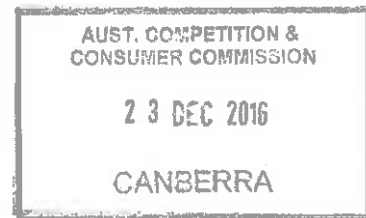


20 December 2016



General Manager  
Adjudications Branch  
Australian Competition & Consumer Commission  
GPO Box 3131  
CANBERRA ACT 2601

Dear Sir / Madam

**Application for interim and final authorisation – SACOME Electricity Purchasing Group**

The South Australian Chamber of Mines and Energy Inc (SACOME), on behalf of each of the Participating Members described in the attached Applications for Authorisation, seeks authorisation from the Australian Competition and Consumer Commission (ACCC) to establish a joint electricity purchasing group.

Once authorised, the Participating Members intend to aggregate their electricity demands to secure competitively priced and reliable electricity supply arrangements. It is anticipated that this procurement process will include the issue of a broad based tender seeking competitive offers from the market for the supply of the combined loads, the selection of the best overall offer and the engagement of the chosen electricity supplier or suppliers.

Following completion of this procurement process, each Participating Member will enter into an individual contract with the chosen electricity supplier or suppliers.

We refer to the attached documentation:

1. Form A – Application for Authorisation;
2. Form B – Application for Authorisation;
3. the Supporting Submission to which the Form A and Form B refer; and
4. A copy of the receipt for payment of the \$9,000 lodgement fee via the ACCC payment portal.

If you have any queries in relation to the Applications, or any aspect of the above, please do not hesitate to contact Dr Nigel Long, SACOME'S Director, Policy & Community on (08) 8202 9999 or by email [nlong@sacome.org.au](mailto:nlong@sacome.org.au).

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Rebecca Knol".

Rebecca Knol  
Chief Executive Officer

South Australian Chamber of Mines and Energy Incorporated

# Form A

Commonwealth of Australia

*Competition and Consumer Act 2010 — subsections 88 (1A) and (1)*

## **EXCLUSIONARY PROVISIONS AND ASSOCIATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Competition and Consumer Act 2010* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act.
- to make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision within the meaning of section 45 of that Act.

*(Strike out whichever is not applicable)*

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

### **1. Applicant**

(a) Name of Applicant:  
*(Refer to direction 2)*

A91567

i. The South Australian Chamber of Mines and Energy Inc (SACOME)

ii. Nyrstar Port Pirie Ltd (ABN 31 008 046 428)  
Address: PO Box 219, PORT PIRIE SA 5540

Arrium Limited (ABN 63 004 410 833)  
Address: Locked Bag 3050, ARTARMON NSW 1570

OZ Minerals Limited (ABN 40 005 482 824)  
Address: Level 1, 163 Greenhill Road, PARKSIDE SA 5063

Adelaide Brighton Cement Ltd (ABN 96 007 870 199)  
Address: Level 1, 157 Grenfell Street, ADELAIDE SA 5000

Intercast & Forge Pty Ltd (ABN 28 090 515 334)  
Address: 1 Schumacher Road, WINGFIELD SA 5013

Hillgrove Resources (ABN 73 004 297 116)  
Address: 5-7 King William Road, UNLEY SA 5061

Seeley International (ABN 23 054 687 035)  
Address: 112 O'Sullivan Beach Road, LONSDALE SA 5160

Central Irrigation Trust (ABN 17 023 608 663)  
Address: 4 Fowles Street, BARMERA SA 5345

SMR Automotive (ABN 77 007 550 094)  
Address: 18 Sheriffs Road, LONSDALE SA 5160

Thomas Foods International (ABN 52 008 178 121)  
Address: Level 2, 170 Fullarton Road, DULWICH SA 5013

Rex Minerals (SA) Pty Ltd (ACN 125 407 669) & Rex Minerals Ltd  
(ABN 12 124 960 523)  
Address: Level 19, 11 Waymouth Street, ADELAIDE SA 5000,

(together, **Participating Members**).

- (b) Description of business carried on by applicant:  
(Refer to direction 3)

SACOME is the peak industry body representing companies with interests in the South Australian minerals, energy, extractive and oil and gas sectors, including those who provide services to these companies.

Over the years SACOME's activities have helped to shape a positive regulatory environment for its members, saving them time and money.

The Participating Members are companies operating in South Australia in the minerals, energy, extractive, oil and gas, manufacturing and agricultural sectors. For more detail, please refer to section 2.3 in the submission supporting the Application (the **Supporting Submission**) which is lodged with this form.

- (c) Address in Australia for service of documents on the applicant:

SACOME

290 Glen Osmond Road

FULLARTON SA 5064

Attention: Dr Nigel Long

Email: [nlong@sacome.org.au](mailto:nlong@sacome.org.au)

## 2. **Contract, arrangement or understanding**

- (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:  
(Refer to direction 4)

The Participating Members are seeking to establish a joint electricity purchasing group to aggregate their electricity demand needs and place a single tender into the market for the supply of their combined loads with the objective of securing a cost

competitive and reliable electricity supply. Following the tender process, each Participating Member would enter into an individual contract with the chosen electricity supplier(s).

For more detail, please refer to section 3 in the Supporting Submission.

- (b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, exclusionary provisions and (if applicable) are, or would or might be, cartel provisions:  
*(Refer to direction 4)*

The proposed conduct relates to:

- collectively conducting a tender process for the supply of the combined electricity loads of the Participating Members;
- 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 supplier(s) by entering into individual contracts with the electricity supplier(s) on substantially similar terms and conditions;
- entering into an agreement with the successful electricity supplier(s) on the same or substantially the same terms and conditions; and
- making joint decisions regarding the administration and operation of certain aspects of their electricity supply agreements.

For more detail, please refer to section 3 in the Supporting Submission.

- (c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

The proposed conduct relates to sourcing a cost competitive and reliable electricity supply for the Participating Members.

For more detail, please refer to section 3 in the Supporting Submission.

- (d) The term for which authorisation of the provision of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

The Participating Members seek authorisation for a total period of 11 years, comprising:

- i. a 6-12 month period for the joint tender process, including investigation, market approach, negotiation, execution and mobilisation of the electricity supply agreement;
- ii. a 3-5 year period for the initial term of each electricity supply agreement between the successful electricity supplier(s) and each Participating Member; and
- iii. a 3-5 year period to reflect the ability of each Participating Member to negotiate an extension to the term of its electricity supply agreement.

For more detail, please refer to section 3.4 in the Supporting Submission.

### **3. Parties to the proposed arrangement**

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

Following the completion of the joint tender process, the successful electricity supplier(s) will offer to enter into a separate electricity supply agreement with each Participating Member. The electricity supplier(s) is likely to be a licensed electricity retailer with generation operation located in South Australia. However, the joint tender process will be technologically neutral and will seek proposals from any person who is able to offer a cost competitive and reliable electricity supply.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:

*(Refer to direction 5)*

The Participating Members are companies operating in the South Australia in the minerals, energy, extractive, oil and gas, manufacturing and agricultural sectors. For details of each Participating Member, please refer to section 2.3 in the Supporting Submission.

### **4. Public benefit claims**

- (a) Arguments in support of application for authorisation:

*(Refer to direction 6)*

Please refer to section 6 in the Supporting Submission.

- (b) Facts and evidence relied upon in support of these claims:

Please refer to section 6 in the Supporting Submission.

### **5. Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

*(Refer to direction 7)*

The relevant markets are both:

- i. the market for the generation and wholesale supply of electricity governed by the National Electricity Law (i.e. the National Electricity Market or NEM) or, in the alternative, the market for the generation and wholesale supply of electricity in South Australia; and
- ii. the market for the supply of electricity to commercial and industrial customers in South Australia.

For more detail, please refer to section 4 in the Supporting Submission.

### **6. Public detriments**

- (a) Detriments to the public resulting or likely to result from the contract arrangement or understanding for which authorisation is sought, in particular the likely effect of

the contract arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:  
(Refer to direction 8)

Please refer to section 7 in the Supporting Submission.

- (b) Facts and evidence relevant to these detriments:

Please refer to section 7 in the Supporting Submission.

**7. Contracts, arrangements or understandings in similar terms**

- (a) This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding:

- (b) Is this application to be so expressed?

No.

- (c) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:

(Refer to direction 9)

Not applicable.

- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

(Refer to direction 10)

Not applicable.

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

Not applicable.

**8. Joint Ventures**

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

No.

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Not applicable.

- (c) If so, by whom or on whose behalf are those other applications being made?

Not applicable.

**9. Further information**

- (a) Name, postal address and telephone contact details of the person authorised by the applicant seeking authorisation to provide additional information in relation to this application:

SACOME  
290 Glen Osmond Road  
FULLARTON SA 5064  
Attention: Dr Nigel Long  
Email: [nlong@sacome.org.au](mailto:nlong@sacome.org.au)

Dated..... 21/12/16 .....

Signed by/on behalf of the applicant

  
.....  
(Signature)

REBECCA A. KNOLL  
.....  
(Full Name)

SACOME  
.....  
(Organisation)

CEO  
.....  
(Position in organisation)

## **DIRECTIONS**

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

In lodging this form, applicants must include all information, including supporting evidence, that they wish the Commission to take into account in assessing their application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which authorisation is sought.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, exclusionary provisions. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and
  - (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
  6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
  7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for authorisation.
  8. Provide details of the detriments to the public, including those resulting from any lessening of competition, which may result from the proposed contract, arrangement or understanding. Provide quantification of those detriments where possible.



9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.
10. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, and descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.

## Form B

Commonwealth of Australia

*Competition and Consumer Act 2010 — subsections 88 (1A) and (1)*

### **AGREEMENTS AFFECTING COMPETITION OR INCORPORATING RELATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Competition and Consumer Act 2010* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act).
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act).
- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

*(Strike out whichever is not applicable)*

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

#### **1. Applicant**

(a) Name of Applicant:  
*(Refer to direction 2)*

A91568

i. The South Australian Chamber of Mines and Energy Inc (**SACOME**)

ii. Nyrstar Port Pirie Ltd (ABN 31 008 046 428)  
Address: PO Box 219, PORT PIRIE SA 5540

Arrium Limited (ABN 63 004 410 833)  
Address: Locked Bag 3050, ARTARMON NSW 1570

OZ Minerals Limited (ABN 40 005 482 824)  
Address: Level 1, 163 Greenhill Road, PARKSIDE SA 5063

Adelaide Brighton Cement Ltd (ABN 96 007 870 199)  
Address: Level 1, 157 Grenfell Street, ADELAIDE SA 5000

Intercast & Forge Pty Ltd (ABN 28 090 515 334)  
Address: 1 Schumacher Road, WINGFIELD SA 5013

Hillgrove Resources (ABN 73 004 297 116)  
Address: 5-7 King William Road, UNLEY SA 5061

Seeley International (ABN 23 054 687 035)  
Address: 112 O'Sullivan Beach Road, LONSDALE SA 5160

Central Irrigation Trust (ABN 17 023 608 663)  
Address: 4 Fowles Street, BARMERA SA 5345

SMR Automotive (ABN 77 007 550 094)  
Address: 18 Sheriffs Road, LONSDALE SA 5160

Thomas Foods International (ABN 52 008 178 121)  
Address: Level 2, 170 Fullarton Road, DULWICH SA 5013

Rex Minerals (SA) Pty Ltd (ACN 125 407 669) & Rex Minerals Ltd  
(ABN 12 124 960 523)  
Address: Level 19, 11 Waymouth Street, ADELAIDE SA 5000,

(together, **Participating Members**).

- (b) Short description of business carried on by applicant:  
(Refer to direction 3)

SACOME is the peak industry body representing companies with interests in the South Australian minerals, energy, extractive and oil and gas sectors, including those who provide services to these companies.

Over the years SACOME's activities have helped to shape a positive regulatory environment for its members, saving them time and money.

The Participating Members are companies operating in South Australia in the minerals, energy, extractive, oil and gas, manufacturing and agricultural sectors. For more detail, please refer to section 2.3 in the submission supporting the Application (the **Supporting Submission**) which is lodged with this form.

- (c) Address in Australia for service of documents on the applicant:

SACOME

290 Glen Osmond Road

FULLARTON SA 5064

Attention: Dr Nigel Long

Email: [nlong@sacome.org.au](mailto:nlong@sacome.org.au)

## 2. **Contract, arrangement or understanding**

- (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:  
(Refer to direction 4)

The Participating Members are seeking to establish a joint electricity purchasing group to aggregate their electricity demand needs and place a single tender into the market for the supply of their combined loads with the objective of securing a cost competitive and reliable electricity supply. Following the tender process, each

Participating Member would enter into an individual contract with the chosen electricity supplier(s).

For more detail, please refer to section 3 in the Supporting Submission.

- (b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, cartel provisions, or that do, or would or might, have the effect of substantially lessening competition:  
*(Refer to direction 4)*

The proposed conduct relates to:

- collectively conducting a tender process for the supply of the combined electricity loads of the Participating Members;
- 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 supplier(s) by entering into individual contracts with the electricity supplier(s) on substantially similar terms and conditions;
- entering into an agreement with the successful electricity supplier(s) on the same or substantially the same terms and conditions; and
- making joint decisions regarding the administration and operation of certain aspects of their electricity supply agreements.

For more detail, please refer to section 3 in the Supporting Submission.

- (c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

The proposed conduct relates to sourcing a cost competitive and reliable electricity supply for the Participating Members.

For more detail, please refer to section 3 in the Supporting Submission.

- (d) The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

The Participating Members seek authorisation for a total period of 11 years, comprising:

- i. a [6-12 month period for the joint tender process, including investigation, market approach, negotiation, execution and mobilisation of the electricity supply agreement;
- ii. a 3-5 year period for the initial term of each electricity supply agreement between the successful electricity supplier(s) and each Participating Member; and
- iii. a 3-5 year period to reflect the ability of each Participating Member to negotiate an extension to the term of its electricity supply agreement.

For more detail, please refer to section 3.4 in the Supporting Submission.

### **3. Parties to the proposed arrangement**

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

Following the completion of the joint tender process, the successful electricity supplier(s) will offer to enter into a separate electricity supply agreement with each Participating Member.

The electricity supplier(s) is likely to be a licensed electricity retailer with generation operations located in South Australia. However, the joint tender process will be technology neutral and will seek proposals from any person who is able to offer a cost competitive and reliable electricity supply.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:  
*(Refer to direction 5)*

The Participating Members are companies operating in the South Australia in the minerals, energy, extractive, oil and gas, manufacturing and agricultural sectors. For details of each Participating Member, please refer to section 2.3 in the Supporting Submission.

### **4. Public benefit claims**

- (a) Arguments in support of authorisation:  
*(Refer to direction 6)*

Please refer to section 6 in the Supporting Submission.

- (b) Facts and evidence relied upon in support of these claims:

Please refer to section 6 in the Supporting Submission.

### **5. Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

*(Refer to direction 7)*

The relevant markets are both:

- i. the market for the generation and wholesale supply of electricity governed by the National Electricity Law (i.e. the National Electricity Market (or NEM)) or, in the alternative, the market for the generation and wholesale supply of electricity in South Australia; and
- ii. the market for the retail supply of electricity to commercial and industrial customers in South Australia.

For more detail, please refer to section 4 in the Supporting Submission.

## **6. Public detriments**

- (a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:  
(Refer to direction 8)

Please refer to section 7 in the Supporting Submission.

- (b) Facts and evidence relevant to these detriments:

Please refer to section 7 in the Supporting Submission.

## **7. Contract, arrangements or understandings in similar terms**

This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.

- (a) Is this application to be so expressed?

No.

- (b) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:  
(Refer to direction 9)

Not applicable.

- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

Not applicable.

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

Not applicable.

## **8. Joint Ventures**

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

No.

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Not applicable.

- (c) If so, by whom or on whose behalf are those other applications being made?

Not applicable.

**9. Further information**

- (a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

SACOME

290 Glen Osmond Road

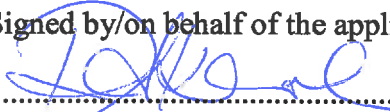
FULLARTON SA 5064

Attention: Dr Nigel Long

Email: [nlong@sacome.org.au](mailto:nlong@sacome.org.au)

Dated..... 17/01/17 .....

Signed by/on behalf of the applicant

  
.....  
(Signature)

REBECCA KNOWL  
.....  
(Full Name)

CEO  
.....  
(Position in Organisation)

## **DIRECTIONS**

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

In lodging this form, applicants must include all information, including supporting evidence, that they wish the Commission to take into account in assessing the application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions. Provide details of those provisions of the contract, arrangement or understanding that do, or would or might, substantially lessen competition.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and
  - (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
  6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
  7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the authorisation.
  8. Provide details of the detriments to the public which may result from the proposed contract, arrangement or understanding including quantification of those detriments where possible.
  9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.



# Supporting Submission

SACOME Electricity Purchasing Group

SACOME and others

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# Supporting Submission

Confidential version

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# 1. Executive Summary

This Application is made by The South Australian Chamber of Mines and Energy Inc (SACOME) on behalf of the entities listed in section 2.3 (together, the **Participating Members**).

The Participating Members seek interim and final authorisation from the Australian Competition and Consumer Commission (ACCC) to establish a joint electricity purchasing group. Once authorised, the Participating Members will use their combined electricity demands to secure cost competitive and reliable electricity supply arrangements.

It is anticipated that this procurement process will include the issue of a broad based tender seeking competitive offers for the supply of the combined electricity loads, the selection of the best overall offer and the engagement of the chosen electricity supplier or suppliers. Following completion of this procurement process, each Participating Member will be able to enter into an individual contract with the chosen electricity supplier or suppliers.

The Participating Members seek authorisation in respect of the following proposed conduct:

- (a) interim authorisation to collectively:
  - (i) investigate potential electricity supply options for their combined electricity loads;
  - (ii) conduct a tender process for the supply of their combined electricity loads that is designed to identify and select an electricity supplier or a group of electricity suppliers to supply their combined electricity loads; and
  - (iii) negotiate 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 supplier(s) by entering into individual contracts with the electricity supplier(s) on substantially similar terms and conditions;
- (b) final authorisation for each Participating Member to enter into an agreement with the successful electricity supplier(s) on the same (or substantially similar) terms and conditions; and
- (c) each of the Participating Members being involved in joint decisions regarding the administration and operation of certain aspects of their electricity supply agreements (specifically, periodic and other price reviews).

The Participating Members consider that the proposed conduct will provide significant public benefits, as the Australian energy market transitions towards a lower carbon emission future by:

- increasing competition in the South Australian electricity market by encouraging new generation (there is currently a lack of competition in the South Australian electricity market);<sup>1</sup>
- 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);<sup>2</sup>

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<sup>1</sup> See section 2.1, page 7 of this submission for detail on the Herfindahl-Hirschman Index (HHI).

<sup>2</sup> On 2 December AEMO issued Market Notice 56089 implementing a minimum requirement for synchronous generating units to be online at any time in South Australia - [http://www.aemo.com.au/-/media/Files/Media\\_Centre/2016/SA-System-Strength.pdf](http://www.aemo.com.au/-/media/Files/Media_Centre/2016/SA-System-Strength.pdf)

- providing all consumers with access to potential lower prices through increased competition.

The Participating Members do not consider that the proposed conduct will lead to any public detriments, such as any substantial lessening of competition in a relevant market.

## 2. Introduction

### 2.1. Background and Context

As recently recognised by the Australian Energy Market Operator (AEMO), Australia's National Electricity Market (the NEM), and the South Australian electricity market in particular, is undergoing a transformational change.<sup>3</sup> Fossil-fuelled synchronous generation is progressively being displaced by distributed, intermittent, non-synchronous generation at both the utility scale and the residential level as consumers become more active about how their demand is met.<sup>4</sup>

This change in generation mix is challenging the designs built into the power system and the regulatory framework within which it operates.<sup>5</sup>

These challenges are more acute in South Australia due to the combination of its generation mix and the risk of separation from the rest of the NEM<sup>6</sup>. These South Australian challenges have recently been highlighted by the following events:

- (a) The separation event that occurred on 1 November 2015 when the SA power system partially separated (became islanded) from the interconnected power system resulting in the loss of 160 megawatts (MW) of customer load and 11 MW of generation.<sup>7</sup>
- (b) The closure of the Northern Power Station in May 2016, which has created a number of challenges for transmission network voltage control in the Upper North and Eyre Peninsula regions of South Australia.<sup>8</sup>
- (c) The extraordinary spikes in South Australia's wholesale electricity price in July 2016 of up to \$14,000 per megawatt hour (MWh) when the Heywood Interconnector capacity was reduced due to a planned outage whilst the weather was cold and the wind wasn't blowing.<sup>9</sup>
- (d) The 'Black System' event in South Australia, which occurred during severe weather on 28 September 2016. Preliminary reports suggest that voltage disturbances caused by transmission system faults led to a total sustained reduction of 445MW of wind generation across nine windfarms, plus further transient reductions of 39 MW in each ride-through event.<sup>10</sup> The sudden loss of 445MW of generation increased flows on the Heywood Interconnector triggering its automatic protection mechanism to operate and disconnect to

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<sup>3</sup> Australian Energy Market Operator, *Future Power System Security Program: Progress Report*, August 2016, p 9.

<sup>4</sup> *Ibid*, p 9.

<sup>5</sup> *Ibid*, p 9.

<sup>6</sup> *Ibid*, p 9.

<sup>7</sup> AEMO, *Load Shedding in South Australia on Sunday 1 November 2015: An AEMO Power System Operating Incident Report for the National Electricity Market*, February 2016, p 5.

<sup>8</sup> *Ibid*, p 4.

<sup>9</sup> AEMO, *Electricity Pricing Event Reports*, July 2016.

<sup>10</sup> AEMO, *Updated Report – Black System Event in South Australia on 28 September 2016*, 19 October 2016, p 5.

avoid damage to the interconnector and other transmission network infrastructure in both South Australia and Victoria.<sup>11</sup>

- (e) The 'load shedding event' on 30 November 2016 which was triggered by a transmission network fault in Victoria, which in turn led to an outage of the Heywood interconnector and the shedding of load in South Australia to restore required frequency levels<sup>12</sup>.

The challenges facing the South Australian electricity market have also been the subject of numerous investigations, State and Federal Government announcements, industry comments and expert commentary. All commentators agree that South Australia will experience a sustained period of high electricity prices and increased price volatility.

These events have had significant implications for each of the Participating Members who together purchase 1,400GWh of electricity per annum and need a stable and reliable supply of electricity to conduct their business operations. Electricity supply disruptions have a material impact on mining operations, furnaces, processing and refrigeration which resulted in production losses of up to \$20 million in the case of the 28 September 2016 event.

The Participating Members are aware that at a Federal level, the COAG Energy Council, Australian Energy Market Commission (AEMC) and AEMO, and at a State level, the South Australian Government, are currently considering the recent events in South Australia and how these challenges can be addressed in the short, medium and long term.<sup>13</sup> However, the potential solutions being discussed, which include regulatory intervention and a third interconnector between South Australia and either Victoria or New South Wales, will take a number of years to be developed and implemented.

The Participating Members are of the view that the proposed conduct presents a solution to the immediate challenges faced in the South Australian electricity market in advance of the development and implementation of the above solutions.

Having access to a competitive and reasonably priced reliable supply of electricity during this intermediary period is critical to each of the Participating Members and will directly influence their decisions concerning the scope of their ongoing business operations in South Australia during and potentially beyond this intermediary period.

Without such a solution, each Participating Member would need to purchase electricity either:

- directly through the spot market (which is currently generating prices that are very volatile and high in comparison to other States)<sup>14</sup>; or
- from existing electricity suppliers who are offering contracts which reflect this price volatility in futures pricing and the higher spot prices in South Australia (refer to Figures 1 & 2 below<sup>15</sup>).

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<sup>11</sup> *Ibid*, p 6.

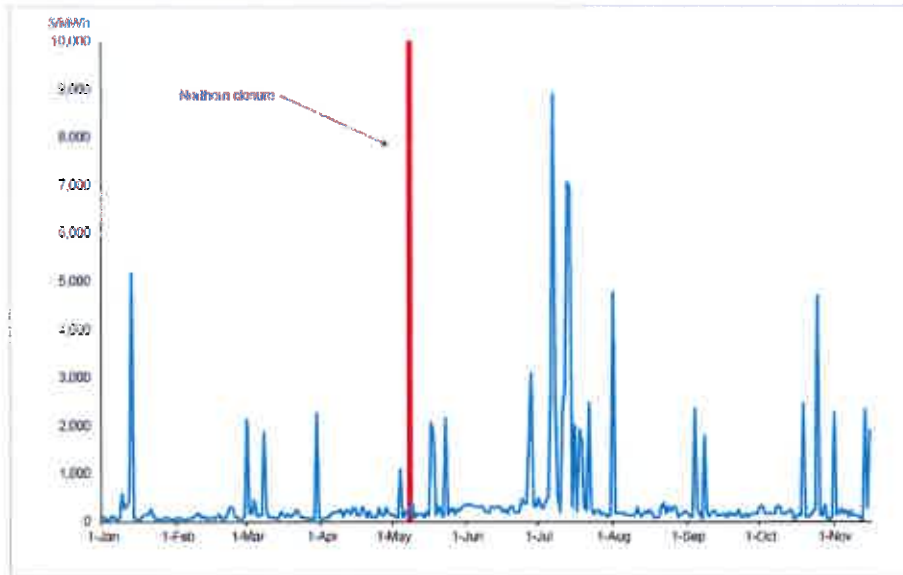
<sup>12</sup> AEMO, *Preliminary Report – South Australia separation event 1 December 2016*, 8 December 2016

<sup>13</sup> See e.g., COAG Energy Council, *Meeting Communiqué*, 7 October 2016; Australian Energy Market Operator, *Future Power System Security Program: Progress Report*, August 2016; AEMC, *Consultation Paper: System Security Market Frameworks Review*, 8 September 2016; South Australian Minister for Mineral Resources and Energy, *Proposed Rule Change – System Security*, 12 July 2016.

<sup>14</sup> Australian Energy Council (AEC), *South Australia: Pioneering Australia's Energy Transformation*, November 2016, p 6.

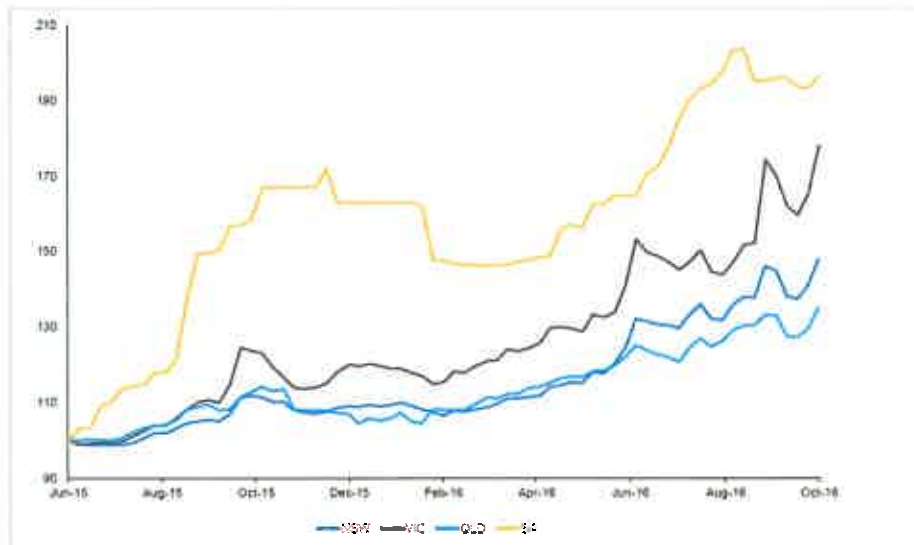
<sup>15</sup> *Ibid*, p 7.

Figure 1: South Australian wholesale spot market, April to September 2016



Source: NEM Review

Figure 2: Future baseload wholesale prices CY 2017 indexed



Source: NEM Futures

Both Figures 1 and 2 clearly illustrate price trajectory and volatility in the South Australian wholesale market; a situation likely to continue and become worse during the 2016/17 summer period. In addition, the limited generation mix and concentration of generation market power in South Australia means that if the Participating Members were to individually seek long term electricity supply agreements, they would be unable to attain cost competitive prices.

The Participating Member's current combined electricity load of 180MW and annual demand of 1,400GWh of electricity is of a sufficient scale to either bring new generation into the South Australian electricity market, encourage existing and underutilised generation to re-enter the South Australian electricity market or generate an innovative solution to the current challenges faced by the Participating Members. We believe that this will not only benefit Participating Members and deliver significant flow on public benefits to the broader South Australian community but will also increase competition and subsequently benefit other consumers of electricity in South Australia.

The encouragement of new or currently mothballed generation to enter or re-enter the South Australian market will ensure further competition and increased power system security in the South Australian. A combined electricity load of 180MW is of a sufficient size to ensure medium sized generators above 200MW generating capacity can obtain the necessary contracted load to operate economically. Further load scheduled to come on line in later years could assist in increasing competition and lowering electricity costs.

There is a lack of market liquidity in the South Australian market at present with estimates of the Herfindahl-Hirschman Index of 3300-3400<sup>16</sup> highlighting the lack of competition that has seen futures pricing above \$100/MWh, illustrated in Figure 2. Bringing further competition into the market should ease the current risk premium in futures pricing not only the Participating Members but also other purchasers outside of the Participating Members.

Collectively, the Participating Members provide a range of products from raw minerals, refined metals, forged and manufactured vehicle parts, and food goods to the local and global markets. Operating in global markets requires the business to be globally competitive. The recent electricity price and power system security shocks, means that the viability of these businesses is coming into doubt. This puts at risk millions of dollars in further investment, up to 7,500 direct jobs and the respective suppliers who service and receive the goods of the Participating Members.

Furthermore, for gas fired generators the option to secure a customer load of 180MW could alleviate pressures on gas market contracts. There is a present issue where generators supplying variable, following load cannot secure competitive long term gas contracts due to their variable use of gas. The establishment of fixed price wholesale electricity contracts with a South Australian based gas fired generator would potentially provide access to lower priced electricity for other users.

## **2.2. SACOME**

SACOME is the peak industry body representing companies with interests in the South Australian minerals, energy, extractive and oil and gas sectors, including those who provide services to these companies.

SACOME's activities have helped to shape a positive regulatory environment for its members; improved and streamlined the assessment and approval process for resources projects and delivered increased efficiencies in time and costs. SACOME engages with all its stakeholders to develop good social, economic and environmental outcomes from the resources sector and progress the State's economic development.

After the closure of Northern Power Station and the market events of 1 November 2015, 7 July 2016, 28 September 2016 and 30 November 2016, it has become very difficult SACOME members to secure competitively priced and reliable electricity supply.

SACOME facilitates a support service for its members to discuss and collectively address matters to manage risk and improve commercial and operational outcomes. It is through the establishment of the SACOME Energy Markets Committee that the Participating Members have decided to make this application to establish a joint electricity purchasing group.

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<sup>16</sup> Melbourne Energy Institute, *Winds of Change: An analysis of recent changes in the South Australian electricity market*, August, 2016, p.30-31

### 2.3. Participating Members

The Participating Members are all companies operating in South Australia in the minerals, energy, extractive and oil and gas, agricultural, manufacturing and food sectors. The Participating Members are listed below:

- (a) Nyrstar Port Pirie Ltd (ABN 31 008 046 428)

Address: PO Box 219, PORT PIRIE SA 5540

Description of business: Global multi-metals business, with a market leading position in zinc and lead, and growing positions in other base and precious metals. Smelting operations in South Australia at Port Pirie.

- (b) Arrium Limited (ABN 63 004 410 833)

Address: Locked Bag 3050, ARTARMON NSW 1570

Description of business: Arrium is an international diversified mining and materials company with two key business segments: Arrium Mining and Arrium Steel. Located in Whyalla South Australia at the Middleback Ranges mining operations and Whyalla Steel Works.

- (c) OZ Minerals Limited (ABN 40 005 482 824)

Address: Level 1, 163 Greenhill Road, PARKSIDE SA 5063

Description of business: Oz Minerals is a copper-focused international mining company based in South Australia operating the Prominent Hill and developing the Carrapateena mines.

- (d) Adelaide Brighton Cement Ltd (ABN 96 007 870 199)

Address: Level 1, 157 Grenfell Street, ADELAIDE SA 5000

Description of business: Adelaide Brighton Cement is a South Australian manufacturer of clinker, cement, lime and dry blended products. ABC operates manufacturing and distribution facilities at its Birkenhead and Angaston plants as well quarries and mines in South Australia.

- (e) Intercast & Forge Pty Ltd (ABN 28 090 515 334)

Address: 1 Schumacher Road, WINGFIELD SA 5013

Description of Business: Intercast and Forge deliver world-class components primarily for the automotive, rail and general industrial markets. They excel with the capability to supply components that consistently meet the close tolerance and safety critical specifications required by modern manufacturing industries. In Australia, they supply 40 per cent of the Australian market for high quality cast iron components

- (f) Hillgrove Resources (ABN 73 004 297 116)

Address: 5-7 King William Road, UNLEY SA 5061

Description of Business: Hillgrove Resources Limited is an Australian mining company listed on the Australian Securities Exchange (ASX: HGO) focused on developing its Indonesian and Australian base and precious metals projects. Hillgrove's flagship development is the Kanmantoo Copper Mine, located less than 55km from Adelaide in South Australia



- (g) Seeley International (ABN 23 054 687 035)

Address: 112 O'Sullivan Beach Road, LONSDALE SA 5160

Description of Business: Seeley International is Australia's largest air conditioning manufacturer and a global leader in developing ingenious, energy-efficient cooling and heating products.

- (h) Central Irrigation Trust (ABN 17 023 608 663)

Address: 4 Fowles Street, BARMERA SA 5345

Description of Business: CIT (Central Irrigation Trust) pumps water from the River Murray through large diameter pipeline systems to 1,400 growers who irrigate 13,000 hectares of horticultural crops in the Riverland Region of South Australia. We also supply 3,200 domestic and 17 Industrial customers. CIT, a private company formed in 1997, manages the assets and operations of eleven Irrigation Trusts being Berri, Cadell, Chaffey, Cobdogla, Golden Heights Kingston, Loxton, Moorook, Mypolonga, Sunlands and Waikerie and the Lyrup Village Settlement Trust. Each Trust is owned by its members, the local irrigators, who own the assets and infrastructure for their district

- (i) SMR Automotive (ABN 77 007 550 094)

Address: 18 Sheriffs Road, LONSDALE SA 5160

Description of Business: SMR is a global corporation with world class engineering capabilities, state-of-the-art manufacturing facilities and a global customer base. Its broad customer base includes major car makers in North America, Europe, Asia, and Australia, as well as non-automotive customers in diversified industries. SMR specializes in research and development, innovative engineering, polymer processing, manufacturing of electronic and electromechanical systems, automated painting, and the assembly of complete systems.

- (j) Thomas Foods International (ABN 52 008 178 121)

Address: Level 2, 170 Fullarton Road, DULWICH SA 5013

Description of Business: Thomas Foods International generates revenue from livestock trading, meat processing and meat wholesaling. The company supplies a wide range of meat products for domestic and overseas markets, exporting to more than 80 countries. It is the largest family owned meat packing company in Australia.

- (k) Rex Minerals (SA) Pty Ltd (ACN 125 407 669) & Rex Minerals Ltd (ABN 12 124 960 523)

Address: Level 19, 11 Waymouth Street, ADELAIDE SA 5000

Description of Business: Rex Minerals discovered the significant Hillside copper / gold ore deposit located near Ardrossan on Yorke Peninsula, SA in 2008, and completed an extended feasibility study in 2015. The company has an approved Mining Lease and is preparing to submit the Program for Environment Protection and Rehabilitation (PEPR) to the SA Department of State Development by September 2017. With improving copper prices and finance availability, Rex estimates the mine could be operational from 2020 onwards.

### 3. Scope of the Authorisation

#### 3.1. Proposed Conduct

The Participating Members seek authorisation to, together with SACOME as an industry body:

- (a) collectively investigate potential electricity supply options for their combined electricity loads;
- (b) collectively conduct a tender process for the supply of their combined electricity loads that is designed to identify and select an electricity supplier(s) to supply their combined electricity loads;
- (c) jointly negotiate 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 supplier(s);
- (d) individually enter into an electricity supply agreement with the successful electricity supplier(s) on the same (or substantially similar) terms and conditions; and
- (e) make joint decisions regarding the administration and operation of certain aspects of their electricity supply agreements (specifically, periodic and other price reviews).

#### 3.2. Joint Tender Process

Subject to obtaining interim authorisation and completing any preliminary investigations concerning potential electricity supply options for the combined electricity loads, a joint tender is intended to be conducted as follows:

- (a) the joint tender will be developed and approved by Participating Members before being issued to the broad electricity supply market;
- (b) the process will be open to all suitably qualified suppliers of electricity;
- (c) all tender responses will be evaluated by SACOME together with a committee of nominated representatives of all Participating Members, and expert advisers as required;
- (d) the tender will be conducted on the basis that the terms of each individual electricity supply agreement will be on substantially similar terms and conditions except as required to meet the individual needs of Participating Members;
- (e) the terms of the electricity supply agreement will be negotiated with one or more preferred tenderers, as determined by the evaluation committee;
- (f) contractual negotiations will be conducted by one or more representatives of the Participating Members or by a representative of SACOME on their behalf; and
- (g) the entry of any Participating Member into an electricity supply agreement with a tenderer will be subject at all times to that Participating Members' internal governance and approval processes.

The Participating Members will obtain advice concerning the tender process, and are open to a broad range of potential outcomes from the tender process, such as:

- (a) a sole electricity supplier being awarded contracts to service all Participating Members for the operating term;
- (b) a consortium of a number of parties and generation types to service all Participating Members for the operating term;
- (c) a portion of the total requirement of the Participating Members being awarded to a combination of (a) and (b).

The 'commencement date' for the electricity supply agreement applying to each Participating Member will depend on when their existing contractual commitments expire (or can be terminated), and so will not necessarily be the same.

### **3.3. Ongoing Administration of Electricity Supply Agreements**

Once each individual electricity supply agreement is in force, it will run on its own terms and be independently administered by the relevant Participating Member, so there will be no ongoing consultation.

However, the Participating Members may also establish a contract working group, comprising representatives of each Participating Member. The contract working group will participate in joint activities and decisions which may include review of supplier performance, exercising contract options, as well as periodic and other price reviews. Each Participating Member seeks authorisation to join with other Participating Members to negotiate collectively with the electricity supplier in relation to significant events that will affect the group as a whole.

### **3.4. Period for which Authorisation is Sought**

The Participating Members seek authorisation for a total period of 11 years, comprising:

- (a) a 6-12 month period for the joint tender process, including investigation, market approach, negotiation, execution and mobilisation of the electricity supply agreements;
- (b) a 3-5 year period for the term of each electricity supply agreement between the successful electricity supplier(s) and each Participating Member; and
- (c) a 3-5 year period to reflect the ability of each Participating Member to extend the term of an electricity supply agreement.

### **3.5. Application for Interim Authorisation**

The Participating Members seek interim authorisation from the ACCC in respect of this Application in order to enable the Participating Members to obtain specialist procurement advice, conduct initial investigations concerning potential electricity supply options and issue their request for tender to the market by 30 March 2017.

As discussed in section 2.1 of this Application, 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 Participating Members are able to act quickly, as any delay in developing and publishing the tender will impact the project timelines and decrease the ability of the Participating Members to effectively address the issues raised in this Application.

Whilst interim authorisation would enable the Participating Members to carry out the joint tender process, no electricity supply agreement pursuant to the joint tender process will be entered into by a Participating Member unless and/or until a final determination from the ACCC authorising the overall conduct comes into effect.

## 4. Market Definition

The Participating Members consider that both of the following markets are relevant to the assessment of the effect of the proposed conduct on competition:

- (a) the market for the generation and wholesale supply of electricity in the NEM or, in the alternative, in the South Australian region of the NEM; and
- (b) the market for the retail supply of electricity to commercial and industrial customers in South Australia.

Wholesale electricity in South Australia, Victoria, the Australian Capital Territory, New South Wales, Queensland and Tasmania is traded through the NEM. Generators in the NEM sell electricity through a wholesale spot market in which prices are determined by dispatch offers and bids and the need to balance electricity supply and demand.

The main customers in the NEM are electricity retailers. These customers bundle electricity with network services for sale to residential, commercial and industrial energy users.<sup>17</sup> The total consumption of electricity in the NEM in 2015-16 was 197.6 terawatt hours (TWh), of which South Australia consumed 13.4 TWh.<sup>18</sup>

As discussed in section 2.1 of this Application, the current combined electricity load of the operating Participating Members represents less than 1.0% of the total consumption in the NEM, and 10% of the total consumption in the South Australian market.

## 5. Counterfactual

If the ACCC does not grant authorisation for the proposed conduct, each of the Participating Members will need to independently pursue a source of supply of electricity.

That would be likely to significantly diminish the ability of the Participating Members to realise cost savings and efficiencies sought by the proposed conduct. The following outcomes will be likely if the Participating Members do not carry out the proposed conduct:

- (a) higher transaction costs and higher electricity input costs, which may be passed on to customers through higher prices for the goods and services provided by the Participating Members;
- (b) fewer electricity supplier(s) coming to market due to the additional administrative burden of tendering and negotiating agreements for each Participating Member, and the lesser economic incentive;
- (c) possible lack of consistency between contract terms inhibiting electricity supplier(s) to independently achieve the same economies of scale and reduction of operational risk; and
- (d) periods in which all electricity consumers in South Australia, including the Participating Members, do not have access to cost competitive and reliable electricity supply.

As a consequence, each Participating Member is likely to incur substantially greater costs than under the proposed conduct, and suffer significant operational losses from a lack of a cost competitive and reliable electricity supply. In the longer term, this could lead to the Participating

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<sup>17</sup> Australian Energy Regulator (AER), *State of the Energy Market 2015*, p 24.

<sup>18</sup> AER, Electricity supply to regions of the National Electricity Market, <<https://www.aer.gov.au/wholesale-markets/wholesale-statistics/national-electricity-market-electricity-consumption>> as at 20 October 2016.

Members making decisions to cease operating in South Australia, and/or in Australia. Such loss would be passed on to the broader community through the loss of jobs and economic prosperity.

## 6. Public Benefits

### 6.1. Overview

Public benefit is not defined in the CCA. However, it has been interpreted broadly and includes:<sup>19</sup>

... anything of value to the community generally, any contribution to the aims pursued by the society including as one of its principal elements (in the context of trade practices legislation) the achievement of the goals of efficiency and progress. Plainly the assessment of efficiency and progress must be from the perspective of society as a whole: the best use of society's resources. We bear in mind that (in the language of economics today) efficiency is a concept that is usually taken to encompass "progress"; and that commonly efficiency is said to encompass allocative efficiency, productive efficiency and dynamic efficiency.

The proposed conduct will provide a range of public benefits, which include:

- increasing competition in the South Australian market by encouraging new generation;
- improving power system security with additional synchronous dispatchable generation able to provide Frequency Control and Ancillary Services, which reduces the risk of major unplanned supply interruptions (blackouts);
- providing all consumers with access to potential lower prices through increased competition; and
- increased efficiency and cost savings through the collaborative approach to the tender.

We expand on each of these public benefits in the following sections.

### 6.2. Potential for Increased Competition for Supply of Electricity in South Australia

The aggregated electricity requirements of the Participating Members and the length of the electricity supply agreements sought by them is likely to incentivise competition for the supply of electricity, compared to each individual Participating Member negotiating for the supply of a smaller amount of electricity.

At present, customers of electricity do not have any meaningful bargaining power in the South Australian market, as evidenced by the upward trend in the electricity prices offered by suppliers<sup>20</sup> and the highly volatile spot price.<sup>21</sup> The combined load of the Participating Members would encourage suppliers to compete for the electricity supply contract(s) on offer, in a manner that would not occur if the Participating Members continued to act independently.

The high cost to business of electricity necessarily impacts the costs of goods and services offered by the Participating Members to consumers (or to its downstream customers). Any lower

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<sup>19</sup> *Re 7-Eleven* (1994), ATPR 41-357 at [42,777]. See also *Queensland Co-operative Milling Association Ltd* (1976), ATPR 40-012 at 17,242 and *Vff Chicken Meat Growers' Boycott Authorisation* (2006) ACompT 9 at [75].

<sup>20</sup> see ASX Futures pricing for South Australia; <[https://www.asxenergy.com.au/futures\\_au/S](https://www.asxenergy.com.au/futures_au/S)>

<sup>21</sup> See pricing event of 7<sup>th</sup> July 2016; AEMO, Electricity Pricing Event Report - Wednesday 06 July 2016 to Friday 08 July 2016, <[https://www.aemo.com.au/-/media/Files/Electricity/NEM/Market\\_Notices\\_and\\_Events/Pricing-Event-Reports/July-2016/06-08-July-2016---High-Energy-Price-SA.pdf](https://www.aemo.com.au/-/media/Files/Electricity/NEM/Market_Notices_and_Events/Pricing-Event-Reports/July-2016/06-08-July-2016---High-Energy-Price-SA.pdf)>

electricity price obtained by the Participating Members will ultimately benefit the customers of each Participating Member (e.g. consumers).

### **6.3. Greater Economies of Scale and Efficiency**

Each Participating Member is likely to be able to source electricity separately. However, the electricity requirements of an individual Participating Member are unlikely to be sufficient to encourage a new entrant into the market for the generation and wholesale supply of electricity in South Australia. By aggregating their electricity requirements, the Participating Members will be able to realise greater economies of scale than individual electricity supply arrangements and encourage new entrants into the market.

### **6.4. Competitively Priced Electricity for South Australia**

The prospect of a joint tender may provide an improved incentive for new market entrants or existing electricity suppliers to expand their current operations, as well as an incentive for existing electricity suppliers not to cease or roll back operations in South Australia. This may increase the mix of generation available in South Australia, and ensure that competitively priced electricity is available for the Participating Members and for other consumers of electricity.

Having competitively priced electricity is critical to each of the Participating Members and will likely be the basis upon which future decisions to continue or expand business operations in the state of South Australia will be made. This is very important as many of the businesses conducted by Participating Members are located in rural and regional areas. Increased employment and industry development in these areas will strengthen the economies of these communities. The broader economy would also benefit from the development, and procurement of the goods and services, of the businesses conducted by the Participating Members.

The events of the 7 July 2016 where a convergence of market factors resulted in sustained high spot market prices in South Australia<sup>22</sup> resulted in the Participating Members incurring significant electricity costs and in some cases the temporary shutdown of operations. Measures to improve the affordability of electricity prices in South Australia will result in Participating Members conducting business in a globally competitive manner.

### **6.5. Reliable Supply of Electricity for South Australia**

The introduction of further synchronous generation into the South Australian market has the additional benefit of enhancing the reliability and security of electricity supply in South Australia. The events of 1 November 2015, 28 September 2016 and 30 November 2016 demonstrate that with a high reliance on non-synchronous generation and the Heywood interconnector to provide frequency control, the South Australian grid is unsecure in these high wind, high import periods with low synchronous generation.

The November 2015 trip of the Heywood interconnector resulted in under frequency load shedding to maintain the stability of the grid<sup>23</sup>. The resulting 35-minute blackout caused major disruptions and delays for mining operations, manufacturers and processing facilities in South

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<sup>22</sup> Grattan Institute, *Keeping the lights on: Lessons from South Australia's power shock*, September 2016

<sup>23</sup> Australian Energy Market Operator (AEMO), *Electricity Pricing Event Reports – November 2015*, 9 September 2016

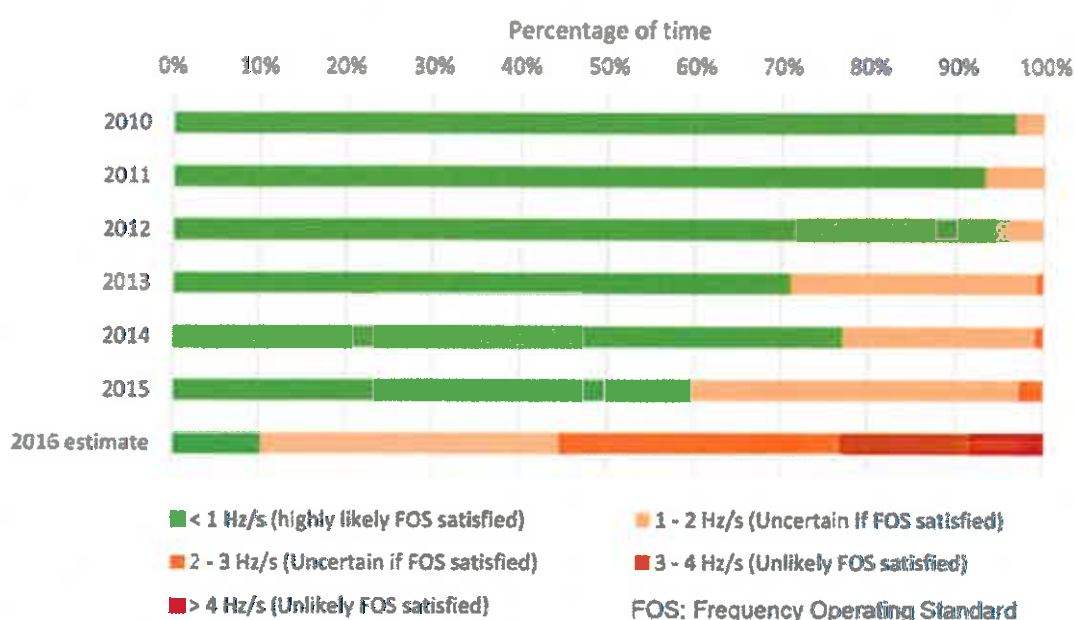
Australia. Participating Members experienced operational outages for up to 24 hours as they recovered to restart their facilities.

The September 2016 system black, due to a lack of system inertia which led to a 6 Hz rate of change of frequency (RoCoF) event<sup>24</sup>, resulted in millions of dollars of lost production and repairs for Participating Members. Many experienced disruptions for up to two weeks waiting for infrastructure repairs and lost production due to the lack of electricity to restart operations or maintain required operating conditions. The cost of the outage for those Participating Members over this period ranged from millions of dollars a day in lost productivity to tens of millions in repairs and restart procedures. The State-wide industrial impact was estimated to be at least \$367 million<sup>25</sup>. This financial impact is weighing on some Participating Members' future decisions on investment in projects in South Australia.

This is an issue that ElectraNet has noted in its RIT-T South Australian Energy Transformation report as an area of concern. RoCoF events, like the one that occurred on 28 September 2016, are increasing in South Australia. Figure 3 demonstrates the increasing frequency of larger RoCoF events in South Australia.<sup>26</sup>

ElectraNet emphasized that “where the RoCoF exceeds 3 Hz/s, it becomes highly unlikely that the Frequency Operating Standard (FOS) will be met, with a consequent high risk of a ‘system black’ event”.<sup>27</sup> Since 2010, RoCoF exceeding 3Hz/s has increase to greater than 20%.

Figure 3: Increasing exposure to RoCoF in South Australia for separation



Source: AEMO Future Power System Security Program, Progress Report, August 2016

<sup>24</sup> AEMO, *Black System South Australia – 28 September 2016: Third Preliminary Report*, December 2016, p 58.

<sup>25</sup> *The Australian, Today in SA: blackout cost \$367m but could have been worse*, 9 December 2016

<sup>26</sup> ElectraNet, *South Australian Energy Transformation: RIT-T Project Specification Consultation Report*, 7 November 2016, p 26.

<sup>27</sup> *Ibid*, p 27.



To provide a joint tender to increase synchronous generation within South Australia should improve power system security and reliability, and reduce the risk of future serious unplanned supply interruptions. Businesses in South Australia have been impacted greatly by the lack of reliable electricity supply and as such, improvement to electricity supply is a critical outcome (and a material public benefit) for the business community as a whole.

## 6.6. Transaction Cost Savings

Conducting a tender for an arrangement of this complexity is a detailed and rigorous process requiring significant time and resources. This process will involve the preparation of tender documents and the advertising, receipt and evaluation of tenders. The process of contract preparation, negotiation and administration will then need to follow the selection of a successful tender.

A joint tendering and contract process will be a significantly more efficient process as it will eliminate the duplication of work by each of the Participating Members and the tenderers. It will also eliminate the need for duplication of specialist energy and legal advisers which will be cost prohibitive for some individual Participating Members. This will save the time that would be taken, and the costs that would be incurred, by each Participating Member if it was required to conduct a separate tender process, which will ultimately benefit the customers of each Participating Member.

## 7. Public Detriment

SACOME submits that the proposed conduct will not result in any significant public detriment and any public detriment would be outweighed by the substantial public benefits outlined above.

The Participating Members' present combined electricity loads equate to less than 1.0% of the NEM, and approximately 10% of the South Australian market, and future loads will not significantly alter these proportions:

	Participating Members	South Australia	NEM
Annual Electricity Consumption	1.4 TWh	12.9 TWh <sup>25</sup>	197.6 TWh

In the NEM, the amount of electricity that the Participating Members are intending to purchase subject to the proposed conduct is comparatively small. As such, the significant volume of electricity required by other users of electricity in these markets is not subject to the proposed conduct and may remain available to alternative suppliers who are not successful tenderers. This means that the proposed conduct could not have any significant or substantial impact on competition.

Any public detriment would also be mitigated by the following:

- (a) the tender process will be open and transparent and will ensure that there is competition between electricity suppliers to be awarded the tender;
- (b) the successful electricity supplier(s) will be free to contract with any other parties for the supply of electricity if it wishes to do so;

<sup>25</sup> AEMO, *South Australian Electricity Report*, August 2016, p. 14.



- (c) the process will be technology neutral with all retailers and producers with differing asset portfolios able to apply; and
- (d) applying as a group entity, it enables retailers and generators to source a firm load that is of significant size enabling easier contractual arrangements for fuel sources.

## 8. Conclusion

The Participating Members are at risk of becoming economically uncompetitive in their respective globalised commodity markets. The ability for these members to hedge their exposure to a volatile spot market in South Australia has been severely diminished due to the lack of competition and thereby liquidity in the futures market. With the closure of Northern Power Plant in South Australia futures contracts have doubled, with some Participating Members who have smaller load profiles attracting higher risk premiums due to the fundamentals of the energy markets in South Australia.

Through a joint tender process, the Participating Members seek to group their load profiles to provide a stable load to ensure that retailers can provide competitive affordable contracts to hedge against exposure to the South Australian spot market. These benefits, through the contracting of a firm load, will provide a number of public benefits by:

- increasing competition in the South Australian market by encouraging new generation;
- improving power system security with additional synchronous dispatchable generation able to provide Frequency Control and Ancillary Services, which reduces the risk of major unplanned supply interruptions (blackouts) ;
- providing all consumers with access to potential lower prices through increased competition.

The ability for the Participating Members to hedge against a volatile South Australian market and thereby protect their business from uneconomical input costs is critical in a State that has high unemployment<sup>29</sup> and low economic development.<sup>30</sup> These Participating Members have indicated that there is a real and present risk that their operations now and future investments may be deferred or cease unless they have access to competitively priced and secure electricity supply. This would put thousands of direct jobs at risk and further thousands that rely on the supply of the Participating Members' services and goods.

This project is a transitional arrangement for the Participating Members as the National Electricity Market undergoes structural and physical changes. These changes are expected to bring in additional volatility in prices and this project will enable the Participating Members to effectively hedge against this volatility as a group.

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<sup>29</sup> South Australian Centre for Economic Studies, Economic Indicators – Labour and Demography, <<https://www.adelaide.edu.au/saces/economy/labour/>>

<sup>30</sup> South Australian Centre for Economic Studies, Economic Indicators – Production and Trade <<https://www.adelaide.edu.au/saces/economy/production/>>