



# Draft Determination and interim authorisation

Application for revocation of A91448 and A91449 and the substitution of  
authorisation AA1000454

lodged by

Stanwell Corporation Limited & Diamantina Power Station Pty Ltd  
in respect of arrangements for participants of the North West Power  
System to agree to rules relating to the coordination of electricity  
dispatch

Authorisation number: AA1000454

19 December 2019

Commissioners:

Ridgeway

Rickard

## Summary

The ACCC proposes to conditionally re-authorise the current and future participants within the North West Power System (NWPS) to agree to rules related to the coordination of dispatch of generators, and demand management and load shedding of certain electricity consumers in the NWPS (the Dispatch Protocol).

The NWPS is a shared network centred in Mount Isa in Queensland that is not connected to the National Electricity Market (NEM). There is a current proposal for the NWPS to connect to the NEM (the CopperString 2.0 project).

The Conduct has been conditionally authorised since 29 January 2015. The ACCC considers re-authorising the Conduct will result in public benefits through providing quality and reliability of electricity supply, system security and safety.

The ACCC considers there will be minimal public detriment resulting from the Conduct. While the CopperString 2.0 project proposes to connect the NWPS to the NEM, the project is at an early stage and it is not yet certain whether it will proceed. The ACCC also considers the Dispatch Protocol will be likely to be required to facilitate the transition of the NWPS to the NEM (should it occur).

Overall, the ACCC considers that the Conduct is likely to result in public benefits that would outweigh any likely public detriments.

The ACCC proposes to grant re-authorisation for 5 years, subject to a condition that the Applicants notify the ACCC in writing within 10 business days of any amendment made to the Dispatch Protocol, including the Schedules (with exceptions).

The ACCC has granted interim authorisation to allow the participants to continue to engage in the Conduct while the ACCC is considering the substantive application for re-authorisation.

The ACCC invites submissions in relation to this draft determination by 28 January 2020 before making its final decision.

### 1. The application for authorisation revocation and substitution

- 1.1. On 4 October 2019, Stanwell Corporation Limited (**Stanwell**) and Diamantina Power Station Pty Ltd (**DPS Co**) (together, the **Applicants**) lodged an application to revoke authorisations A91448 and A91449 and substitute authorisation AA1000454 for the ones revoked (referred to as re-authorisation) with the Australian Competition and Consumer Commission (the **ACCC**). Authorisations A91448 and A91449 are due to expire on 20 February 2020.
- 1.2. The Applicants are seeking re-authorisation for rules relating to the coordination of dispatch of generators, and demand management and load shedding of certain electricity consumers within the NWPS for 10 years.<sup>1</sup>
- 1.3. Authorisation provides businesses with legal protection for arrangements that may otherwise risk breaching the law but are not harmful to competition and/or are likely to result in overall public benefits.

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<sup>1</sup> This application for re-authorisation AA1000454 was made under subsection 91C(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**).

- 1.4. The Applicants also requested interim authorisation to allow the Conduct to continue while the ACCC is considering the substantive application for re-authorisation. Interim authorisation is discussed further in section 6 of this draft determination.

## The Applicants

- 1.5. The Applicants are:

- a) Stanwell – through its subsidiaries, Mica Creek Pty Ltd and SCL North West Pty Ltd, Stanwell is the owner and operator of the Mica Creek Power Station (**MCPS**), a gas-fired power station.
- b) DPS Co – DPS Co is the owner and operator of the Diamantina Power Station (**DPS**) and the Leichhardt Power Station (**LPS**), which are gas-fired generators.

(the **Applicants**)

## The Conduct

- 1.6. The Applicants are seeking re-authorisation for the current and future participants of the NWPS (described in paragraphs 2.3-2.5 below) to agree to rules relating to the coordination of dispatch of generators, and demand management and load shedding of certain electricity consumers within the NWPS (the **Dispatch Protocol**) for 10 years.

(the **Conduct**)

- 1.7. Consistent with authorisations A91448 and A91449, the Applicants are not seeking re-authorisation of the whole Dispatch Protocol; rather, they are seeking re-authorisation for specific arrangements forming part of the Dispatch Protocol. These arrangements are outlined at **Attachment A**.
- 1.8. Authorisations A91448 and A91449 were granted on 29 January 2015 subject to a condition that requires the Applicants to notify the ACCC of any amendment to the Dispatch Protocol in writing within 10 business days of making the amendment (the **Notification Condition**), with the exception of Schedules 5 and 6. The Applicants are seeking to amend the Notification Condition to extend the exemption to apply to a number of other Schedules (described in paragraph 2.11 below). The Applicants have not otherwise changed the nature or extent of the Dispatch Protocol itself.

## 2. Background

- 2.1. The NWPS is an isolated electricity generation and transmission network centred in Mount Isa, Queensland, and has operated since at least 1998. The system services residents and businesses in Mount Isa and Cloncurry, as well as surrounding mining operations.
- 2.2. The NWPS is not connected to the National Energy Market (**NEM**) grid that services the majority of residents and businesses in Australia's eastern states. There is a current proposal to connect the NWPS to the NEM via a high voltage transmission line to be constructed (discussed in paragraph 2.9 below).<sup>2</sup>

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<sup>2</sup> There were previous proposals to connect the NWPS to the NEM (including the previous version of the proposed CopperString 2.0 project, in 2010-12), however these proposals did not proceed.

- 2.3. The NWPS is serviced primarily by the three gas-fired power stations owned by the Applicants.<sup>3</sup> In addition, small amounts of capacity are supplied by various mining operations' own power stations within the NWPS.<sup>4</sup> Ergon Energy Corporation owns the majority of the 220kV network infrastructure (i.e. the poles and wires) in the NWPS.<sup>5</sup>
- 2.4. The NWPS supplies electricity to a number of parties who have significant individual electricity demand profiles (the **Major Offtakers**). These Major Offtakers include six mines in the area,<sup>6</sup> as well as Ergon Energy Corporation's retail subsidiary, which supplies electricity to residents and small businesses in the region. Overall demand in the NWPS is determined largely by a small number of Major Offtakers, meaning the system is prone to a high level of potential demand variability, increasing the potential for imbalances that may result in power shortages or power surges.

## The key arrangements under the Dispatch Protocol

- 2.5. The current participants in the NWPS (and parties to the current Dispatch Protocol the subject of authorisations A91448 and A91449) are the two generators, Ergon Energy Corporation and the Major Offtakers.<sup>7</sup>
- 2.6. The Dispatch Protocol enables the NWPS participants and their customers to meet the constraints of an isolated network by enabling them to agree to certain technical and operational matters and to rely upon load shedding to ensure safety, security and reliability of supply in the NWPS. In addition, the Dispatch Protocol:
- (a) requires Stanwell and DPS Co to enter into an Energy Balancing Agreement, which allows them to utilise small amounts of excess capacity at each other's power station if required.<sup>8</sup>
  - (b) details the role of the 'Generation Co-ordinator' (who is currently a DSP Co employee). The Generation Co-ordinator has the authority to activate the Energy Balance Agreement, and Load Shedding Schedules and Procedures, and performs a similar function in the NWPS to that of the Australian Energy Market Operator (**AEMO**) in the NEM. Generators, Major Offtakers, and Ergon Energy Corporation all communicate with the Generation Co-ordinator in order to balance supply and demand and maintain network integrity.
- 2.7. Whereas in the NEM, market rules are developed by the Australian Energy Market Commission (**AEMC**), the responsibility for developing and administering the Dispatch Protocol is with the NWPS Working Committee. The Working Committee also reviews the performance of the Generation Co-ordinator, and can re-allocate the position of the Generation Co-ordinator if there is a major change in the role of the major generators or if the Generation Co-ordinator is not discharging its functions to the majority of the Working Committee's satisfaction.<sup>9</sup>

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<sup>3</sup> The three generators are capable of generating up to 520MW of electricity in total. MCPS is capable of generating 218MW, DPS is capable of generating 242MW and LPS is capable of generating 60MW.

<sup>4</sup> These power stations include the Mount Isa Mines Power Station, ICPL Acid Plant and XPS Power Station.

<sup>5</sup> Ergon Energy Corporation is a subsidiary of Energy Queensland Limited, which is a Queensland Government owned corporation.

<sup>6</sup> These six mines are owned by Mount Isa Mines Co, Ernest Henry Mining Co, MMG Dugald River Co, Capricorn Copper Pty Ltd and Century Mining Limited respectively.

<sup>7</sup> Historically, the NWPS operated under a previous version of the Dispatch Protocol developed between Stanwell, Ergon and their customers in 1998. However, the commissioning of the DPS and LPS in 2014 meant that a new Dispatch Protocol was required in order to co-ordinate the supply of electricity into the network. The arrangements under this new Dispatch Protocol were the subject of authorisations A91448 and A91449 in 2015.

<sup>8</sup> Page 7 of the application for re-authorisation states that the transient use of each other's spare capacity is designed to reduce the likelihood of insufficient supply into the network, and to share risk across participants in the network.

<sup>9</sup> The application for re-authorisation, paragraph 5.4(c)(iii), page 12.

2.8. Each current participant in the NWPS has one representative on the Working Committee, and there are procedures within the Dispatch Protocol for the Working Committee to admit proposed new participants (such as a new generator, a retailer or a Major Offtaker) to the NWPS.<sup>10</sup> All changes to the Dispatch Protocol must be agreed by the Working Committee, and certain key provisions can only be amended with the written consent of all participants. These include provisions regarding the responsibilities of the Generation Co-ordinator and the criteria for approving: new participants and new facilities to be connected to the NWPS, existing generators adding new capacity, and future additions to the supply network.

## Potential connection to the NEM – CopperString 2.0 project

2.9. CuString Pty Ltd (**CuString**) is the project proponent for the CopperString 2.0 project, a privately-owned project.<sup>11</sup> CopperString 2.0 proposes to connect the NWPS to the NEM grid south of Townsville through a high-voltage electricity transmission line stretching over 1000 kilometres.<sup>12</sup> Subject to negotiating various arrangements, and making a final investment decision in late 2020, CuString expects to achieve project completion by mid-2024.

2.10. CuString considers that should CopperString 2.0 be successful, the NWPS and all its participants will be subject to the relevant rules and regulations administered by AEMO and AEMC. CuString submits that at that time, the Dispatch Protocol will not be necessary and should be withdrawn to avoid conflict with NEM rules (except for assisting to transition electricity customers to the NEM). CuString's submission is discussed further in paragraph 3.4 below.

## Proposed amendment to the Notification Condition

2.11. Under authorisations A91448 and A91449, the Applicants are required to comply with the Notification Condition except in relation to Schedules 5 and 6 of the Dispatch Protocol. The Applicants propose to extend the exemption so that they will not be required to notify the ACCC of any future amendment to a number of other Schedules of the Dispatch Protocol, which they consider to be administrative and non-controversial Schedules. These Schedules are described below:

- a) Schedule 1 – Working Committee Charter (except for clause 11 'Voting Rights'). This Schedule sets out the purpose, functions, responsibilities and day-to-day operations of the Working Committee.
- b) Schedule 4 – Metering Requirements. This Schedule sets out the metering requirements and how metering data may be used. It does not relate to, or affect, generation capacity or load shedding.
- c) Schedule 9 – A list of Participants and Disconnected Participants in the NWPS (including voting entitlements).
- d) Schedule 10 – Facilities Status. This Schedule identifies the status of facilities in the NWPS and what type of units they are.

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<sup>10</sup> These procedures are set out in clauses 4.2 to 4.4 of the Dispatch Protocol.

<sup>11</sup> Prior to CopperString 2.0, there was a similar proposal to build high voltage transmission line to connect the NWPS to the NEM grid. However, the relevant stakeholders elected to invest additional generation capacity (through constructing new power stations, DPS and LPS), instead of proceeding with the CopperString project.

<sup>12</sup> A project overview for CopperString 2.0 is available on the Queensland Government's website, at <https://www.statedevelopment.qld.gov.au/coordinator-general/assessments-and-approvals/coordinated-projects/current-projects/copperstring-project.html>, viewed 6 December 2019.

- e) Schedule 12 – Form of Confidentiality Deed Poll. This Schedule is a pro-forma confidentiality deed poll which sets out the confidentiality framework for potential new participants.

2.12. The Applicants indicate that they will continue to notify the ACCC in writing of any amendment to the Dispatch Protocol or to the remaining Schedules of the Dispatch Protocol within 10 business days of the amendment being made.<sup>13</sup>

### 3. Consultation

- 3.1. A public consultation process informs the ACCC's assessment of the likely public benefits and detriments from the Conduct.
- 3.2. The ACCC invited submissions from a range of potentially interested parties including major competitors, customers, relevant industry associations or peak bodies, state and federal government and relevant regulatory bodies.<sup>14</sup>
- 3.3. The ACCC received two submissions in relation to the application for re-authorisation.
- 3.4. CuString considers re-authorisation should be granted for 3 years, as the Protocol will not be necessary after the construction of CopperString 2.0.<sup>15</sup> It submits that the Dispatch Protocol should be reviewed upon commencement of CopperString 2.0, to allow the parties sufficient time to consider and agree arrangements to transition to the NEM. CuString also submits that certain clauses in the Dispatch Protocol inhibit NWPS participants from negotiating and executing agreements for connecting to the NEM on terms inconsistent with the Dispatch Protocol;<sup>16</sup> and re-authorisation should be granted conditional on removing such restriction.<sup>17</sup>
- 3.5. In response, DPS Co submits that CopperString 2.0 has not achieved a final investment decision and there are many assumptions/unknowns (including possible delays); as such it would be inappropriate to grant re-authorisation for three years.<sup>18</sup> DPS Co considers that re-authorisation should be granted for 10 years, or until the commencement of the transitional arrangements for CopperString 2.0 to connect NWPS to the NEM (whichever occurs first).
- 3.6. DPS Co considers that, as the NWPS is a standalone power system built on different technical and operational standards, its integration with the NEM (following the proposed construction of CopperString 2.0) will likely involve some work which will take at least 1-2 years. These include significant infrastructure modifications to the NWPS, transfer of the Generation Co-ordinator role to AEMO and other regulatory arrangements, and negotiations (yet to be undertaken) between all participants in the

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<sup>13</sup> Schedules 1 (clause 11), 2, 3, 7, 8 and 11.

<sup>14</sup> A list of the parties consulted and the public submissions received is available from the ACCC's public register [www.accc.gov.au/authorisationsregister](http://www.accc.gov.au/authorisationsregister).

<sup>15</sup> CuString indicates that, in the event that CopperString 2.0 does not proceed, it will notify the ACCC as soon as reasonably practicable.

<sup>16</sup> For example, clauses in the Dispatch Protocol that prevent negotiation and execution of Connection and Access Agreements on terms (including technical standards) that are not consistent with those in the Dispatch Protocol.

<sup>17</sup> CuString also raises a concern in relation to clause 2.9(n) (or 2.9(p), on the current version of the Dispatch Protocol provided by the Applicants to the ACCC for the purposes of the ACCC's public register) of the Dispatch Protocol: If 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 or Disconnected Participant requesting the change and making any required application for approval under the Dispatch Protocol". In response, DPS Co submits that the cost of infrastructure amendments be borne by the entity requiring them ensures that other Participants are not unduly paying for infrastructure amendments that do not affect or benefit them.

<sup>18</sup> DPS Co raised the point that a three-year re-authorisation period would end in February 2023, which would be before the end of the proposed construction for CopperString 2.0 (expected by mid-2024).

NWPS and stakeholders (e.g. governments) regarding cost sharing of the modifications. DPS Co considers the Dispatch Protocol will still be needed for transition to the NEM following CopperString 2.0.

- 3.7. DPS Co submits that pre-emptively amending the Dispatch Protocol as suggested by CuString would compromise system security, particularly in the circumstance where CuString has not provided details of the amendments it seeks. It considers that CuString should join the NWPS, and provide information to the NWPS Working Committee on its proposed connection terms and Dispatch Protocol amendments.<sup>19</sup> DPS Co indicates it is willing to progress CuString's entry into the NWPS, and negotiate with CuString in good faith to facilitate connection to the NEM and enable it to contract with participants; and, subject to reaching an appropriate cost and resource-sharing arrangement between the NWPS participants, review the technical standards and other aspects of the NWPS.
- 3.8. Public submissions in relation to this application for re-authorisation can be found on the Public Register for this matter.

## 4. ACCC assessment

- 4.1. The ACCC's assessment of the Conduct is carried out in accordance with the relevant authorisation test contained in the Act.
- 4.2. The Applicants have sought authorisation for Conduct that would or might constitute a cartel provision within the meaning of Division 1 of Part IV of the Act or may substantially lessen competition within the meaning of section 45 of the Act. Consistent with subsection 90(7) and 90(8) of the Act,<sup>20</sup> the ACCC must not grant authorisation unless it is satisfied, in all the circumstances, that the conduct would result or be likely to result in a benefit to the public, and the benefit would outweigh the detriment to the public that would be likely to result (the **authorisation test**).

### Relevant areas of competition

- 4.3. To assess the likely effect of the Conduct, the ACCC will identify the relevant areas of competition likely to be impacted.
- 4.4. The Applicants submit that the relevant area of competition is geographically confined to the NWPS, however includes all levels of the supply chain within the NWPS, including both the wholesale and retail supply of electricity.
- 4.5. This is consistent with the ACCC's previous assessment in 2015 (A91448 and A91449). The ACCC considers that these areas of competition are still relevant for the purposes of authorisation AA1000454. The operation of the Dispatch Protocol affects all participants in the NWPS, including both wholesale and retail customers.
- 4.6. For this reason, the ACCC considers that the relevant areas of competition are likely to be:
  - the wholesale supply of electricity in the NWPS, and
  - the retail supply of electricity in the NWPS.

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<sup>19</sup> DPS Co submits that CuString is currently an 'Intending Participant'; but, to its knowledge, CuString has not taken the next step in the process to join NWPS and become a 'Full Participant'. DPS Co submits that to date, there has been no consultation by CuString with the Applicants in relation to the potential transition or final implications of its connection to the NWPS.

<sup>20</sup> See subsection 91C(7).

## Future with and without the Conduct

- 4.7. In applying the authorisation test, the ACCC compares the likely future with the Conduct that is the subject of the re-authorisation to the likely future in which the Conduct does not occur.
- 4.8. The ACCC considers that the future with the Conduct would be the status quo. The arrangements under the Dispatch Protocol have been authorised since 2015 and would continue to operate as they have since then. The ACCC considers that NWPS participants would continue to abide by the operational provisions of the Dispatch Protocol. This would require participants to meet their respective obligations under the Dispatch Protocol, such as generating sufficient capacity to meet contracted demand, co-ordinating electricity dispatch and balancing supply and demand, operating in accordance with load shedding protocols, and agreeing to a system for enabling new connections to the network (including admitting potential new participants, such as CuString, to the NWPS).
- 4.9. The ACCC considers that the future without the Conduct would be a situation where NWPS participants have no agreed-upon system for managing the different technical aspects of electricity supply, including generation capacity and load shedding. There would be no network-wide coordination of dispatch and no requirement for generators to have in service sufficient capacity to meet demand, including reserve capacity. This may result in lower standards of efficiency, reliability and safety for electricity supply in the NWPS, and new entry by future participants into the NWPS<sup>21</sup> or proposed future connection of the NWPS to the NEM would be less attractive and less likely due to the instability and subsequent risks within the network as a result of lack of coordination.

## Public benefits

- 4.10. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (the **Tribunal**) which has stated that the term should be given its widest possible meaning, and includes:

*...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.*<sup>22</sup>

- 4.11. The Applicants submit that the public benefits proposed, and accepted by the ACCC, in its original authorisation application remain relevant.<sup>23</sup> These public benefits are:
- quality and reliability of supply,
  - system security, and
  - safety.
- 4.12. The Applicants submit that these benefits are achieved through the Conduct for which authorisations have been granted and re-authorisation has been sought (see Attachment A). The Applicants also submit that, since authorisations in 2015, these benefits have been realised in the following ways.

<sup>21</sup> For instance, a new retailer, a Major Offtaker, network supplier, or electricity generator.

<sup>22</sup> Queensland Co-operative Milling Association Ltd (1976) ATPR 40-012 at 17,242; cited with approval in Re 7-Eleven Stores (1994) ATPR 41-357 at 42,677.

<sup>23</sup> The applicants' original application for authorisation (A91448 and A91449) was lodged on 29 August 2014. Conditional authorisation was granted on 29 January 2015 and came into effect on 20 February 2015.

*Back up generation and contingency contracts not required*

- 4.13. The Applicants submit that the reliability of the NWPS has led to significant savings and efficiency gains in the NWPS supply chain. In particular, Major Offtakers have been able to rely on the NWPS to meet their electricity demand and have not needed to enter into contingency contracts or to invest in unnecessary back-up generation. The Applicants estimate that the collective cost savings to Major Offtakers as a result of this would be in the order of \$80 million.

*New participants*

- 4.14. The Applicants submit that since the Dispatch Protocol came into effect, there have been three new participants (miners) entering the NWPS using the process set out in the Dispatch Protocol (which is overseen by the NWPS Working Committee).<sup>24</sup> The Applicants submit this demonstrates that the Dispatch Protocol is working effectively to enable new participants to join the NWPS while meeting the specified technical requirements to ensure safety and reliability.
- 4.15. The Applicants submit the technical requirements are minimum standards that do not impose any requirements beyond those necessary to ensure an adequate and safe system of electricity supply, and are consistent with good operating practice and relevant standards. Further, if there are disputes between a new participant (or an intending new participant) and the Working Committee on these issues, the participant (or intending new participant) may seek a review of the Working Committee's decision by an independent expert, whose decision will be binding.

*Effective implementation of the load shedding protocols*

- 4.16. The Applicants submit that the load shedding protocols implemented under the Dispatch Protocol remain an effective protection for the system.

*Instances where excess capacity has been utilised*

- 4.17. The Applicants submit that minor variations in contracted load and in related generators' output occur on a daily basis. Energy Balance Agreements allow each generator to support the other for these events, and manage and correct these variations.

*Enhanced ability to accommodate renewable energy*

- 4.18. The Applicants submit that the Load Management System set out in the Dispatch Protocol has allowed the NWPS to be better prepared and technically able to protect against the intermittence of renewables and the peaks and lows caused by the nature of renewable generation. The Applicants submit that authorisations have enabled NWPS participants to engage in discussions about, and reach agreement in relation to, the Load Management System.
- 4.19. In addition to the above, the Applicants submit that re-authorisation will enable potential new participants (such as CuString) a clear avenue and process to join the

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<sup>24</sup> However, this includes Century Mining Limited, who acquired the Century Mine from a previous participant in the NWPS (who was previously a party to the existing authorisations), MMG. In 2016, MMG ceased mining production at the Century Mine; and in 2018, Century Mining Limited re-commenced operation at the Century Mine and re-joined the NWPS after completing infrastructure upgrades.

NWPS, and allow them to deal with the Applicants and other participants of the NWPS as a group for the purposes of joining the NWPS.<sup>25</sup>

### **ACCC assessment on public benefits**

- 4.20. The ACCC considers that since authorisations A91448 and A91449, the Conduct has resulted in public benefits in the form of efficiency savings, facilitation of admission of new participants into the NWPS, use of load shedding protocols and Energy Balancing Agreements (which maximises overall efficiency in the NWPS), and enhancing the NWPS' ability to accommodate renewable energy generation.
- 4.21. While the \$80 million in efficiency savings is the Applicants' estimate, the ACCC considers that there are likely to be significant cost savings from not needing to have back-up generation contracts compared to a situation where dispatch of electricity in the NWPS was not coordinated. Further, the ACCC notes there have been new participants entering the NWPS by the use of the admission processes contained in the Dispatch Protocol.
- 4.22. The ACCC considers that the existence of effective load shedding protocols is likely to minimise the impact of any shortages on safety and efficiency within the NWPS. In the absence of appropriate load shedding protocols, instances of insufficient capacity to meet supply could give rise to system instability or safety concerns where loads are disconnected in a disorderly manner. Appropriate load shedding protocols also ensure that lower priority loads are disconnected before critical loads (such as those for which interruption could impact health and safety), thereby minimising the potential for these critical loads to experience sudden power outages.
- 4.23. Further, the Load Management System agreed to under the Dispatch Protocol has allowed the NWPS to prepare and be better able to protect against the intermittence of renewable generation, in the event that renewable generators connect to the NWPS. This preparation may better facilitate the entry of renewables into the NWPS, thereby allowing the NWPS to take advantage of these low cost, low emissions generation technologies without compromising security and reliability standards for system participants and consumers.
- 4.24. The ACCC considers that these public benefits will continue to be realised if the Conduct is re-authorised.

### **Public detriments**

- 4.25. The Act does not define what constitutes a public detriment. The ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as:

*...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.<sup>26</sup>*

- 4.26. The Applicants submit that the Conduct is unlikely to generate significant public detriments. The Applicants submit that since the Dispatch Protocol came into effect, there has been:

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<sup>25</sup> However, the Applicants also submit that the Dispatch Protocol does not govern customer relationships, and CuString and other new participants would still be required to individually approach potential customers, including the existing participants of the NWPS.

<sup>26</sup> Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

- No evidence of DPS Co or Stanwell discriminating against any participants of the NWPS. The NWPS Working Committee has required load shedding by all participants at various times, and the order of priority for load shedding is rotated annually to ensure equality amongst participants.
- No complaints from third parties. The Applicants submit that they are not aware of any complaints relating to an inability to join the NWPS or the Dispatch Protocol in the last 5 years.
- No unresolved concerns from participants. Any concerns raised in relation to the Dispatch Protocol have been resolved by the Working Committee, and there has been no occasion where the Dispatch Protocol's dispute resolution process has been utilised.
- No reduction in competition to supply new electricity customers. The Applicants competed to supply electricity to two new mining companies (which joined the NWPS in early and late 2018 respectively), and will continue to compete to supply future new customers.

4.27. Consistent with its views in authorisations A91448 and A91449,<sup>27</sup> the ACCC considers that public detriments generated from the Conduct would be minimal (if any). Nonetheless, the ACCC has considered potential public detriments in the form of:

- The technical requirements of the Dispatch Protocol limiting the ability of new participants to join the NWPS, lessening competition in the wholesale or retail supply of electricity in the NWPS.
- The Conduct inhibiting the connection of the NWPS to the NEM.

### **The Conduct lessening competition by preventing new participants from joining the NWPS**

4.28. The ACCC has considered the potential for the Conduct to prevent new participants from joining the NWPS, primarily through the technical requirements in the Dispatch Protocol for enabling new generation, new load/connection or new distribution/transmission supply network to the NWPS.<sup>28</sup>

4.29. The ACCC accepts that the more onerous the technical requirements for joining the NWPS, the lower the competitive constraint imposed by new entry in the wholesale and retail supply of electricity in the NWPS. However, the ACCC also considers that any potential public detriments would be limited by a number of factors, including:

- Effective co-ordination of electricity dispatch and other mechanisms, are needed to promote safety and efficiency in the NWPS, without which it would not be an attractive system for outside parties to enter. Indeed, many requirements imposed by the Dispatch Protocol are substantially similar to those that would be required to enter any electricity network. For example, the requirements and processes in the Dispatch Protocol are similar to those that are applied in the Northern Territory's isolated network and the NEM more generally.<sup>29</sup>

<sup>27</sup> See in particular, paragraphs 62 to 70 of the ACCC's final determination in respect of authorisations A91448 and A91449 (dated 29 January 2015), available at <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/stanwell-corporation-limited-diamantina-power-station-pty-limited-authorisations-a91448>.

<sup>28</sup> These requirements include, but are not limited to, those relating to voltage at the point of connection, voltage fluctuations, voltage control and voltage unbalance.

<sup>29</sup> The 'Network Technical Code and Network Planning Criteria' and the 'National Electricity Rules' impose similar requirements on the Northern Territory's isolated electricity network and the NEM respectively.

- The Applicants' submission regarding entry by new electricity customers into the NWPS, discussed at paragraph 4.14, demonstrates that the technical requirements have not been too onerous for these new participants.
- The Dispatch Protocol has been agreed by all participants in the NWPS, and any future changes must be agreed by the NWPS Working Committee on which all participants in the NWPS (including the Major Offtakers) are represented. The key provisions of the Dispatch Protocol can only be amended with the unanimous support and written consent of all participants. These include provisions regarding the responsibilities of the Generation Co-ordinator and the criteria and processes for approving: new participants and new facilities to the NWPS, existing generators adding new capacity, and future additions to the supply network.
- Given the broad representation of participants with competing interests on the NWPS Working Committee, it is unlikely that all participants would have incentives to adopt or apply the technical standards prescribed in the Dispatch Protocol in a manner that would prevent new participants from joining the NWPS beyond the requirements necessary to ensure the safety and reliability of the NWPS.<sup>30</sup>
- While potential new participants are required to meet technical standards as set out in the Dispatch Protocol to ensure system stability, decisions about admitting new participants are made by the Working Committee and are appealable to an independent expert whose decision is binding (to date, such procedure has not been utilised).

### **The Conduct inhibiting the connection of the NWPS to the NEM**

- 4.30. CuString has submitted that some clauses in the Dispatch Protocol may inhibit the progression of NEM connection by limiting the extent to which NWPS participants can freely negotiate and enter into agreements for achieving NEM connection (such as Connection and Access Agreements) on terms that are inconsistent with the Dispatch Protocol.
- 4.31. As discussed above, the ACCC recognises that the requirement for new participants to abide by the technical standards set out in the Dispatch Protocol may affect the connection of the NWPS to the NEM. However, the ACCC also considers that any detriment arising in the form of impeding connection to the NEM does not appear to be likely or material at this time (and over the proposed re-authorisation period of 5 year discussed in paragraph 4.47 below).
- 4.32. The proposed CopperString 2.0 project is at an early stage and an investment decision has not been made, and specific details of required amendments to the Dispatch Protocol to facilitate NEM connection (including cost sharing arrangement) are not yet available for consideration by the NWPS Working Committee (on which all NWPS participant are represented). Given this, there is insufficient basis to form the view that the Conduct is inhibiting the connection of the NWPS to the NEM.
- 4.33. Should the CopperString 2.0 project proceed, the success of the project will likely depend on the outcome of negotiations between CuString, NWPS participants and relevant stakeholders (e.g. governments) on matters such as technical standards, cost sharing and transitional arrangements. In that regard, the ACCC notes the Dispatch Protocol contain processes for CuString to become a participant in the NWPS and

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<sup>30</sup> For example, Major Offtakers may have incentives to block a new mining operator from entering the NWPS, but the generators would be unlikely to agree to arrangements that prevented, or made it more difficult for a new customer to enter the NWPS. Similarly, the incumbent generators may have incentives to raise barriers to entry to new generation capacity, but Major Offtakers would be unlikely to agree to arrangements that limited their choice of electricity supplier.

initiate amendments to the Protocol for the NWPS Working Committee's consideration. Any proposed amendments to the Dispatch Protocol are required to be considered by the Working Committee, and the ACCC will also have an opportunity to be notified and consider the implication of the amendments, if the Conduct is re-authorized.<sup>31</sup>

- 4.34. Further, the ACCC may also initiate a review of any authorisation if it considers there has been a material change of circumstances since the authorisation was granted. For instance, should more information about CopperString 2.0 (including more certainty around its timing, progress and negotiations with NWPS participants) become available, the ACCC may be able to review the authorisation and seek submissions from the interested parties. If a review is initiated, and following such a review the ACCC is satisfied that the likely public benefits from the Conduct no longer outweighs the likely detriments to the public, the ACCC may revoke the authorisation.
- 4.35. More broadly, the ACCC also considers the existing law will continue to apply to deal with any breaches of the anti-competitive conduct provisions of the Act (not covered by the scope of Conduct proposed to be re-authorized).
- 4.36. For the reasons outlined above, the ACCC considers that the Conduct is likely to result in minimal public detriment.

### Notification Condition

- 4.37. Authorisations A91448 and A91449 were granted subject to the following condition:

The Applicants must notify the ACCC in writing of any amendment to the Dispatch Protocol within 10 business days of the amendment being made, with the exception of amendments made to Schedule 5 – Forecast Data Format or Schedule 6 – Key Contact Details (the **Notification Condition**).<sup>32</sup>

- 4.38. The Notification Condition was imposed as the Applicants had sought authorisation in relation to the arrangements forming part of the Conduct rather than the whole Dispatch Protocol. The Notification Condition provides an opportunity for the ACCC to assess the amendments post-authorisation and to raise concerns if it considers such changes may change the balance of the public benefit and detriment.<sup>33</sup> During the period of authorisations A91448 and A91449, the Applicants have complied with the Notification Condition. The ACCC has not identified any concerns in relation to the amendments to the Dispatch Protocol notified to it by the Applicants.
- 4.39. The Applicants have sought to broaden the exemption to the Notification Condition beyond Schedule 5 and 6 of the Dispatch Protocol to cover additional Schedules: Schedule 1 – Working Committee Charter (except for clause 11 'Voting Rights');<sup>34</sup> Schedule 4 – Metering Requirements; Schedule 9 – A list of Participants and Disconnected Participants in the NWPS; Schedule 10 – Facilities Status; Schedule 12 – Form of Confidentiality Deed Poll.
- 4.40. Broadly, the ACCC considers that the Applicants' proposed broadening of the exemption to the Notification Condition relates to the administrative processes and

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<sup>31</sup> That is, if an amendment to the Dispatch Protocol is one to which the Revised Notification Condition applies.

<sup>32</sup> Schedule 5 is a pro-forma nomination form used by participants in the NWPS to submit their demand forecasts to the Generation Co-ordinator and Schedule 6 list contact details for participants in the NWPS.

<sup>33</sup> For instance, if there were amendments to the technical standards that would raise the barriers to entry for new generation capacity or businesses entering the NWPS rather than addressing legitimate operational issues in managing the NWPS.

<sup>34</sup> This Schedule sets out the purpose, functions, responsibilities and day-to-day operations of the Working Committee. The Applicants have not sought to be exempted from notifying the ACCC of future amendment to clause 11 of Schedule 1 of the Dispatch Protocol. Clause 11 provides for equal representation of all participants on the NWPS Working Committee.

procedures under the Dispatch Protocol, rather than any substantive matters impacting on the competitive dynamics between the NWPS participants. The ACCC considers that broadening the exemption to the Notification Condition to cover non-controversial Schedules of the Dispatch Protocol would result in efficiency and reduce administrative costs on both the Applicants and the ACCC.

- 4.41. However, the ACCC notes that Schedule 9 of the Dispatch Protocol sets out the voting entitlement of NWPS participants, which may be useful to the ACCC in understanding the balance of power within the NWPS Working Committee, and may provide useful context should any concerns be raised in the future regarding the voting rights of NWPS participants. The ACCC also considers that the inclusion of Schedule 9 in the Notification Condition would be consistent with the inclusion of clause 11 of Schedule 1 in the Notification Condition.<sup>35</sup>
- 4.42. For the reasons set out above, the ACCC proposes to re-authorise the Conduct, subject to a revised Notification Condition that the Applicants notify the ACCC in writing of any amendment to the Dispatch Protocol and the following Schedules of the Dispatch Protocol – Schedules 1 (clause 11), 2, 3, 7, 8, 9 and 11 – within 10 business days of the amendment being made.

### Balance of public benefits and detriments

- 4.43. For the reasons outlined in this draft determination, and subject to the proposed revised Notification Condition, the ACCC is satisfied that the Conduct is likely to result in public benefits and that these public benefits would outweigh any likely detriments to the public from the Conduct.

### Length of authorisation

- 4.44. The Act allows the ACCC to grant authorisation for a limited period of time.<sup>36</sup> This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the likely detriments for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.
- 4.45. In this instance, the Applicants seek re-authorisation for 10 years, on the basis that the Dispatch Protocol has worked well for the last five years, and a further 10 years would reduce the administrative and procedural costs of re-applying for authorisation given the Conduct will not change over that time.
- 4.46. CuString's submission proposes granting re-authorisation for a maximum of three years, as it considers the CopperString 2.0 project would finish construction and commence operation by mid-2024 at the latest.<sup>37</sup> For the reasons noted in paragraphs 3.5-3.6 above (such as the uncertainties associated with CopperString 2.0 at this time), DPS Co submits re-authorisation should be granted for 10 years or until the commencement under the national electricity regime of the transitional arrangements for CopperString 2.0 to connect NWPS to the NEM (whichever occurs first).
- 4.47. The ACCC considers that it would be appropriate to grant re-authorisation for five years, as that would better align with the proposed timetable for construction of the

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<sup>35</sup> Further, Schedule 9 is explicitly referred to in clause 11 of Schedule 1.

<sup>36</sup> Subsection 91(1)

<sup>37</sup> However, in its submission in response, DPS Co submits that if re-authorisation was granted for three years, it would likely end in February 2023.

CopperString 2.0 project and the transition period in the lead up to CopperString 2.0's connection of NWPS to the NEM. Both CuString and DPS Co agree that the Dispatch Protocol (or some future version of it) will likely be useful in assisting the transition period to migrate NWPS participants and customers to the NEM framework. A five year re-authorisation period would also be consistent with the period of authorisations granted under current authorisations A91448 and A91449.

- 4.48. However, should there be a material change of circumstances following the grant of re-authorisation, the ACCC is able to review the authorisation, as discussed in paragraph 4.34 above.

## 5. Draft determination

### The application

- 5.1. On 4 October 2019 the Applicants lodged an application to revoke authorisations A91448 and A91449 and substitute authorisation AA1000454 for the ones revoked (referred to as re-authorisation). This application for re-authorisation AA1000454 was made under subsection 91C(1) of the Act.
- 5.2. The Applicants seek re-authorisation for the Conduct described in paragraph 1.6. Subsection 90C(5) of the Act requires that before determining an application for re-authorisation, the ACCC shall comply with the requirements of section 90A and prepare a draft determination.

### The authorisation test

- 5.3. Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the Conduct is likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would be likely to result from the Conduct.
- 5.4. For the reasons outlined in this draft determination, subject to the proposed revised Notification Condition, the ACCC considers that the Conduct would be likely to result in a benefit to the public and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the Conduct, including any lessening of competition.
- 5.5. Accordingly, the ACCC proposes to grant re-authorisation.

### Conduct which the ACCC proposes to re-authorise

- 5.6. The ACCC proposes to revoke authorisations A91448 and A91449 and grant authorisation AA1000454 in substitution for the current and future participants of the NWPS to agree to rules relating to the coordination of dispatch of generators, and demand management and load shedding of certain electricity consumers within the NWPS as described in paragraph 1.6 and defined as the Conduct (and described in Attachment A).
- 5.7. Authorisation AA1000454 is proposed to be granted subject to the following revised Notification Condition:

The Applicants must notify the ACCC in writing of any amendment to the Dispatch Protocol and Schedules 1 (clause 11), 2, 3, 7, 8, 9 and 11 of the Dispatch Protocol, within 10 business days of the amendment being made.

- 5.8. The Conduct may involve a cartel provision within the meaning of Division 1 of Part IV of the Act or may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the Act.
- 5.9. The ACCC proposes to grant authorisation AA1000454 for five years, subject to the revised Notification Condition.
- 5.10. This draft determination is made on 19 December 2019.

## 6. Interim authorisation

- 6.1. The existing authorisations A91448 and A91449 are due to expire on 20 February 2020. In order to enable due consideration to be given to the application for re-authorisation, the ACCC has decided to suspend the operation of authorisations A91448 and A91449 and grant interim authorisation in substitution.<sup>38</sup> The ACCC has decided to grant interim authorisation for the following reasons:
- Interim authorisation will maintain the status quo, allowing NWPS participants to continue co-ordination of the electricity dispatch, balance supply and demand, and undertake other activities to maintain the safe and reliable operation of the NWPS.
  - The ACCC considers its final determination in this matter is unlikely to come into effect before the existing authorisations expire.
  - For the reasons set out in this draft determination, the ACCC considers the Conduct is likely to result in public benefits, which would outweigh any likely public detriments. Interim authorisation will be made subject to the existing Notification Condition, allowing the ACCC to assess the implications of any amendment to the Dispatch Protocol (if any) (except for Schedules 5 and 6).
- 6.2. The ACCC grants interim authorisation on the same terms as authorisations A91448 and A91449, including the current Notification Condition.
- 6.3. Interim authorisation will commence immediately, and remain in place until the date the ACCC's final determination comes into effect or until interim authorisation is revoked.

## 7. Next steps

- 7.1. The ACCC now invites submissions in response to this draft determination by **28 January 2020**. In addition, consistent with section 90A of the Act, the Applicants or an interested party may request that the ACCC hold a conference to discuss the draft determination.

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<sup>38</sup> This decision is made under s 91(2)(f) of the Act.

## Attachment A

The specific arrangement under the Dispatch Protocol for which re-authorisation is sought is set out below.<sup>39</sup>

### 1. Operational Control

The Major Generators agree the Generation Co-ordinator will co-ordinate the dispatch of electricity as required, to maintain system frequency, voltage and reactive power flows and time error control for the NWPS, in order to ensure that they are able to meet their contractual obligations to their customers.

### 2. Generation capacity

At any time, the Major Generators will each have in service sufficient capacity to supply all the loads contracted and forecast by their respective off-takers and off-takers' customers. At any time, the Major Generators will each have in service spinning capacity and reserve plant margin as required under agreements with their respective off-takers.

### 3. New load

The Participants agree new loads or network extensions will be permitted if:

- (i) the new load or network extension complies with the prescribed technical requirements; and
- (ii) the prescribed system studies show that the proposed new load or network extension will not adversely impact the safety, reliability and quality of electricity supply in the NWPS and of its Participants; or
- (iii) if the studies identify an adverse impact on the safety, reliability and quality of electricity supply, the entity seeking the new load or network extensions addresses those issues to the satisfaction of the Working Committee acting honestly and reasonably before connecting.

### 4. New generation capacity

The Participants agree that additional generation capacity will be permitted to connect to the NWPS if:

- (iv) the entity seeking to connect complies with the prescribed technical requirements; and
- (v) the prescribed system studies show that the proposed generation will not adversely impact the safety, reliability and quality of electricity supply in the NWPS and of its Participants;
- (vi) if the studies identify an adverse impact on the safety, reliability and quality of electricity supply, the entity seeking to connect addresses those issues to the satisfaction of the Working Committee acting honestly and reasonably before connecting.

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<sup>39</sup> All capitalised terms in this Attachment have the same meaning as set out in the 'Definitions' section of the North West Power System Dispatch Protocol that was provided to the ACCC with the application for re-authorisation A1000454.

## **5. Starting large load**

The Participants will agree an approval procedure for permitting connection of large loads. In accordance with this procedure, Major Generators agree that they will not supply electricity to large individual loads rated greater than 3MW, or loads with an instantaneous apparent power demand during starting greater than 10MVA, without the approval of the Generation Co-ordinator except in certain limited circumstances.

## **6. Load shedding**

The Participants will agree a system of load shedding following a generation shortfall whereby the Major Generators will cease supply to offtakers in accordance with the agreed system.

## **7. Reconnection of load following a load shed event**

The Major Generators agree to recommence supply to offtakers following a load shed event at the direction of the Generation Co-ordinator.

## **8. Arrangements in relation to Ergon Energy Queensland Pty Ltd<sup>40</sup>**

The Major Generators agree that EEQ is to be given priority of dispatch from DPS generation.

## **9. Participants must be signatories to the Dispatch Protocol**

The Major Generators agree that they will only:

- (i) supply electricity to offtakers; and
- (ii) permit new generators to connect to the NWPS,

if those offtakers and/or new generators are signatories to the Dispatch Protocol as amended from time to time.

## **10. Amendments to particulars**

The Participants in the Dispatch Protocol are bound by amendments to the Dispatch Protocol, provided those amendments are consistent with the principles set out in paragraphs 1-9, and do not otherwise constitute a new contract, arrangement or understanding in breach of the CCA.

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<sup>40</sup> Ergon Energy Queensland Pty Ltd is an electricity retailer in the NWPS. Its parent company is Ergon Energy Corporation, the owner of the network (i.e. poles and wires) in the NWPS.