

26 November 2014

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Gavin Jones
Director, Merger & Authorisation Review Division
Australian Competition and Consumer Commission
Level 35 360 Elizabeth Street
Melbourne VIC 3000

Dear Gavin

Stanwell & Diamantina - Applications for Authorisation A91448 & A91449

1. We refer to our email to you on 22 October 2014 requesting that the final North West Power System Dispatch Protocol as agreed by the participants (**Dispatch Protocol**) be excluded from the public register on the basis that it is a confidential and commercially sensitive document.
2. For ease of reference we set out again the reasons for the Applicants' request:
 - (a) The Dispatch Protocol was written for the operation and management of the North West Power System (**NWPS**) and is a confidential document as between the Participants in the NWPS. Clause 11(a) of the Dispatch Protocol provides:

*'The Dispatch Protocol, Working Committee business and all information received by a Participant under or in connection with the Dispatch Protocol (including by a Representative in the course of fulfilling its duties as a member of the Working Committee) shall be confidential (**Confidential Information**). Confidential Information must not be disclosed to persons other than the Participants unless the communication is specifically authorised by the Dispatch Protocol or the Working Committee from time to time. This obligation continues after a Participant ceases to be a Participant.'*
 - (b) The Dispatch Protocol is linked to contractual arrangements with customers in the NWPS and the Applicants are concerned that it may be a matter of sensitivity to those customers. For example, the Dispatch Protocol provides for the conditions which may give rise to load shedding, the priority in which loads may be shed and permits the automatic disconnection of loads to ensure load shedding may occur in a fast, safe and co-ordinated way. The load shedding provisions in the Dispatch Protocol reflect contractual supply obligations between each Major Generator and its off-takers.

- (c) The Dispatch Protocol will be made available free of charge to genuinely interested third parties, including potential New Entrants, on entry into an appropriate confidentiality agreement with the Participants (see clause 3.4 of the final Dispatch Protocol).
 - (d) The Dispatch Protocol is not otherwise now within the public domain.
 - (e) The Applicants are content for relevant parts of the Dispatch Protocol to be made publicly available, including the description of the Dispatch Protocol contained within the non-confidential version of the submission provided in support of the applications, the revised annotated Schedule 1 to the submission and the note identifying key changes to the Dispatch Protocol. Schedule 1 was prepared specifically for the purpose of providing a description of the arrangements without requiring publication of the full Dispatch Protocol.
 - (f) The Applicants do not consider it is necessary for the Commission's determination of the applications that a full copy of the Dispatch Protocol be made publicly available. Schedule 1, read in the context of the submission, provides an accurate and complete description of the relevant competition aspects of the arrangements.
 - (g) As a practical matter, the Applicants understand that no submissions were made in response to the Commission's invitation to interested parties to make a submission regarding the applications. Accordingly, the Commission has not been prevented from engaging in an effective and meaningful public consultation process by reason of the exclusion of the Dispatch Protocol from the public register.
 - (h) The Applicants' request is consistent with industry practice. For example, the dispatch protocols for the North West Interconnected System (NWIS) in Western Australia are not publicly available and, to the Applicants' knowledge, are only available to authorised personnel from the participating companies in the NWIS.
 - (i) We understand that the 1998 Dispatch Protocol, the predecessor to the current Dispatch Protocol, was kept confidential when the arrangements were originally authorised in 1998.
3. Authorisation of the arrangements is being sought for a period of five years. We understand from our discussions with you that the Commission has some concerns about excluding the Dispatch Protocol from the public register in circumstances where the participants may agree changes to the Dispatch Protocol over the term of the authorisation which might affect the operation of the arrangements for which authorisation is being sought.
4. Without necessarily accepting the basis for the Commission's concerns, we would like to work with the Commission to find a way of addressing those concerns and to ensure there is an appropriate level of transparency regarding the arrangements for which authorisation is being sought. Against that background, the Applicants make the following proposal for the Commission's consideration.
5. The Applicants propose that it be a condition of any final authorisation that, within 10 business days of the change being made, they will notify the Commission in writing of any amendment to the provisions of the Dispatch Protocol other than those provisions listed in **Annexure A**.

6. This proposal is intended to give the Commission an opportunity to raise any concerns it may have about the competition issues resulting from future amendments to the Dispatch Protocol and to request further information from the Applicants if required. However, it will not impose on the Applicants nor the Commission the burden and cost of seeking a variation to the authorisation on every occasion the Dispatch Protocol is amended, regardless of how minor that amendment may be.
7. The Applicants make this proposal aware that to the extent any future amendments to the Dispatch Protocol constituted a new contract, arrangement or understanding, that new contract, arrangement or understanding would not be covered by the grant of authorisation.
8. Further, the Applicants are cognisant of the Commission's power to revoke an authorisation if, at any time, it appears to the Commission that there has been a material change in circumstances since the authorisation was granted.
9. We consider the above proposal addresses the concern raised by the Commission without requiring the disclosure of information which the Applicants consider is confidential and commercially sensitive.
10. Notwithstanding their claims for confidentiality, the Applicants grant the Commission permission to describe the provisions of the Dispatch Protocol and the arrangements for which authorisation is being sought to the extent the Commission considers reasonably necessary for the purposes of issuing a draft and final decision on the applications for authorisation, including in documents which are made available on the Commission's public register.

We look forward to hearing your views.

Yours faithfully
MINTER ELLISON



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Annexure A

- Schedule 5, Forecast Data Format; and
- Schedule 6, Key Contact Details.