



Australian  
Competition &  
Consumer  
Commission

# Draft Determination

Applications for authorisation

lodged by

Stanwell Corporation Limited & Diamantina Power  
Station Pty Limited

in respect of

arrangements for participants in the North West  
Power System (NWPS) to agree to rules relating to  
the coordination of electricity dispatch schedules at  
electricity generators in the NWPS.

Date: 18 December 2014

Authorisation numbers: A91448 & A91449

Commissioners: Sims  
Rickard  
Schaper  
Cifuentes  
Court  
Featherston

## Summary

The ACCC proposes to grant conditional authorisation for participants in the North West Power System (NWPS) to agree to rules relating to the coordination of electricity dispatch schedules at electricity generators in the NWPS.

The NWPS is a shared network centred in Mount Isa in Queensland that is not connected to the National Electricity Market (NEM) due to its isolation. No regulatory institutions exist to coordinate dispatch for the NWPS. Historically, the NWPS has been serviced primarily by Stanwell's Mica Creek Power Station. Recently Diamantina has been developing the Diamantina Power Station and the associated Leichhardt Power Station. The Applicants submit that now that there are two generators supplying customers in the NWPS it is necessary to co-ordinate the supply of electricity into the network as well as the consumption of large quantities of electricity by customers in the NWPS, including mining operations, to ensure the safe and efficient operation of the NWPS.

Authorisation is proposed to be granted subject to a condition that the Applicants notify the ACCC in writing of any amendment made to the rules (with limited exceptions) within 10 business days of the amendment being made.

The ACCC proposes to grant authorisation for five years

### Next steps

The ACCC will seek submissions in relation to this draft determination before making its final decision. The Applicants and interested parties may also request that the ACCC hold a pre-decision conference to allow oral submissions on the draft determination.

## The applications for authorisation

1. On 29 August 2014, Stanwell Corporation Limited (**Stanwell**) and Diamantina Power Station Pty Limited (**Diamantina**)—together the **Applicants**—lodged applications for authorisation A91448 & A91449 under subsections 88(1A) and (1) of the *Competition and Consumer Act 2010* (the **CCA**) with the Australian Competition and Consumer Commission (the **ACCC**).<sup>1</sup>
2. Broadly, the Applicants are seeking authorisation to agree to rules relating to the coordination of electricity dispatch at their electricity generators in the North-West Power System (**NWPS**). The rules also cover procedures for demand management, sharing reserve capacity, shedding loads in situations where supply cannot meet demand and connecting new generation capacity to the NWPS (the **proposed arrangements**). (Box 1 sets out the proposed arrangements for which authorisation is sought).
3. The proposed arrangements will also be agreed to by the owner of the network infrastructure (i.e. the poles and wires) in the region, Ergon Energy Corporation Limited (**Ergon Network**), as well as the local electricity retailer, Ergon Network's wholly owned subsidiary Ergon Energy Queensland Pty Limited (**Ergon Retail**).

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<sup>1</sup> Detailed information about the authorisation process is contained in the ACCC's Authorisation guidelines available on the ACCC's website [www.accc.gov.au](http://www.accc.gov.au).

4. The NWPS supplies electricity to the region's mining operations who have significant individual electricity demand profiles. Under the proposed arrangements, a number of these mines are classified as **Major Offtakers** and are required to become parties to the arrangements as a condition of being supplied electricity by Stanwell or Diamantina. At present, Major Offtakers in the NWPS (and therefore parties to the arrangements) are six mines owned by Mount Isa Mines (**MIM**)<sup>2</sup>, and the MMG Century mine owned by MMG Limited. Ergon Retail is also a Major Offtaker.
5. The Dispatch Protocol is a key part of the proposed arrangements and sets out the terms and conditions on which all of the signatories will coordinate the supply and consumption of electricity across the NWPS, as well as terms and conditions pertaining to other parties entering the NWPS. The Applicants are not seeking authorisation for the entire Dispatch Protocol and have identified the specific arrangements in the Dispatch Protocol which they consider may raise concerns under the CCA and for which they are seeking authorisation. These arrangements are discussed further at paragraph 27.
6. The Applicants are seeking authorisation for five years.
7. At the time of lodging the applications the Applicants also sought interim authorisation by early October 2014 on the basis that Diamantina was scheduled to commence supplying generation into the NWPS in a manner that would require coordination of supply with Stanwell through the Dispatch Protocol in early October 2014. On 1 October 2014 the ACCC granted interim authorisation for the arrangements until the date the ACCC's final determination comes into effect or until the ACCC decides to revoke interim authorisation.

## Background<sup>3</sup>

### *The North-West Power System*

8. The NWPS is an electricity generation and transmission network centred in Mount Isa, Queensland. The system services residents and businesses in Mount Isa and Cloncurry, as well as surrounding mining operations. Mount Isa has a population of 21,237 residents (9904 households)<sup>4</sup> and Cloncurry has 3229 residents (1463 households).<sup>5</sup>
9. Due to its isolation, the NWPS is not connected to the National Electricity Market (**NEM**) grid that services most residential and business properties across Australia's eastern states (see **Figure 1**). While connecting to the NEM has been considered at various times in the region's history, the Applicants submit that it is highly improbable that the NWPS will be connected to the national electricity grid during the five year period for which they seek authorisation.

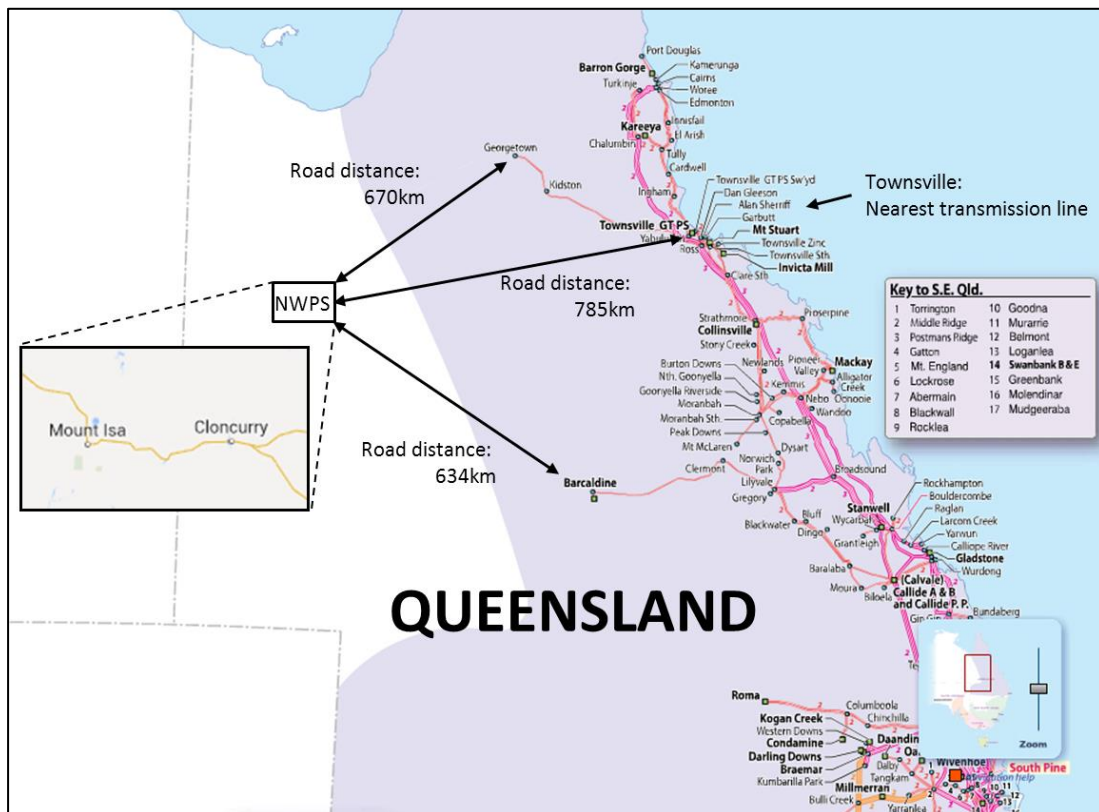
<sup>2</sup> MIM is part of the Glencore Xstrata plc Group.

<sup>3</sup> Unless otherwise referenced, all information in this section is taken from the Applicants submission in support of their application for authorisation.

<sup>4</sup> Australian Bureau of Statistics, *2011 Census QuickStats – Mount Isa*, Available at: [http://www.censusdata.abs.gov.au/census\\_services/getproduct/census/2011/quickstat/LGA35300?opendocument&navpos=220](http://www.censusdata.abs.gov.au/census_services/getproduct/census/2011/quickstat/LGA35300?opendocument&navpos=220) (Accessed 20 May 2014)

<sup>5</sup> Australian Bureau of Statistics, *2011 Census QuickStats – Cloncurry*, Available at: [http://www.censusdata.abs.gov.au/census\\_services/getproduct/census/2011/quickstat/LGA32450](http://www.censusdata.abs.gov.au/census_services/getproduct/census/2011/quickstat/LGA32450) (Accessed 20 May 2014)

**Figure 1: NWPS and the National Electricity Market**



10. The NWPS is currently serviced primarily by Stanwell's Mica Creek Power Station (**MCPS**). MCPS is a gas fired power station capable of generating up to 246.8MW of electricity. Stanwell currently operates as the defacto system operator for the NWPS. Stanwell has no statutory obligation to function as the system operator, its responsibilities to do so arise as a consequence of its contractual relationship with its customers.
11. Diamantina (a joint venture between AGL Energy Limited and APA Group) has been developing the Diamantina Power Station (**DPS**) and the associated Leichhardt Power Station (**LPS**). The DPS and LPS are open cycle gas turbine generators with generation capacities of 242MWh and 60MWh respectively. The LPS was commissioned on 1 August 2014 and the DPS is coming online in stages throughout late 2014 and is expected to be fully operational by the end of 2014. Upon commissioning of the DPS it is expected that Diamantina will become the primary generator and supplier of electricity in the NWPS. Pursuant to the proposed arrangements, once the DPS and LPS are commissioned, Diamantina will assume the role of NWPS system operator subject to a satisfactory handover process.
12. In addition to the MCPS, DPS and LPS small amounts of capacity are currently supplied by:
  - The Mines Power Station owned and operated by MIM comprising a 12.5MW and 15MW waste heat recovery generator, which run one at a time and are connected to MIM copper smelter operations. These operations, and consequently, the generators, are expected to cease operation in 2016.

- The X41 Power Station (XPS) owned by APS Group. The XPS is a 41MW gas fired power station was previously operated by MIM but which is operated by at the direction of the DPS from October 2014.
  - The Aggreko Power Station (APS) owned by Aggreko Power Pty Ltd. The APS comprises approximately 15MW of temporary additional generating units installed adjacent to the XPS. The APS is leased to and operated by MIM but will cease operations soon after the first 80MW of generation at the DPS commences.
13. Prior to the commissioning of the DPS, the MCPS supplied the following customers under Power Purchase Agreements or, in the case of Ergon Retail, through on-supply arrangements with MIM:
- MIM for operations at Mount Isa Mine, Ernest Henry Mine, George Fisher Mine (also known as the Hilton Mine), Lady Loretta Mine, Lady Annie Mine and Mount Gordon Min;
  - Ergon Retail which resells electricity to residential, commercial and mining customers in the Mount Isa and Cloncurry regions;
  - MMG Century for its MMG Century Mine; and
  - MMG Dugald River for its Dugald River project (although this is not yet connected to the NWPS).
14. Once the DPS is commissioned, it will supply electricity to MIM and Ergon Retail. MMG Century and MMG Dugald River will remain offtakers of MCPS.
15. As noted, all Major Offtakers are parties to the proposed arrangements and any new customer of the MCPS or the DPS which has an aggregate load of greater than 10MW will also be required to become a party to the proposed arrangements. No new offtakers or major customer loads are envisaged in the short term.
16. Retail customers in the Mount Isa-Cloncurry region are classified as 'excluded customers' under the *Electricity Act 1994 (Qld)*, meaning their premises are not connected to the national grid. Ergon Retail supplies electricity to around 10,500 customers in the Mount Isa-Cloncurry region, approximately 85% of which are residential. Ergon Retail sells electricity at a tariff rate set by the Queensland Competition Authority. Ergon Retail receives a subsidy to ensure that consumers in regional and rural areas, such as the Mount Isa-Cloncurry region, pay the same regulated tariffs as consumers in lower-cost south east Queensland.
17. In many ways the NWPS is a small version of the NEM, with generators supplying electricity into a shared network that distributes and delivers electricity to connected customers. However, no regulatory institutions exist to coordinate dispatch for the NWPS and for this reason the proposed arrangements provide for the creation of a 'Generation Co-ordinator' role. The Generation Co-ordinator will be responsible for aligning supply and demand on the network, and rules relating to connecting to the NWPS.
18. Furthermore, the NWPS has certain characteristics that make the stable supply of electricity more challenging. In particular, the NWPS services a customer portfolio characterised by a few very large customers (mining operations with large electricity demands) and two groups of various smaller customers (the towns of Mount Isa and

Cloncurry), which means that demand for electricity in the NWPS can be lumpier than on a more diversified network.

19. When a mining customer starts up large facilities or, in some cases, large individual pieces of machinery, there can be significant increase in demand for electricity. Similarly, when these facilities/machines are shut-down there can be sudden drops in demand and consequential over-supply while the generators decrease their output. Episodes of excess electricity demand, or excess supply of electricity, can reduce system stability and impact on the supply of electricity to other customers in the NWPS.

*Key arrangements under the proposed arrangements*

20. The NWPS currently operates under a Dispatch Protocol developed between Stanwell, Ergon and their customers in 1998. However, the commissioning of the DPS means the 1998 Dispatch Protocol will no longer be effective. Specifically, as there will now be two generators supplying customers on Ergon Network's poles and wires, the Applicants submit that it is necessary to co-ordinate the supply of electricity into the network as well as the consumption of large quantities of electricity by mining operations. The Applicants submit that this coordination is necessary to ensure the safe and efficient operation of the NWPS.
21. The new Dispatch Protocol is a key part of the proposed arrangements and it sets out the terms and conditions under which generators will supply electricity into the NWPS. The Dispatch Protocol also sets out how Major Offtakers will increase and decrease their electricity demand; for example, Major Offtakers must notify when they are about to connect a demand load greater than 3MWh.
22. The Dispatch Protocol contains nine schedules setting out specific types of co-ordination. Key schedules relevant to the applications for authorisation are:
  - Schedule 2 – Technical Standards for the NWPS: This schedule sets out specifications for technical aspects of the network such as voltage, frequency, and harmonic current distortion, as well as requirements for points of connection and network testing.
  - Schedule 3 – System Studies and Planning: This schedule sets out the procedure to be followed by any participant wishing to, amongst other things, add or remove any significant generation capacity or load, carry out major reconfigurations of, or augmentations to, or establish new supply networks forming part of the NWPS.
  - Schedule 7 – Load Shedding System: This schedule sets out the provisions and procedures for shedding different loads when necessary. The system includes a schedule of the order that Major Offtakers' loads are to be shed if necessary. Major Offtakers are able to identify different loads that they would like prioritised in the system (i.e. be further down the order of loads to be shed). The order of the schedule rotates so that no participant is always the first to have their loads shed. Loads that are critical to safety (e.g. safety facilities at mines) are prioritised above non-critical loads, meaning critical loads shall only be shed in events where there is still excess demand on the system after all non-critical loads have been shed. However, all parties have agreed that Ergon Retail's load will be last to be shed by the DPS so as to ensure residents and businesses in the area are least affected by load shedding events.

- Schedule 8 – System Restoration Procedures After Load Shed Events: This document sets out procedures for recovering from different types of load shedding events and requires the parties to co-ordinate their ramp up of electricity supply and demand.

23. Stanwell and Diamantina are also required to enter into an Energy Balance Agreement which sets out provisions for them to utilise small amounts of excess capacity at each other's power station should it be required. 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. The Energy Balance Agreement sets out circumstances and conditions on which it can be activated and compensation for the provider of additional generating capacity.
24. Finally, the Dispatch Protocol details the role of the Generation Co-ordinator who is responsible for balancing supply and demand on the network and has the authority to activate the Energy Balance Agreement and Load Shedding Schedules and Procedures. Generators, Major Offtakers, and Ergon Network all communicate with the Generation Co-ordinator in order to balance supply and demand and maintain network integrity. It is expected that the Generation Co-ordinator will be a Diamantina employee stationed at the DPS. The performance of the Generation Co-ordinator is reviewed by a NWPS Working Committee.
25. All changes to the Dispatch Protocol must be agreed by the NWPS Working Committee. Each participant in the NWPS (i.e. Stanwell, Diamantina, Ergon Retail and each of the mines classified as Major Offtakers) has one representative on the Working Committee. Certain key provisions of the Dispatch Protocol cannot be amended without the written consent of all participants. This includes provisions relating to the responsibilities of the Generation Co-ordinator and the criteria for approving: new entrants and new facilities to the NWPS; existing generators adding new capacity; and future additions to the supply network.
26. The Applicants state that the Dispatch Protocol will be made available by the Generation Co-ordinator to potential new entrants and genuinely interested parties.

## The conduct for which authorisation is sought

27. As noted at paragraph 5, the Applicants are not seeking authorisation for the entire Dispatch Protocol document. The Applicants have identified the specific arrangements forming part of the Dispatch Protocol for which they seek authorisation as follows.

### Box 1: Proposed arrangements for which authorisation is sought

#### (a) 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.

#### (b) 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 offtakers and offtakers' 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 offtakers.

**(c) New load**

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

1. the new load or network extension complies with the prescribed technical requirements; and
2. 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
3. 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.

**(d) New generation capacity**

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

- (i) the entity seeking to connect complies with the prescribed technical requirements; and
- (ii) 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; or
- (iii) 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.

**(e) 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.

**(f) 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.

**(g) 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.



#### **(h) Arrangements in relation to Ergon Retail**

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

#### **(i) 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.

#### **(j) 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 (a) to (i) above, and do not otherwise constitute a new contract, arrangement or understanding, in breach of the CCA.<sup>6</sup>

#### ***Interpretation***

All capitalised terms in this Box 1 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 applications for authorisation A91448 & A91449.

## **Submissions**

28. The ACCC tests the claims made by the applicant in support of an application for authorisation through an open and transparent public consultation process.
29. Prior to the current applications being lodged, applications were lodged on 27 February 2014 that were in substantially the same terms as the proposed arrangements. However, at the time of lodging those applications the Dispatch Protocol underpinning the arrangements had not been finalised. On 13 June 2014 the Applicants withdrew their applications as the Dispatch Protocol still had not been finalised, with the intention of lodging new applications once the Dispatch Protocol was finalised.
30. The ACCC sought submissions from a range of interested parties in relation to the February 2014 applications including from participants and customers in the NWPS, industry associations, regulatory agencies, and participants in the NEM. Two public submissions were received from Cloncurry Shire Council (the council responsible for the area covered by the NWPS), and MMG Century.
31. After the current applications were lodged the ACCC again invited submissions but advised parties that if they had previously provided a submission in relation to the February 2014 applications and their views about the current application remained as

<sup>6</sup> In the description of the conduct provided by the Applicants paragraph (j) inadvertently refers to the principles set out in paragraphs 1 to 9 rather than paragraphs (a) to (i).

expressed in that submission they may wish to indicate this and limit their submission to any additional comments they wished to make.

32. No additional submissions were received.

33. The views of the Applicants and interested parties are summarised below and are considered further in the ACCC's assessment of the proposed arrangements. Copies of public submissions may be obtained from the ACCC's website [www.accc.gov.au/AuthorisationsRegister](http://www.accc.gov.au/AuthorisationsRegister).

## Applicants

34. In summary, the Applicants submit that three key public benefits are likely to arise from the proposed arrangements:

- quality and reliability of supply,
- system security, and
- the safe operation of the NWPS.

35. The Applicants submit that the specified technical requirements for generation capacity and connecting loads will promote a safe and reliable means of generating and transporting electricity, reducing risk of system wide disruption and minimising the impact of any disruption. The Applicants submit that the arrangements require the generators to have sufficient capacity to supply all forecast loads as well as excess capacity, and the Energy Balance Agreement facilitates sharing of excess capacity to reduce the chance of customers being affected by transient energy imbalances on the network. The Applicants also submit that appointing a Generation Co-ordinator to align demand and supply will improve reliability by allowing for proactive management of the network.

36. The Applicants submit that the technical requirements for generation and connection are efficient as they do no more than set a minimum standard consistent with relevant Australian standards, the Electricity Industry Code (Queensland) and recognised industry codes of practice. The Applicants submit that these standards do not impose any unnecessary barriers to those seeking to join the NWPS, as they do not impose any requirements beyond those necessary to ensure an adequate level of power system security and adequacy of supply and minimise the risk of overloading the system and involuntary load shedding. The Applicants further submit that these standards provide clarity to new entrants about the technical operating characteristics of the NWPS to enable them to make informed decisions about potential new entry.

37. The Applicants state that enhanced safety is the most important public benefit arising from the proposed arrangements, and note that safety is a particular concern given the mining and industrial consumers prevalent in the NWPS. The Applicants submit that the role of the Generation Co-ordinator, the technical restrictions on new generation and new connecting loads, procedures for load shedding ramping up generation and reconnection post-load shedding are all critical for the safe operation of the NWPS. The Applicants also submit that the proposed arrangements can only be effective if they bind all generators and offtakers in the NWPS, including proposed new generators of offtakers.

## **Interested parties**

38. Cloncurry Shire Council did not object to the February 2014 application provided that any load shedding did not disadvantage the residents of Cloncurry Shire and residents were not disadvantaged in relation to electricity prices.
39. MMG Century supported the February 2014 application and submitted that separate networks was the only other viable option to coordination between Stanwell and Diamantina and that the cost of infrastructure required makes this an unlikely alternative.

## **ACCC Assessment**

40. The ACCC's evaluation of the proposed arrangements is in accordance with the relevant net public benefit tests<sup>7</sup> contained in the CCA. While there is some variation in the language of the tests, in broad terms, the ACCC is required to identify and assess the likely public benefits and detriments, including those constituted by any lessening of competition and weigh the two. Generally, the ACCC may grant authorisation if it is satisfied that the benefit to the public would outweigh the public detriments.
41. In order to assess the effect of the proposed arrangements and the public benefits and detriments likely to result, the ACCC identifies the relevant areas of competition and the likely future should authorisation not be granted.

## **The relevant area of competition**

42. The Applicants submit that the relevant market is the wholesale market for the supply and acquisition of electricity in the NWPS.
43. The ACCC considers that the relevant area of competition is geographically confined to the NWPS. However, the ACCC considers that the relevant areas of competition in which the impact of the proposed arrangements should be assessed includes all levels of the electricity supply chain within the NWPS, including the retail supply of electricity by Ergon Retail and the consumption of electricity by residents and small businesses in the Mount Isa-Cloncurry region. The ACCC notes that the key aspects of the proposed arrangements, such as the Load Shedding System, will have direct impacts on the supply of electricity to all customers in the NWPS.
44. The ACCC notes that the proposed arrangements will also impact businesses currently operating in the NWPS and any future new entrants within the NWPS supply area including mining operators and new electricity generation capacity.

## **The future with and without**

45. To assist in its assessment of the proposed arrangements against the authorisation tests the ACCC compares the likely future with the conduct that is the subject of the authorisation to the likely future without the conduct that is the subject of the authorisation. The ACCC will compare the public benefits and detriments likely to arise in the future where the conduct occurs against the future in which the conduct does not occur.

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<sup>7</sup> Subsections 90(6), 90(7), 90(5A), 90(5B) and 90(8). The relevant tests are set out in Attachment A.

46. The Applicants submit that if authorisation is not granted the most likely future without the proposed arrangements is as follows:

- (a) while there may be some elements of the 1998 dispatch protocol which could be retained, it was developed on the basis of there being only one major generator supplying all customers and so would not be appropriate when there are two major generators on the NWPS each supplying their own customers;
- (b) the new Dispatch Protocol would not be implemented and there would be no arrangements between the MCPS and the DPS and other NWPS participants which provides for the coordination of dispatch of major generators and load shedding;
- (c) Ergon would, by default, as the network operator, have the responsibility of setting the standards and technical requirements for new load and generation connecting to the NWPS;
- (d) the two major generators, the MCPS and the DPS, would operate their power stations on a shared grid;
- (e) each of the MCPS and the DPS would unilaterally operate their power stations to supply the expected load of their customers; and
- (f) each of the MCPS and the DPS would enter into separate load shedding arrangements with their customers which would involve the installation of new technical solutions and/or customers agree to underwrite new generation capacity to reduce the need for load shedding or enter into back up supply arrangements with the other generator. However, in practice, neither generator could island their generation in the event of major loss of generation without shutting down the other party's customers.

47. The Applicants submit that Ergon has no statutory function to co-ordinate the dispatch of load and may not have the technical capability, or interest, to do so. As a result, without an agreement between the parties, the system risks being imbalanced which can create frequency instability and increase the probability of unit trips, which risks the safe reliable operation of the system.

48. The Applicants state that another possible future without the proposed arrangements the subject of the authorisation is that Ergon augments its electricity system in such a way as to enable each of MCPS and DPS to generate and dispatch directly to their respective customers. The Applicants argue that this is likely to involve substantial works and could potentially involve duplicating much of the existing electricity transmission system and that this is not realistic given the expense involved.

49. The ACCC considers that, without the proposed arrangements the subject of the authorisation, the DPS and the MCPS would both supply electricity into the network without coordinating their dispatches. If, as submitted by the Applicants, Ergon Network took on the responsibility of coordinating the connection of electricity generation and large demand loads to the network, the ACCC considers that Ergon Network may not be able to match supply and demand as effectively—or intervene with the same degree of control—as would the case if the DPS and the MCPS were able to coordinate dispatch. The ACCC also notes the Applicants submission that Ergon's expertise primarily relates to network operation rather than generation dispatch and that Ergon has expressed no desire or willingness to undertake such a role.

50. The ACCC also recognises that the alternative noted by the Applicants, augmentation of Ergon's network that would allow each generator to service their customers directly (and therefore avoid the need to coordinate supply), would be very costly and is therefore unlikely. Significant sections of the network would need to be duplicated, and such investment would need to be underwritten by Major Offtakers, who are unlikely to consider such a course to be cost effective.
51. Finally, the ACCC notes that another possible future without the proposed arrangements for which authorisation is sought is the NWPS connecting to the NEM. Under this scenario, the parties to the arrangements would operate under the protocols of the NEM and the supply of electricity would be coordinated by the Australian Energy Market Operator (**AEMO**), as it is across the rest of the NEM. However, the ACCC considers that this is unlikely (at least over the five year period for which authorisation is sought) as the option to connect the NWPS to the NEM was put forward as an alternative to commissioning additional generation power when stakeholders were considering the future of electricity supply needs in the Mount Isa-Cloncurry region. Those stakeholders chose to commission the DPS, which should—along with MCPS—provide adequate electricity generation throughout the period for which authorisation is sought.
52. The ACCC therefore considers that the likely future without the proposed arrangements for which authorisation is sought is one in which the two generators supply electricity into the Ergon's network either without any coordination, or with Ergon facilitating enough coordination to ensure the network is not compromised or otherwise dangerous to operate.

## Public benefits

53. Public benefit is not defined in the CCA. However, the Tribunal has stated that the term should be given its widest possible meaning. In particular, it includes:

...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principle elements ... the achievement of the economic goals of efficiency and progress.<sup>8</sup>

54. Broadly, the ACCC considers that coordinating the supply of electricity within the NWPS, as well as large blocks of demand by Major Offtakers, is likely to generate public benefits. For context, the ACCC notes that the coordination of electricity supply in the NEM is a core responsibility of the AEMO, which provides around-the-clock estimates of electricity demand across the NEM to inform generators and other market participants. This information is crucial for informing decisions by generators such as meeting daily peak demand cycles. The AEMO is also responsible for the integrity of the NEM and ensuring that the connection or disconnection of large loads or generation capacity does not adversely affect electricity supply. The ACCC considers that the proposed arrangements are aimed at establishing similar arrangements in the NWPS now that the MCPS and the DPS will both be dispatching into the NWPS and that the responsibilities of the Generation Co-ordinator under the proposed arrangements are broadly analogous to the demand forecasting and safety functions of the AEMO.

55. In particular, the proposed arrangements:

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<sup>8</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.

- provide for coordination of dispatch of electricity into the network
- require generators to have in service sufficient capacity to meet demand, including reserve capacity to minimise network disruption
- establish technical requirements that new load and generation capacity must meet before connecting to the NWPS so as to ensure that the integrity of the network is not compromised by new connections
- establish procedures for starting large loads including requiring the approval of the Generation Co-ordinator to ensure that unanticipated spikes in demand do not compromise supply
- establish procedures for load shedding and reconnection following load shedding in the event of a generator shortfall.

56. The ACCC also considers that the customer base of the NWPS makes coordination of supply and demand particularly necessary. The ACCC notes that the approximately 10,500 households and businesses in the area supplied by Ergon Retail only account for a relatively small proportion of overall electricity demand in the NWPS. The overall demand for electricity in the NWPS is determined largely by the activities of a small number of Major Offtakers, and is therefore prone to a higher variability of demand than would be typical in a market with a larger, more diverse set of customers (such as the NEM). This high level of potential demand variability increases the potential for imbalances in demand and supply that may result in power shortages or surges on the network.

57. Given the particular characteristics on the supply and demand sides of the NWPS, the ACCC considers effective coordination of dispatch requires the participation of all levels of the supply chain, not just the two generators. In particular, the ACCC notes that a number of elements of the proposed arrangements that are designed to ensure that demand and supply are kept in balance, such as the Load Shedding System and the protocols for connecting large individual loads to the network, require the cooperation of the Major Offtakers.

58. The ACCC therefore considers that the proposed arrangements, by addressing the complications that arise from multiple generators supplying electricity across a single network, are likely to promote improved safety for users of the NWPS, improved efficiency across the NWPS and increased reliability of supply.

59. As well as promoting improved safety and reliability of supply, by providing for the MCPS and the DPS to utilise the excess capacity at each other's power station should it be required, the arrangements allow generators to minimise investment in additional back up generation and mean offtakers have less need for contingency contracts with the other generator.

## **Public detriments**

60. Public detriment is also not defined in the CCA but the Tribunal has given the concept a wide ambit, including:

...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>9</sup>

61. The ACCC considers that the proposed arrangements are unlikely to generate significant public detriments.
62. The ACCC notes that the proposed arrangements include all Major Offtakers in the NWPS, that the Dispatch Protocol has been agreed by all Major Offtakers and that future changes to the Dispatch Protocol must be agreed by the NWPS Working Committee on which all major participants in the NWPS, including all Major Offtakers, are represented. The NWPS Working Committee is also responsible for the appointment of, and reviewing the performance of, the Generation Co-ordinator. Further, key provisions of the Dispatch Protocol cannot be amended without the written consent of all participants. This includes provisions relating to the responsibilities of the Generation Co-ordinator and the criteria for approving: new entrants and new facilities to the NWPS; existing generators adding new capacity; and future additions to the supply network.
63. Accordingly, the ACCC considers 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. For example, it is unlikely that Major Offtakers would agree to arrangements or investments by generators that unnecessarily increase the cost of electricity generation or raise barriers to new generation capacity connecting to the NWPS. Similarly, it is unlikely that generators would agree to terms and conditions that unnecessarily increased their cost of access to Ergon's network.
64. The ACCC also notes that no participant in the NWPS, or any other party, has raised concerns with the proposed arrangements. Submissions that were received, while limited, were broadly supportive, and expressed the view that the arrangements are sensible given the need to manage two generators supplying electricity across a single network.
65. However, the ACCC also notes that two important classes of stakeholders in the NWPS are not party to the proposed arrangements: businesses that may wish to enter the NWPS such as new generators or mining operators and retail end consumers.
66. With respect to new entrants, the ACCC considers that it is unlikely that all participants in the NWPS would have incentives to adopt or apply the technical standards prescribed in the Dispatch Protocol in a manner that would raise barriers to new entry beyond the requirements necessary to ensure the safety and reliability of the NWPS. 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 suppliers.
67. With respect to residential and small business customers, the ACCC notes that consumers in the Mount Isa-Cloncurry region are classified as 'excluded customers' under the *Electricity Act 1994 (Qld)*, meaning their premises are not connected to the

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<sup>9</sup> *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,683.

national grid. Ergon Retail has Community Services Obligations with the Queensland Government that requires them to sell electricity at a tariff rate set by the Queensland Competition Authority.

68. More generally, the ACCC notes that:

- the Dispatch Protocol does not affect the terms and conditions on which generators contract with offtakers,
- there are restrictions on the use of shared information between the parties and on matters that can be discussed between the parties (including prices and any other matter that may breach the CCA),
- while potential new entrants are required to meet technical requirements as set out in the Dispatch Protocol, decisions about admitting new entrants are made by the Working Committee made up of all participants in the NWPS and are appealable to an independent expert whose decision is binding, and
- the Dispatch Protocol is structured so as to prevent discrimination in favour of, or against, any customer or group of customers, with the exception of the provision that requires Ergon Retail (and therefore residential and domestic customers) to be given priority of dispatch by DPS.

69. Accordingly, having regard to relevant provisions of the Dispatch Protocol, the ACCC considers that the proposed arrangements are unlikely to result in significant anti-competitive detriment.

70. However, the ACCC also notes the possibility that changes may be made to the Dispatch Protocol (including the technical standards) during the life of any authorisation granted by the ACCC. In this respect, the Applicants have not sought authorisation for the Dispatch Protocol itself. Rather, they have sought authorisation for overarching categories of arrangements as outlined in Box 1 at paragraph 27 of this draft determination. Accordingly, notwithstanding the above consideration of the potential anti-competitive detriments of the proposed arrangements there is the possibility that changes could be made to the Dispatch Protocol subsequent to authorisation being granted that, while within the scope of the categories of arrangements authorised, may change the balance of public benefit and detriment.

71. The ACCC would be concerned, for example, if changes were made to the technical standards which were designed to raise barriers to entry for new generation capacity or businesses to enter the NWPS rather than to address legitimate operational issues in managing the NWPS.

72. To address this issue the Applicants propose that the ACCC grant authorisation subject to a condition that they be required to notify the ACCC in writing of any change to the Dispatch Protocol or schedules to the Dispatch Protocol within 10 days of the change being made, other than changes to Schedule 5 and Schedule 6. 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.

73. The Applicants submit that this will provide the ACCC with the opportunity to raise any concerns regarding future amendments and seek further information if necessary without imposing the cost or burden of having to seek to vary the authorisation every time the Dispatch Protocol is amended.



74. Having regard to the broad representation of participants with competing interests on the NWPS Working Committee responsible for deciding on changes to the Dispatch Protocol and the requirement for unanimous support among participants for changes to key clauses in the Dispatch Protocol, the ACCC considers that the risk of amendments being made to the Dispatch Protocol that would change the balance of public benefit and detriment of the proposed arrangements is low.
75. However, the ACCC considers that the condition suggested by the Applicants would address any remaining concern about future amendments being made to the rules that may change the balance of public benefit and detriment. This condition will provide the ACCC with the opportunity to raise any concerns regarding the amendments with the Applicants during the period of authorisation.
76. If the ACCC considers that as a result of any amendment to the Dispatch Protocol there has been a material change of circumstances since the authorisation was granted the ACCC is able to review the authorisation, including seeking submissions from interested parties. If following a review the ACCC is satisfied that the likely public benefit from the proposed arrangements no longer outweighs the likely detriment to the public, including any detriment constituted by a lessening of competition, the ACCC may revoke the authorisation.
77. Accordingly, the ACCC proposes to impose a condition of authorisation requiring that within 10 business days of any amendment being made to the Dispatch Protocol or schedules to the Dispatch Protocol, other than an amendment Schedule 5 or Schedule 6, the Applicants must notify the ACCC in writing of the amendment.

## **Balance of public benefit and detriment**

78. For the reasons outlined in this draft determination and subject to the proposed condition of authorisation the ACCC is satisfied that the likely benefit to the public resulting from the proposed arrangements would outweigh the likely detriment to the public including from any lessening of competition that would be likely to result.
79. Accordingly, subject to the proposed condition of authorisation set out in paragraph 88, the ACCC is satisfied that the relevant net public benefit tests are met.

## **Length of authorisation**

80. The CCA allows the ACCC to grant authorisation for a limited period of time.<sup>10</sup> This allows the ACCC to be in a position to be satisfied that the likely public benefits will continue to outweigh the detriment 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.
81. The ACCC proposes to grant authorisation for five years, as sought by the Applicants.

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<sup>10</sup> Subsection 91(1).

# Draft determination

## The application

82. On 29 August 2014, the Applicants lodged applications for authorisation A91448 & A91449 with the ACCC. The applications were made using Form A and Form B, Schedule 1 of the *Competition and Consumer Regulations 2010*. The applications were made under subsections 88(1A) and (1) of the CCA, for current and future participants in the NWPS to agree to rules relating to the coordination of electricity dispatch schedules at electricity generators in the NWPS, as described in Box 1 at paragraph 27 of this draft determination.
83. The Applicants seek authorisation of these arrangements as they may have the effect of substantially lessening competition within the meaning of section 45 of the CCA. The arrangements also contain provisions that may be cartel provisions or exclusionary provisions within the meaning of the CCA.
84. Section 90A(1) requires that before determining an application for authorisation the ACCC shall prepare a draft determination.

## The net public benefit test

85. For the reasons outlined in this draft determination, subject to the proposed condition below, the ACCC considers that in all the circumstances the proposed arrangement for which authorisation is sought is likely to result in a public benefit that would outweigh the detriment to the public constituted by any lessening of competition that would be likely to result.
86. Subject to the proposed condition below, the ACCC is also satisfied that the proposed arrangement for which authorisation is sought is likely to result in such a benefit to the public that it should be allowed to take place.

## Condition

87. The ACCC proposes to grant authorisation subject to the following condition:

The Applicants must notify the ACCC in writing of any amendment to the Dispatch Protocol or schedules to the Dispatch Protocol within 10 days of the amendment being made, with the exception of amendments made to Schedule 5 – Forecast Data Format or Schedule 6 – Key Contact Details.

## Conduct for which the ACCC proposes to grant authorisation

88. The ACCC proposes to grant authorisation for current and future participants in the NWPS to make and give effect to rules relating to the coordination of electricity dispatch schedules at electricity generators in the NWPS which are described in Box 1 at paragraph 27 of this draft determination for five years.
89. This draft determination is made on 18 December 2014.

## **Further submissions**

90. The ACCC will now seek further submissions from interested parties. In addition, the applicant or any interested party may request that the ACCC hold a conference to discuss the draft determination, pursuant to section 90A of the CCA.

## Attachment A - Summary of relevant statutory tests

**Subsections 90(5A) and 90(5B)** provide that the ACCC shall not authorise a provision of a contract, arrangement or understanding (or a proposed contract, arrangement or understanding) that is or may be a cartel provision, unless it is satisfied in all the circumstances that:

- the provision, in the case of subsection 90(5A) would result, or be likely to result, or in the case of subsection 90(5B) has resulted or is likely to result, in a benefit to the public; and
- that benefit, in the case of subsection 90(5A) would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement were made or given effect to, or in the case of subsection 90(5B) outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted or is likely to result from giving effect to the provision.

**Subsections 90(6) and 90(7)** state that the ACCC shall not authorise, under section 88(1), a provision of a contract, arrangement or understanding (or a proposed contract, arrangement or understanding), other than an exclusionary provision, unless it is satisfied in all the circumstances that:

- the provision of the proposed contract, arrangement or understanding in the case of subsection 90(6) would result, or be likely to result, or in the case of subsection 90(7) has resulted or is likely to result, in a benefit to the public; and
- that benefit, in the case of subsection 90(6) would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement was made and the provision was given effect to, or in the case of subsection 90(7) has resulted or is likely to result from giving effect to the provision.

**Subsection 90(8)** states that the ACCC shall not:

- make a determination granting:
  - i. an authorization under subsection 88(1) in respect of a provision of a proposed contract, arrangement or understanding that is or may be an exclusionary provision; or
  - ii. an authorization under subsection 88(7) or (7A) in respect of proposed conduct; or
  - iii. an authorization under subsection 88(8) in respect of proposed conduct to which subsection 47(6) or (7) applies; or
  - iv. an authorisation under subsection 88(8A) for proposed conduct to which section 48 applies;

unless it is satisfied in all the circumstances that the proposed provision or the proposed conduct would result, or be likely to result, in such a benefit to the public that the proposed contract or arrangement should be allowed

to be made, the proposed understanding should be allowed to be arrived at, or the proposed conduct should be allowed to take place, as the case may be; or

- make a determination granting an authorization under subsection 88(1) in respect of a provision of a contract, arrangement or understanding that is or may be an exclusionary provision unless it is satisfied in all the circumstances that the provision has resulted, or is likely to result, in such a benefit to the public that the contract, arrangement or understanding should be allowed to be given effect to.