

Email

24 February 2021

The General Manager, Competition Exemptions
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

Danielle.Staltari@acc.gov.au

Dear Ms Staltari

Application for Re-Authorisation of A91516 and A91517 (Matter)

As you are aware, we act for Australia Pacific LNG Pty Limited, QCLNG Operating Company Pty Ltd and GLNG Operations Pty Ltd (together, **the Applicants**) in relation to the above Matter, and we refer to our letter of 12 February 2021 providing a draft application for re-authorisation in this Matter.

As foreshadowed in our letter of 12 February 2021, the Applicants seek:

1. re-authorisation of the conduct the subject of applications A91516 and A91517 for a period of five years (**Authorisation**), subject to a change in the condition applicable, being that the Condition is replaced by reporting pursuant to the Gas Transparency Measures under the National Gas Law at the time those measures commence. Such Authorisation will permit the Applicants to continue to coordinate the timing and scheduling of maintenance events at their LNG facilities on Curtis Island; and
2. interim authorisation in accordance with s 91(2) of the *Competition and Consumer Act 2010* (Cth) which will ensure that, pending the ACCC's determination, the Applicants can continue to:
 - (a) undertake discussions and take steps to agree the sequencing and timing of scheduled maintenance at the LNG Facilities, including the sequencing and timing of associated shutdowns and outages; and
 - (b) post Maintenance Information to the Gas Bulletin Board as required by the Condition,

while mitigating any concern on the part of the ACCC that the Applicants are engaging in conduct that, but for the interim authorisation and Authorisation, could be in breach of the *Competition and Consumer Act 2010* (Cth).

We look forward to hearing from you with respect to this request for interim authorisation, and the application for Authorisation.

Yours sincerely

Elizabeth Richmond, Partner



Sunita Kenny, Senior Associate



Our ref 16702/19780

cc: Gavin Jones, Director, Competition Exemptions, ACCC
gavin.jones@acc.gov.au

Luke Griffin, Assistant Director, Competition Exemptions, ACCC
luke.griffin@acc.gov.au

Application for Re-authorisation - FORM

1. Applicants

1.1 Provide details of the applicants for revocation and substitution, including:

(a) **name, address (registered office), telephone number, and ACN**

This application for re-authorisation (**Application**) is made on a joint basis by the liquefied natural gas (LNG) producers listed in Schedules 1-3 of the supporting submission, and which are collectively referred to as the **Applicants**. Please see the supporting submission to this Application for further information.

(b) **contact person's name, position, telephone number, and email address**

Elizabeth Richmond
Partner
Clayton Utz

T: [REDACTED]

E: [REDACTED]

(c) **a description of business activities**

The Applicants operate respective LNG facilities on Curtis Island in the Port of Gladstone (each an **LNG Facility**). The LNG facilities form part of the APLNG, QCLNG, and GLNG projects, which involve the extraction and processing of natural gas, including coal seam gas (**CSG**), and its conversion to LNG for export. Please see the supporting submission for further details.

(d) **email address for service of documents in Australia.**

C/- Elizabeth Richmond
Clayton Utz
Level 15
1 Bligh Street
SYDNEY NSW 2000

T: [REDACTED]

E: [REDACTED]

2. Authorisation to be revoked (the existing authorisation)

2.1 Provide details of the authorisation sought to be revoked including:

(a) **the registration number and date of the authorisation which is to be revoked**

Authorisations A91516 and A91517 dated 14 April 2016

(b) **other persons and/or classes of persons who are a party to the authorisation which is to be revoked**

Please see Schedules 1-3 of the supporting submission to this Application.

(c) **the basis for seeking revocation, for example because the conduct has changed or because the existing authorisation is due to expire.**

The Applicants seek reauthorisation for the following reasons: first, the Authorisations are due to expire on 6 May 2021. Second, the Applicants seek to revise the Condition to which their Authorisation is subject in light of wide-ranging amendments to reporting requirements under the National Gas Law (**NGL**) which are expected to commence in 2021.

For further information concerning the amendments to the NGL, and the amendment to the Condition of Authorisation sought by the Applicants, please see the supporting submission to this Application.

3. Authorisation to be substituted (the new authorisation)

3.1 If applicable, provide details of any other persons and/or classes of persons who also propose to engage, or become engaged, in the proposed conduct and on whose behalf authorisation is sought. Where relevant provide:

- (a) **name, address (registered office), telephone number, and ACN**
- (b) **contact person's name, telephone number, and email address**
- (c) **a description of business activities.**

Please see Schedules 1-3 of the supporting submission to this Application.

4. The proposed conduct

4.1 Provide details of the proposed conduct, including:

- (a) **a description of the proposed conduct and any documents that detail the terms of the proposed conduct**

The Applicants wish to continue to discuss, make and give effect to arrangements regarding the sequencing and timing of scheduled maintenance works, and associated shutdowns and outages, at each of the LNG Facilities, in order to limit the extent to which scheduled maintenance works occur concurrently at the LNG Facilities.

Re-authorisation is therefore sought for the Applicants to engage in the following conduct:

- (a) To 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:
 - i. 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;
 - ii. classifying maintenance campaigns (e.g. major and minor);
 - iii. working to identify optimal maintenance windows having regard to factors such as climate, safety considerations and local 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 LNG Facilities;
 - 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 each LNG Facility.
- (b) To 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 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 shutdown windows (e.g. 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 LNG Facility maintenance, subject to applicable third party confidentiality restrictions.

(collectively the **Proposed Conduct**).

- (b) **an outline of any changes to the conduct between the existing authorization and the new authorization**

Not applicable.

- (c) **the relevant provisions of the *Competition and Consumer Act 2010 (Cth)* (the Act) which might apply to the proposed conduct.**

The relevant provisions of the *Competition and Consumer Act (Cth)* which might apply to the Proposed Conduct are listed below. Please see the supporting submission to this Application for further details.

- Cartel conduct (Division 1 of the Part IV)
- Contractors, arrangements or understandings that restrict dealings or affect competition (s. 45).

In making this Application, the Applicants seek to obtain the certainty afforded by authorisation of the Proposed Conduct. They do not concede that the Proposed Conduct would contravene the CCA.

- (d) **the rationale for the proposed conduct**

Please see sections 3 and 4 of the supporting submission to this Application.

- (e) **the term of authorisation sought and reasons for seeking this period.**

In line with the current Authorisation which was granted for 5 years, the Applicants seek re-authorisation of the Authorised Conduct for a further period of 5 years until May 2026.

- 4.2 **Provide the name of persons, or classes of persons, who may be directly impacted by the proposed conduct (e.g. targets of a proposed collective bargaining arrangement; suppliers or acquirers of the relevant goods or services) and detail how or why they might be impacted.**

The persons and classes of persons are the same as those identified in the Applicants' 2015 *Submission in support of application for authorisation* enclosed with this Application. In summary the relevant persons are the maintenance workforce, including both OEM vendors, specialist maintenance contractors, associated skills and services required to support the maintenance work (eg, accommodation, catering and equipment transport), and the local workforce.

Please also see sections 3.4 and 4 of the supporting submission to this Application.

5. **Market information and concentration**

- 5.1 **Describe the products and/or services, and the geographic areas, supplied by the applicants. Identify all products and services in which two or more parties to the proposed conduct overlap (compete with each other) or have a vertical relationship (e.g. supplier-customer)**

- 5.2 **Describe the relevant industry or industries. Where relevant, describe the sales process, the supply chains of any products or services involved, and the manufacturing process.**

- 5.3 **In respect of the overlapping products and/or services identified, provide estimated market shares for each of the parties where readily available.**

- 5.4 **In assessing an application for authorisation, the ACCC takes into account competition faced by the parties to the proposed conduct. Describe the factors that would limit or prevent any ability for the parties involved to raise prices, reduce quality or choice, reduce innovation, or coordinate rather than compete vigorously. For example, describe:**

- (a) **existing competitors**
- (b) **likely entry by new competitors**
- (c) **any countervailing power of customers and/or suppliers**
- (d) **any other relevant factors.**

The responses to these questions remain the same as those contained in the Applicants' 2015 *Submission in support of application for authorisation*, enclosed with this Application.

6. **Public benefit**

- 6.1 **Describe the benefits to the public that are likely to result from the proposed conduct. Refer to the public benefit that resulted under the authorisation previously granted.**

Provide information, data, documents or other evidence relevant to the ACCC's assessment of the public benefits.

The public benefits of the proposed contracts, arrangements or understandings for which authorisation is sought are set out in detail in the supporting submission to this Application at paragraph 3. The facts and evidence relied upon in support of the public benefits claims are set out in the supporting submission to this Application.

7. Public detriment including any competition effects

7.1 Describe any detriments to the public likely to result from the proposed conduct, including those likely to result from any lessening of competition. Refer to the public detriment that may have resulted under the authorisation previously granted. Provide information, data, documents, or other evidence relevant to the ACCC's assessment of the detriments.

For the reasons set out in the supporting submission to this Application, the Applicants consider that the proposed conduct identified in section 4 above will not give rise to any anti-competitive detriments.

The facts and evidence relied upon in support of that position are set out in the supporting submission to this Application.

8. Contact details of relevant market participants

8.1 Identify and/or provide names and, where possible, contact details (phone number and email address) for likely interested parties such as actual or potential competitors, customers and suppliers, trade or industry associations and regulators.

Please see the spreadsheets providing contact details for maintenance contractors and suppliers attached to the supporting submission to this Application.

9. Additional information

9.1 Provide any other information or documents you consider relevant to the ACCC's assessment of the proposed application.

Please see the supporting submission attached to this Application.

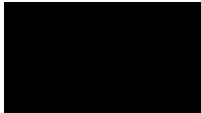
10. Declaration by Applicant(s)

10.1 Authorised persons of the applicant(s) must complete the following declaration. Where there are multiple applicants, a separate declaration should be completed by each applicant.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the Application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).



Signature of authorised person: Solicitor acting on behalf of the Applicants

Office held: Partner

Name of authorised person: Mary Elizabeth-Anne Richmond

This 24th day of February 2021.

Application for Re-authorisation of Authorisations A91516 and A91517

1. Executive summary

On 14 April 2016, the Australian Competition and Consumer Commission (**ACCC**) granted conditional authorisation (**Authorisation**) to Australia Pacific LNG Pty Ltd (**APLNG**),¹ the Queensland Curtis LNG Project (**QCLNG**),² and the Gladstone LNG Project (**GLNG**)³ (together, the **Applicants**). The Authorisation permitted the Applicants to coordinate the timing and scheduling of maintenance events at their LNG facilities on Curtis Island (**LNG Facilities**), by:

- (a) making and giving effect to arrangements or understandings among themselves 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; and
- (b) exchanging information for the purpose of making and giving effect to the arrangements and understandings referred to above - including:
 - (i) information about maintenance techniques and operational processes;
 - (ii) potential resource constraints associated with particular shutdown windows (eg accommodation) and discussing mitigation options; and
 - (iii) disclosing the names of the maintenance contractors who have been appointed by each of the Applicants to perform the relevant third party facility maintenance.

(the **Authorised Conduct**).

The Applicants submitted at the time the Authorisation was sought that the proposed conduct is necessary because maintenance at the LNG Facilities is highly complicated and costly, and there are a limited number of maintenance services providers available to undertake such maintenance. The Authorisation was granted so as to permit the Applicants to confer about timing and scheduling of maintenance, and therefore to minimise LNG downtimes due to scheduled maintenance.

The Authorisation was granted subject to a condition which was set out at Attachment A to the Authorisation (**Condition**). That Condition requires an Applicant to publish Maintenance Information as defined in paragraph 2 of the Condition, as soon as practicable after, but within 2 business days of that information being disclosed to another Applicant, and to ensure that the information published remains an accurate reflection of the Applicant's reasonable expectations about scheduled maintenance activities. The Condition was intended to mitigate the risk of information asymmetry occurring between the Applicants and other participants in the domestic gas market who, but for the Condition, would not have the same access to the upcoming maintenance scheduling information and therefore, capacity, as the Applicants. The publication requirement is satisfied by an Applicant providing the Maintenance Information to AEMO to put on the Gas Bulletin Board (**Bulletin Board**).

¹ The Australia Pacific LNG Project Participants listed in Schedule 1.

² The Queensland Curtis LNG Project participants listed in Schedule 2.

³ The GLNG Project Participants listed in Schedule 3.

In early 2020 comprehensive amendments to the National Gas Law (**NGL**) were proposed to give effect to a package of measures designed to enhance transparency in the gas market. Those measures are set out in the Energy Council's Regulation Impact for Decision of March 2020 (**RIS**) and are expected to be implemented during 2021 (**Gas Transparency Measures**).⁴ The measures are proposed in response to recommendations to enhance gas market transparency made by the Australian Energy Market Commission (**AEMC**) in 2016, and by the ACCC and the Gas Market Reform Group in 2018/2019.

If implemented, the Gas Transparency Measures will require the Applicants to report publicly on a broader and more detailed range of information than the current Condition requires.

As a result, the Applicants submit that the information required to be published under the new reporting requirements will go further than the Condition and will eliminate any potential information asymmetry between the Applicants and other market participants that the Condition was intended to address. On that basis the Applicants further seek that, as part of the requested reauthorisation, the Condition be amended such that it will cease to apply at the commencement of Gas Transparency Measures. This is addressed specifically in paragraph 5 below.

Accordingly, the Applicants seek reauthorisation of Authorisations A91516 and A91517 which are due to expire on 6 May 2021, and request that the ACCC authorise the Applicants to continue the Authorised Conduct on the same terms, subject to the Condition being replaced by the implementation of the Gas Transparency Measures at the time those measures commence. The Applicants are content to adhere to the terms of the Condition until those measures are operative.

In line with the current Authorisation which was granted for 5 years, the Applicants seek re-authorisation of the Authorised Conduct for a further period of 5 years until May 2026. In granting authorisation for 5 years in 2016, the ACCC noted the application had been made at the outset of the LNG industry on Australia's east coast, and that there was some uncertainty about the impact of the industry on east markets across Australia's east coast. Since that time, nothing has arisen that would cause reauthorisation to be inappropriate. The benefits associated with the Authorised Conduct continue to outweigh the detriment as is detailed below.

2. The Applicants

Each of the Applicants and the parties to this Application are set out in Schedules 1-3 attached to this Submission.

Each LNG Facility now operates two LNG "trains", comprising a total of six operational trains. Since the 2016 authorisation, each of the LNG Facilities has undertaken a major maintenance event. Each of the LNG Facilities currently has a major service planned for 2021 for one of their LNG trains and the potential for a further major service for its second train in 2022. Each of these major services is planned to run for approximately 30 days and will require a workforce of up to 800 people. The Applicants' ability to coordinate this maintenance ensures

⁴ The RIS at page xxix indicates an intention that the proposed new Bulletin Board reporting measures would commence on 1 March 2021 with further proposed changes to the Gas Statement of Opportunities (**GSOO**) to commence on 1 April 2021. A consultation paper concerning the proposed regulatory amendments package to give effect to the RIS was released in November 2020 and the consultation period ended in January. Legislation to implement the Gas Transparency Measures has not yet been progressed through the South Australian Parliament.

that this large workforce will be available for each LNG Facility's service and the Applicants are not seeking use of the same limited workforce at the same time.

Accordingly, reauthorisation at this point is particularly important to enable the Applicants to coordinate their major maintenance activities running over 2021 and 2022.

3. Public benefits from authorisation

3.1 Reducing costs and downtime associated with maintenance

The Applicants consider continued authorisation to be important to reduce costs and downtime associated with maintenance. The Applicant's experience under the Authorisation is that the reduced costs and downtime which they and the ACCC anticipated would occur, did, in fact, occur. These are likely to occur into the future under a new authorisation.

Maintenance shutdowns are labour and capital intensive, requiring a significant number of highly skilled maintenance technicians, including specialist maintenance personnel, who are experienced in servicing the relevant equipment. Coordination between the Applicants has reduced the instances of multiple LNG trains being simultaneously offline, which ensures that each event can be managed as efficiently as possible by available personnel. In many cases, the personnel and the firms they work for today are based outside of Queensland, and operate on a national or international basis. Ensuring access to the limited supply of skilled labour and specialist equipment has been achieved with minimal delays and at efficient cost when multiple LNG trains do not require the use of limited labour and equipment resources at the same time. The Authorised Conduct also ensures that the facilities have maximised use of local resources to the extent possible, in support of the local labour force.

The Authorised Conduct has enabled each of the LNG Facilities to reduce maintenance cost and downtime in the following ways:

- **Reduced occurrence of LNG trains being offline simultaneously:** As a result of the coordination between the Applicants, there have not been any instances of major scheduled maintenance occurring concurrently and resulting in multiple trains being offline at the same time. Each LNG Facility has had access to the specialist resources required for maintenance events (such as flange management, nitrogen services, cranes and others) as required, without needing to consider the potential for overlap, and therefore assisting with shorter, more efficient maintenance events.
- **Dedicated local labour force:** As in 2016 when the final application for Authorisation was made, in many cases, the specialised personnel and the firms they work for are based outside of Queensland, and operate on a national or international basis. However, reduced cost has arisen through better utilisation of local Gladstone and broader Queensland resources, with up to 70% of labour now being locally sourced with specialist services flown in as required. Service providers including UGL, Enermech and Kaefer now all have a permanent presence in Gladstone with many contracts specifying a minimum local resource percentage to promote local employment opportunities. It is very unlikely that these service providers would have made the decision to establish a permanent presence without the certainty and more efficient operational planning achieved because of the ability to co-ordinate maintenance activities. Reauthorisation of the Authorised Conduct will provide continued certainty to those providers that have made this investment, and will support continued investment, with attendant benefits to the local community.

- **Travel costs:** Although there has been no reduction in service providers' day rates, their travel costs have been reduced and that saving is passed through to the LNG Facilities. For example, maximising the use of the local labour force significantly reduces the need for interstate or international resources and the consequential savings have been estimated at \$2 million per shutdown.
- **Contractor unavailability:** The ability to coordinate has enabled contractors to be scheduled and therefore there has not been instances of downtime being extended due to contractor availability.
- **Safety considerations:** LNG train shutdowns are around-the-clock periods of high activity which last for around 30 days in the case of Major Shutdowns, and involve a proportionally larger volume of high risk maintenance activity compared to normal operations (for example, confined space entry, working at heights, heavy lifts and intrusive maintenance). Ensuring adequate emergency response to a potential incident is critical to the safety of everyone involved in an LNG shutdown, and emergency response resources would be spread more thinly if two or more maintenance shutdowns occurred concurrently. Confidence in the availability of limited specialist response teams and recovery personnel (for the likes of confined space entry and working at heights) in the event those personnel are required, has been an important safety benefit that has arisen from the Authorised Conduct.

The Applicants have found that costs and downtime associated with maintenance have been reduced during the period of Authorisation and going forward the Applicants have no reason to expect that this benefit will not continue, as the Authorised Conduct will be the same.

3.2 Reducing inefficiencies arising from events of significant volatility in domestic gas markets

The Authorisation Determination noted that the Applicants can have significant impacts on domestic markets because of their large production capacity relative to the rest of the market, and the potential for market volatility where multiple facilities are simultaneously offline, or alternatively, ramping up production

The Authorised Conduct enables this volatility to be smoothed in two ways:

- first, by minimising the occurrence of multiple train shutdowns, which can lead to large volumes of excess gas being sold into the domestic market, and
- second, through a range of strategies which are deployed by the Applicants to achieve material efficiency benefits in relation to their use of CSG resources. This includes the ability to manage the gas supply to avoid curtailment..

The Authorised Conduct has enabled the Applicants to achieve material efficiency benefits in relation to their use of CSG resources and they expect this benefit will continue if the conduct is reauthorised.

3.3 Reducing the need to employ wasteful, last resort gas control techniques

As noted above, where Applicants are able to plan for maintenance, they are better able to manage their gas supply to avoid curtailment. While flaring excess gas is sometimes necessary in the operation of an LNG Facility, a reduction in flaring benefits the environment and reduces the waste of a valuable, natural resource.

Flaring of gas is more readily avoidable where Applicants are able to employ better production management measures and minimise or prevent gas being sent to the plant where it is unable to be processed and therefore flaring of saleable gas is minimised. Being able to communicate outages, particularly major outages, between Applicants prevents multiple parties trying to divert gas domestically at the same time and allows individual Applicants to offer gas to the other proponents for production in their facilities to LNG, therefore reducing the likelihood of having to turn down production in the Upstream.

3.4 Reducing the negative impact of maintenance activities on third parties and the local community.

The Applicants consider reauthorisation of the Authorised Conduct to be important to reduce the negative impact of maintenance activities on third parties and the local community. The Applicants' experience under the Authorisation is that they have been able to achieve this through co-ordination and that this is likely to occur into the future if the conduct is reauthorised.

Each of the Applicants, along with the Queensland government and relevant regulators, has been concerned to manage the impact of the development and operation of the LNG Facilities on local communities and infrastructure in the Gladstone region, in particular, accommodation, transport, logistics and emergency services. This concern is reflected in the conditions on which environmental and other government approvals have been granted for the LNG Facilities, and the steps taken by the Applicants and relevant regulators to manage congestion in the Gladstone port area and township.

It will be important to continue to co-ordinate on these matters to ensure that these benefits continue to accrue. The Authorised Conduct covers ongoing matters, such as congestion on roads and demands on local services, which mean that it will be important for the Applicants to continue to co-ordinate as they have to date.

4. Potential public detriments have not occurred

4.1 No information asymmetry

Accurate Maintenance Information has been published on the Bulletin Board by the Applicants as required by the Condition, and therefore the information asymmetry the subject of the ACCC's concern in the Authorisation has been entirely mitigated. While the Applicants now seek an amendment to this Condition as foreshadowed above and set out below at paragraph 5, the amendment requested, which is that the Applicants comply with the Gas Transparency Measures from, the time they become operative instead of the Condition, will also entirely mitigate information asymmetry.

4.2 No reduction in competition for maintenance services

The ACCC articulated a potential concern about a reduction in competition for maintenance service providers in the Authorisation, on the basis that the conduct could result in fewer opportunities for maintenance service providers to win contracts with the Applicants. The same concern was not expressed by maintenance service providers. When considering all maintenance contractors used by the Applicants during the period of Authorised Conduct,

there was limited overlap of suppliers suggesting that a wide range of service providers are being awarded contracts for maintenance events.

4.3 No unauthorised co-ordination

The final potential detriment raised in the Authorisation was the potential for coordination beyond the scope of the Authorised Conduct.

There has been no such unauthorised coordination during the Authorisation nor any complaints about such conduct. The Applicants fully understand their broader obligations to comply with the *Competition and Consumer Act 2010* (Cth) in particular to avoid any sharing of information beyond the scope of the Authorised Conduct.

5. Amendment to Condition of Authorisation

The Condition requires the Applicants to make publicly available "Maintenance Information" that an LNG producer the subject of the Condition discloses to another LNG Producer in the course of scheduling maintenance activities pursuant to the Authorised Conduct.

As noted above, amendments to the NGL are presently proposed to give effect to a package of measures designed to enhance transparency in the gas market. Measures to improve transparency were first proposed by the AEMC in 2016 and those proposals were the subject of some limited consideration by the ACCC at the time of the Authorisation. While submissions were made by market participants about the applicability of the proposed reforms in the context of the Authorisation, the ACCC took the view that AEMC was the appropriate body to determine the scope of industry-wide disclosure requirements and the implementation of those reforms, and that any Condition of disclosure imposed on the Applicants should be limited to the scope of the Authorised Conduct.

In November 2020 a consultation paper was released concerning the draft regulatory amendments necessary to give effect to gas market transparency reforms that were endorsed by Energy Ministers in March 2020 (**Consultation Paper**). Submissions to the paper are now closed.

It is expected that, following the consultation process, the Gas Transparency Measures will be implemented over the course of 2021 and 2022. The precise timing has not yet been determined, but the relevant legislative changes will be progressed through the South Australian Parliament. As an applied law regime, the amendments made to the NGL in South Australia will flow through to all jurisdictions that have applied the NGL as the law of that jurisdiction. The specific dates of commencement will be further canvassed through the legislative consultation process.

If implemented, the Gas Transparency Measures will require the Applicants to report publicly on a range of information that is more onerous than what the current Condition requires of the Applicants. Critically, and as set out in paragraph 7.2 of the Consultation Paper, the Applicants will be further subject to Part 18 of the Rules concerning the reporting requirements of the Bulletin Board and for their LNG Facilities to report the following information:

- the nameplate capacity of the connection point to the LNG Facility and the nameplate capacity of the LNG Facility;
- detailed facility information (i.e. the name of the pipeline and delivery points to which the facility is connected);

- the short and medium term capacity outlook for the LNG Facility; and
- daily gas consumption by the LNG Facility.

Reporting therefore will entail the provision by the Applicants of:

A. General information concerning the capacity of a LNG Facility:

- Daily capacity: (i) quantity of natural gas the facility can receive from a pipeline on a gas day; and (ii) the quantity of natural gas the facility can process to a liquefied state on a gas day.
- Nameplate rating: (i) maximum daily quantity of natural gas the facility can receive from a pipeline on a gas day under normal operating conditions; and (ii) the maximum quantity of natural gas the facility can process to a liquefied state on a normal gas day.

B. Short term capacity outlook:

- a short-term capacity outlook for the coming seven days: (each gas day D-1 for the period D to D+6): r 178(2).
- short-term capacity outlook: "*the facility operator's good faith estimate of the daily capacity of the facility*".
- when referring to an LNG Facility, daily capacity means: (i) the quantity of natural gas that the facility can receive from a pipeline on a gas day; and (ii) the quantity of natural gas that the facility can process to a liquefied state on a gas day.

C. Medium term capacity outlook

- information about matters expected to affect the daily capacity of the LNG Facility for an outlook period of 12 months (commencing after the horizon of the short term capacity outlook, i.e., after one week in future).
- ***when describing matters which it is anticipated will affect daily capacity, the report to AEMO must include: (i) expected start/end date; (ii) a description of the matter affecting capacity; and (iii) expected daily capacity during the affected period.*** [Emphasis added]

D. Daily consumption data

- Rule 189A will require an LNG Facility to report to AEMO on each gas day D+1 the daily consumption data for the preceding day for that facility.
- daily consumption data is defined as, for an LNG Facility, the quantity of natural gas delivered to the facility on a gas day.

The Applicants submit that:

- medium term reporting will require the reporting of scheduled maintenance events, as currently takes place under the Condition; and

- the information otherwise required to be published under the Gas Transparency Measures goes further than the Condition and will eliminate the need for market participants to extrapolate from the Maintenance Information presently posted to the Bulletin Board each LNG Facility's expected capacity. Reporting will provide a greater level of visibility of the Applicants' operations to the market than is presently available under the Condition.

Once these measures are implemented, there will be no potential for information asymmetry between the Applicants and other market participants, nor should there be a need for the Applicants to make duplicative posts to the Bulletin Board.

Accordingly, while noting that the Condition currently attached to the Authorisation has been effective, the Applicants request that, should the ACCC reauthorise the Authorised Conduct as requested by the Applicants, the current Condition cease to apply at the commencement of Gas Transparency Measures in light of the new reporting requirements that will then be in place. The Applicants are content to adhere to the terms of the Condition until those measures are operative.

6. Conclusion

At the time of the Authorisation, the ACCC noted that the Authorised Conduct was likely to result in public benefits that would outweigh the likely public detriment. Each of those public benefits (set out in section 3 above) have in fact resulted from the Authorised Conduct and the Applicants have every expectation that they will continue to do so. There is nothing about the LNG Facilities, the expected maintenance schedule, or the East Coast gas market more broadly that means these same benefits would not continue to flow in the future, and continue to outweigh any potential detriment.

The Applicants propose to continue publishing relevant information for the market under the Condition until such time as the Gas Transparency Measures are implemented. Following implementation of those transparency measures, the Applicants will be required to publish information the equivalent of Maintenance Information in any event by reporting their medium term capacity outlook.

The ACCC now has the benefit of greater certainty, partly through its increased scrutiny of the east coast gas market and responses to the ACCC Gas Inquiry 2017-2025, of the market dynamics and the effect of the LNG industry on gas markets across Australia's east coast. This means that the decision about reauthorisation, in circumstances where the same net public benefits arise, can be made with greater confidence than when Authorisation was sought in 2015 and granted in 2016, particularly in circumstances where the Authorised Conduct remains unchanged.

Schedule 1 Participants in the APLNG project

Australia Pacific LNG Pty Ltd and its subsidiaries

ConocoPhillips Australia Operations Pty Ltd as downstream Operator to APLNG

Name, address (registered office), telephone number, and ABN

C/- ConocoPhillips Australia Operations Pty Ltd (ABN 28 141 253 787)

Registered address: Level 1, 33 Park Road, Milton QLD 4064

Telephone: (07) 3182 7302

Schedule 2 Participants in the QCLNG project

QCLNG Applicant: QCLNG Operating Company Pty Ltd as operator of the QCLNG Plant, which is owned and used by the following parties:

Owners

Common Facilities owners

- QGC Common Facilities Company Pty Ltd
- Capricorn Participant Pty Ltd as trustee of the Capricorn Participant Trust* (*conditional on completion of a transaction currently subject to FIRB approval).

LNG Train 1 owners

- QGC Train 1 Pty Ltd (“QGC T1”)
- CNOOC QCLNG Pty Ltd (“CNOOC T1”)

LNG Train 2 owners

- QGC Train 2 Pty Ltd (“QGC T2”)
- Tokyo Gas QCLNG Pty Ltd (“Tokyo Gas”)

Facility users

- QGC Train 1 Tolling Pty Ltd
- QGC Train 2 Tolling Pty Ltd
- QGC Train 2 Tolling No. 2 Pty Ltd
- CNOOC QGLNG Tolling Pty Ltd
- Tokyo Gas QCLNG Pty Ltd

Name, address (registered office), telephone number, and ACN

QCLNG Operating Company Pty Ltd (ACN 138 872 385)
Registered address: L30, 275 George Street, Brisbane QLD 4000
Telephone: (07) 3024 9000

Schedule 3 GLNG Operations Pty Ltd as agent for the Participants in the GLNG project

GLNG Operations Pty Ltd (ABN 66 132 321 192) of Level 22 Santos Place, 32 Turbot Street, Brisbane QLD 4000 as agent for the Participants in the GLNG project as listed below:

Santos GLNG Pty Ltd

ABN: 12 131 271 648

Address: Ground Floor, Santos Centre, 60 Flinders Street, Adelaide SA 5000

Telephone: (08) 8116 5000

Email: jvadmin.santos@santos.com, Attention: Manager Finance – GLNG Asset

PAPL (Downstream) Pty Limited

ABN: 43 147 649 205

Address: Level 36, Santos Place, 32 Turbot Street, Brisbane QLD 4000

Telephone: (07) 3238 8000

Email: notices.papl@petronas.com.my; cc: jvadmin.papl@petronas.com.my, Attention: Managing Director/ CEO

Total GLNG Australia

ABN: 146 680 524

Address: Level 23, Bourke Place, 600 Bourke Street, Melbourne VIC 3000

Telephone: (03) 9861 8600

Email: notices.tepau@total.com; cc: E-AUPER-TEPAU-glng_notices@total.com, Attention: Managing Director

KGLNG Liquefaction Pty Ltd

ABN: 39 146 143 311

Address: Level 36, Santos Place, 36/32 Turbot Street, Brisbane QLD 4000

Telephone: (07) 3007 3007

Email: admin@kglng.com; cc: [REDACTED], Attention: Managing Director