

8 November 2019

Mr Gavin Jones  
Director, Adjudication  
Australian Competition and Consumer Commission  
23 Marcus Clarke Street  
CANBERRA ACT 2601

By email only: [adjudication@accc.gov.au](mailto:adjudication@accc.gov.au)

Dear Mr Jones

**Submission by CuString Pty Ltd (CopperString 2.0) in relation to application for revocation and substitution of authorisation – AA1000454 – Stanwell Corporation Limited and Diamantina Power Station Pty Ltd**

We refer to your letter dated 22 October 2019.

Thank you for the opportunity to provide a submission in relation to the authorisation sought by Stanwell Corporation Limited (**Stanwell**) and Diamantina Power Station Pty Ltd (**DPS**) (**the Applicants**) to agree to rules related to the coordination of dispatch generators, and demand management and load shedding of certain electricity consumers in the North West Power System (**NWPS**) known as the “Dispatch Protocol”.

At the outset, we would like to make it clear that CopperString 2.0 agrees with and generally supports the need for the Dispatch Protocol in regulating electricity supply in the North West region under the definition of the NWPS as a system that is isolated from the National Electricity Market (**NEM**). However, CopperString 2.0 considers the proposed duration of 10 years for the Authorisation is not appropriate in light of the probability of the NWPS being incorporated into the NEM increasing significantly.

CopperString 2.0 submits that a duration of no greater than 3 years is appropriate with an additional provision that a review to be triggered upon commencement of construction of the CopperString 2.0 project. This suggestion gives regard to CopperString 2.0’s intended connection of the NWPS to the NEM as discussed below.

Additionally, CopperString 2.0 is concerned that requirements in the Dispatch Protocol that oblige Participants not to enter into a Connection and Access Agreement that is inconsistent with the Dispatch Protocol (including the Technical Standards) will operate as a practical impediment to the efficient and timely achievement of connection of the NWPS to the NEM. For that reason, CopperString 2.0 submits that any authorisation granted by the ACCC should be conditional on the Dispatch Protocol being amended so that it does not prevent Participants from effectively negotiating and entering into Connection and Access Agreements, or any other agreements necessary to facilitate NEM connection, on terms that are inconsistent with the Dispatch Protocol. The effect of that permissive provision would obviously only apply should electricity customers in the NWPS believe connection to the NEM is in their best interests and therefore should not be of concern to the Applicants.

**In summary:**

1. The rationale for the Dispatch Protocol for which authorisation is sought is that the NWPS as an isolated region is not subject to regulatory oversight. Connection to the NEM will increase competition in the generation market and ensuring greater competition in the supply of electricity to the NWPS. The NWPS will no longer be an isolated region and will form part of the NEM. The Dispatch Protocol will therefore only be necessary for the period during which the NWPS continues to be isolated, and to the extent that the Dispatch Protocol can be used to facilitate a transition to the NEM.
2. Continued operation of the Dispatch Protocol (in the form suggested by the Applicants) beyond the commencement date of NEM connection may result in uncertainty, because of the inconsistency between the Dispatch Protocol and the rules that apply under the NEM.
3. The Dispatch Protocol in its current form may inhibit the progression of NEM connection by having an impact on the extent to which current, and prospective, Participants can freely negotiate commercial agreements required to achieve NEM connection.
4. The justification put forward by the Applicants for a 10 year term is the reduction of administrative costs. An authorisation for a term of 3 years would reflect the time required to progress toward commercial operation of infrastructure required to connect to the NEM (anticipated to be in 2024) and would be an appropriate timeframe within which to review the ongoing need (if any) for the Dispatch Protocol.
5. A trigger based on commencement of construction of the CopperString 2.0 project will provide a prudent point in time to review the role of the Dispatch Protocol in facilitating an efficient transition to the NEM market framework.
6. For the reasons set out above, the Dispatch Protocol should only be authorised on the basis that Participants are protected should they wish to negotiate and enter into a Connection and Access Agreement, or other agreements necessary to facilitate NEM connection, that are inconsistent with the Dispatch Protocol.

The rationale for these views is set out in further detail **below**.

**1 The effect of CopperString 2.0**

The CopperString 2.0 project will connect the North West Minerals Province (**NWMP**) to the NEM via a high voltage electricity transmission line with capacity sufficient to supply all or part of the existing load supplied by the Applicants through the NWPS.

The nature of the existing sub-transmission and distribution infrastructure in the NWPS, and the proposed connection arrangements for CopperString 2.0, means that upon connection of CopperString 2.0 to the NWPS, all existing Participants under the Dispatch Protocol will be connected the NEM grid.

Contrary to the justification put forward by the Applicants for the authorisation, the NWPS will no longer be an isolated electricity generation and transmission network. From connection of the CopperString 2.0 transmission network, the relevant loads and generators will have the same rights, obligations and access to the Australian Energy Market Operator (**AEMO**) regulated central dispatch process and any associated secondary markets, as loads and generators currently connected to the NEM.

We note that this was considered by the ACCC in its previous Determination on the authorisation of the Dispatch Protocol as a possible future without the Dispatch Protocol. In that

Determination, the ACCC stated that connection of the NWPS to the NEM was “*unlikely (at least over the five year period for which authorisation is sought)*”.<sup>1</sup> Connection of the NWPS to the NEM is no longer unlikely due to the development of the CopperString 2.0 project.

### **Current status**

CopperString 2.0 is currently in formal confidential negotiations with a group of mining and industrial business in the NWMP (known within CopperString 2.0 as “Foundation Customers”).

CopperString 2.0 is also in the process of negotiating financial, regulatory and supply arrangements necessary to achieve a final investment decision. CopperString 2.0 is well advanced in discussions with the Queensland Government in relation to the development of legislation and agreements for the implementation and operation of the CopperString 2.0 transmission network.

Based on current scheduling, CopperString 2.0 expects to achieve Financial Close in late 2020 and commence construction in early to mid-2021.

Subject to achieving the necessary approvals, CopperString 2.0 expects that commercial operations will commence, and the connection to the NEM grid will be established, between late 2023 and mid-2024.

## **2 Potential for inconsistency and uncertainty**

If the Dispatch Protocol is authorised to operate beyond the date on which the CopperString 2.0 transmission network becomes operational, the Dispatch Protocol will no longer be required (because market participants will be governed by the relevant NEM and AEMO rules) and it is likely that the continued existence of the Dispatch Protocol will lead to uncertainty, because the Dispatch Protocol will be inconsistent with the regulatory regime that would now apply in the NWMP. CopperString 2.0 does however note that a dispatch protocol of some form may be beneficial in assisting the transition of electricity customers from the isolated NWPS to the integrated NEM regime.

## **3 Potential inhibitors to NEM connection under the Dispatch Protocol**

Whilst we acknowledge that it is not the intention of the Applicants to prevent new entities entering the market through the operation of the Dispatch Protocol, we highlight the following terms of the Dispatch Protocol which may have that effect for the ACCC’s consideration:

- clause 2.9(c), which provides that the terms of any new Power Purchase Agreement (PPA), Energy Supply Agreement (ESA), or (most relevantly for NEM connection) Connection and Access Agreement (CAA) must not be inconsistent with the Dispatch Protocol;
- clause 2.9(n), which provides that in the event that “*a change in the NWPS creates a need for modifications to existing components of the NWPS*”, then the relevant costs associated with that modification will be borne by the Participant requesting the change;
- clause 2.12(k), which gives the Generation Coordinator (being a representative of one of the Applicants) responsibility for ensuring that any New Entrant to the NWPS becomes a signatory to the Dispatch Protocol prior to connection of its load or generation or transmission assets to the NWPS;

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<sup>1</sup> Refer to ACCC [Determination on Authorisation numbers A91448 & A91449](#) dated 29 January 2015, at paragraph 52.

- clause 3.1, which provides that all new ESAs, PPAs and CAAs must either reference or include standards that do not conflict with the Technical Standards set out under the Dispatch Protocol; and
- clause 3.2, which relevantly provides that Participants must not permit third parties to implement “*changes to the NWPS*” through their assets without first requiring that third party to become a Participant and comply with the Dispatch Protocol.

Although the ACCC previously accepted (and we agree) that “*competitive tension between the parties can generally be relied upon to ensure that the Dispatch Protocol is not applied in a way which would generate an anti-competitive detriment*”,<sup>2</sup> our concern is that the capacity of the NEM to facilitate supply of the entire existing load supplied by the Applicants through the NWPS makes CopperString 2.0 a potential new entrant unlike anything considered by the NWPS Working Committee previously.

In this regard, we note that the only new entrants to the NWPS (identified by the Applicants) since the Dispatch Protocols came into effect are mining asset owners (including MMG, Capricorn Copper and Century Mining Limited).<sup>3</sup>

NEM connection will represent a fundamental change to the structure of supply and demand for Major Offtakers and other Participants in the NWPS, and as such, it is unlikely that the market can rely on competitive tension alone to protect and encourage competition.

#### **4 Proposed approach**

Having regard to CopperString 2.0’s timeline for an anticipated commencement date for operations, CopperString 2.0 suggests that the authorisation be granted for no longer than a three-year period and any authorisation granted by the ACCC should be conditional on the Dispatch Protocol being amended if necessary so that it does not prevent Participants from effectively negotiating and entering into a Connection and Access Agreement, or any other agreements necessary to facilitate NEM connection, on terms that are inconsistent with the Dispatch Protocol.

The Applicants would be free to seek re-authorisation at that time, and the ACCC would then be able to consider the likelihood of NEM connection and the then-current status of CopperString 2.0’s project and its likely impact on the market.

We consider that the review of the Dispatch Protocol in the year prior to the commencement of the CopperString 2.0 transmission network, and upon achievement of the construction milestone, will allow the parties sufficient time to consider and agree the necessary arrangements for the NWPS to transition from the Dispatch Protocol to the NEM, so as to ensure that the certainty and consistency of supply to the NWPS is maintained. Maintaining certainty of supply to the region is a high priority of CopperString 2.0.

In circumstances where the justification put forward by the Applicants for a 10 year term is the reduction of administrative costs,<sup>4</sup> we consider that the significant public benefit to be derived from the successful implementation of NEM connection must be considered by the ACCC as a determinative factor when assessing the authorisation application.

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<sup>2</sup> As above, at paragraph 64.

<sup>3</sup> Refer to [Application for revocation and substitution of Authorisations A91448 & A91449](#) dated 2 October 2019, at paragraph 6.1(b).

<sup>4</sup> As above, at paragraph 4.5.

In the event that CopperString 2.0 does not proceed, CopperString 2.0 will notify the ACCC will as soon as reasonably practicable.

Finally, we request that Dispatch Protocol terms, and in particular clauses 2.9(c) and 3.1, are amended so as not to prevent or hinder Participants from entering into Connection and Access Agreements, or any other agreements required to facilitate NEM connection, that are inconsistent with the Dispatch Protocol.

Thank you for the opportunity to provide a submission into this consultation. Please do not hesitate to contact me if you have any questions or would like me to provide further information.

Yours Sincerely,



**John G O'Brien**

CopperString 2.0 Project Founder  
Executive Director, CuString Pty Ltd

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