

Updates to the AER's Rebidding and Technical Parameters Guideline

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About the Justice and Equity Centre

The Justice and Equity Centre is a leading, independent law and policy centre. Established in 1982 as the Public Interest Advocacy Centre (PIAC), we work with people and communities who are marginalised and facing disadvantage.

The Centre tackles injustice and inequality through:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change to deliver social justice.

Energy and Water Justice

Our Energy and Water Justice work improves regulation and policy so all people can access the sustainable, dependable and affordable energy and water they need. We ensure consumer protections improve equity and limit disadvantage and support communities to play a meaningful role in decision-making. We help to accelerate a transition away from fossil fuels that also improves outcomes for people. We work collaboratively with community and consumer groups across the country, and our work receives input from a community-based reference group whose members include:

- Affiliated Residential Park Residents Association NSW;
- Anglicare;
- Combined Pensioners and Superannuants Association of NSW;
- Energy and Water Ombudsman NSW;
- Ethnic Communities Council NSW;
- Financial Counsellors Association of NSW;
- NSW Council of Social Service;
- Physical Disability Council of NSW;
- St Vincent de Paul Society of NSW;
- Salvation Army;
- Tenants Union NSW; and
- The Sydney Alliance.

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The Justice and Equity Centre office is located on the land of the Gadigal of the Eora Nation.

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Recommendations

Recommendation 1 – dispatch mode of IPRR

That the AER does not attempt to resolve the issue of VSRPs implicitly bidding non-responsive resources into the NEM, but instead recommends that the AEMC commence a process to adjust the National Electricity Rules to ensure that VSRPs are not forced to make such bids.

Recommendation 2 – ramp rate rebidding

That further clarity is provided in the guideline on what constitutes a minimum safe operating level.

Recommendation 3 – auto- and artificial intelligence-bidding

That the AER continues to investigate and monitor the risk of implicit collusion and other risks associated with AI bidding and rebidding but ensures any bespoke AI obligations can be demonstrated they are practically enforceable and make a meaningful contribution to reducing or addressing the risks they identify.

Recommendation 4 – battery rebidding

That the AER proposes rule change to the AEMC in order to provide regulators adequate powers to identify and police market manipulation through rebidding and related practices.

1. Introduction

The Justice and Equity Centre (JEC) welcomes the opportunity to respond to the Australian Energy Regulator's (AER) consultation paper on Updates to the rebidding and technical parameters guideline (the consultation paper).

The JEC supports more fundamental changes to the rules governing bidding and rebidding in the wholesale market, in order to ensure the market delivers the most efficient outcomes for consumers.

Rebidding can be a legitimate part of an efficiently functioning wholesale energy market. However, experience demonstrates that it is often likely to be employed by large market participants exercising concentrated market power to strategically push up spot prices in a way that is contrary to consumers' interests.

While the consultation paper identifies a range of emerging issues relating to rebidding, it does not engage with this fundamental issue: that the regulation governing bidding and rebidding is not able to distinguish between 'legitimate' rebidding – done in response to changing events or market conditions or the physical or technical capabilities of their plants – and 'illegitimate' rebidding, which undermines market efficiency and integrity.

It makes little difference to this shortcoming whether it is a battery, artificial intelligence agent, or algorithm that is bidding or rebidding, with these simply influencing how often rebidding – and illegitimate rebidding – may occur.

Ultimately, we contend that guideline changes cannot resolve the underlying issue, and that changes to the rules are required.

This submission responds to each issue raised in the consultation paper, noting the instances where we consider the inability of any regulator to distinguish a legitimate from an illegitimate bid is more pertinent than the issue identified in the consultations paper. We also note the instances in which changing the guideline is inadequate to managing the issue raised.

2. Integrating price-responsive resources

The AER should not try to resolve the disparity between the nameplate and actual capacity of VRSPs in the rebidding and technical parameters guideline. It should instead recommend that the AEMC commence a process to amend the rules to resolve the fundamental issue of the disparity existing in the first place.

The National Electricity Rules (NER) require voluntary scheduled resource providers (VSRP) to offer a total load of voluntary scheduled resources (VSR) into the market despite only a portion of that load being meaningfully dispatchable.

The problem identified in the consultation paper is that when the market reaches the Market Price Cap (MPC) during periods of supply scarcity, VSRPs are in danger of failing to fulfil their obligations in terms of following dispatch orders by implicitly bidding the passive load within their

VSR portfolios as well as their responsive load. The fundamental problem, however, remains the disconnect between the nameplate capacity of a given VSRP and the responsive resources it actually controls.

This is not an issue that can be resolved in the guideline. Instead, a rule change is required to ensure that VSRPs only bid resources they meaningfully control and can dispatch.

We do not consider it appropriate to use clause 3.8.19(a) of the NER to bring the VSRP nameplate capacity in line with its genuine capacity given the 'plant conditions' or 'operating conditions' are not abnormal: the passive resources within the VSRP portfolio are permanently passive.

Recommendation 1

That the AER does not attempt to resolve the issue of VSRPs implicitly bidding non-responsive resources into the NEM, but instead recommends that the AEMC commence a process to adjust the National Electricity Rules to ensure that VSRPs are not forced to make such bids.

3. Ramp rate rebidding and safe operating level

It is not in consumers' interests for market participants to use zero ramp rate rebids for commercial purposes – that is, to prevent them from being dispatched to a lower level of output than would otherwise be the case.

We support the guideline providing further clarity on what constitutes a minimum safe operating level.

Recommendation 2

That further clarity is provided in the guideline on what constitutes a minimum safe operating level.

4. Use of auto-bidding and artificial intelligence

The introduction of artificial intelligence (AI) warrants specific consideration, robust targeted measures, and close monitoring for the development of systemic risks. While we support this initiative, we are not convinced the proposed measures meaningfully addressed the potential risks posed by AI.

We support the proposal for any risk associated with algorithm- or AI-produced bids not complying with the NER remains with the market participant responsible for the bid – that is, the owner of the asset being bid/rebid.

We acknowledge the risk of implicit collusion occurring between two AI agents, this being one of the more foreseeable risks AI presents. However, we are not convinced the proposed solution is capable of meaningfully addressing this risk.

Making AI-generated bids transparent may help track AI's contribution to rebidding issues after the fact. However, this does not resolve the problem identified in the consultation paper of "giving rise to new opportunities for market manipulation or other conduct which could undermine the integrity of the market." Relying on transparency to manage this turns on the capacity of the regulator to monitor and process all bids, which is currently a practical limitation. To be clear, the only concretely identified risk we are aware of in relation to AI bidding is an increased likelihood of implicit collusion, and it is not clear how transparency about how bids are produced resolves or reduces this risk. The AER should provide more clarity on its reasoning in proceeding with this measure and demonstrate how it can meaningfully address the risks.

Secondly, we consider that the proposed obligations on page 15 of the consultation paper are stated so vaguely as to be unenforceable in practice. Without more concrete articulations of what sorts of behaviour interfere with the efficiency and integrity of the market, imposing these obligations gives a misleading impression of managing the issue without providing any reason for market participants to change their behaviour, and without providing any scope for likely impact of practical enforcement.

We consider more fundamental rule changes to address rebidding – and reducing the scope to employ it 'illegitimately' – a necessary part of addressing the risks presented by AI.

Recommendation 3

That the AER continues to investigate and monitor the risk of implicit collusion and other risks associated with AI bidding and rebidding but ensures any bespoke AI obligations can be demonstrated they are practically enforceable and make a meaningful contribution to reducing or addressing the risks they identify.

5. Rebidding of batteries

It is not possible for a regulator to differentiate between a rebid made on a legitimate basis from one that is made on an illegitimate basis. This is in part because the regulatory system is set up to analyse bids on an individual basis, not in the context of a portfolio. We do not consider it possible to meaningfully resolve this issue in guidelines and contend the AER should recommend more fundamental rule changes.

We agree that batteries increase the complexity of the market and the functions of the market operator by increasing the volume of rebids. However, they do not cause a unique, new problem; they simply increase the frequency of any existing one. The volume of rebidding per se is not the issue that threatens the integrity of the market or consumers' interests; it is the volume of 'illegitimate' rebids, which may be facilitated by batteries without being unique to them.

Consumers interests are threatened by the possibility of market participants using batteries to systematically manipulate spot prices. This occurs when dispatchable resources are withheld in order to drive spot prices higher and other resources within a market participant's portfolio can take advantage of these higher prices.

We don't see how the move to reduce the number of rebids made by batteries or require market participants to record contemporaneous notes for battery rebids is likely to have any meaningful impact on this.

While market manipulation poses a real and material threat to consumers' interests, and rebidding plays a role in facilitating it, we do not support the proposals in section 2.2.4 because we do not consider them likely to be impactful. There is a risk they create an impression of regulation where none meaningfully exists.

Ultimately, we consider that market manipulation is not an issue that can be managed within this guideline. New powers are needed to enable the regulator to

- Analyse bidding behaviour of a given resource with a view to the context of a wider portfolio of energy resources owned by a single market participant; and
- Analyse bidding behaviour with a view to market concentration dynamics.

We contend that these new powers – and more effective rules to address rebidding - will need to be established through rule changes.

Recommendation 4

That the AER proposes rule change to the AEMC in order to provide regulators adequate powers to identify and police market manipulation through rebidding and related practices.

6. Continued engagement

We welcome the opportunity to meet with the AER and other stakeholders to discuss these issues in more depth. Please contact Michael Lynch at mlynch@jec.org.au regarding any further follow up.