a submission

The Commission has published a notice under section 95 of the NEL for this rule change proposal inviting written submissions. Submissions are to be lodged online or by mail by 22 May 2014 in accordance with the following requirements.

Where practicable, submissions should be prepared in accordance with the Commission's Guidelines for making written submissions on rule change requests.[23] The Commission publishes all submissions on its website, subject to a claim of confidentiality.

All enquiries on this project should be addressed to Sebastien Henry on (02) 8296 7800.

7.1 Lodging a submission electronically

Electronic submissions must be lodged online via the Commission's website, www.aemc.gov.au, using the "lodge a submission" function and selecting the project reference code "ERC0166". The submission must be on letterhead (if submitted on behalf of an organisation), signed and dated.

Upon receipt of the electronic submission, the Commission will issue a confirmation email. If this confirmation email is not received within 3 business days, it is the submitter's responsibility to ensure the submission has been delivered successfully.

7.2 Lodging a submission by mail

The submission must be on letterhead (if submitted on behalf of an organisation), signed and dated. The submission should be sent by mail to:

Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Or by Fax to (02) 8296 7899.

The envelope must be clearly marked with the project reference code: ERC0166.

Except in circumstances where the submission has been received electronically, upon receipt of the hardcopy submission the Commission will issue a confirmation letter.

If this confirmation letter is not received within 3 business days, it is the submitter's responsibility to ensure successful delivery of the submission has occurred.

23 This guideline is available on the Commission's website.

Abbreviations

ACCC	Australian Competition and Consumer Commission
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
Commission	See AEMC
MSA	Market Surveillance Administrator
NECA	National Electricity Code Administrator
NEL	National Electricity Law
NEM	National Electricity Market
NEMMCO	National Electricity Market Management Company
NEO	National Electricity Objective
NER	National Electricity Rules
TPA	Trade Practices Act 1974