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Submitted by email to AERInquiry@aer.gov.au.

11 January 2017

Rebidding and Technical Parameters Guideline Review 2016

The Australian Energy Council (the Energy Council) welcomes the opportunity to make a submission to the Australian Energy Regulator (AER) for the Rebidding and Technical Parameters Guideline Review 2016.

The Energy Council is the industry body representing 21 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses.

We consider that the issues raised in our submission to the consultation draft remain, and accordingly reiterate them below.

Errors (section 6)

The draft guidelines appear to confirm that all errors in rebids will be considered "material errors" under the new rebidding Rules. If the errors are material, the AER should be alerted within two business days of the error being found.

As an "E" rebid is the result of a positive action on behalf of the market participant which provides additional information to the AER, the Energy Council would expect such action to satisfy the reporting obligation. It is also notable that the "E" designation is additional to the information required under clause 3.8.22(c)(2), having been included in the guidelines specifically to provide context to regulators and participants.

It should be made explicit in the guideline whether or not the AER considers this notification sufficient to discharge the reporting obligation placed upon market participants. It is not clear from the revised guidelines whether separate reporting would be required to inform "*whether the relevant participant has cooperated with the AER in relation to the breach*" – initial notification (by whatever means) of an identified error is likely to be necessary but not sufficient to be considered "cooperation".

Form of rebid (section 3.4)

Inclusion of a second timestamp

The AER have proposed that participants be required to enter two timestamps in the reason provided to AEMO in relation to every rebid. The rationale provided in support of this proposal is:

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> *"… we note that clause 3.8.22(c)(3) provides that market participants must provide to the AER, upon written request, in accordance with the Guideline, such additional information to substantiate and verify the reason for a rebid as the AER may require from time to time.*
>
> *The AER considers that providing the "time of becoming aware" as part of a rebid reason would be the most efficient means for participants to provide, and the AER to receive, the relevant information. The alternative is for the AER to request participants to provide this information in writing each time we seek to determine whether or not a rebid has been made "as soon as practicable". Relevant participants would be required to respond to the AER's request in writing, which may be more onerous (and in the long term more expensive) than providing the "time of becoming aware" as a regular ("business as usual") component of a rebid reason."*

We agree that the AER may request additional information from market participants, including the "time of becoming aware". However, the Rules draw a clear distinction between the information which is considered to be necessarily provided in relation to all rebids – as listed in clause 3.8.22(c)(2) – and information which is considered likely to be required rarely – and hence is able to be requested in writing from time to time – and that this distinction has a purpose.

While the obligation to rebid as soon as practicable applies to all rebids, in practice it is rebids which occur late enough to diminish or preclude competition which have the potential to impair market efficiency. This is reflected in both the AEMC final determination[1] and the AER proposed guidelines[2]. The Rules reflect this in requiring a contemporaneous record for a "late rebid" which includes the "time of becoming aware". The AER's proposal to require additional disclosure in relation to the vast bulk of rebids which are not likely to be of relevance is an inefficient burden on market participants.

If participants wish to provide additional information in their rebid reason they may do so, however there should not be a broad obligation to provide unnecessary data. The second timestamp should be an optional element, occurring after the category code if at all.

Alteration of component ordering

The Energy Council does not support the proposed reorganisation of the general form of the rebid reason.

Participants and regulators have invested in systems based on the current format which places a timestamp first and category second. This process relates to both systems to produce compliant rebid reasons and systems to review market rebid reasons.

In its draft decision the AER state

> *"We consider that changing the order of the components of the rebid reason would reduce data collection error rates. Specifically, positioning the category code at the beginning of the rebid reason would separate it from the other non-numeric component (the brief, verifiable and specific reason) thereby eliminating the current risk that the category code could be mistaken for part of the brief verifiable and specific reason."*

The category code has been submitted adjacent to the brief, verifiable and specific reason for an extended period of time with no apparent confusion as to its purpose.

It is unclear why the category code is at risk of becoming "*mistaken for part of the brief verifiable and specific reason"*. It is likely that requiring participants to change the order of the components of their rebid reasons would create discontinuities in any analysis of the data, particularly as implementation timeframes would be expected to vary among participants.

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[1] AEMC 2015, *Bidding in Good Faith, Final Rule Determination*, 10 December 2015 , Sydney, page vi
[2] Section 3.3

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If the proposal for the second timestamp to be included as an optional field occurring after the category label were adopted, the separation apparently desired by the AER may occur in any event.

The proposal to move the category label to occur prior to the timestamp(s) appears to incur cost for no benefit. We are not aware of any cost/benefit analysis performed by the AER in respect of the proposed changes and in its absence encourage the AER to retain the current prefix arrangements which are "HHMM Category".

Legal status (section 7)

Section 7 of the draft guidelines refers to a separate document for the procedures for handling confidential information claims in respect of clauses 3.8.22(c)(3) and 3.8.19(b)(2). In our previous submission, we requested that clarification be provided on this approach and how the approach will remain consistent with the NER requirement that the guidelines be produced in accordance with the Rules Consultation Procedure.

The revised guidelines continue to refer to a separate document in this respect with the added description "as amended from time to time". This addition reinforces our concern that the portion of the procedures devoted to handling claims of confidential information may be revised outside of a Rules Consultation Procedure. We do not consider that such action would be Rules compliant.

Requirement to rebid as soon as practicable (section 3.3)

The Energy Council considers that the alterations made to the language used in section 3.3 have failed to address the substantive issue and retains a bias towards "false positive" breaches being assessed.

As addressed above and in the revised guideline, the relevant issue is whether a rebid is delayed and whether that delay has an adverse effect on competition. There are likely to be many circumstances where a small "delay for convenience" reasonably exists when compared to the minimum practicable response time, and does not impair market efficiency. An example provided in our submission to the initial consultation is repeated below.

> As an example of the difference, a trader may be in a meeting when they receive notification of a changed weather forecast or testing regime applicable to the following afternoon. It may be practicable but inconvenient to leave the meeting and revise the offer immediately. However, it is unlikely that waiting the typically short time until the meeting is completed before entering a rebid would impair market efficiency or diminish competition given the long lead time before the relevant period.

Accordingly the words "for the convenience of, or" should be removed from section 3.3 of the draft guideline.

The AER should also remove the references to "unexpected high price outcomes" from the guideline as the Rules are intended to regulate *all* rebidding, not just that which is associated with high prices. Prices which are inefficiently low in the short term are equally damaging to the long term interests of consumers.

Any questions about our submission should be addressed to Emma Richardson, Policy Adviser by email to emma.richardson@energycouncil.com.au or by telephone on (03) 9205 3103.

Yours sincerely,

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