



Draft Determination and interim authorisation

Application for authorisation AA1000484
lodged by the
Australian Energy Market Operator (AEMO)
in respect of cooperation and information sharing for the purpose of
responding to effects of the COVID-19 pandemic on the energy system

Authorisation number: AA1000484

24 July 2020

Commissioners:

Sims

Keogh

Rickard

Court

Ridgeway

Summary

The ACCC proposes to grant conditional authorisation to enable the Australian Energy Market Operator (AEMO) and participants in the Australian gas and/or electricity markets to cooperate to ensure the ongoing safety, security, or reliability of Australian energy systems during the pandemic by:

- a) sharing information regarding ongoing operation at their facilities
- b) co-ordinating repairs and maintenance
- c) sharing essential personnel
- d) sharing essential inputs.

Conduct between energy market participants under the authorisation must be facilitated by AEMO. Conduct under the proposed authorisation does not include information sharing or agreements about the wholesale or retail price of energy, or retail cost or profits.

The ACCC proposes to grant conditional authorisation until 31 March 2021. This is subject to three proposed conditions, which impose reporting requirements, particular reporting requirements on conduct undertaken by LNG producers, and requires that agreements formed under the authorisation not endure beyond the period of authorisation.

The ACCC has also decided to revoke the interim authorisation granted on 17 April 2020 and grant a replacement interim authorisation to enable cooperation in the form of sharing information regarding ongoing operation, co-coordinating repairs and maintenance, sharing essential personnel, and sharing essential inputs. The replacement interim authorisation allows narrower conduct than what was permitted by the 17 April 2020 interim authorisation. Interim authorisation will remain in place until the final authorisation comes into force, the interim authorisation is revoked, or the application for authorisation is withdrawn.

The ACCC invites submissions in relation to this draft determination by 14 August 2020 before making its final decision.

1. The application for authorisation

- 1.1. On 30 March 2020, the Australian Energy Market Operator (**AEMO**), on behalf of itself, AEMO Industry Participants¹ and Other Approved Participants² (collectively, the **Participants**) lodged application for authorisation AA1000484 with the Australian Competition and Consumer Commission (the **ACCC**). This application for authorisation AA1000484 was made under subsection 88(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**).
- 1.2. The ACCC can grant authorisation which provides businesses with legal protection for arrangements that may otherwise risk breaching the law but are not harmful to competition and/or are likely to result in overall public benefits.

¹ As defined at paragraph **Error! Reference source not found.** a), below.

² As defined at paragraph **Error! Reference source not found.** b), below.

- 1.3. AEMO also requested the ACCC grant, under subsection 91(2) of the Act, interim authorisation to enable the Participants to engage in the Proposed Conduct³ while the ACCC is considering the substantive application. The ACCC initially granted interim authorisation on 3 April 2020. This interim authorisation was revoked and replaced with a new interim authorisation on 17 April 2020. The ACCC is now revoking the interim authorisation granted on 17 April 2020 and replacing it with an interim authorisation that aligns with the Proposed Conduct set out below. Interim authorisation is set out in section 6.

The Applicant and Participants

- 1.4. AEMO was established by the Council of Australian Governments in 2009 to manage the National Electricity Market (**NEM**) and the eastern and south-eastern states and Australian gas markets, this role has expanded to now include responsibility for power in Western Australia and various gas market functions. The application was lodged by AEMO on behalf of itself and:

a) AEMO Industry Participants:

Participants in Australian gas and/or electricity markets and their related bodies corporate. The participants and members registered, or with an approved exemption, in respect of markets and systems operated or managed by AEMO can be found in the lists at the following links:

- <https://aemo.com.au/en/energy-systems/electricity/national-electricity-market-nem/participate-in-the-market/information-for-currentparticipants/participants-registered-for-the-nem>
- <https://aemo.com.au/learn/market-participants/gas-market-participants>
- <https://aemo.com.au/energy-systems/electricity/wholesale-electricity-market-wem/participate-in-the-market/information-for-currentparticipants/participants-registered-in-the-wem>
- <https://gbbwa.aemo.com.au/#participants>

b) Other Approved Participants:

Any other parties involved in energy or related sectors who in the future wish to engage in the conduct the subject of the application provided the ACCC's prior approval is obtained through the following process:

Where AEMO proposes that other parties involved in energy or related sectors are to engage in the Proposed Conduct and that those parties should obtain the protection of any interim authorisation granted by the ACCC, the following process should be followed:

- (i) AEMO must seek the approval of the ACCC by sending an email to adjudication@acc.gov.au with the subject 'AEMO authorisation – request to be covered by authorisation', identifying the entity(ies) that it wishes to be covered by the authorisation and the types of coordination measures that it proposes those entities to engage in.

³ See paragraphs 1.5 to 1.8, below.

- (ii) *If the ACCC approves a party involved in the energy or related sectors to engage in the Proposed Conduct, that party will have the protection of authorisation from the time it is notified of the ACCC's decision.*

The Proposed Conduct

- 1.5. Following amendments to the application for authorisation, AEMO is seeking authorisation to discuss, enter into or give effect to any contract, arrangement or understanding between the Participants, or engage in any conduct, which has the purpose of:
- a) ensuring the safe, secure and/or reliable operation of Australia's energy systems and/or the continued operation and integrity of the wholesale markets that underpin energy supply during the COVID-19 pandemic;
 - b) ensuring ongoing energy supply to support consumers, businesses, government operations and the economy during the pandemic;
 - c) minimising the risk of any energy outages during the pandemic;
 - d) ensuring that there are sufficient resources to maintain and operate energy infrastructure, including personnel and essential inputs such as fuel, parts and equipment; or
 - e) planning or preparing for the impacts of the COVID-19 pandemic in relation to any of the above,

and which falls in one of the following categories:

- i. **(sharing information regarding ongoing operation)** sharing of information related to the ongoing availability, performance and/or operation of AEMO Industry Participant facilities and any risks to ongoing availability, performance and/or operation
- ii. **(co-ordinating repairs and maintenance)** planning for and/or minimising any disruptions to energy supply, for example, by coordinating scheduling of any repairs, maintenance and other works requiring outages
- iii. **(sharing essential personnel)** sharing information and/or entering into common arrangements in relation to essential employees and contractors to ensure there are sufficient personnel to maintain and operate energy infrastructure, and
- iv. **(sharing essential inputs)** sharing information about the availability of, and/or entering into arrangements to share, essential inputs for energy production, generation, transmission, distribution and supply systems and infrastructure, such as parts, equipment or specialised resources necessary for essential maintenance, as well as other consumable materials necessary for the operation of AEMO Industry Participant facilities (but in all cases excluding fuel for thermal generators),

and is limited to:

- discussions, conduct, contracts, arrangements and/or understandings to which AEMO is either a party or has facilitated; or
- discussions, conduct, contracts, arrangements and/or understandings to which AEMO is not a party but which are carried out for the purposes of implementing a discussion, conduct, contract, arrangement and/or understanding that AEMO has facilitated.

- 1.6. The application further specifies that:
- a) where discussions relate to a specific state or territory jurisdiction, discussions will only occur where attended by a senior officer of the relevant state or territory government department with responsibility for energy, or their delegate,
 - b) where conduct, contracts, arrangements and/or understandings relate to a specific state or territory jurisdiction, conduct, contracts, arrangements and/or understandings must be agreed to by, or arise out of a discussion attended by, a senior officer of the relevant state or territory government department with responsibility for energy, or their delegate.
- 1.7. Finally, authorisation is not sought for, and the conduct does not include, entering into any contracts, arrangements or understandings regarding the wholesale or retail price of energy; or sharing confidential information relating to retail pricing matters, cost or profits.
- 1.8. The conduct as described in paragraphs 1.5 to 1.7 is referred to in this draft determination as the **Proposed Conduct**.

2. Background

- 2.1. AEMO submits that the COVID-19 pandemic could have the potential to impact the reliability and security of Australian energy systems and markets. In particular:
- a) essential workers and contractors who perform regular maintenance and repairs of critical infrastructure may become unwell with the virus or otherwise be required to self-isolate;
 - b) disruption to local and global supply chains as a result of the pandemic may result in shortages of parts, equipment, fuel or other essential resources that are necessary to produce and supply energy; and/or
 - c) lock downs of cities and regional centres are leading to significant changes in demand patterns, which, without close management can have implications for system stability from a technical perspective.
- 2.2. AEMO is concerned that any disruption to the security of Australia's energy systems could have significant consequences for consumers, businesses and the Australian economy.
- 2.3. AEMO originally applied for authorisation for a broader range of conduct, including sharing information and entering into arrangements on deferring non-essential works, gas availability, managing system stability, and any other conduct AEMO deems necessary as notified to the ACCC. Subsets of this wider range of conduct were permitted in the interim authorisations of 3 April 2020 and 17 April 2020.
- 2.4. On 19 June 2020, the ACCC sought information from AEMO as to the ongoing need for the authorisation, in the context of the pandemic in Australia appearing to be improving compared to the state when the application for authorisation was lodged. On 16 July 2020 AEMO confirmed that, while there was an ongoing need for authorisation, it is appropriate for the Proposed Conduct to be narrowed to reflect AEMO's better understanding of the impact of the pandemic in Australia since the application was first lodged in March 2020. The Proposed Conduct set out in section 1 above reflects the narrowed conduct AEMO provide on 16 July.

AEMO's role in the energy market

- 2.5. AEMO's role is to oversee the operations and security of the NEM power system in eastern and south-eastern Australia and the Wholesale Energy Market (**WEM**) in Western Australia. AEMO also manages a variety of gas trading markets and infrastructure.
- 2.6. AEMO's functions seek to promote the efficient investment in, and efficient use of, gas and electricity for the long-term interests of Australian consumers in relation to price, quality, safety, reliability and security.⁴
- 2.7. AEMO responsibilities include monitoring supply and demand, voltage and frequency, and managing planned and unplanned outages, and emergencies. AEMO manages the Gas Short Term Trading Market, the Gas Supply Hubs and Pipeline Capacity Trading, as well as retail markets in electricity and gas. To achieve this, AEMO monitors system performance and security and manages the essential services that support a secure electricity system, such as regulating balancing, frequency control, inertia and system strength, voltage management and system restart capabilities.⁵
- 2.8. Forecasting and modelling of potential (or developing) changes is critical to AEMO's work. AEMO produces short-term, long-term and operational predictions of demand and supply, and provides information to market participants about forecast risks to supply. AEMO also assesses and plans for the impact that operational changes will have on the system, such as planned outages, the connection of new generators and gas supply levels.⁶
- 2.9. If an energy-related event or emergency were to occur, AEMO is responsible for restoring energy systems to a secure operating state as soon as safely possible. AEMO are also responsible for coordination and management of emergency arrangements across the NEM, WEM and gas markets in eastern and south-eastern Australia, including collaborating with governments, emergency services and the energy industry participants during major disruptions of energy supply.⁷

3. Consultation

- 3.1. A public consultation process informs the ACCC's assessment of the likely public benefits and detriments from the Proposed Conduct.
- 3.2. The ACCC invited submissions from a range of potentially interested parties including major energy suppliers, customers, industry associations, consumer groups, state and federal government agencies and relevant regulatory bodies.⁸
- 3.3. The ACCC received four submissions from interested parties in relation to the application. These submissions were from the Public Interest Advocacy Centre, ATCO, the Australian Energy Council, and the Consumers' Federation of Australia.
- 3.4. The submissions generally support the granting of authorisation. However, some parties note that the ACCC should be cautious of authorising the Proposed Conduct for the requested 12 months due to the success Australia has had in managing the

⁴ AEMO, 'What we do', <https://aemo.com.au/about/what-we-do>

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ A list of the parties consulted and the public submissions received is available from the ACCC's public register www.accc.gov.au/authorisationsregister.

pandemic and suggested authorisation only continue for six months. Some interested parties also suggested that authorisation should only be provided for the conduct permitted by the 17 April 2020 interim authorisation.

- 3.5. As noted at paragraph 2.4, AEMO amended the application for authorisation to narrow the forms of cooperation for which it is seeking authorisation to what is now the Proposed Conduct after interested party submissions had been provided.
- 3.6. Public submissions by AEMO and interested parties are on the Public Register for this matter.

4. ACCC assessment

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

Relevant areas of Competition

- 4.3. To assess the likely effect of the Proposed Conduct, the ACCC identifies the relevant areas of competition likely to be impacted.
- 4.4. AEMO submits that the Participants compete in relation to the generation, transmission, transportation and/or supply of electricity and gas in Australia.
- 4.5. The ACCC agrees that the relevant areas of competition are likely to be, separately, the generation, transmission, and supply of electricity in Australia; and the extraction, transportation and supply of gas in Australia. Input markets to these supply chains, including for services such as maintenance, are also likely to be relevant to the Proposed Conduct.

Future with and without the Proposed Conduct

- 4.6. In applying the authorisation test, the ACCC compares the likely future with the Proposed Conduct that is the subject of the authorisation to the likely future in which the Proposed Conduct does not occur.
- 4.7. AEMO submits that the future without the Proposed Conduct is that the Participants may be unable to coordinate certain activities in order to ensure the safe, secure and reliable supply of energy during the pandemic. AEMO further notes that although it has certain emergency powers to deal with immediate threats to power system security and interruptions to supply, the existing emergency management arrangements may not be well suited to dealing with the needs of the current pandemic situation.
- 4.8. The ACCC considers that in the future without the Proposed Conduct, any COVID-19 related issues that arise in the energy system and that fall within the scope of the Proposed Conduct would be managed to the best of AEMO's ability using its existing powers. AEMO may also liaise and negotiate with individual industry participants on a bilateral basis in order to achieve some degree of coordination.

4.9. In the future with the with Proposed Conduct, AEMO and industry participants will be able to coordinate to mitigate or resolve COVID-19 related issues in the energy system that fall with the scope of the Proposed Conduct. This coordination is beyond AEMO's existing powers and so will better allow a collective response to COVID-19 related issues in the system.

Public benefits

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

*...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.*⁹

4.11. The ACCC has considered the following public benefits:

- Greater capacity to ensure the ongoing safety, security and/or reliability of Australian energy systems
- Minimising costly delays to maintenance.

Greater capacity to ensure the ongoing safety, security and/or reliability of Australian energy systems

4.12. AEMO submits that the Proposed Conduct will help ensure the ongoing safety, security, and/or reliability of Australian energy systems and the integrity of wholesale markets during the pandemic. The supply of gas and electricity to consumers is essential, and disruptions to these services during the pandemic can have significant detrimental impacts for consumers, businesses and the economy.

4.13. AEMO considers the Proposed Conduct will improve the information available to it regarding the ongoing availability, performance and operation of energy industry participants, help to minimise any disruptions to energy supply (for example, by coordinating the scheduling of any repairs, maintenance and other works requiring outages) and improve its management of system stability.

4.14. AEMO submits that disruptions to energy supply could occur as a result of three factors:

- a) essential workers or contractors responsible for maintenance or repairs becoming unwell and/or being required to self-isolate as a result of COVID-19
- b) possible shortages in parts, equipment or other essential resources as a result of disruptions to local and global supply chains, and/or
- c) ongoing changes in demand for energy as a result of changed economic activity and lock-downs of cities and regional centres which may have implications for system stability from a technical perspective.

4.15. The ACCC considers that the Proposed Conduct will improve the ability for the Participants to respond to impacts of the pandemic on Australia's energy systems and markets. Should such impacts arise, AEMO will be able to convene relevant groups to

⁹ 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.

quickly share critical information and, where necessary, collectively agree to specific responses. Such collective action is unlikely to be achieved absent the authorisation, or is unlikely to be achieved quickly as AEMO would need to work individually with relevant Participants.

- 4.16. This enhanced capacity to respond to impacts of the pandemic reduces the potential for the pandemic to give rise to outages or other system security issues. Improvements to system security, safety and reliability flow onto economic benefits by avoiding outages for consumers and producers, and minimising damage to energy system infrastructure through system instability.
- 4.17. The ACCC therefore considers that the Proposed Conduct is likely to result in a public benefit in the form of providing greater capacity to ensure the ongoing safety, security and/or reliability of Australian energy systems.

Minimising costly delays to maintenance

- 4.18. Travel restrictions, border closures, and other impacts on production are likely to impact on critical maintenance activities in the energy system. Maintenance at facilities such as thermal generators can involve significant temporary workforces and highly specialised foreign labour. These workforces may not be available, or may be significantly restricted in their movements during the pandemic. Core components are often imported from specialised manufacturers, and such supply chains may be disrupted due to COVID-19.
- 4.19. The pandemic is likely to make maintenance activities more difficult to plan for, and has the potential to cause delays and extended outages at specific generators. Such delays or outages at specific generators would impose costs to those generators. These costs will likely eventually be passed through to consumers.
- 4.20. The Proposed Conduct is likely to reduce the potential for COVID-19 to cause delays or extended outages at specific generators. Participants should be able to coordinate a maintenance schedule that minimises the potential for delays to cascade and create overlapping, expensive outages. Sharing information will better allow participants to find relevant labour and components in the unique COVID-19 circumstances.
- 4.21. While in normal market conditions, the ACCC would generally take the view that competition between generators is likely to be superior in allocating maintenance labour and components, the COVID-19 pandemic may cause acute supply issues to such markets, such as forcing large teams of skilled labour to quarantine, or become sick, for extended periods of time. Given the potentially high cost of delays to maintenance, the ACCC considers that there is public benefit in minimising these costs during the pandemic.
- 4.22. AEMO and relevant Participants in Queensland have been coordinating maintenance under the interim authorisation. Such activities reflect that there have been some COVID-19 related disruptions to maintenance plans.
- 4.23. An example of this public benefit during the interim authorisation (provided by AEMO) was when, through discussions held under the interim authorisation, one generator was able to quickly locate an alternative local supplier of a major part that would ordinarily be imported from Germany but was unavailable for importation due to pandemic related restrictions in Europe. This avoided an extended outage which was at risk of overlapping with other scheduled outages in the state, giving rise to risks of energy outages. The sharing of this information (which does not ordinarily occur, even

through AEMO) caused other generators to consider their supply chains for their outages earlier than originally planned, to avoid the risk of delays for their outages.

4.24. The ACCC considers that the Proposed Conduct is likely to result in a public benefit in the form of minimising costly delays to maintenance.

ACCC conclusion on public benefit

4.25. The ACCC considers that the Proposed Conduct is likely to result in public benefits from providing greater capacity to ensure the ongoing safety, security and/or reliability of Australian energy systems, and from minimising costly delays to maintenance.

Public detriments

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

...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.¹⁰

4.27. The ACCC has considered the following public detriments:

- Reduced competition in wholesale electricity markets
- Reduced competition for maintenance services and other inputs.

Reduced competition in wholesale electricity markets

4.28. The ACCC considers that sharing commercially sensitive information regarding ongoing operations of facilities, including generators, could lessen competition in wholesale electricity markets.

4.29. The transparency afforded to Participants over the operations of their competitors could facilitate anti-competitive and inefficient behaviours. For example, the bidding behaviour of generators may change if they learn through the Proposed Conduct that a particular competitor's plant is suffering technical issues.

4.30. Such detriments may be increased through information asymmetries. Because the information that is shared under the Proposed Conduct may not otherwise be publicly available, Participants may be able to use market sensitive information to their advantage and to the disadvantage of non-participants. Where some businesses have access to more or better information than their rivals the resulting information asymmetry can act as a barrier to competition for the less informed business and have a distortionary effect on the market. For example, customers and aggregators on the demand-side may be less well informed about the precise details of planned plant outages than the generators involved in the Proposed Conduct. The result could be that businesses on the demand-side have less opportunity to anticipate and respond to strategic behaviour than the involved generators.

4.31. However, the ACCC considers that the risk of a lessening of competition occurring in wholesale electricity markets is limited for two reasons. First, because the Proposed Conduct does not include entering into any contracts, arrangements or understandings regarding the wholesale price of energy. Second, in relation to the concerns regarding asymmetric information, the Australian Energy Market Commission recently made a

¹⁰ Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

change to the National Electricity Rules to increase the transparency of information made available to Participants via the medium-term projected assessment of system adequacy (MTPASA) process.¹¹ The new Rule provides for the publication of generator availability information at the individual participant and plant unit level. This would substantially reduce the degree of information asymmetry concerning planned outages between parties involved in the Proposed Conduct and those not involved. The new Rule is due to take effect from 20 August 2020.

4.32. Risk is also limited by the Proposed Conduct stipulating that Participants are not able to conduct discussions or form agreements without the oversight of AEMO.

4.33. The ACCC considers that the Proposed Conduct may lead to detriments by reducing competition in wholesale electricity markets, but that such detriments are unlikely and would not persist long term.

Reduced competition for maintenance services and other inputs

4.34. By allowing the Participants to coordinate their repairs and maintenance, the Proposed Conduct is likely to reduce competition for the supply of maintenance services.

4.35. A coordinated approach to maintenance may be less efficient in allocating service providers to the most valuable maintenance work, and may impact service provider revenue. Coordination may have similar impacts on markets for other inputs, such as components or non-maintenance related personnel.

4.36. The ACCC considers that the Proposed Conduct is likely to lessen competition for maintenance services and other inputs. However, as discussed previously, given the unique circumstances of the COVID-19 pandemic, the ACCC considers that coordination to minimise disruption to the system, or costly delays to generators is likely to give rise to public benefits.

ACCC conclusion on public detriment

4.37. The ACCC considers that the Proposed Conduct is likely to lead to some public detriment as a result of a lessening of competition in wholesale markets and for maintenance services and other inputs.

Balance of public benefit and detriment

4.38. The ACCC considers that the Proposed Conduct is likely to result in public benefits in the form of greater capacity to ensure the ongoing safety, security, or reliability of Australian energy systems, and minimise costly delays to maintenance.

4.39. The ACCC considers that the Proposed Conduct is likely to lead to some public detriment as a result of a lessening of competition in wholesale markets and for maintenance services and other inputs. However, the ACCC considers that the detriment resulting from coordination in respect of these services is offset by the public benefit that such coordination brings by reducing disruption to the system and costly delays to generators.

4.40. For the reasons outlined in this draft determination, and subject to the proposed conditions, the ACCC is satisfied that the Proposed Conduct is likely to result in a

¹¹ Australian Energy Market Commission, *Rule Determination, National Electricity Amendment (Improving Transparency and Extending Duration of MTPASA) Rule 2020, 20 February 2020*, available at: https://www.aemc.gov.au/sites/default/files/documents/erc0270_-_mt_pasa_final_determination.pdf (accessed 16 July 2020).

public benefit and that this public benefit would outweigh any likely detriment to the public from the Proposed Conduct.

Length of authorisation

- 4.41. The Act allows the ACCC to grant authorisation for a limited period of time.¹² This enables the ACCC to be in a position to be satisfied that the likely public benefits will 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.
- 4.42. AEMO seeks authorisation for 12 months from the date of final determination. This would be until approximately 30 September 2021.
- 4.43. The Public Interest Advocacy Centre submits that with restrictions across Australia being lifted (at the time of its submission) and in the absence of a severe second wave of infections, the types of disruptions that the proposed conduct seeks to overcome may no longer be material and the ACCC should consider a six month authorisation period rather than 12. This would be until approximately 31 March 2021.
- 4.44. The ACCC considers that COVID-19 related authorisations should only be in place so long as they are necessary. From the information provided to date, it is unclear that AEMO and industry participants will need to continue cooperating (in the manner enabled by the authorisation) for a further 12 months post-final determination in order to respond effectively to challenges caused by COVID-19. As such, subject to further information and submissions it receives, the ACCC considers that a shorter period of authorisation is appropriate.
- 4.45. The ACCC accordingly proposes to grant authorisation until 31 March 2021.

5. Draft determination

The application

- 5.1. On 30 March 2020, AEMO lodged application AA1000484 with the ACCC, seeking authorisation under subsection 88(1) of the Act. AEMO amended its application for authorisation on 16 July 2020.
- 5.2. AEMO seeks authorisation for the Proposed Conduct described at paragraphs 1.5 to 1.8. Subsection 90A(1) of the Act requires that before determining an application for authorisation, the ACCC shall prepare a draft determination.

The authorisation test

- 5.3. Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the Proposed Conduct is likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would be likely to result from the Proposed Conduct.
- 5.4. For the reasons outlined in this draft determination and subject to the conditions below, the ACCC is satisfied, in all the circumstances, that the Proposed Conduct would be likely to result in a benefit to the public and the benefit to the public would outweigh the

¹² Subsection 91(1)

detriment to the public that would result or be likely to result from the Proposed Conduct, including any lessening of competition.

- 5.5. Accordingly, subject to the proposed conditions, the ACCC proposes to grant authorisation.

Conditions of authorisation

- 5.6. In its interim authorisations of 3 April and 17 April 2020 the ACCC imposed conditions requiring, in broad terms, required AEMO to regularly report to the ACCC how authorisation is being used, Participants to continue to comply with conditions imposed in related authorisations, and any agreements formed in reliance of the interim authorisation not to endure beyond the authorisation period.
- 5.7. These conditions provide important transparency in relation to the conduct being undertaken under the interim authorisation, ensure that other (related) authorisations are not compromised and signal to Participants how appropriate agreements and arrangements should be structured. The ACCC considers that these mechanisms minimise the risk and extent of detriment, discussed above, and therefore proposes to retain conditions to this effect in the proposed authorisation.
- 5.8. The ACCC proposes to grant authorisation subject to the following conditions:

Condition 1: Reporting Requirements

- 5.9. AEMO must comply with the attached Reporting and Communications Protocol (**Attachment A**).

Condition 2(a): WA and NT LNG producers

- 5.10. Where the Proposed Conduct involves the scheduling of maintenance at LNG facilities in WA or the NT, Disclosing Producers (as defined in Attachment C) must comply with Attachment C.

Condition 2(b): Queensland LNG producers

- 5.11. Where the Proposed Conduct involves the scheduling of maintenance at LNG facilities in Queensland, LNG Producers (as defined in Attachment D) must comply with Attachment D.

Condition 3: Agreements not to endure beyond authorisation period

- 5.12. Any contract, arrangement or understanding entered into in reliance on this authorisation must provide for its immediate termination (other than any provisions dealing with ongoing confidentiality obligations) upon the expiry or revocation of this authorisation.

Conduct which the ACCC proposes to authorise

- 5.13. The ACCC proposes to grant conditional authorisation AA1000484 to enable the Participants to cooperate to ensure the ongoing safety, security, or reliability of Australian energy systems during the pandemic as described in paragraphs 1.5 to 1.8 and defined as the Proposed Conduct.
- 5.14. The ACCC proposes to grant authorisation in relation to Division 1 of Part IV of the Act and section 45 of the Act.

5.15. The ACCC proposes to grant authorisation AA1000484 for until 31 March 2021.

5.16. This draft determination is made on 24 July 2020.

6. Interim authorisation

6.1. Section 91 of the Act allows the ACCC, where it considers it appropriate, to grant interim authorisation. This allows the parties to engage in the Proposed Conduct while the ACCC is considering the substantive application.

Initial interim authorisations

6.2. Initially AEMO requested interim authorisation for the Proposed Conduct, along with cooperating on deferring non-essential works, sharing information on gas availability, managing system stability, and any other conduct AEMO deems necessary and as notified to the ACCC.

6.3. On 3 April 2020, the ACCC granted interim authorisation under subsection 91(2) of the Act for a subset of the conduct. On 17 April 2020, the interim authorisation was revoked and a new interim authorisation issued to allow the Participants to engage in all of the conduct proposed by AEMO at that time, with the exception of sharing information regarding gas availability.¹³ Both of these interim authorisations were subject to conditions.

Request to vary interim authorisation

6.4. On 16 July, AEMO wrote to the ACCC to narrow the scope of the conduct sought under authorisation to the Proposed Conduct and requested that the interim authorisation be varied to reflect the Proposed Conduct.

ACCC's decision on interim authorisation

6.5. The ACCC has decided to revoke the 17 April 2020 interim authorisation, and grant a replacement conditional interim authorisation to allow the Participants to engage in the Proposed Conduct. The interim authorisation commences immediately and will remain in place until the date the ACCC's final determination comes into effect, until the interim authorisation is revoked or the application for authorisation is withdrawn.

6.6. The ACCC has decided to grant interim authorisation as it is unlikely that interim authorisation will materially alter the competitive dynamics in any market on an enduring basis. As set out in the ACCC's assessment of the Proposed Conduct above, the ACCC considers that the Proposed Conduct is likely to result in a net public benefit, and that any public detriments arising from the Proposed Conduct are likely to be limited.

6.7. Interim authorisation is granted to allow the Participants to coordinate in relation to a narrow range of conduct. If the ACCC does not ultimately grant authorisation, the affected markets are likely to return to the competitive dynamics they exhibited before the ACCC granted interim authorisation.

Conditions of interim authorisation

¹³ See ACCC Interim Authorisation Decision of 17 April 2020 available at <https://www.accc.gov.au/system/files/public-registers/documents/Interim%20Authorisation%20Decision%20-%2017.04.20%20-%20PR%20-%20AA1000484%20AEMO.pdf>.

6.8. The ACCC proposes to grant interim authorisation subject to the following conditions:

Condition 1: Reporting Requirements

6.9. AEMO must comply with the Reporting and Communications Protocol set out at **Attachment B**.

Condition 2(a): WA and NT LNG producers

6.10. Where interim authorisation conduct involves the scheduling of maintenance at LNG facilities in WA or the NT, Disclosing Producers (as defined in Attachment C) must comply with Attachment C.

Condition 2(b): Queensland LNG producers

6.11. Where the interim authorisation conduct involves the scheduling of maintenance at LNG facilities in Queensland, LNG Producers (as defined in Attachment D) must comply with Attachment D.

Condition 3: Agreements not to endure beyond authorisation period

6.12. Any contract, arrangement or understanding entered into in reliance on this interim authorisation must provide for its immediate termination on the expiry of this interim authorisation, and all conduct giving effect to any such contract, arrangement or understanding must cease upon termination, other than any provisions dealing with ongoing confidentiality obligations.

7. Next steps

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

Attachment A: Reporting and Communications Protocol

Australian Energy Market Operator (AEMO)

Application for authorisation AA1000484

Final Determination: XX September 2020

Purpose

1. This is the Reporting and Communications Protocol referred to in condition 1 of the Final Determination granted by the ACCC on XX September 2020 in respect of proposed arrangements between AEMO and certain gas and electricity industry participants for the purpose of dealing with the effects of the COVID-19 pandemic on Australia's energy systems (**Authorisation**).
2. Capitalised terms used but not defined in this document have the meaning given in the Final Determination.

AEMO's reporting commitments

3. While AEMO engages in conduct enabled by the Authorisation, AEMO will use its best endeavours to provide no later than the first Thursday of each month (or if not a business day in Sydney, on the next business day) a report to the ACCC setting out each material contract, arrangement, understanding or decision made by AEMO and AEMO Industry Participants (and any Other Approved Participants) in the previous month that involves the Conduct, including:
 - a) the dates of all material decisions, contracts, arrangements or understandings formed that rely on the Authorisation,
 - b) the parties to each material decision, contract, arrangement or understanding formed that rely on the Authorisation,
 - c) what topics were discussed at meetings where those material decisions, contracts, arrangements or understandings were formed, and/or the material content of those contracts, arrangements, understandings or decisions, including key details such as the relevant products or services, quantities, timings, and financial or other compensation,
 - d) a description of the issues arising from the COVID-19 pandemic that the relevant decision, contract, arrangement or understanding seeks to address and how it will be addressed,
 - e) all material decisions, contracts, arrangements or understandings referred to in the AEMO update to Energy Coordination Mechanism meetings,
 - f) where possible a non-confidential version of the report for publication on the public register.

Information requested and concerns raised by the ACCC

4. The ACCC may request additional information regarding conduct enabled by the Authorisation. AEMO, any AEMO Industry Participant and any Other Approved Participant must promptly provide any further information requested by the ACCC.
5. An ACCC representative may elect to attend any meeting or call where it is intended that material decisions, contracts, arrangements or understandings may be formed as an observer for the purpose of observing that the relevant conduct of those groups which might give rise to concerns under Part IV of the CCA notwithstanding the Authorisation granted on XX September 2020. Where reasonably practicable, AEMO will provide the ACCC with advance notice of any regular meetings where material decisions, contracts, arrangements or understandings are expected to be formed. The ACCC will give AEMO notice in advance of its proposed representative at the relevant meeting or call.
6. Any notice or request for information under paragraphs 4 to 5 should be provided to the contact person nominated by AEMO for the purposes of this Reporting Protocol.

Confidentiality

7. Unless stated otherwise, AEMO asks that the ACCC receive any information provided under this Reporting Protocol on a confidential basis in accordance with the ACCC's statutory obligations on the basis set out below:
 - a. there is no restriction on the internal use, including future use, that the ACCC may make of the information consistent with its statutory functions;
 - b. the confidential information may be disclosed to the ACCC's external advisors and consultants on condition that each such advisor or consultant is informed of the obligation to treat the information as confidential; and
 - c. the ACCC may disclose the confidential information to third parties (in addition to its external advisors or consultants) if compelled by law or in accordance with section 155AAA of the CCA.
8. Nothing in paragraph 7 limits AEMO's obligations under paragraph 3 above.

Attachment B:

Reporting and Communications Protocol

Australian Energy Market Operator (AEMO)

Application for authorisation AA1000484

Interim authorisation decision: 24 July 2020

Purpose

1. This is the Reporting and Communications Protocol referred to in condition 1 of the interim authorisation granted by the ACCC on 24 July 2020 in respect of proposed arrangements between AEMO and certain gas and electricity industry participants for the purpose of dealing with the effects of the COVID-19 pandemic on Australia's energy systems (**Interim Authorisation**).
2. Capitalised terms used but not defined in this document have the meaning given in the Draft Determination.

AEMO's reporting commitments

3. While AEMO engages in conduct enabled by the Interim Authorisation, AEMO will use its best endeavours to provide no later than each Thursday (or if not a business day in Sydney, on the next business day) a report to the ACCC setting out each material contract, arrangement, understanding or decision made by AEMO and AEMO Industry Participants (and any Other Approved Participants) in the previous week that involves the Proposed Conduct, including:
 - a) the dates of all material decisions, contracts, arrangements or understandings formed that rely on the Interim Authorisation,
 - b) the parties to each material decision, contract, arrangement or understanding formed that rely on the Interim Authorisation,
 - c) what topics were discussed at meetings where those material decisions, contracts, arrangements or understandings were formed, and/or the material content of those contracts, arrangements, understandings or decisions, including key details such as the relevant products or services, quantities, timings, and financial or other compensation,
 - d) a description of the issues arising from the COVID-19 pandemic that the relevant decision, contract, arrangement or understanding seeks to address and how it will be addressed,
 - e) all material decisions, contracts, arrangements or understandings referred to in the AEMO update to Energy Coordination Mechanism meetings,
 - f) where possible a non-confidential version of the report for publication on the public register

Information requested and concerns raised by the ACCC

4. The ACCC may request additional information regarding conduct enabled by the Interim Authorisation. AEMO, any AEMO Industry Participant and any Other Approved Participant must promptly provide any further information requested by the ACCC.
5. An ACCC representative may elect to attend any meeting or call where it is intended that material decisions, contracts, arrangements or understandings may be formed as an observer for the purpose of observing that the relevant conduct of those groups which might give rise to concerns under Part IV of the CCA notwithstanding the Interim Authorisation granted on 24 July 2020. Where reasonably practicable, AEMO will provide the ACCC with advance notice of any regular meetings where material decisions, contracts, arrangements or understandings are expected to be formed. The ACCC will give AEMO notice in advance of its proposed representative at the relevant meeting or call.
6. Any notice or request for information under paragraphs 4 to 5 should be provided to the contact person nominated by AEMO for the purposes of this Reporting Protocol.

Confidentiality

7. Unless stated otherwise, AEMO asks that the ACCC receive any information provided under this Reporting Protocol on a confidential basis in accordance with the ACCC's statutory obligations on the basis set out below:
 - a. there is no restriction on the internal use, including future use, that the ACCC may make of the information consistent with its statutory functions;
 - b. the confidential information may be disclosed to the ACCC's external advisors and consultants on condition that each such advisor or consultant is informed of the obligation to treat the information as confidential; and
 - c. the ACCC may disclose the confidential information to third parties (in addition to its external advisors or consultants) if compelled by law or in accordance with section 155AAA of the CCA.
8. Nothing in paragraph 7 limits AEMO's obligations under paragraph 3 above.

Attachment C:

Disclosure requirements on WA and NT LNG producers

Definitions:

WA and NT LNG Maintenance Activities means where Chevron Australia Pty Ltd (**Chevron**), Inpex Operations Australia Pty Ltd (**Inpex**), Shell Australia Pty Ltd (**Shell**) and/or Woodside Energy Limited (**Woodside**):

- a) make and give effect to arrangements or understandings among the applicants regarding the sequencing and timing of the conduct of scheduled maintenance at the facilities which support LNG production, including the sequencing and timing of shutdowns and partial plant outages associated with such maintenance by:
 - i. identifying the maintenance requirements for each of the facilities which support LNG production, including the scope and expected duration of maintenance campaigns and any shutdowns or partial plant outages associated with those maintenance campaigns;
 - ii. classifying planned maintenance campaigns (e.g. major/minor shutdown maintenance or campaign maintenance);
 - iii. working to identify optimal maintenance windows having regard to factors such as climate, safety considerations and resource constraints;
 - iv. scheduling maintenance in such a way as to minimise contractor mobilisation and demobilisation costs;
 - v. developing a process to:
 - A. nominate preferred dates for planned maintenance;
 - B. negotiate and agree the proposed dates for planned maintenance at each of the facilities supporting LNG production;
 - C. inform one another of ad hoc unplanned maintenance requirements;
 - D. consult about variations to any maintenance dates;
 - E. resolve conflicts where maintenance dates overlap; and
 - F. prepare and agree a schedule recording the planned maintenance dates for relevant facilities; and
- b) exchange information for the purpose of making and giving effect to the arrangements and understandings referred to in paragraph (a), including information about:
 - i. maintenance techniques, safety practices and operational processes, including personnel requirements, specialist equipment and the use, storage, transport and disposal of hazardous chemicals;
 - ii. potential resource constraints associated with particular maintenance windows (e.g. transport and accommodation) and discussing mitigation options; and
 - iii. disclosing the names of the maintenance contractors who have been appointed by each party to perform the relevant maintenance, subject to applicable third party confidentiality restrictions

Requirements:

1. The purpose of this condition is to make publicly available any "Maintenance Information" (as defined in paragraph 2, below) that Chevron, INPEX and/or Woodside (each a '**Disclosing Producer**') disclose to another Disclosing Producer or Shell in the course of scheduling maintenance activities for LNG facilities in Western Australia and/or the Northern Territory as part of WA and NT LNG Maintenance Activities
2. Each Disclosing Producer must publish the following information (**Maintenance Information**):
 - a. the Disclosing Producer's reasonable expectation of the dates when the Scheduled Maintenance Activities (as defined in paragraph 4) will commence and conclude;
 - b. whether the Scheduled Maintenance Activities are expected to involve any of the following:
 - i. Shutdown of one half or less of an LNG train;
 - ii. Shutdown of greater than one half of an LNG train but not greater than one LNG train;
 - iii. Shutdown of greater than one LNG train but not greater than one and a half LNG trains;
 - iv. Shutdown of greater than one and a half of an LNG train but not greater than two LNG trains;
 - v. Shutdown of greater than two LNG trains but not greater than two and a half LNG trains;
 - vi. Shutdown of greater than two and a half LNG trains but not greater than three LNG trains;
 - vii. Shutdown of greater than three LNG trains but not greater than three and a half LNG trains;
 - viii. Shutdown of greater than three and a half LNG trains but not greater than four LNG trains;
 - ix. Shutdown of greater than four LNG trains but not greater than four and a half LNG trains; or
 - x. Shutdown of greater than four and a half LNG trains

where such Maintenance Information has been disclosed by a Disclosing Producer to another Disclosing Producer or to Shell pursuant to the Authorisation as soon as is practicable after, but within 2 business days of, the disclosure. For the avoidance of doubt, the information to be published pursuant to this paragraph does not include preliminary discussions between Disclosing Producers and Shell for the purpose of determining possible dates for Scheduled Maintenance Activities.

3. For the purposes of this requirement of publication, a Disclosing Producer will reasonably expect the occurrence of Scheduled Maintenance Activities when the Disclosing Producer has undertaken sufficient planning to define the scope of the shutdown of one or more of its LNG trains (including any partial shutdowns) associated with the Scheduled Maintenance Activities and has confirmed the availability of contractors for the proposed shutdown period.

4. For the purposes of this requirement of publication, Scheduled Maintenance Activities means the performance of scheduled maintenance activities at an LNG facility:
 - a. involving the complete or partial shutdown of an LNG train; and
 - b. where the shutdown is expected to have a duration of a minimum of 1 day.
5. The Disclosing Producer will satisfy the publication requirement under paragraph 2 if it publishes the Maintenance Information on its internet website in a manner that is easily accessible to interested parties.
6. It is acknowledged that the Maintenance Information published by the Disclosing Producer may be subject to change for a number of operational or commercial reasons. The provision of the Maintenance Information by the Disclosing Producer may be made subject to the following disclaimer:

"[insert name of Disclosing Producer] provides the Maintenance Information on the basis that the information:

 - *is provided in good faith and is published as a condition of the Authorisation granted by the ACCC; and*
 - *is based on [insert name of Disclosing Producer]'s reasonable expectations and is subject to change."*
7. Each Disclosing Producer must, as soon as is practicable, amend and/or update its published Maintenance Information as necessary to ensure that the published Maintenance Information continues to accurately reflect the Disclosing Producer's reasonable expectations about Scheduled Maintenance Activities.
8. The Disclosing Producers must comply with the requirements in paragraphs 2 and 7 unless and until:
 - a. they are required to publish the Maintenance Information or information substantially the same as the Maintenance Information in compliance with another statutory or regulatory obligation including, but not limited to, an obligation of publication arising under the National Gas Law or the National Gas Rules (or any regulation, rule, procedure or instrument made thereunder) and:
 - i. one or more Disclosing Producers have notified the ACCC, in writing, of the relevant statutory or regulatory obligation, including details of the publication requirement; and
 - ii. the ACCC has advised, in writing, that the publication requirements in paragraphs 2 and 7 no longer apply; or
 - b. the ACCC has otherwise advised, in writing, that the requirements in paragraphs 2 and 7 no longer apply.

Attachment D:

Disclosure requirements on Queensland LNG producers

Definitions:

LNG Facilities means liquefied natural gas (LNG) facilities on Curtis Island, near Gladstone, Queensland

Curtis Island Maintenance Activities means any situation where Australia Pacific LNG Pty Ltd, Queensland Curtis LNG Project, and Gladstone LNG:

- a) Make and give effect to arrangements or understandings among the Applicants regarding the sequencing and timing of the conduct of scheduled maintenance at the LNG facilities, including the sequencing and timing of shutdowns and partial plant outages associated with such maintenance by:
 1. Identifying the maintenance requirements for each of the LNG facilities, including the scope and expected duration of maintenance campaigns and any shutdowns or partial plant outages associated with those maintenance campaigns
 2. Classifying maintenance campaigns (e.g. major and minor)
 3. Working to identify optimal maintenance windows having regard to factors such as climate, safety considerations and local resource constraints
 4. Scheduling maintenance in such a way as to minimise contractor mobilisation and demobilisation
 5. Developing a process to:
 - i. Nominate preferred dates for planned maintenance
 - ii. Negotiate and agree the proposed dates for planned maintenance at each of the LNG facilities
 - iii. Inform one another of ad hoc unplanned maintenance requirements
 - iv. Consult about variations to any maintenance dates
 - v. Resolve conflicts where maintenance dates overlap
 - vi. Prepare and agree a schedule recording the planned maintenance dates for each LNG facility.
- b) Exchange information for the purpose of making and giving effect to the arrangements and understandings referred to in paragraph a) – including information about:
 1. Maintenance techniques and operational processes, including personnel requirements, specialist equipment and the use, storage, and transport and disposal of hazardous chemicals
 2. Potential resource constraints associated with particular shutdown windows (e.g. accommodation) and discussing mitigation options
 3. Disclosing the names of the maintenance contractors who have been appointed by each of the Applicants to perform the relevant LNG facility maintenance, subject to applicable third party confidentiality restrictions.

Requirements:

1. The purpose of this condition is to make publicly available any "Maintenance Information" (as defined in paragraph 2, below) that an LNG producer the subject of this condition (an **LNG Producer**) discloses to another LNG Producer in the course of Curtis Island Maintenance Activities.
2. Each LNG Producer must publish the following information (**Maintenance Information**):
 - (a) the LNG Producer's reasonable expectation of the dates when the Scheduled Maintenance Activities (as defined in paragraph 4) will commence and conclude;
 - (b) whether the Scheduled Maintenance Activities are expected to involve any of the following:
 - (i) Shutdown of one half or less of an LNG train;
 - (ii) Shutdown of greater than one half of an LNG train but not greater than one LNG train;
 - (iii) Shutdown of greater than one LNG train but not greater than one and a half LNG trains; or
 - (iv) Shutdown of greater than one and a half LNG trains

where such Maintenance Information has been disclosed by an LNG Producer to another LNG Producer pursuant to the Authorisation as soon as is practicable after, but within 2 business days of, the disclosure to the other LNG Producer(s). For the avoidance of doubt, the information to be published pursuant to this paragraph does not include preliminary discussions between LNG Producers for the purpose of determining possible dates for Scheduled Maintenance Activities.

3. For the purposes of this requirement of publication, an LNG Producer will reasonably expect the occurrence of Scheduled Maintenance Activities when the LNG Producer has undertaken sufficient planning to define the scope of the shutdown of one or more of its LNG trains (including any partial shutdowns) associated with the Scheduled Maintenance Activities and has confirmed the availability of contractors for the proposed shutdown period.
4. For the purposes of this requirement of publication, **Scheduled Maintenance Activities** means the performance of scheduled maintenance activities at an LNG Facility:
 - (a) involving the complete or partial shutdown of an LNG train; and
 - (b) where the shutdown is expected to have a duration of a minimum of 1 day.
5. The LNG Producer will satisfy the publication requirement under paragraph 2 if it:
 - (a) provides the Maintenance Information to the Australian Energy Market Operator (AEMO) who accepts receipt of the Maintenance Information and publishes it on the Natural Gas Services Bulletin Board (Bulletin Board) or similar publication; or
 - (b) if the Maintenance Information is not able to be published on the Bulletin Board, publishes the Maintenance Information on its internet website in a manner that is easily accessible to interested parties.
6. It is acknowledged that the Maintenance Information published by the LNG Producer may be subject to change for a number of operational or commercial reasons. The

provision of the Maintenance Information by the LNG Producer may be made subject to the following disclaimer:

"[insert name of LNG Producer] provides the Maintenance Information on the basis that the information:

- is provided in good faith and is published as a condition of the Authorisation granted by the ACCC; and*
- is based on [insert name of LNG Producer]'s reasonable expectations and is subject to change."*

7. Each LNG Producer must, as soon as is practicable, amend and/or update its published Maintenance Information as necessary to ensure that the published Maintenance Information continues to accurately reflect the LNG Producer's reasonable expectations about Scheduled Maintenance Activities.
8. The LNG Producers must comply with the requirements in paragraphs 2 and 7 unless and until:
 - (a) they are required to publish the Maintenance Information or information substantially the same as the Maintenance Information in compliance with another statutory or regulatory obligation including, but not limited to, an obligation of publication arising under the National Gas Law or the National Gas Rules (or any regulation, rule, procedure or instrument made thereunder) and:
 - (i) one or more LNG Producers have notified the ACCC, in writing, of the relevant statutory or regulatory obligation, including details of the publication requirement; and
 - (ii) the ACCC has advised, in writing, that the publication requirements in paragraphs 2 and 7 no longer apply; or
 - (b) the ACCC has otherwise advised, in writing, that the requirements in paragraphs 2 and 7 no longer apply.