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Central Petroleum Mereenie Pty Ltd as trustee for the Central Petroleum Mereenie Unit Trust, Central Petroleum Limited and Macquarie Mereenie Pty Limited

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Submission to the Australian Competition and Consumer Commission

in response to the further submission provided by Power and Water Corporation dated 5 November 2017.

24 November 2017

1 Introduction

This submission:

(a) supports the application made to the Australian Competition and Consumer Commission (***ACCC***) under section 88(1A) and (1) of the *Competition and Consumer Act 2010* (Cth) (***CCA***) for authorisation to make and give effect to provisions of a contract, arrangement or understanding which may be a cartel provision within the meaning of Division 1 of Part IV of the CCA, or may result in a substantial lessening of competition in a market (the ***Application***);

(b) responds to the submission opposing authorisation provided to the ACCC by Power and Water Corporation (***PWC***) dated 15 November 2017 (the ***2nd PWC Submission***), largely by reference to a previous submission from PWC dated 1 November 2017 (the ***1st PWC Submission***); and

(c) responds to the queries received from the ACCC on 20 November 2017.

The Applicants are disappointed that PWC is continuing to use the authorisation process to seek to delay and frustrate a pro-competitive development in respect of the Mereenie project that would provide part of the solution to the nation's critical East Coast gas market shortage. The Applicants have been forced to spend significant time and resources debunking unsubstantiated claims by PWC, and sincerely hope that the ACCC is not swayed by such claims that are inconsistent with PWC's own conduct, the ACCC's own previous analysis and the evident state of the gas market.

2 The Applicants

The Application, and this submission, is made on behalf of the following parties (the ***Applicants***):

(a) Macquarie Mereenie Pty Ltd (***Macquarie Mereenie***); and

(b) Central Petroleum Mereenie Pty Ltd as trustee for the Central Petroleum Mereenie Unit Trust and Central Petroleum Limited (together, ***Central***).

Macquarie Mereenie and Central Petroleum Mereenie Pty Ltd as trustee for the Central Petroleum Mereenie Unit Trust are the participants in the Mereenie joint venture (the ***Mereenie JV Participants***), which is currently the subject of the Mereenie Joint Operating Agreement dated 1 September 2015 (as amended) (***JOA***).

Central Petroleum Limited (***Central Petroleum***) is the operator of the Mereenie joint venture and employer of the key commercial personnel who would be involved in marketing arrangements on behalf of Central Petroleum Mereenie Pty Ltd as trustee for the Central Petroleum Mereenie Unit Trust.

3 Previous Submissions from the Applicants

The Applicants have addressed many of the issues raised in the 2nd PWC Submission in the Applicant's earlier submission of 10 November 2017 (the ***Applicants' Earlier Submission***).

The Applicants' Earlier Submission is therefore referred to throughout this submission, and remains highly relevant both as to why interim authorisation and authorisation should be granted by the ACCC.

4 Risk of lessening competition and higher prices

4.1 No removal of supplier or lessening of competition

As described in detail in sections 5 and 6 of the Applicants' Earlier Submission:

(a) Joint marketing of Mereenie gas will not lessen competition through removing a supplier or increasing concentration or changing the prices or terms that would be offered to customers – as Central Petroleum is not a supplier of Mereenie gas. Central Petroleum has already made sales up to the Production Limit which applies under the existing joint venture arrangements. As described in the Applicants' Previous Submission that fact has been publicly announced, such that customers know that Central Petroleum is unable to supply Mereenie gas; and

(b) The joint marketing conduct to be authorised will make the market more competitive as:

(i) there will be an increase in supply available from Mereenie due to both:

(A) expanded production from the field; and

(B) removing the existing Production Limit which currently also places a cap on how much Mereenie gas Macquarie Mereenie can sell separately;

(ii) once the authorisation has expired, there will be two Mereenie suppliers; and

(iii) during the joint marketing period, the seller of Mereenie gas will be a more effective competitor for sales of Northern Territory sourced gas, particularly against PWC's dominant position, given the ability to draw on the Applicants' combined experience and industry knowledge.

It is also worth noting that the joint marketing and related development of Mereenie is proposed in a very different commercial environment to that which has previously existed in the Northern Territory. It is the development of the NGP and the resulting inclusion of the Northern Territory into the East Coast gas market, with all the increased supply potential for Mereenie and Northern Territory gas that that brings, that has given rise to the need for the conduct sought to be authorised. This is not a case of market participants seeking to reduce the numbers of sellers and reduce competition on price and other terms in an oversupplied and unconnected Northern Territory gas market as PWC appears keen to imply.

4.2 PWC's mischaracterisation of the causes for WA gas prices

The reference to Western Australian gas prices – and the suggestion that the rise and subsequent stabilising was triggered by joint marketing and the unwinding of previous joint marketing arrangements respectively is highly misleading.

Firstly, the ACCC has already expressly considered this interpretation and rejected it. The ACCC noted in its determination to grant authorisation for North West Shelf Project joint venture marketing in 2010 that:[1]

> *While the ACCC accepts that the price for natural gas has increased sharply in recent years and that it is higher than prices in eastern states, the ACCC does not consider that this is a result of joint marketing from WA domgas projects. Rather the strong demand for energy from the resources sector, the LNG export component of the WA gas industry, the constrained choice of energy options facing WA mining projects and the increasing costs of exploration and development appear to be driving the increased prices and the difference with the eastern states.*

[1] ACCC, Determination in respect of Application for authorisation of joint marketing activities for the sale of domgas in Western Australia from the North West Shelf Project and to administer existing gas supply contracts, Authorisation no. A91220, A91221, A91222 and A91223, 8 September 2010 at p iv.

The ACCC rejects the assertion that authorisation of joint marketing by the NWS Project will result in significantly higher gas prices in Western Australia. Gas has always been jointly marketing in Western Australian by the NWS Project – including when gas was being sold for an extended period of time at historically low prices.

An accurate and comprehensive explanation of the actual factors behind the Western Australian price rises is contained in the Gas Price Trends Review prepared by Oakley Greenwood Pty Ltd for the Commonwealth in February 2016:[2]

Industrial gas prices rose sharply in WA around 2006 as increasing demand from domestic growth and the commodity boom had caught up with available gas supply. Many large producers, driven by high Asian LNG pries, focussed on liquefied natural gas (LNG) export opportunities and this also impacted market structure and gas supply. The introduction of oil linking in place of CPI escalation and US dollar pricing in GSAs also contributed to the sharp price increase.

…

The foundation of the WA domestic market is the long-term supply from the North West Shelf Joint Venture (NWSJV). As part of NWSJV developing a LNG project, it agreed to sell approximately 3,000 PJ of gas to the WA Government to supply the domestic market. An additional 2,000 PJ was subsequently agreed by the parties to be sold to the domestic market. NWSJV gas supply to the domestic market commenced in 1984.

For many years, these large gas volumes and relatively low priced foundation NWSJV arrangements supplied the WA domestic gas market. New gas producers had to compete against other new entrants and existing NWSJV supply to enter the market, which amongst other factors, supported the continuation of relatively low wholesale market prices. The price bottom of the WA gas market was most likely around 2001-2002 at the time of the Harriet joint venture GSA with Burrup Fertilizers.

By early 2006, the long period of high domestic demand growth and the increasing demand from the ongoing commodity boom had caught up with available gas supply. The increasing focus of many large gas producers on LNG opportunities and higher Asian LNG prices had also impacted market structure and the availability of gas for domestic supply.

As a consequence, new domestic GSA prices increased dramatically over a relatively short period of time. As market conditions favoured sellers, oil link/$US GSAs were also introduced to the market replacing the traditional $A/CPI agreements. New GSA prices spiked to double digit figures per GJ for ex-plant supply.

Domestic customers that remained under long-term NWSJV foundation agreements were partially insulated from the rapid gas price increase from 2006, although their prices did increase under periodic gas price reviews, but not to the same extent as new GSAs. This dampening of forward gas prices under long-term contracts is the same as that experienced under long-term

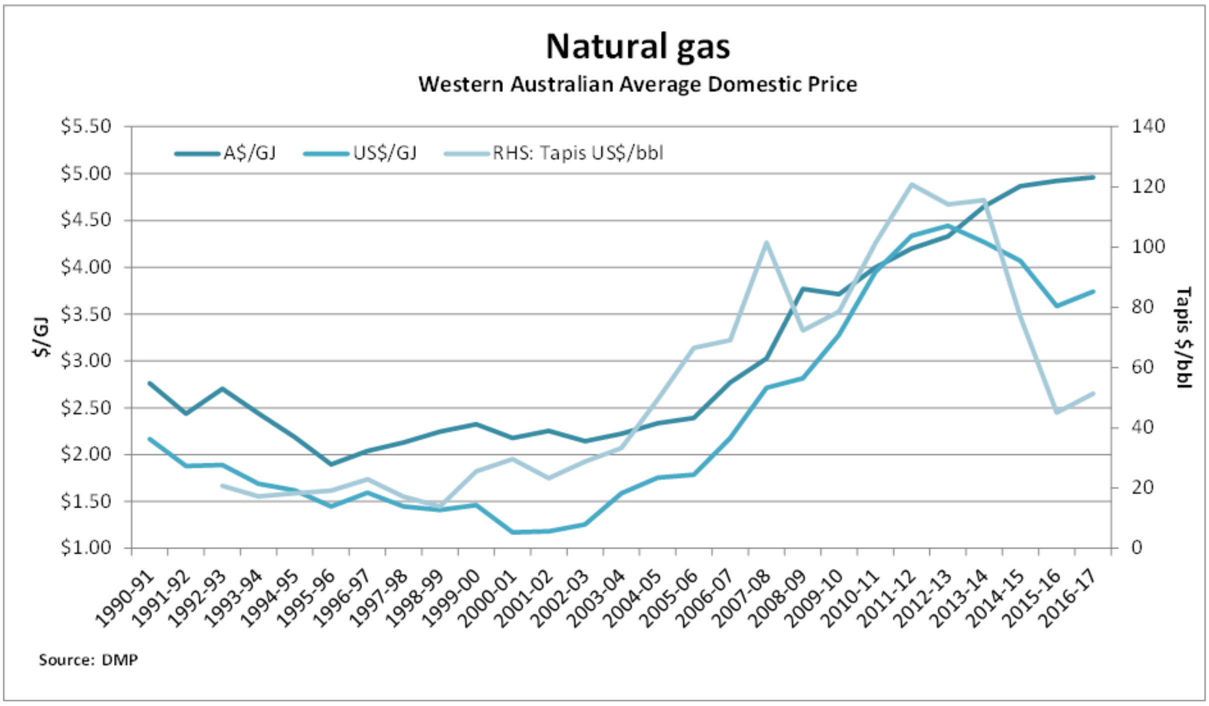
[2] Oakley Greenwood, Gas Price Trends Review, February 2016, p3 and 71-73

> *contracts in eastern Australia during the period of rapid price appreciation from 2011 to 2015.*
>
> *The substantial increase in gas price from 2006 to 2009 resulted in a negative response by many customers and industry groups and a supply response from producers. In 2006 the WA Government introduced a 15% gas reservation policy, which is applied as part of the negotiating process with export gas producers and has the flexibility for case-by-case negotiations.*
>
> *This policy was continued by subsequent governments and clarified in 2012 in the Strategic Energy Initiative's Energy 2031, which stated that the prices and contracts for domestic gas will be determined by the market. By 2010-2011 the combination of the above responses and other market factors (LNG price softening delaying some new development) tempered the high gas prices experienced from 2006 to 2009 and this downward price trend has continued to 2015, albeit settling at a much higher base compared to the pre-2006 price base.*

There is no mention of joint marketing arrangements as a material factor in Western Australia's domestic gas prices. Rather, as is evident from the extracts above and the ACCC's previous analysis, it was supply and demand changes (particularly LNG demand driving domestic prices to LNG netback levels), and the transition of gas pricing to linkage to oil prices which were the principal drivers of pricing in Western Australia.

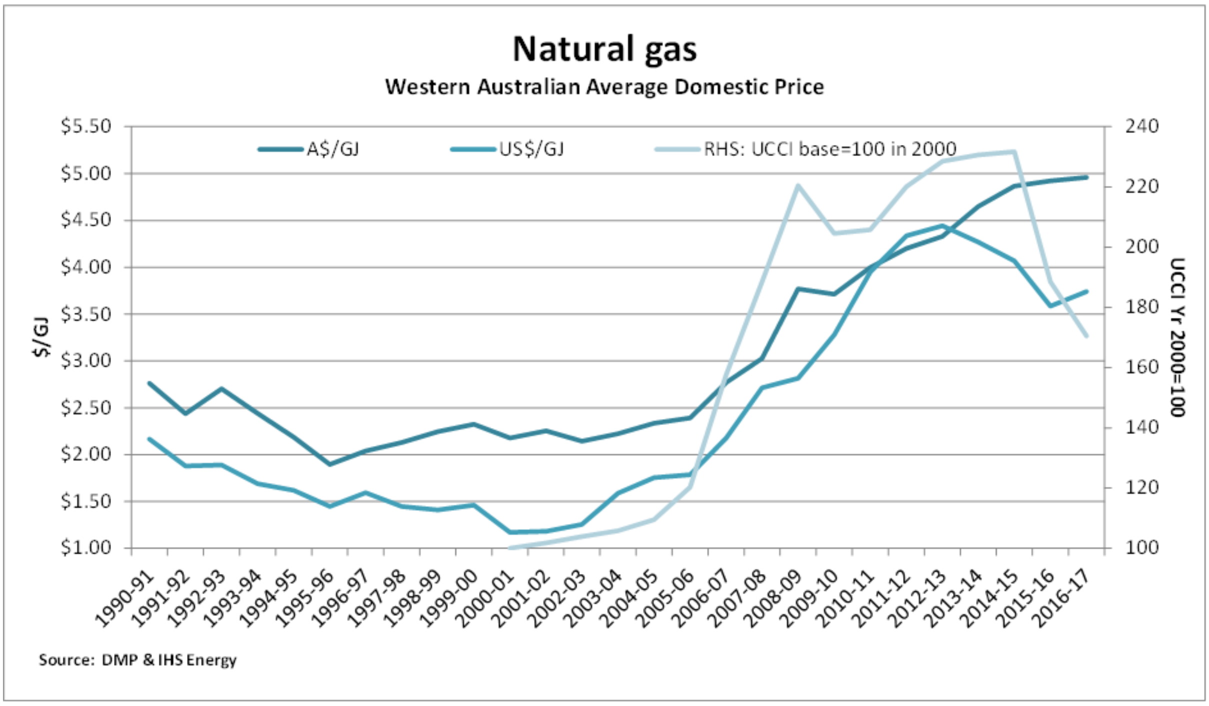
The point about correlation of gas prices to oil prices is an important one. Figure 1 below shows the very close correlation between crude oil prices in US$ and the Western Australian domestic gas price data noted by PWC. It is evident from that graph that the linkage of gas prices to oil price indices would have resulted in very significant growth in linked gas prices until 2014 (and that there has always been an underlying linkage even if not historically built directly into the pricing arrangements for gas supply agreements).

Figure 1



In addition, it would be anticipated that price would also have some correlation to costs of production. Figure 2 below shows the correlation between the IHS Upstream Capital Costs Index (UCCI) which tracks the costs of equipment, facilities, materials and personnel (both skilled and unskilled) used in the construction of a geographically diversified portfolio of 28 onshore, offshore, pipeline and LNG projects and the Western Australian domestic gas price data noted by PWC. It shows, there were also likely to be cost pressures (unsurprising in a time of high demand) influencing the price rises experienced in Western Australian from about 2000 – 2014.

Figure 2



Consequently, the Applicants consider it is contrary to previous independent assessments and a complete mischaracterisation of the reasons for historical Western Australian gas prices to seek to imply, as PWC does, that joint marketing arrangements were a material adverse influence on Western Australian gas prices.

5 Whether joint marketing is necessary

5.1 Joint marketing opens the way to the Mereenie development

As discussed in section 7 of the Applicants' Earlier Submission, joint marketing is critical to providing the certainty which is required in order for each Mereenie JV Participant to justify progressing the development of Mereenie in the current circumstances.

In particular:

(a) approval of a Mereenie development requires the approval of both joint venture participants;

(b) Macquarie Mereenie does not have economic incentives to approve such a development, when it already has substantial Mereenie gas to sell (before reaching the cap provided by the Production Limit) under the existing arrangements;

(c) Central Petroleum is not in a position to sole risk further Mereenie development (particularly given that it has already made sales up to its Production Limit); and

(d) Macquarie Mereenie is unwilling to sole risk further Mereenie development given the materiality of the costs involved relative to the total investment made in the Mereenie acquisition.

As discussed in section 5.3 of the Applicants' submission made as part of their initial application for authorisation, joint marketing:

(a) facilitates aggregation of a larger volume for sale to major commercial and industrial customers on the east coast than either Mereenie JV Participant could sell alone, and in turn for underwriting any required pipeline transportation arrangements;

(b) provides counterparties (such as pipeline owners or third party gas customers) with greater certainty of long term supply and performance than where gas supply was reliant on an individual Mereenie JV Participant (neither of which are 'oil and gas majors'); and

(c) assists the Applicants in finding attractive gas sales opportunities by providing access to Central's knowledge of Northern Territory customers and both parties respective contacts and knowledge in respect of east coast customers.

The ACCC has also accepted on numerous occasions (including the 2009 and 2010 joint marketing authorisations for the Gorgon and North West Shelf Projects) that:

(a) in an illiquid and immature market, attempting to separately market gas is likely to result in substantial commercial risks (including due to issues associated with gas balancing);

(b) those commercial risks and potential for divergent investment incentives between the joint venturers means that separate marketing is likely to result in deferral or withdrawal of planned investment – such that the market without joint marketing is likely to involve lower volumes of supply; and

(c) the additional production and supply occurring as a result of the investment facilitated by joint marketing is a substantial public benefit, particularly where there is an existing demand and supply imbalance.[3]

While every authorisation has to be assessed on a case by case basis, the ACCC indicated that those two determinations 'could be broadly considered as an indication of the factors the ACCC would consider in future applications'[4] and that reasoning equally applies to the proposed Mereenie joint marketing. The analysis by the ACCC noted above is highly reflective of, and directly relevant to, the issues facing the Applicants in respect of the Mereenie field.

While the East Coast market more broadly is mature, sales from the Northern Territory (whether to Northern Territory customers or East Coast customers are not mature, and remain characterised by the 'lumpy' contract nature of the market and limited suppliers – which evidence an immature market where separate marketing is not viable), as discussed in section 10 of this submission further below.

In addition to the above, Central will need to obtain capital for any future Mereenie development which will need to be supported by substantial long term domestic gas sales contract(s)

[3] ACCC, Determination in respect of Application for authorisation of joint marketing activities for the sale of domgas in Western Australia from the North West Shelf Project and to administer existing gas supply contracts, Authorisation no. A91220, A91221, A91222 and A91223, 8 September 2010; ACCC, Determination in respect of Application for authorisation of the joint marketing and sale of natural gas from the Gorgon Gas Project for supply in Western Australia, Authorisation no. A91139, A91140, A91160 and A91161, 5 November 2009.

[4] ACCC, Determination in respect of Application for authorisation of joint marketing activities for the sale of domgas in Western Australia from the North West Shelf Project and to administer existing gas supply contracts, Authorisation no. A91220, A91221, A91222 and A91223, 8 September 2010, p 40.

denominated in Australian dollars (and indexed to CPI). Mereenie joint marketing is necessary to facilitate procuring such substantial long term domestic gas sales contract(s).

5.2 PWC's mischaracterisation of Central Petroleum's previous statements

In relation to the inferences that PWC seeks to draw from previous announcements from Central Petroleum:

(a) Central Petroleum's equity raising was to fund four wells – two of those did not relate to Mereenie (instead relating to other 100% owned Central Petroleum projects, Palm Valley and Ooraminna);

(b) While Central Petroleum would ideally like to drill all four wells as part of a single drilling campaign (due to the lower costs per well such an approach would result in), the drilling of the two wells at the Mereenie field are still awaiting Mereenie joint venture approval, a decision on which has been put on hold pending the outcome of the ACCC's decision on interim authorisation. If Mereenie joint venture approval is not forthcoming, then the two Mereenie wells will not proceed as part of the drilling campaign and the Palm Valley and Ooraminna wells will have to proceed separately;

(c) It is true that tender documents for the drilling contract have been issued – but award of that contract has not yet occurred because, as noted in the Operating Activities Report quoted by PWC, 'Central … will be awarding the contract as soon as joint venture approval has been received', which as noted above is on-hold pending a decision on interim authorisation; and

(d) It is true that there has been some initial promising testing from previous drilling. However, given the nature of the geology, there will need to be months of production testing from the new Mereenie wells before the parties will be able to confidently contract long term additional supply from the Mereenie expansion.

It is simply not correct to claim, as PWC does, that authorisation of joint marketing is not a material impediment for development work at Mereenie to proceed. PWC is not well placed to comment on such matters given that PWC has never been an equity participant in the development of gas fields. As outlined above and in the Applicants' Earlier Submission, joint marketing and authorisation by the ACCC is pivotal to the Applicants' investment in further development of the Mereenie field. PWC's assertions that its claims are supported by the previous statements from Central Petroleum Limited is a misunderstanding of those statements.

6 Market definition

As described in section 10.4(f) of the Applicants' Previous Submission, PWC's queries about the appropriate market definition seem to ignore the fact that Mt Isa buyers will have alternative sources of supply from gas basins available at the Ballera gas hub (such as the Cooper and Surat basins) and Northern Territory gas. From the perspective of East Coast gas customers, Northern Territory gas will clearly be substitutable for gas from East Coast producers.

It is of course, Cooper and Surat basin gas that is currently supplying all Mt Isa customers, and following the commissioning of the Northern Gas Pipeline (***NGP***) it will become a mix of Cooper, Surat and Northern Territory sourced gas.

Price rises of Northern Territory gas would be presumed to result in substitution for Cooper/Surat basin gas (and vice versa) at the point of customers having to make new contracting decisions. Similarly, producers in the Cooper and Surat Basin will in turn have access to customers in all parts of the East Coast gas market, such that prices rises in other parts of the East Coast gas market would be anticipated to result in Cooper/Surat gas being diverted to such customers if the

Mt Isa region price did not also rise. In other words there will clearly be supply side substitutability which indicates that, from the commissioning of and first gas flows through the NGP, all such basins and the customers they supply are in the same wider East Coast gas market.

This interlinkage with the East Coast gas market is also likely to only increase with time. In particular, the Applicants note Jemena's announcement of an agreement with Galilee Energy Limited to extend the NGP via the Galilee Basin to provide other connection points from the Northern Territory to the East Coast gas market.[5]

7 Gas shortage on the East Coast

7.1 East Coast gas market shortage is not resolved

As described in detail in section 8 of the Applicants' Previous Submission:

(a) the East Coast gas market remains clearly short – that much has been clearly demonstrated by the ACCC's own analysis in the *Gas Inquiry 2017-2020, Interim Report*, (September 2017)[6] – including forecasting up to a 383 PJ shortfall in 2018 between supply and demand (based on AEMO's upper band domestic demand and LNG demand at capacity);

(b) recent political arrangements with LNG exporters have not resolved the shortfall, but have intervened in the market to give domestic customer demand priority over export customer demand;

(c) those political arrangements are only relevant for 2 years in any case (one of which is largely irrelevant to this authorisation as it will mostly occur before Northern Territory gas will be available to East Coast gas market customers); and

(d) as the ACCC has previously identified 'supply side options will provide more lasting solutions to address shortages in gas and are more likely to result in pricing returning to reasonable levels'[7].

In addition, the East Coast gas market shortfall is actually anticipated to worsen from 2018 levels, with projections that in 2022:

(a) the LNG market will tighten[8] and LNG spot market prices will equal or exceed long-term domestic gas prices (thereby raising the LNG net-back prices which domestic users would be anticipated to set the price for domestic customers); and

(b) the closure of the Liddell power station will result in higher gas demand for gas powered baseload generation.

7.2 PWC's mischaracterisation of Central Petroleum's previous statements

Clearly higher gas prices is the principal reason for supply from Northern Territory fields becoming economic and pipeline tariff reform is an important element for the prospects of Northern Territory gas being available to East Coast gas customers at competitive prices to more closely located sources of production.

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[5] Jemena fast-tracks plans to connect Galilee Basin to the east-coast gas market, 17 October 2017. Available at: https://jemena.com.au/about/newsroom/media-release/2017/jemena-fast-tracks-plans-to-connect-galilee-basin-

[6] ACCC, Gas Inquiry 2017-2020 – Interim Report

[7] ACCC, Gas Inquiry 2017-2020 – Interim Report, p 23.

[8] See for example Wood Mackenzie, Global LNG – shadow cast over price recovery, 13 July 2017. Available at https://www.woodmac.com/news/the-edge/global-lng-price-recovery/

However, to the extent that PWC seeks to use previous statements from Central Petroleum Limited to imply that further Mereenie development will occur without joint marketing, that is a mischaracterisation of those statements.

The key issue that appears to have been overlooked by PWC's simplistic analysis is that the further development of Mereenie is dependent on more than just the gas price and potential pipeline tariffs (although both of those issues are obviously important to the economics of supply from the Northern Territory).

As noted in section 5 of this submission above, the development requires joint venture approvals which have been put on hold pending interim authorisation. It remains hard to see how Macquarie Mereenie is economically incentivised to approve further development when it already has surplus capacity to sell Mereenie gas without incurring the costs and risks of further development.

In addition, the ultimate outcomes of tariff reforms, in terms of how they translate into pricing for particular pipeline services remain uncertain.

8 Effect on East Coast gas markets if no joint marketing

Given that it is clearly evident that there is a substantial shortfall in the East Coast gas market, all additional significant sources of supply should be considered a significant public benefit.

As noted in section 10.1(d)(i) of the Applicants' Earlier Submission, the quantity of additional gas from Mereenie may be small in the context of the overall East Coast Gas Market – but it is material when compared to the gas shortfall. The quantity of gas targeted to be jointly marketed is 15 PJ per annum which, for some context, is:

(a) nearly 4% of the ACCC's 2018 projected East Coast Gas Market Shortfall of 383PJ (based on AEMO's upper band domestic demand and LNG demand assuming LNG demand at capacity); and

(b) nearly 14% of the ACCC's 2018 projected East Coast Gas Market Shortfall of 108 PJ (based on AEMO's upper band domestic demand forecast and LNG demand assuming existing levels of contract and spot sales).[9]

It goes without saying that the Mereenie project alone will not resolve the East Coast gas market shortage. Clearly no one gas project can close a supply gap as significant as what the East Coast gas market is facing. However, as outlined above, the increase of supply that will result from the proposed joint marketing will be a meaningful step in mitigating this shortage.

In fact it appears to the Applicants that, even aggregating all potential sources of future production referred to in section 2.7 of the *Gas Inquiry 2017-2020, Interim Report* (September 2017),[10] there still would not be enough new sources of supply to close the anticipated supply gap.

The impact on the East Coast Gas Market also goes beyond pure volume – Mereenie gas increases the diversity of supply – something the ACCC has previously recognised is important - and provides real competition to PWC in sales of Northern Territory gas into the East Coast Gas Market.

In that context, it remains mystifying to the Applicants that PWC would seek to imply that there is questions about whether the joint marketing and development of Mereenie would have any impact on the East Coast Gas Market.

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[9] See ACCC, Gas Inquiry 2017-2020 – Interim Report, p 31 for the shortfall forecasts.

[10] ACCC, Gas Inquiry 2017-2020 – Interim Report, p 39-41.

9 Extent of public benefits attributable to joint marketing

The Applicants' submissions made at the time of the initial application for authorisation set out in detail the anticipated public benefits including:

(a) increased supply of gas into the East Coast gas market (and resulting greater competition and positive impact on downstream gas users);

(b) increased available gas supply to Northern Territory customers;

(c) expansion of regional and indigenous employment opportunities;

(d) increase of government revenue;

(e) increase of land access compensation to traditional owners;

(f) incentives and signals to infrastructure owners;

(g) cost savings and synergies; and

(h) environmental benefits.

PWC has not sought to provide any credible evidence that those public benefits would not arise or of any material public detriment capable of outweighing the substantial public benefits.

PWC's 2nd submission appears to particularly question the extent to which public benefits for the state of competition and domestic supply will occur in the Northern Territory. That seems to ignore the commercial reality that:

(a) Northern Territory customers have currently had the benefit of being in an isolated market which is effectively oversupplied, with significant resources remaining in the ground and prices below that in the East Coast gas market; but

(b) from commissioning of the NGP it would be anticipated that Northern Territory pricing will rise to East Coast gas market parity levels (after accounting for transportation costs).

The higher supply that will be delivered by a Mereenie development would be anticipated to mitigate the extent of the price rise that might otherwise be experienced by Northern Territory customers.

As noted in each of the Applicants' submissions, there will no anti-competitive detriment from the joint marketing (which is, in fact, pro-competitive), such that even if a view is taken that those public benefits are less than the Applicants' consider, they still manifestly outweigh any theoretical anti-competitive detriment that is being asserted by PWC.

10 'Additional Points' – feasibility of separate marketing and maturity of market

Each of PWC's 'Additional Points' seeks to raise queries about whether joint marketing is required.

In the ACCC's determination in relation to the North West Shelf Project, the ACCC noted that in order for it to conclude that separate marketing was feasible it would need to demonstrate that the practical problems identified by the applicants in an environment of few producers and buyers, long term contracts and no active spot/secondary market, could be overcome.[11]

PWC has provided absolutely no evidence to demonstrate that separate gas marketing of Northern Territory gas production by a joint venture party to the East Coast gas market is viable.

[11] ACCC Authorisation Determination, North West Shelf Project A90624, 29 July 1998, page vi.

In fact, each of the features the ACCC has previously identified in the North West Shelf and Gorgon joint marketing authorisations as evidencing an immature market (such that separate marketing is not likely to be commercially viable), also very clearly exist for sales to Northern Territory customers and for sales of Northern Territory gas to East Coast gas customers.

In particular sales of that nature involve:

(a) small number of suppliers (principally PWC, Mereenie, Central Petroleum's other fields);

(b) small number of purchasers (PWC, limited industrial buyers in the Northern Territory, limited Mt Isa region based buyers);

(c) small number of gas transport options (dependent on one major in-Territory pipeline – the Amadeus pipeline, the capacity register for which indicates the firm capacity is fully contracted under long term contracts,[12] and one pipeline connection to the East Coast in the NGP);

(d) no designated gas storage facility;

(e) no short term/spot market;

(f) no gas financial markets;

(g) no real secondary market; and

(h) new demand being 'lumpy' and project based (and therefore favouring long term contracting of supply).

The fact that separate marketing is feasible for large scale joint ventures with well-established projects, that are near gas hubs or sources of major demand (such as the North West Shelf, Gorgon and Cooper basin projects) does not provide any basis for implying that separate marketing from the Mereenie project is feasible or more in accordance with current 'gas market practice'.

In addition, there is a clear distinction in relation to the need for joint marketing between mature fields where no or limited fresh capital investment is required (where separate marketing is more feasible) and a field like Mereenie where the need for further significant capital is pressing and it is imperative to the joint venturers' ability to develop the field, and develop it in the timeframes required to meet the market opportunity, that their interests are aligned.

The paragraphs quoted by PWC from the ACCC's East Coast Gas Marketing Inquiry Report note the need to consider the specific circumstances of the relevant project, and are clearly being taken out of content to the extent that PWC is seeking to imply that the ACCC's views on the Gippsland Basin joint venture are equally applicable to the Mereenie joint venture.

11 ACCC Questions

11.1 Customers or tenders identified

In the initial submission made at the time of applying for authorisation, the Applicants sought to identify the key stakeholders. That list included the Applicants' assessment of the most likely East Coast customers for Northern Territory gas, being the industrial users in the Mt Isa region.

The Applicants of course strongly believe that once the NGP has been commissioned and first gas is being delivered from the Northern Territory to East Coast customers, customers outside the immediate Mt Isa region will become interested in Northern Territory gas supplies.

[12] APA, Amadeus Gas Pipeline, Spare Capacity Register, Available at https://www.apa.com.au/globalassets/documents/regulatory/central-region-pipelines/agp-capacity-register-jun-17.pdf

However, it is unfortunately very difficult for the Applicants to undertake business development and obtain market data about possible or target joint customers, the status of their tender processes and the timing of their gas needs, when the inability to implement joint marketing in the form applied for without authorisation, makes it effectively impossible for the Applicants to effectively jointly participate in such processes currently. Given the need for joint marketing, the Applicants have not been aggressively undertaking business development, which in their experience is how the targets and opportunities become more evident.

[redacted]

11.2 Systems to protect confidential pricing information in the event interim authorisation is granted but full authorisation is not

As discussed in section 9 of the Applicants' Earlier Submission:

(a) there is very limited information that authorisation would give access to that the Applicants do not already have access to due to their role as joint venturers – with the only such information being the price at which the other joint venture participant is willing to sell Mereenie gas at a particular point in time when a sales opportunity arises; and

(b) the price at which a joint venture participant is willing to sell gas is determined by market conditions and non-price terms particular to the customer (most obviously volume and term), such that the competitive relevance of any such information will quickly cease.

In relation to protecting confidential pricing information during the period between interim authorisation and authorisation:

(a) Macquarie will administer effective information barriers to manage any confidential information and/or non-public price sensitive information in the event that interim authorisation is granted but full authorisation is not. These include:

   (i) physical separation of employees and the business group who are directly involved with the Mereenie joint venture (i.e. restricted to employees with a legitimate need to know the information as part of their duties or to carry out the proposed conduct for the Mereenie joint venture) (***Mereenie Employees***);

   (ii) restricted swipe card access to buildings, floors, printers, meeting rooms etc for Mereenie Employees;

   (iii) restricted computer system and file access to ensure confidential information cannot be viewed by any other Macquarie employee other than Mereenie Employees;

   (iv) behavioural measures which apply to all Macquarie employees such as:

      (A) clear desk requirements, including as the secure storage of documents and other material containing confidential and/or inside information;

      (B) not discussing confidential and/or inside information outside of the relevant Mereenie Employee areas, or in public places such as lifts and shared kitchens; and

      (C) confidential information would only be provided to Macquarie employees outside of the Mereenie Employees (such as those in legal or other supporting functions) on a strict 'need to know' basis;

(b) Central Petroleum will not be able to make use of any information it may have access to in that period because:

(i) as noted numerous times in this and previous submissions, Central Petroleum is not able to sell any further Mereenie gas separately due to already having sold up to the Production Limit;

(ii) Central Petroleum's only other producing gas field, Dingo, is fully contracted, not connected to the Amadeus pipeline and only connected to the Owen Springs power station; and

(iii) Central Petroleum's Palm Valley field is currently shut in and would require significant further capital investment in order to sustain gas supplies to underwrite a long term gas supply agreement of the type that would be being sought by (and for which pricing would be discussed by) the Mereenie joint venturers.

12 Conclusion

For the reasons set out above in this submission and in each of the prior submissions the Applicants have made during this authorisation process, the Applicants continue to consider that it is appropriate for the ACCC to grant the interim authorisation and authorisation sought.