



Final Report Rebidding and Technical Parameters Guideline

February 2017

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1 Background

Where a rebid occurs the reasons for it must be provided to the Australian Energy Market Operator. The Rebidding and Technical Parameters Guideline (Guideline) sets out the information that must be provided in support of these reasons and our process for requesting additional information if required. It also covers some other areas related to the bidding and rebidding of technical parameters.

The previous version of the Guideline was published in December 2009. This Final Decision marks the end of our review of the 2009 version of the Guideline, undertaken to ensure the Guideline reflects market developments (including the commencement in July 2016 of the "Ramp Rate" rule change and the "False or Misleading" rule change).

The consultation process commenced with a Consultation Paper published in July 2016. The Consultation Paper proposed changes to the 2009 version of the Guideline for stakeholder feedback. We received five submissions, which we took into account in drafting our Draft Decision of December 2016). We received four submissions to the Draft Decision which we have taken into account in drafting this Final Decision and the Final Guideline.

All documents relating to each stage of the consultation process can be found on the [Rebidding and Technical Parameters Guideline Review](#) project page on the AER website.

2 Issues raised in submissions

The following contains the issues raised in submissions and the AER's responses.

2.1 Form of the rebid

Clause 3.8.22A(d) requires *relevant participants* to *rebid* as soon as practicable after becoming aware of the change in material conditions and circumstances on the basis of which it decides to vary its *dispatch offer* or *dispatch bid*. In our Consultation Draft and Draft Decision the AER suggested *relevant participants* include the "time of becoming aware" of the change in material conditions and circumstances as part of a *rebid* reason. We proposed this because we considered it would be the most efficient means for *relevant participants* to provide, and the AER to receive, the relevant information. We also proposed a change to the order of the components of the *rebid* reason to streamline data collection and reduce error rates.

Submissions to the Draft Decision and earlier Consultation Draft were unanimous in their opposition to the proposed changes on the grounds that the National Electricity Rules (Rules) do not require *relevant participants* to provide the "time of becoming aware" as part of a rebid and implementing the changes would result in additional IT related and training costs. The AER accepts that the Rules do not require *relevant participants* to provide the "time of becoming aware" as part of a *rebid* and acknowledges that there may be a financial cost associated with such a requirement. As such, the AER has decided to omit this from the Final Guideline.

Although the Rules do not require *relevant participants* to provide the "time of becoming aware" as part of a *rebid* reason, the AER notes that under clause 3.8.22(c)(3) *relevant 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. So, although under the Rules the AER cannot compel participants to provide the "time of becoming aware" as part of a *rebid* reason, we are permitted to seek that information from *relevant participants* on an ad hoc basis. Also, it is important for relevant participants to note that the AER may seek the "time of becoming aware" in respect of any rebid - not just those submitted in the *late rebidding period*.

Several submissions suggested the possibility of including the "time of becoming aware" as optional text after the category code in the rebid reason. The AER agrees with these submissions and considers that such an approach would be an efficient way for participants to record the "time of becoming aware" and would be helpful for the AER as the enforcement agency.

In summary, the AER's final decision is to keep the form of the *rebid* as it stands in the 2009 version of the Rebidding and Technical Parameters Guideline with the option for *relevant participants* to include the "time of becoming aware" as optional text after the category code. The final decision on the form of the rebid is:

HHMM {space} Category {space} DDD...D

Where:

HHMM is the time, in 24-hour format, of the event(s) or other occurrence(s) adduced by the relevant participant as the reason for the rebid occurred.

Category is either P for a plant or physical change, A for a AEMO forecast or dispatch change, F for a financial or commercial change or E for a *rebid* to address an error.

DDD...D is a verifiable description of the events or occurrences that explain the *rebid*.

(Where appropriate, the *relevant participant* should provide before and after data for relevant factors that assist in explaining the reason for the *rebid*. The AER also recommends that the time when the *relevant participant* becomes aware of the change in material conditions and circumstances on the basis of which it decides to vary its *dispatch offer* or *dispatch bid* (see clause 3.8.22A(d)) be included in the *rebid* reason in HHMM format.)

2.2 Market ancillary services

In its submission to the draft decision, AGL raised opposition to the removal of the following paragraph from the Guideline:

The AER is cognisant of the practical difficulties of ensuring that the exact technical characteristics of plant at any point in time are reflected in bids precisely. Accordingly, it is not expected that participants should constantly rebid to update minor variations in plant characteristics. However, it is expected that more significant variations would be updated quickly.

Our response is the same as when this issue was raised in the Consultation Draft. That is, our Compliance and Enforcement Statement of Approach (Statement of Approach)¹ details our approach to compliance and the enforcement options available to us and sets out the criteria we apply when exercising our discretion regarding enforcement action. Matters are assessed on a case-by-case basis with all relevant circumstances being considered, including those outlined in our Statement of Approach, which we may amend from time to time.

Ultimately responsibility rests with businesses to meet their obligations under the national energy laws. We encourage businesses to continuously review the effectiveness of their compliance policies, systems and procedures to ensure that they are complying with their obligations.

¹ <http://www.aer.gov.au/publications/corporate-documents/aer-compliance-and-enforcement-statement-of-approach>

The AER does not consider it to be appropriate (or possible) to provide an exhaustive list of the circumstances when enforcement action is warranted. In light of the above, the text has not been reinstated.

2.3 Confidential information

Our Consultation Draft clarified that we will treat confidential information provided by participants in accordance with the ACCC/AER Information Policy: collection and disclosure of information (Information Policy).²In its submission to the Consultation Draft the AEC sought clarity on whether the approach in the Guideline would remain consistent when updated versions of the Information Policy are published. To this end, the AER included text in the draft Guideline to clarify that the AER will apply the Information Policy as amended *from time to time* (emphasis added).

In its submission to the Draft Decision the AEC again raised concerns in relation to the interaction between the Rules and the Information Policy. Specifically, the AEC said the addition of the words "from time to time":

“.....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.”

As a Commonwealth agency the AER is subject to a range of obligations under a number of Commonwealth laws with regard to the way in which it can collect, use and disclose information.³ The Information Policy informs stakeholders of these obligations as well as outlining the AER's policy on the collection, use and disclosure of information (including procedures in relation to confidential information). While the Information Policy may be amended from time to time, such amendments would not be made without widespread consultation with relevant stakeholders.⁴ As such, the AER will apply the Information Policy as the procedures for handling claims in accordance with clauses 3.8.19(b) and 3.8.22(d) as amended from time to time.

Therefore, the AER's position on confidential information outlined in the Draft Decision remains unchanged.

2.4 Requirement for a rebid to be made “as soon as practicable”

Clause 3.8.22A(d) requires a relevant participant to make a *rebid* as soon as practicable after becoming aware of the change in material conditions and circumstances on the basis of which it decides to vary its *dispatch offer* or *dispatch bid*.

² <https://www.aer.gov.au/system/files/ACCC-AER%20Information%20Policy%202014.pdf>

³ Such laws include (but are not limited to) the *Competition and Consumer Act 2010*, the *National Electricity Law*, common law duties of confidence, the *Evidence Act 1995*, *Federal Court of Australia Act 1976*, *Privacy Act 1988*, *Administrative Decisions (Judicial Review) Act 1977* and the *Freedom of Information Act 1982*.

⁴ The AER considers that any such consultation would likely satisfy the requirements set out in the Rules consultation procedures.

We included the following text in the Draft Decision to make it clear that we could not state in advance the time frame that would satisfy the obligation on a *relevant participant* to make a rebid as soon as practicable:

It is not possible to state in advance the time frame that will satisfy the obligation on a relevant participant to make a rebid “as soon as practicable”, as this will depend on the surrounding facts and circumstances in which a rebid is made. It is clear however, that the phrase means that a relevant participant must make a rebid as soon as the circumstances permit, and that delay solely or primarily due to for the convenience of, or to provide commercial advantage to, the relevant participant is unlikely to be a relevant consideration.

In its submission to the Draft Decision the AEC said that the words “for the convenience of, or” should be removed from the above paragraph, for the following reasons:

“.....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.....”

Our response to this remains the same as in our draft decision. That is, the AER notes that in its Final Decision, the AEMC considered the harm arising out of deliberate late rebidding, including the impact of price shocks on investment decisions that would be made by large industrial users and, more relevantly, the risk that higher cost generation may be dispatched ahead of lower cost generation.

In its Final Rule Determination, the AEMC states:

Competitive demand response may not have sufficient time to change output. The cost to supply electricity will then be higher than it would otherwise have been. The reduced transparency and predictability of spot prices may limit participation in the market, damaging competitive pressures on price outcomes.⁵

Similarly, the AEMC notes in its Final Rule Determination:

It is not in the long term interests of consumers for generators to deliberately delay in making rebids in the knowledge that other participants will have insufficient time to undertake a competitive response.⁶

Therefore, we consider that, whether the delay is for convenience or for commercial advantage, the impact on the competitive response will be the same. To this end we have maintained the text from the Draft Decision in the Final Decision.

In its submission to the Draft Decision AGL suggested that the Final Guideline should provide guidance on what the AER means by “convenience”. AGL submitted that the regulatory intent of the word is unclear and does not provide sufficient guidance as to what conduct the AER considers to be appropriate. In response to AGL's submission we note that the AER will assess each case on its merits and consider all relevant circumstances. We also note that our Statement of Approach sets out factors we may have regard to when

⁵ National Electricity Amendment (Bidding in Good Faith) Rule Amendment Final Rule Determination, p iii

⁶ National Electricity Amendment (Bidding in Good Faith) Rule Amendment Final Rule Determination, p 37

deciding whether to take enforcement action and as such we do not consider it necessary to provide further guidance on the meaning of 'convenience.'

The Draft Decision included the following paragraph to explain the importance to the market of *relevant participants* rebidding as soon as practicable (in other words the harm involved in late rebidding):

To reach an efficient outcome, the competitive process relies on transparency and predictability. In the context of a decentralised dispatch market such as the NEM, relevant participants who deliberately delay rebidding (after they have already made a decision to do so) could have a harmful effect on this process. This is because such delays limit the time competitors have to respond, which may lead to unexpected high price outcomes. Ultimately this may inflate the prices of hedge products, which may in turn filter down to end consumers. In summary, deliberately delaying rebidding for convenience or commercial gain is ultimately not in the long term interest of consumers.

On the above, in its submission to the Draft Decision the AEC said:

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 interest of consumers.

The AER agrees that the Rules govern all rebidding behaviour, not just rebidding associated with high price outcomes. While the AEMC’s Final Rule Determination⁷ focussed mostly on unexpected high price outcomes, deliberately late rebidding can indeed lead to unexpected low price outcomes, which, depending on the circumstances may be equally as harmful. In line with this the language in the Final Guideline has been changed to “unexpected price outcomes”.

2.5 Error rebids

We removed the reference to "material" errors in the Consultation Draft and Draft Decision to make it clear that *relevant participants* should follow the same process regardless of the perceived materiality of the error.

In its submission to the Draft Decision the AEC said that the draft Guideline appears to confirm that all errors in rebids will be considered to be material. The AEC also requested that the Guideline make it clear whether or not submitting a correcting (“E”) rebid discharges participants from their reporting obligations.

Our response to the issues raised by the AEC is that, consistent with our Draft Decision we take into account all self-reports in considering whether to take enforcement action and that, consistent with our Statement of Approach responsibility ultimately rests with businesses to meet their obligations under the national energy laws.

⁷ <http://www.aemc.gov.au/getattachment/815f277c-a015-47d0-bc13-ce3d5faaf96d/Final-Determination.aspx>

3 Effective date

The 2009 version of the Guideline was reviewed to taken into account market developments including the introduction of the "Ramp Rate" rule change and the "False or Misleading" rule change. As the Rule changes took effect in July 2016 (some months after the Rule changes were finalised), and participants have already made the system changes associated with the Rule changes, the AER's intention is that the new (2017) version of the Rebidding and Technical Parameters Guideline will take effect immediately.