

12 October 2001

Mr Michael Rawstron
General Manager
Regulatory Affairs – Electricity
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

Our Ref: R-01-282

Dear Mr Rawstron,

FILE No:
DOC:



61 Mary Street
Brisbane QLD 4000
PO Box 107 Albert Street
Brisbane QLD 4002
Telephone 07 3228 8222
Facsimile 07 3228 8118
Website www.ergon.com.au

NATIONAL ELECTRICITY CODE CHANGES – REBIDDING RULES

We refer to the application "*National Electricity Code Changes – Rebidding Rules*" ('Code Changes'), submitted by the National Electricity Code Administrator ('NECA') to the Australian Competition and Consumer Commission ('ACCC') for authorisation. Ergon Energy welcomes the opportunity to provide comment on the proposed Code Changes and we ask that the ACCC accept this letter as our submission on the application for authorisation.

General Comment

Ergon Energy welcomes NECA's recognition of the concerns expressed by market participants regarding the workability and likely unintended consequences of the changes to the market rules for rebidding, as originally proposed.

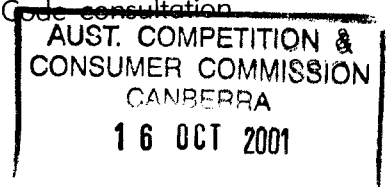
As Ergon Energy raised in its original submission to NECA on this issue, although we agree that generator rebidding is a problem and needs to be addressed, we do not agree that it can be resolved without a thorough investigation and analysis of abuses of market power. For this reason, the amendments to the Code (as originally proposed), may have in fact exacerbated the problem and increased inefficiency in the market.

To this end, we support the modifications that have been made to the proposed regime, embodied in the current Code Changes.

The Code Changes

While Ergon Energy generally supports the proposed Code Changes, there are amendments that we believe are required in order to promote transparency and more efficient market outcomes:

- Clause 3.8.22(c)(3) should be amended to provide that the guidelines developed under the clause may only be amended in accordance with Code consultation procedures.



We suggest the clause should read:

*"NECA must publish the guidelines developed under this clause 3.8.22 and may amend such guidelines from time to time **in accordance with Code consultation procedures.**"*

- Although supporting the spirit of clause 3.8.22B(a), we query whether this clause in its current form will be workable. While we agree that the onus should be placed on the party submitting the bid or rebid to justify the basis upon which this occurred, we are concerned that:
 - The standard for triggering the clause is high - *"materially prejudicing the efficient, competitive or reliable operation of the market"* in accordance with the market objectives and the purpose behind the market rules.
 - The standard for satisfying the onus is low (and open to varying interpretations) – *"reasonable cause"*.

This leads to the concern that the clause may not be triggered as often as it otherwise should, yet that when it is, the onus will be readily satisfied.

We believe that the need to prove that the market objectives and the purpose of the market rules have been met should rest on the party submitting the bid or rebid. We suggest that the clause should be amended to read:

"A Market Participant must not submit a dispatch bid, network dispatch offer, dispatch offer or rebid, if such conduct has the purpose, or has or is likely to have the effect, of prejudicing the efficient, competitive or reliable operation of the market in accordance with the market objectives and the purpose of the market rules. The Market Participant must demonstrate that the conduct was not for this purpose, or did not or was not likely to have this effect."

Please do not hesitate to contact Sandra Heymer on (07) 3228 8259 should you wish to discuss our comments in any way.

Yours faithfully,


Darren Barlow
Manager Regulation
Strategic Business Development Group