

# **Coal Market Price Emergency (Directions for Coal Mines) Notice 2023 No. 2**

under the

Energy and Utilities Administration Act 1987

The Minister for Energy makes the following notice under the *Energy and Utilities Administration Act 1987*, Schedule 3, clause 6.

The Hon. Penny Sharpe, MLC  
Minister for Energy

Dated

---

# Contents

	Page
<b>Part 1 Preliminary</b>	<b>3</b>
1 Name of notice	3
2 Commencement	3
3 Definitions	3
4 Meaning of "existing agreement"	3
5 Coal market price emergency	4
6 Application of notice	4
<b>Part 2 Directions</b>	<b>5</b>
7 Introduction	5
8 Direction about selling thermal coal for more than maximum price per metric tonne delivered	5
9 Direction about accepting offers from coal fired power stations	5
10 Direction about agreements	6
11 Direction about providing advice about coal available for supply to a coal fired power station	6
12 Direction about reserving proportion of expected future quarterly coal production	7
13 Direction about priority to be given to certain coal fired power stations	7
14 Delivery of coal in accordance with directions	8
15 Direction about reporting	8
<b>Part 3 Miscellaneous</b>	<b>10</b>
16 Repeal	10
17 Savings	10
<b>Schedule 1 Reservations of coal production</b>	<b>11</b>

## Coal Market Price Emergency (Directions for Coal Mines) Notice 2023 No. 2

under the

Energy and Utilities Administration Act 1987

### Part 1 Preliminary

#### 1 Name of notice

This notice is the *Coal Market Price Emergency (Directions for Coal Mines) Notice 2023 No. 2*.

#### 2 Commencement

This notice commences on the day on which it is made.

#### 3 Definitions

In this notice—

**coal fired power station** means a coal fired power station that is a Registered participant under the *National Electricity (NSW) Law* in the NSW region of the national electricity market.

**coal supplier** — see section 6.

**coal supply agreement** means an agreement to supply coal.

**existing agreement** — see section 4.

**NSW region** means the region identified as the New South Wales region in the *Regions Publication*, published by the Australian Energy Market Operator Limited, ACN 072 010 327, under the *National Electricity Rules*, clause 2A.1.3.

**the Act** means the *Energy and Utilities Administration Act 1987*.

**thermal coal** means coal suitable for use in a coal fired power station.

**Note**— The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this notice.

#### 4 Meaning of "existing agreement"

- (1) An agreement to which a coal supplier is a party is an **existing agreement** if it is—
  - (a) an agreement entered into before the date specified in Schedule 1, column 2 for the coal supplier, or
  - (b) an agreement entered into on or after the date specified in Schedule 1, column 2 for the coal supplier if a term sheet for the agreement was entered before that date, or
  - (c) an arrangement where—
    - (i) the parties to the arrangement have an ongoing commercial relationship by way of an agreement that is periodically renewed, and
    - (ii) the ongoing commercial relationship has existed for the whole of the relevant period, and
    - (iii) the agreement has been renewed during the relevant period, and
    - (iv) each renewed agreement is in substantially the same terms as the previous agreement, except in relation to price, and
    - (v) the volume of coal supplied under each renewed agreement is no more than 50% more or less than the volume of coal supplied under the previous

- agreement, and
  - (vi) each renewed agreement has effect for at least 12 months, and
  - (vii) the arrangement has been identified as a relevant contract in a notice given by the coal supplier to the Secretary of the Treasury before 14 February 2023.
- (2) An agreement made under an arrangement referred to in subsection (1)(c) continues to be an ***existing agreement*** even if the agreement is renewed after the commencement of this notice if—
- (a) it is in substantially the same terms as the previous agreement, except in relation to price, and
  - (b) it has effect for at least 12 months, and
  - (c) it does not provide for the supply of an amount of coal in a year that is more than the greatest amount of coal supplied under an earlier version of the agreement in a year occurring during the relevant period.
- (3) In this section—  
***relevant period*** means the period of 3 years ending on the commencement of this notice.

## **5 Coal market price emergency**

This notice is made on the basis the Premier has, by written order dated 22 December 2022, declared a coal market price emergency.

## **6 Application of notice**

- (1) This notice applies to the persons (***coal suppliers***) listed in Schedule 1, column 1.

## Part 2 Directions

### 7 Introduction

- (1) The requirements of this Part are directions of the Minister to coal suppliers.
- (2) This part applies to a coal supplier regardless of whether the coal supplier supplies coal through another entity.

### 8 Direction about selling thermal coal for more than maximum price per metric tonne delivered

- (1) A coal supplier must not sell, or offer to sell, thermal coal for use in a coal fired power station to another person at a delivered price that is more than—
  - (a) if a price is set out in Schedule 1, column 5 opposite the coal supplier's name — that price, but only for—
    - (i) coal produced at the mine specified in Schedule 1, column 1 (if a mine is specified); or
    - (ii) coal physically produced by the coal supplier (if a mine is not specified in Schedule 1, column 1)
  - (b) otherwise—
    - (i) for thermal coal that has a specific energy of 5,500kcal/kg net of water vapour as received by the power station —the equivalent of \$125 per metric tonne, or
    - (ii) for thermal coal that has a specific energy other than 5,500kcal/kg net of water vapour as received by the power station —the equivalent of \$0.02273/kcal/kg.
- (2) For the purposes of subsection (1)(a), a coal supplier may apply to the Minister for a price in relation to the coal supplier to be included in Schedule 1, column 5.
- (3) The application must be made—
  - (a) in the form approved by the Regulator, and
  - (b) in the way decided by the Regulator.
- (4) Subsection (1) does not apply—
  - (a) if the sale or offer to sell is to another coal supplier, or
  - (b) to the extent the sale or offer to sell is under an existing agreement with an operator of a coal fired power station, or
  - (c) to the extent the offer to sell or purchase is for thermal coal that will be delivered to a coal fired power station on or after 1 July 2024.

### 9 Direction about accepting offers from coal fired power stations

- (1) A coal supplier must enter into an agreement to supply thermal coal if—
  - (a) the coal supplier receives an offer from a person to purchase thermal coal for use in a coal fired power station, and
  - (b) the offer is on reasonable terms, and
  - (c) the thermal coal is not subject to a coal supply agreement and the offer is for an amount of thermal coal that is equal to or less than the amount of coal the coal supplier must make available under section 12.
- (2) For subsection (1)(b), an offer is on reasonable terms if the offer is on terms that —
  - (a) for a coal supplier that ordinarily supplies thermal coal for coal fired power stations—are substantially the same as the terms on which a coal supplier

- ordinarily supplies thermal coal and at a price that is—
  - (i) equal to the price referred to in section 8(1)(a) or (b), or
  - (ii) less than the price referred to in section 8(1)(a) or (b) and agreed to by the coal supplier, or
- (b) otherwise—
  - (i) are substantially the same as the terms on which the person ordinarily buys thermal coal for use in the coal fired power station other than terms relating to the following, which must be reasonable in the circumstances—
    - (A) the responsibility for unloading the coal,
    - (B) the testing of the coal to measure its suitability for use in a coal fired power station, and
  - (ii) for a term about the quality of coal—is in accordance with subsection (3).
- (3) For subsection (2)(b)(ii), a term about the quality of coal is reasonable in the circumstances if—
  - (a) a term about the quality required by a person who ordinarily buys coal is consistent with a term about the quality of coal supplied to the person under coal supply agreements during the previous 3 years, or
  - (b) a range of different terms about the quality of coal, on which the person ordinarily buys coal, have been specified under different agreements in the past 3 years—a term about thermal coal provides that the thermal coal has a coal quality with a typical specific energy of 5,000kcal/kg net of water vapour as received by the power station.
- (3A) A coal supplier must respond to an offer to enter an agreement for the supply of coal to a coal fired power station—
  - (a) in writing, and
  - (b) within 5 business days after receiving the offer.
- (4) To avoid doubt, this section does not prevent a coal supplier accepting an offer from a person to purchase thermal coal for use in a coal fired power station for which the coal supplier has not previously supplied thermal coal.
- (5) To avoid doubt, this section does not apply to an offer to sell or purchase thermal coal that will be delivered to a coal fired power station on or after 1 July 2024.
- (6) In this section—
  - business day** means a day that is not—
    - (a) a Saturday or Sunday, or
    - (b) a public holiday or bank holiday throughout the State.

**public holiday** means a day appointed under the Public Holidays Act 2010 or another Act as a public holiday.

## 10 Direction about agreements

A coal supplier must not enter an agreement for the supply of thermal coal to a coal fired power station unless the agreement is consistent with this Part.

## 11 Direction about providing advice about coal available for supply to a coal fired power station

- (1) This section applies if the operator of a coal fired power station asks a coal supplier for information about the amount of coal, or expected future amounts of coal, the coal supplier has or will have available for potential coal supply agreements calculated in accordance with section 12(1).

- (2) The coal supplier must provide the information requested within 7 days after receiving the request.
- (3) A coal supplier is not required to provide information under this section more than once in a calendar month to an operator of a coal fired power station.

## **12 Direction about reserving proportion of expected future quarterly coal production**

- (1) A coal supplier must, for each quarterly period, make the lesser of the following amounts of coal available for existing or potential coal supply agreements to supply coal fired power stations—
  - (a) the percentage specified in Schedule 1, column 3 opposite the coal supplier's name, of the coal the coal supplier reasonably expects to produce during the quarterly period,
  - (b) the amount of coal the coal supplier reasonably expects to produce during the quarterly period excluding coal required to meet existing agreements other than existing agreements to supply coal fired power stations,
  - (c) the number of metric tonnes of coal specified in Schedule 1, column 4 opposite the coal supplier's name.
- (2) The coal must be made available—
  - (a) for the first quarterly period—up until 30 days before the start of the quarterly period, or
  - (b) otherwise—up until 60 days before the start of the quarterly period.
- (3) For subsection (1)(a), (b) or (c), the percentage or amount of coal made available by the coal supplier must be calculated having regard only to coal made available by the coal supplier under an existing or potential coal supply agreement with operators of coal fired power stations.

**Example—** If a coal supplier makes coal available for an existing or potential coal supply agreement with another coal supplier, the amount of that coal is not to be used in calculating the percentage or amount of coal under subsection (1)(a), (b) or (c).

- (4) In this section—

***quarterly period*** means the following—

- (a) for the first quarterly period—the period—
  - (i) starting on 1 April 2023, and
  - (ii) ending on 30 June 2023,
- (b) otherwise—the following periods in each year—
  - (i) the period from 1 January to 31 March,
  - (ii) the period from 1 April to 30 June,
  - (iii) the period from 1 July to 30 September,
  - (iv) the period from 1 October to 31 December.

## **13 Direction about priority to be given to certain coal fired power stations**

- (1) A coal supplier must—
  - (a) use reasonable endeavours to deliver coal scheduled under a coal supply agreement to a coal fired power station, if it receives written notice from the power station that a delay or cancellation of delivery would result in the coal fired power station having a stockpile of coal that is expected to be less than the expected consumption of coal by the power station for the next 30 days, and
  - (b) prioritise, over other coal supply agreements, the delivery of coal under a coal supply agreement to a coal fired power station that has a stockpile of coal that is expected to be less than the expected consumption of coal by the power

station for the next 30 days.

- (2) To avoid doubt, subsection (1) does not apply to a coal supplier to the extent it would require the coal supplier to breach an existing agreement.

#### 14 Delivery of coal in accordance with directions

- (1) To avoid doubt nothing in this Part requires a coal supplier to agree to deliver only coal the coal supplier has physically produced to a coal fired power station.

**Example**— A coal supplier may arrange for coal produced by another coal supplier to be delivered to a coal fired power station.

- (2) For subsection (1), if a coal supplier arranges for coal physically produced by a different coal supplier to be sold to a coal fired power station, the coal cannot be sold to that coal fired power station for more than the amount specified in subsection 8(1)(b).

#### 15 Direction about reporting

- (1) A coal supplier must, for each calendar month, prepare a report (a *monthly report*) about the following for each coal mine operated by the coal supplier that supplies coal to coal fired power stations—

- (a) the prices, average specific energy of thermal coal net of water vapour as received by a power station and quantity of coal delivered to individual coal fired power stations,
- (b) the total quantity of coal produced and sent for delivery, including coal that is not intended to be supplied for use in a coal fired power station,
- (c) the quantity and price of coal offered under new coal supply agreements to supply individual coal fired power stations,
- (d) the quantity of actual and contracted deliveries of coal for each coal supply agreement for each coal fired power stations and if the contracted and actual amounts differ, the reasons for the difference,
- (e) forecast amounts of coal to be delivered to coal fired power stations for the next 90 days,
- (f) details of any offers for the supply of coal to coal fired power stations that were refused and the reasons for the refusal,
- (g) the expected amounts of coal to be made available each quarter for existing or potential coal supply agreements to supply coal fired power stations in accordance with section 12(1) and the basis on which these amounts were calculated,
- (h) where a coal supplier delivers coal to a coal fired power station and that coal is not produced at a mine operated by the coal supplier—
  - (i) the price and quantity of coal sourced from the mine operated by the other coal supplier, and
  - (ii) the price the coal was sold for to a coal fired power station and the name of the coal fired power station the coal was sold to,

any other matter reasonably required by the Regulator.

- (2) For subsection (1)(a) and (c), a price less than the equivalent of \$0.02273/kcal/kg must be reported as less than \$125 per tonne.
- (3) The monthly report must be—
- (a) in the form approved by the Regulator, and
  - (b) given in the way decided by the Regulator, and



- (c) accompanied by a statutory declaration—
  - (i) of an officer of the coal supplier with responsibility for, or oversight of, the matters set out in subsection (1), and
  - (ii) declaring that the monthly report is true and correct.
- (4) The first monthly report must cover the period starting on 23 December 2022 and ending on 31 January 2023.
- (5) A monthly report is not required to be prepared for a month after 30 June 2024.
- (6) A monthly report prepared for a month ending on or before 30 June 2024 is not required to address anything expected to occur after 30 June 2024.
- (7) A coal supplier must give the monthly report to the Minister and the Regulator not later than—
  - (a) for the first monthly report—20 February 2023, or
  - (b) otherwise—the 15<sup>th</sup> day of the following calendar month.
- (8) In this section—

***officer*** has the same meaning as in the *Corporations Act 2001* of the Commonwealth.  
***quarter*** means the following periods in a year—

  - (a) the period from 1 January to 31 March,
  - (b) the period from 1 April to 30 June,
  - (c) the period from 1 July to 30 September,
  - (d) the period from 1 October to 31 December.

## Part 3 Miscellaneous

### 16 Repeal

The *Coal Market Price Emergency (Directions for Coal Mines) Notice 2023* is repealed.

**Note**— The notice was published in Gazette No 69 of 16 February 2023.

### 17 Savings

Any act, matter or thing that, immediately before the repeal of the *Coal Market Price Emergency (Directions for Coal Mines) Notice 2023* had effect under that notice continues to have effect under this notice.

## Schedule 1 Reservations of coal production

sections 4, 6, 8 and 12

Coal Supplier	Relevant date	Percentage of coal	Metric tonnes of coal	Maximum price
Bengalla Mining Company Pty Limited ABN 32 053 909 470	9 December 2022	15%	280,000	—
Centennial Airly Pty Limited ABN 84 078 693 722	9 December 2022	75%	120,000	—
Centennial Mandalong Pty Limited ABN 74 101 508 892	9 December 2022	25%	125,000	For thermal coal –  (a) if the thermal coal has a specific energy of 5,500kcal/kg net of water vapour as received by the power station — the equivalent of \$297.40 per metric tonne, or (b) if the thermal coal has a specific energy other than 5,500kcal/kg net of water vapour as received by the power station – the equivalent of \$0.05065/kcal/kg plus \$18.85.
Centennial Myuna Pty Limited ABN 95 101 508 981	9 December 2022	100%	260,000	For thermal coal –  (a) if the thermal coal has a specific energy of 5,500kcal/kg net of water vapour as received by the power station — the equivalent of \$174.54 per metric tonne, or (b) if the thermal coal has a specific energy other than 5,500kcal/kg net of water vapour as received by the power station — the equivalent of \$0.02938/kcal/kg plus \$12.93.

Coal Market Price Emergency (Directions for Coal Mines) Notice 2023 No. 2 [NSW]  
 Schedule 1 Reservations of coal production

Centennial Springvale Pty Limited ABN 64 052 096 812	9 December 2022	95%	540,000	—
Glencore Coal Pty Limited ACN 082 271 930 <i>(Glencore)</i> for coal produced by the following—	9 December 2022	10%	1,230,000	—
(a) Bulga mine by Bulga Coal Management Pty Limited ABN 48 055 534 391				
(b) Mangoola mine by Mangoola Coal Operations Pty Limited ABN 54 127 535 755				
(c) Mt Owen mine by Mt Owen Pty Limited ABN 83 003 827 361				
(d) Ravensworth North mine by Ravensworth Operations Pty Limited ABN 12 098 937 761				
(e) Ulan Group mine by Ulan Coal Mines Pty Limited ABN 80 000 189 248				
(f) Hunter Valley Operations by Coal & Allied Operations Pty Ltd ABN 16 000 023 656 and Anotero Pty Limited ABN 96 618 503 674, but limited to Glencore's share of the coal				
(g) United Wambo JV by Wambo Coal Pty Limited ABN 13 000 668 057 and United Collieries Pty Ltd ABN 67 001 990 209, but limited to Glencore's share of the coal				
Great Southern Energy Pty Ltd ABN 40 621 409 201	9 December 2022	100%	300,000	—

Coal Supplier	Relevant date	Percentage of coal	Metric tonnes of coal	Maximum price
Peabody Energy Australia Pty Ltd ACN 096 909 410 ( <i>Peabody</i> ) for coal produced by the following—	9 December 2022	31%	1,280,000	—
(a) Wambo mine by Wambo Coal Pty Limited ABN 13 000 668 057				—
(b) Wilpinjong mine by Wilpinjong Coal Pty Ltd ABN 87 104 594 694				
(c) United Wambo JV by Wambo Coal Pty Limited ABN 13 000 668 057 and United Collieries Pty Ltd ABN 67 001 990 209, but limited to Peabody's share of the coal				
Whitehaven Coal Limited ACN 124 425 396 for coal produced by the following—	19 January 2023	5%	20,000	—
(a) Tarrawonga mine by Whitehaven Coal Mining Limited ABN 65 086 426 253				
(b) Werris Creek mine by the following—				
(i) Werris Creek Pty Ltd ABN 74 626 338 716				
(ii) Creek Resources Pty Ltd ABN 27 100 228 886				
(iii) Betalpha Pty Ltd ACN 105 663 518				

Coal Supplier	Relevant date	Percentage of coal	Metric tonnes of coal	Maximum price
Yancoal Australia Ltd ACN 111 859 119 for coal produced by Stratford mine by CIM Stratford Pty Ltd ABN 75 070 387 914 and Gloucester Coal Ltd ABN 66 008 881 712	19 January 2023	5%	10,000	For thermal coal— (a) if the thermal coal has a specific energy of 5,500kcal/kg net of water vapour as received by the power station — the equivalent of \$173.95 per metric tonne, or (b) if the thermal coal has a specific energy other than 5,500kcal/ kg net of water vapour as received by the power station — the equivalent of \$0.03018/kcal/kg plus \$7.96
Yancoal Australia Ltd ACN 111 859 119 ( <i>Yancoal</i> ) for coal produced by the following, but limited to Yancoal’s share of the coal— (a) Mt Thorley Warkworth complex by Mount Thorley Operations Pty Limited ABN 47 000 013 249 (b) Moolarben mine by Moolarben Coal Mines Pty Limited ABN 82 108 601 672, Yancoal Moolarben Pty Ltd ABN 30 638 942 588 and Kores Australia Moolarben Coal Pty Limited ABN 39 129 132 501 (c) Hunter Valley Operations by Coal & Allied Operations Pty Ltd ABN 16 000 023 656 and Anotero Pty Limited ABN 96 618 503 674	19 January 2023	5%	300,000	—

<b>Coal Supplier</b>	<b>Relevant date</b>	<b>Percentage of coal</b>	<b>Metric tonnes of coal</b>	<b>Maximum price</b>
The following jointly for coal produced at the Mt Arthur mine— (a) Mt Arthur Coal Pty Limited ACN 000 181 902 (b) Hunter Valley Energy Coal Pty Ltd ACN 062 894 464	19 January 2023	5%	175,000	For thermal coal (a) If the thermal coal has a specific energy of 5,500kcal/kg net of water vapour as received by the power station — the equivalent of \$147 per metric tonne, or (b) If the thermal coal has a specific energy other than 5,500kcal/kg net of water vapour as received by the power station — the equivalent of \$0.02673/kcal/kg.
The following jointly for coal produced at the Boggabri mine— (a) Boggabri Coal Pty Limited ABN 77 122 087 398 (b) Chugoku Electric Power Australia Resources Pty Ltd ABN 14 600 294 068 (c) NS Boggabri Pty Limited ABN 47 113 447 313	19 January 2023	0%	0	—
The following jointly for coal produced at the Mt Pleasant mine— (a) Mach Energy Australia Pty Ltd ABN 34 608 495 441 (b) J.C.D.Australia Pty Ltd ABN 49 002 017 209	9 December 2022	10%	120,000	—
The following jointly for coal produced at the Maules Creek mine— (a) Aston Coal 2 Pty Ltd ABN 14 139 472 567, a wholly owned subsidiary of Whitehaven Coal Limited ACN 124 425 396 (b) ICRA MC Pty Ltd ABN 77 147 657 074 (c) J—Power Australia Pty Ltd ABN 59 002 307 682	19 January 2023	5%	95,000	—

<b>Coal Supplier</b>	<b>Relevant date</b>	<b>Percentage of coal</b>	<b>Metric tonnes of coal</b>	<b>Maximum price</b>
The following jointly for coal produced at the Narrabri mine—	19 January 2023	5%	85,000	—
(a) Narrabri Coal Pty Ltd ABN 76 107 813 963, a wholly owned subsidiary of Whitehaven Coal Limited ACN 124 425 396				
(b) Narrabri Coal Australia Pty Ltd ABN 73 110 262 925, a wholly owned subsidiary of Whitehaven Coal Limited ACN 124 425 396				
(c) J—Power Australia Pty Ltd ABN 59 002 307 682				
(d) Kores Narrabri Pty Ltd ABN 62 138 993 263				
(e) Upper Horn Investments (Australia) Pty Ltd ABN 86 129 190 281				
(f) Posco International Australia Holdings Pty Ltd ABN 77 139 088 958				



# Coal Market Price Emergency (Directions for Power Stations) Notice 2023 No. 2

under the

Energy and Utilities Administration Act 1987

The Minister for Energy makes the following notice under the *Energy and Utilities Administration Act 1987*, Schedule 3, clause 6.

The Hon. Penny Sharpe, MLC  
Minister for Energy

Dated

## Contents

<b>Part 1</b>	<b>Preliminary</b>	<b>3</b>
	1 Name of notice	3
	2 Commencement	3
	3 Definitions	3
	4 Coal market price emergency	3
	5 Application of notice	3
<b>Part 2</b>	<b>Directions</b>	<b>4</b>
	6 Introduction	4
	7 Direction about maintaining stockpile of coal	4
	8 Direction about entering coal supply agreements	5
	9 Direction about giving information to coal suppliers	5
	10 Direction about prohibition on reselling or offering to resell coal	6
	11 Direction about reporting	6
<b>Part 3</b>	<b>Miscellaneous</b>	<b>8</b>
	12 Repeal	8
	13 Savings	8

## Coal Market Price Emergency (Directions for Power Stations) Notice 2023 No. 2

under the Energy and Utilities Administration Act 1987

### Part 1 Preliminary

#### 1 Name of notice

This notice is the *Coal Market Price Emergency (Directions for Power Stations) Notice 2023 No. 2*.

#### 2 Commencement

This notice commences on the day on which it is made.

#### 3 Definitions

In this notice—

**business day** means a day that is not—

- (a) a Saturday or Sunday, or
- (b) a public holiday or bank holiday throughout the State.

**coal fired power station** means a coal fired power station that is a Registered participant under the *National Electricity (NSW) Law* in the NSW region of the national electricity market.

**coal supplier** means a coal supplier within the meaning of the *Coal Market Price Emergency (Directions for Coal Mines) Notice 2023*.

**NSW region** means the region identified as the New South Wales region in the *Regions Publication*, published by the Australian Energy Market Operator Limited, ACN 072 010 327, under the *National Electricity Rules*, clause 2A.1.3.

**officer** the same meaning as in the *Corporations Act 2001* of the Commonwealth.

**relevant person**—see section 5.

**relevant person for a coal fired power station** means the relevant person that operates the coal fired power station.

**the Act** means the *Energy and Utilities Administration Act 1987*.

**Note**— The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this notice.

#### 4 Coal market price emergency

This notice is made on the basis the Premier, by written order dated 22 December 2022, declared a coal market price emergency.

#### 5 Application of notice

This notice applies to the following persons (**relevant persons**)—

- (a) AGL Macquarie Pty Ltd, ACN 167 859 494,
- (b) EnergyAustralia NSW Pty Ltd, ACN 163 935 635,
- (c) Origin Energy Eraring Pty Ltd, ACN 164 994 012,
- (d) Sunset Power International Pty Ltd, ACN 162 696 335, trading as Delta Electricity.

## Part 2 Directions

### 6 Introduction

The requirements of this Part are directions of the Minister to relevant persons and officers of relevant persons.

### 7 Direction about maintaining stockpile of coal

- (1) A relevant person for a coal fired power station must plan to maintain a stockpile of coal that is more than the expected demand by the coal fired power station for coal for the next 30 days but (except for EnergyAustralia NSW Pty Ltd ACN 163 935 635) —
  - (a) no more than the expected demand by the coal fired power station for the next 60 days, or
  - (b) if, as at the commencement of this notice, the relevant person's planned stockpile is more than the expected demand by the coal fired power station for the next 60 days, the planned stockpile should be no more than 5% greater than the relevant person's planned stockpile level, at the commencement of this notice.
- (2) For the relevant person's plan under subsection (1), the relevant person must, for the coal fired power station—
  - (a) calculate the expected amount of coal required using a method approved by the Regulator, and
  - (b) calculate the expected amount of coal to be made available under existing coal supply agreements, and
  - (c) calculate the shortfall, if any, from the coal to be supplied under existing coal supply agreements and the expected amount of coal required, and
  - (d) if the relevant person's plan calculates that more coal needs to be made available to meet the expected amount of coal required in subsection (1) —
    - (i) identify coal suppliers that the relevant person considers will be able to supply the coal required, and
    - (ii) ask each coal supplier to confirm the amount of coal that the coal supplier can reasonably supply, and
    - (iii) offer to enter into an agreement with each coal supplier for the supply of the coal required in proportion to the amount that each coal supplier can reasonably supply.

**Example—** If supplier A is able to supply 1000 tonnes and supplier B is able to supply 100 tonnes, the relevant person should offer to buy approximately 10 times more coal off supplier A than supplier B.
- (3) If the relevant person's plan under subsection (1) calculates the relevant person will have less than 30 days of its expected demand in the next 30 days, and the relevant person has not entered into a coal supply agreement for that quarter to prevent that shortfall, the relevant person must —
  - (a) no later than 3 business days after calculating the shortfall, identify coal suppliers that the relevant person considers will be able to supply the coal to make up the shortfall, and
  - (b) no later than 3 business days after calculating the shortfall, notify each coal supplier that the stockpile of coal has fallen below the expected demand by the coal fired power station for the next 30 days, and
  - (c) no later than 3 business days after calculating the shortfall, ask each coal supplier to confirm the amount of coal that the coal supplier can reasonably supply, and

- (d) no later than 5 business days after receiving confirmation from a coal supplier confirming the coal that can be reasonably supplied under subsection (c), offer to enter into an agreement with each coal supplier for the supply of the coal within 90 days of the offer, to make up the shortfall in proportion to the amount that each coal supplier can reasonably supply.
- (4) Subsection (2)(d)(iii) and 3(d) do not require a relevant person to offer to enter into an agreement with more than 1 coal supplier for an amount of coal that is less than 50,000 tonnes.
- (5) If the relevant person's plan under subsection (1) calculates an immediate shortfall of coal in the next 30 days, the relevant person must notify the coal supplier for any new or existing coal supply agreement of the shortfall.

## 8 Direction about entering coal supply agreements

- (1) A relevant person for a coal fired power station must not refuse a written response to an offer to enter into an agreement with a coal supplier that does not ordinarily supply coal for use in coal fired power stations in New South Wales on either of the following grounds if the coal supplier has made a reasonable offer in relation to the grounds—
  - (a) the responsibility for unloading the coal,
  - (b) the testing of the coal to measure its specific energy and suitability for use in a coal fired power station.
- (2) A relevant person for a coal fired power station must not enter an agreement for the supply of coal for the power station unless the agreement is consistent with—
  - (a) this Part, and
  - (b) the relevant person's plan under section 7.

## 9 Direction about giving information to coal suppliers

- (1) A relevant person must give coal supply information to a coal supplier if—
  - (a) the relevant person has entered or offers to enter, an agreement with the coal supplier for the supply of coal for use in a coal fired power station (a ***coal supply agreement***), and
  - (b) the coal supplier asks the relevant person for the coal supply information.
- (2) The coal supplier is not required to enter a new coal supply agreement until the relevant person gives the coal supplier the coal supply information.
- (3) In this section—

***coal supply information*** means—

  - (a) if the relevant person offers to enter an agreement with a coal supplier, the terms the relevant person proposes to include in the coal supply agreement and evidence to show that the terms are reasonable, and
  - (b) if the relevant person has entered into an agreement with a coal supplier—
    - (i) information on the relevant person's stockpile, if the stockpile is less than the expected demand by the coal fired power station for the next 30 days, and
    - (ii) information about whether a delay in delivery of coal will result in the relevant person's stockpile being less than the expected demand by the coal fired power station for the next 30 days.

**Note**— Evidence may include a copy of relevant parts of other coal supply agreements under which coal is ordinarily supplied to the relevant person.

#### **10 Direction about prohibition on reselling or offering to resell coal**

- (1) A relevant person must not sell, or offer to sell, coal to another person.
- (2) This section does not apply to coal sold under an agreement that was entered into before 9 December 2022.

#### **11 Direction about reporting**

- (1) A relevant person for a coal fired power station must, for each calendar month, prepare a report (a *monthly report*) about the following—
  - (a) new offers by the relevant person to purchase coal, including—
    - (i) the proposed price of the coal, and
    - (ii) the quantity of coal proposed to be purchased, and
    - (iii) the duration of the proposed agreement to purchase coal,
  - (b) offers by the relevant person to purchase coal that were refused by a coal supplier including the reasons given by the coal supplier for the refusal,
  - (c) the prices, average specific energy and quantity of coal delivered from individual agreements to supply coal to the relevant person,
  - (d) details of the relevant person's plan under section 7 to maintain a stockpile of coal including, for each calendar month until 1 July 2024, information on—
    - (i) the relevant person's planned stockpile,
    - (ii) the amount of coal the relevant person plans to purchase and the delivery schedule for the coal that is planned for purchase,
    - (iii) details of all coal supply agreements entered into by the relevant person and details of the coal delivery schedule under each coal supply agreement, and
    - (iv) the expected demand for coal by the coal fired power station,
  - (e) on the last day of the month—the quantity of coal in the relevant person's stockpile and the expected demand for coal from the stockpile for the next 30 days,
  - (f) for each agreement to supply coal to the relevant person—
    - (i) the quantity of coal contracted compared to the quantity of coal delivered, and
    - (ii) the reasons given by the coal supplier for any difference,
  - (g) any other matter reasonably required by the Regulator.
- (2) For subsection (1)(a) or (c), a price less than the equivalent of \$0.02273/kcal/kg must be reported as less than \$125 per tonne.
- (3) The monthly report must be—
  - (a) in the form approved by the Regulator, and
  - (b) given in the way decided by the Regulator, and
  - (c) accompanied by a statutory declaration—
    - (i) of an officer of the relevant person with responsibility for, or oversight of, the matters set out in subsection (1), and
    - (ii) declaring that the monthly report is true and correct.
- (4) The first monthly report must relate to the period starting on 23 December 2022 and ending on 31 January 2023.
- (5) The relevant person must give the monthly report to the Minister and the Regulator not later than—
  - (a) for the first monthly report—20 February 2023, or

- (b) otherwise—the 15th day of the following calendar month.

## **Part 3 Miscellaneous**

### **12 Repeal**

The *Coal Market Price Emergency (Directions for Power Stations) Notice 2023* is repealed.

**Note**— The notice was published in Gazette No 69 of 16 February 2023.

### **13 Savings**

Any act, matter or thing that, immediately before the repeal of the *Coal Market Price Emergency (Directions for Power Stations) Notice 2023* had effect under that notice continues to have effect under this notice.