



Compliance Bulletin No. 3

Monitoring and enforcing compliance of electricity offer, bid and rebid information in the National Electricity Market

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Inquiries about the currency of this compliance bulletin should be addressed to:

Australian Energy Regulator
GPO Box 520
Melbourne Vic 3001
Tel: (03) 9290 1444
Fax: (03) 9290 1457
Email: AERInquiry@aer.gov.au

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Shortened forms

AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
Electricity Rules	National Electricity Rules
NEM	National Electricity Market
Rebidding Guideline	AER Rebidding and Technical Parameters Guideline published in September 2009 and effective from 1 December 2009
Relevant participant	Scheduled Generator, Semi-Scheduled Generator and/or a Market Participant operating in the NEM.
Statement of Approach	AER Enforcement and Compliance - Statement of Approach
Time adduced	The information required under clause 3.8.22(c)(2)(ii) of the Electricity Rules, namely: the time at which the event adduced by the Relevant Participant as the reason for the rebid occurred.

1 Introduction

The Australian Energy Regulator (AER) aims to work co-operatively with National Electricity Market (NEM) participants to help them understand their obligations under the national energy framework and to help them achieve high levels of compliance. The purpose of this compliance bulletin is to explain the process that the AER applies when monitoring and enforcing compliance with the National Electricity Rules (Electricity Rules) relating to bid and rebid information.

Chapter 3 of the Electricity Rules establishes a process which allows participants to adjust their commercial positions in response to changing events or market conditions. This includes allowing participants to amend their offers, bids or rebids in response to changes in the technical capabilities of their plant; for instance, due to equipment failure. The Electricity Rules set out a number of conditions that must be met by relevant participants in the NEM when submitting offers, bids or rebids, including providing certain information (for example, clauses 3.8.3A, 3.8.7A, 3.8.19 and 3.8.22(c)).

1.1 Background

The AER monitors the conduct of relevant participants in the NEM on an ongoing basis to screen for non-compliance. Monitoring relies on public data and information provided by the Australian Energy Market Operator (AEMO) and other entities. The AER uses this information to assess participants' compliance with Electricity Rules. Among other things, we monitor offers, bids and rebids.

In September 2009, the AER published the Rebidding and Technical Parameters Guideline (Rebidding Guideline) outlining the detail that must be provided in respect of rebidding, provision of ramp rates and dispatch inflexibilities to AEMO. However, in the twelve months following the publication of the guideline, the AER's compliance monitoring systems identified on average 500 instances per week of offers, bids or rebids which do not meet the relevant requirements of the Electricity Rules. Each week, the AER examines in detail around 80 of these instances, often by writing to the relevant participant to highlight where its offer, bid or rebid does not meet the relevant requirements of the Electricity Rules or to seek clarification of its reasons.

In the majority of cases, the offer, bid or rebid is flagged for one of the following reasons:

- using a generic and non-specific reason such as "testing" which cannot be verified as required by clause 3.8.22(c)(2)(i);
- a failure to provide a reason for a rebid as required by clause 3.8.22(c)(2)(i);

- a failure to provide the time adduced¹ as required by clause 3.8.22(c)(2)(ii);
- bidding inflexible without providing a technical reason for the inflexibility as required by clause 3.8.19(a); and
- submitting a ramp rate that is lower than the threshold allowed in the Electricity Rules, without providing the required additional information to the Australian Energy Market Operator (AEMO) as required by clause 3.8.3A(e).

In March 2011, the AER implemented a three stage process to monitor and enforce compliance with the Electricity Rules relating to bidding and rebidding, as covered by this compliance bulletin.

1.2 Consequences of non-compliance

The AER has been concerned that the frequent submission of offers, bids and rebids which do not meet the relevant requirements of the Electricity Rules can seriously and adversely impact the NEM. In particular, the quality of information available to relevant participants and other persons is reduced, which in turn reduces market efficiency. Poor quality information also affects the AER's ability to monitor and enforce compliance with the Electricity Rules (including the requirement to submit rebids in good faith).

¹ "Time adduced" means the time at which the event(s) or other occurrence(s) adduced by the relevant participant as the reason for the rebid occurred.

2 Regulatory framework

This section describes the roles and functions of the AER and summarises the provisions of the Electricity Rules that are relevant to this compliance bulletin.

2.1 Role and functions of the AER

The AER has functions and powers² which include:

- monitoring compliance with the Electricity Law and the Electricity Rules
- investigating breaches or possible breaches of the Electricity Law and the Electricity Rules
- instituting and conducting proceedings in relation to breaches, and appeals from decisions in those proceedings.

In exercising these functions and powers, we work to ensure that:

- our approach is consistent over time
- our processes are cost effective for relevant participants and the AER
- our activities are transparent.

The AER has detailed its methods for compliance and enforcement in the *AER Enforcement and Compliance - Statement of Approach* (Statement of Approach) available on the AER website.³ This document explains our approach to monitoring compliance, how we respond to potential breaches, and how we decide whether to take enforcement action.

2.2 Relevant Rules

This compliance bulletin explains how the AER will monitor and enforce compliance with Chapter 3 of the Electricity Rules.

Chapter 3 in part, sets out the requirements relevant to Scheduled Generators, Semi-Scheduled Generators or Market Participants operating in the NEM (relevant participants) when submitting offers, bids and rebids of their available capacity and various other technical parameters associated with their operation and market ancillary services.

In particular, the AER has observed that relevant participants frequently make offers, bids or rebids which do not meet the requirements of the clauses 3.8.22(c), 3.8.3A, 3.8.7A and 3.8.19. A description of these provisions is provided below.

² The AER's functions and powers are outlined in Part 3, Section 15 of the National Electricity Law
³ AER, Compliance and Enforcement Statement of Approach, December 2010.

2.2.1 Information to be provided with a rebid

Clause 3.8.22(c)(2) of the Electricity Rules requires that if an offer or a bid is amended by a rebid, the relevant participant must also provide to AEMO:

- a brief, verifiable and specific reason for the rebid, and
- the time at which the event adduced by the Relevant Participant as the reason for the rebid occurred (known as the "time adduced " requirement).

Clause 3.8.22(c)(3) requires the AER to publish a Rebidding Guideline. The guideline outlines the detail that must be included in the brief, verifiable and specific rebid reason. The most recent version of the Rebidding Guideline took effect on 1 December 2009.

At the most basic level, the information provided to AEMO with the rebid must set out the specific reason for the rebid which must be verifiable. The information should focus on the event(s) and occurrence(s) that support the explanation of the reason for the rebid, and must provide the time at which those event(s) and occurrence(s) took place.

The brief, verifiable and specific reason provided must accord with the requirements set out in the Rebidding Guideline.

2.2.2 Information relating to technical parameters

Clauses 3.8.3A, 3.8.7A and 3.8.19 of the Electricity Rules set out the information relating to technical parameters which a relevant participant must provide when submitting an offer, bid or rebid:

- *Ramp rates - clause 3.8.3A.* Relevant participants must provide a ramp rate which meets prescribed minimum levels, unless there are technical or safety related reasons why they are unable to do so. If relevant participants submit a ramp rate that is less than the prescribed minimum, the participant must simultaneously provide AEMO with a brief, verifiable and specific reason for that ramp rate.
- *Market ancillary services - clause 3.8.7A.* The technical parameters of market ancillary service bids and rebids must represent the technical characteristics of the generating unit or load at the time of dispatch.
- *Inflexibility - clause 3.8.19.* A relevant participant may declare itself “inflexible” (that is, unable to operate in accordance with AEMO’s dispatch instructions) in the event that they experience abnormal plant conditions or other abnormal operating requirements in respect of that scheduled generating unit, scheduled network service or scheduled load. In these cases, the relevant participant must provide AEMO with a brief, verifiable and specific reason why they are inflexible.

3 Monitoring and enforcing compliance

As set out in our Statement of Approach, the AER has regard to each instance of potential non-compliance, including the materiality of the conduct in question when forming a view on what, if any, enforcement action to take.

However, given the large number of non-compliant offers, bids or rebids each week, and the adverse consequences this has on the NEM⁴, the AER has decided to implement a three stage process to monitor and enforce offers, bids and rebids which do not meet the requirements of the Electricity Rules.

This approach is intended to address the problems associated with a low standard of offer, bid and rebid information by creating an incentive for relevant participants to have rigorous processes in place for submitting offers, bids and rebids.

It should be noted that this approach does not affect the AER's discretion to take any enforcement action it considers appropriate at any time in relation to any bid or rebid, even if there is a single instance of non-compliance.

3.1 Three stage process

The AER's compliance system generates a report which identifies offers, bids and rebids that might not comply with the Electricity Rules. The AER currently generates that information on a weekly basis as part of preparing the weekly market analysis report. Consistent with this process, a single warning⁵ will apply for a given weekly period, whether the relevant participant submitted one, or multiple, non-compliant offers, bids or rebids during the relevant week.

3.1.1 Initial warning

If the AER detects that a relevant participant has submitted an offer, bid or rebid that does not meet the requirements of the Electricity Rules, the AER will provide an initial written warning to the participant. The AER will seek confirmation that the correspondence has been received.

3.1.2 Second warning

If, within six months after the date of the initial warning, the AER detects that the relevant participant has submitted a second offer, bid or rebid that does not meet the requirements of the Electricity Rules, the AER will provide a second written warning to the participant and again seek confirmation that the correspondence has been received.

3.1.3 Infringement notice

If, within six months after the date of the initial warning, the AER detects that a third offer, bid or rebid does not meet the requirements of the Electricity Rules, the AER will consider issuing an infringement notice imposing a penalty or penalties of

⁴ See Chapter 1 of this bulletin.

⁵ Which type of notice applies will depend on which stage in the three stage process the relevant participant is at - see below.

\$20,000⁶. The AER may issue an infringement notice to the relevant participant against any of its non-compliant offers, bids or rebids.

To be clear, the third breach within a six month period is a trigger for the AER to consider issuing an infringement notice, taking into account all relevant information. It is not a trigger for an automatic fine.

3.1.4 Opportunities for relevant participants to respond

At each stage of the three stage process, the relevant participant is able to respond to the AER if it considers that the offer, bid or rebid made did meet the relevant requirements of the Electricity Rules.

The AER will consider all such responses carefully. If the AER agrees that the relevant participant did meet the relevant requirements of the Electricity Rules, the participant will be restored to the position in the three stage process that it was prior to the erroneous notice.

3.1.5 Portfolio bidding

The AER recognises that relevant participants may, through their parent company structures, employ a common trading team to conduct the bidding of multiple generation assets in the same portfolio. These generation assets are generally registered to different subsidiaries of the same parent company, and therefore exist as separate legal entities.

For the purposes of administering this three stage process in the above scenario, the AER will consider issuing its warnings by reference to the cumulative count of non-compliant offers, bids and rebids made by the same trading team. The count will be made irrespective of whether such non-compliant bidding relates to separate generating units covered by different legal entities within the same portfolio.

This cumulative approach will also cover any bidding that may be conducted by operational staff onsite at the generation facility (typically outside normal business hours) or anyone else with the authority within the same corporate structure to submit bids on behalf of different relevant participants within the same portfolio.

An infringement notice will only ever be issued to the relevant participant responsible for any non-compliant offer, bid or rebid.

3.2 When will the three stage process apply?

The three stage process is primarily intended to apply to the high volume, straight forward rebidding errors such as failure to include the time adduced and/or a rebid reason. In more complex matters, the AER will consider each instance on its merits. If further information is required to determine whether an offer, bid or rebid meets the relevant requirements of the Electricity Rules, the AER will issue a rebidding inquiry

⁶ Section 74 of the Electricity Law allows the AER to issue an infringement notice for breach of a civil penalty provision. The amount of the infringement notice is currently fixed at \$20,000 under the relevant Electricity Regulations.

as per current practice and will consider what further action is required based on the additional information provided.

Chapter 6 of the Rebidding Guideline describes the process to be followed by relevant participants in the event that they make a genuine error when submitting an offer, bid or rebid. Under this process, the AER should be made aware of material errors within two business days of the error being found (where a material error is one which gives rise to a breach of the Electricity Rules). The AER will take into account whether this process has been followed, and any other relevant consideration, in determining whether to issue a warning in accordance with the three stage process. The AER would not expect to issue a warning notice or infringement notice in relation to an offer, bid or rebid that the relevant participant has sought to correct.

In some cases, there may be legitimate reasons why a relevant participant is unable to submit conforming bids. In every case the AER will take relevant circumstances into account.