



27 January 2017

Fei Wu  
Acting Senior Analyst – Adjudication  
Australian Competition & Consumer Commission  
Level 35, 360 Elizabeth Street  
Melbourne VIC 3000

Dear Fei

**A91567 & A91568 – The South Australian Chamber of Mines and Energy Inc & Ors -  
Authorisation**

We refer to your email dated 11 January 2017 requesting further information in relation to the Applications for Authorisation lodged by the South Australian Chamber of Mines and Energy Inc (**SACOME**), on behalf of each of the Participating Members described in the Applications, seeking authorisation from the ACCC to establish a joint electricity purchasing group.

The Applicants request that an interim authorisation decision be made by the ACCC prior to the draft determination and if possible by 31 March 2017.

To assist you in making that decision, we have **enclosed** further information on the Applicants' reasons for seeking interim authorisation by reference to the factors relevant to interim authorisations as set out in the ACCC's Authorisation Guidelines.

If you have any queries in relation to the Applications, or any aspect of the above, please do not hesitate to contact me on (08) 8202 9933 or by email [nlong@sacome.org.au](mailto:nlong@sacome.org.au).

Yours sincerely

A handwritten signature in black ink, appearing to read "Nigel Long", is written over a light grey horizontal line.

Dr Nigel Long  
Director, Policy & Community

## **A91567 & A91568 – The South Australian Chamber of Mines and Energy Inc & Ors - Authorisation**

### **Further information in relation to application for Interim Authorisation**

The following paragraphs set out further information in relation to the Applicant's request for an interim authorisation decision by reference to the factors set out on page 71 of the ACCC's Authorisation Guidelines:

- 1. The object of the Act, which includes enhancing the welfare of Australians through the promotion of competition. The ACCC is therefore unlikely to grant interim authorisation to proposed conduct that has the potential to be significantly anti-competitive unless compelling reasons are provided.**
- 1.1 As mentioned in the supporting submission accompanying the Applicants' Application (**Supporting Submission**), the proposed conduct will provide significant public benefits that go to the object of the Act by:
  - (a) increasing competition in the South Australian electricity market via encouraging new generation (there is currently a lack of competition in the South Australian electricity market);
  - (b) improving power system security with additional synchronous dispatchable generation being able to provide Frequency Control and Ancillary Services, which reduces the risk of major unplanned supply interruptions (i.e. blackouts);
  - (c) providing all consumers with access to potential lower prices through increased competition.
- 1.2 Having said that, the interim authorisation sought by the Applicants only relates to that part of the proposed conduct for authorisation which involves:
  - (a) investigating potential electricity supply options for the Applicant's combined electricity loads;
  - (b) conducting a request for proposal/tender process for the supply of the Applicant's combined electricity loads that is designed to identify and select a preferred electricity supplier or group of electricity suppliers able to supply the Applicant's combined electricity loads; and
  - (c) negotiating an overarching electricity supply contract with the successful electricity supplier(s) that enables Participating Members to gain access to the price and other terms and conditions offered by the successful electricity suppliers(s) **if and when** the ACCC grants the final Authorisation.

- 1.3 The Applicants are not seeking interim authorisation to enter into an agreement with the successful electricity supplier(s) and any negotiations in relation to such an arrangement will be subject to final authorisation being granted by the ACCC (i.e. no electricity supply arrangement will be finalised and commence until such time as the final authorisation has been granted).
- 1.4 This means that the interim authorisation does not have the potential to lead to public detriments or be anti-competitive in any way.
2. **The extent to which the relevant market will change if interim authorisation is granted. Interim authorisation is more likely to be granted when it will maintain the status quo. Interim authorisation is unlikely to be granted if doing so would permanently alter the competitive dynamics of the market or inhibit the market from returning to its pre-interim state if final authorisation is later denied.**
  - 2.1 As mentioned above, the Applicants are not seeking interim authorisation to enter into an agreement with the successful electricity supplier(s) and any negotiations in relation to such an arrangement will be subject to final authorisation being granted by the ACCC. Accordingly, the interim authorisation will not change the relevant market and will maintain the status quo.
  - 2.2 If final authorisation is denied, the tender and negotiation process will come to an end without altering the competitive dynamics of the market or inhibiting the market from returning to its pre-interim authorisation state in any way.
3. **The urgency of the need for interim authorisation. Relevant to this, the ACCC will consider whether an application could have been lodged sufficiently early to have made the request for interim authorisation unnecessary.**
  - 3.1 As discussed in section 2.1 of the Supporting Submission, Australia's National Electricity Market, and the South Australian electricity market in particular, are undergoing a transformational change that has led to high volatility in pricing that is currently affecting the welfare of all South Australians and will continue to do so over the next few years.
  - 3.2 The proposed conduct presents a potential solution to the immediate challenges faced in the South Australian electricity market in advance of the development and implementation of other longer term regulatory and structural solutions. There is a broadly held expectation that price volatility and spot prices will further increase during the 2016/2017 summer period and beyond. It is therefore critical that the Applicants are able to act quickly, as any delay in developing and publishing the request for proposal/tender will impact the project timelines and decrease the ability of the Applicants to effectively address the issues raised in the Application.

- 3.3 The grant of interim authorisation for that part of the proposed conduct relating to the request for proposal/tender and negotiation process will enable the Applicants to act quickly to finalise the new electricity supply arrangements once final authorisation is granted thereby commencing to realise the public benefits detailed in the Supporting Submission as soon as possible.
- 3.4 If the interim authorisation is denied, the Applicants will need to delay the commencement of the request for proposal/tender and negotiation process until the final authorisation is granted. This will in turn delay the finalisation and entry into of new electricity supply agreements, and consequently the realisation of the related public benefits by a further 6-9 months.
- 3.5 In relation to the question as to whether the Application could have been lodged earlier, we note that the current challenges faced by electricity consumers in the South Australian market only became manifest in July 2016. Since that time lack of market liquidity together with increased price volatility and power system security issues have lead to sustained high prices which are likely to continue for at least the next 2 to 3 years and probably beyond. This price volatility and market uncertainty was further exacerbated by State-wide black out and other events that occurred in late September and November 2016. Accordingly, the Application could not have been lodged any earlier.
- 4. The possible harm, if any, to the applicant if a grant of interim authorisation is denied.**
- 4.1 As mentioned above, if a grant of interim authorisation is denied, the Applicants are likely to be delayed from receiving the benefits of the proposed conduct for a further period of at least 6-9 months.
- 4.2 This means that the Applicants will be delayed in realising the cost savings and efficiencies that are expected to accrue from the proposed conduct for that further period. This delay and the associated increased costs will have a flow on effect in relation to the broader South Australian community.
- 5. The possible harm to other parties (such as customers and competitors) if a request for interim authorisation is granted or denied.**
- 5.1 As mentioned above, the Applicants are not seeking interim authorisation to enter into an agreement with the successful electricity supplier(s) and any negotiations in relation to such an arrangement will be subject to final authorisation being granted by the ACCC. Accordingly, there is no possible harm to other parties if the interim authorisation is granted.
- 5.2 However, if the interim authorisation is denied, the public benefits associated with the proposed conduct will be delayed for a further period of at least 6-9 months.

6. **Any possible public benefits or detriments that the ACCC can assess at the time of considering the request from interim authorisation. However, granting interim authorisation does not require the ACCC to determine whether the relevant authorisation test is, or is likely to be satisfied.**
- 6.1 Please see sections 6 (Public Benefits) and 7 (Public Detriment) of the Supporting Submission for information in relation to this factor.
- 6.2 Furthermore, as no contractual arrangements will be entered into until final authorisation is granted, there is no possibility for the detriments to arise in granting the interim authorisation.