

4. The Agreements

Authorisation is sought for the arrangements under the amended GPS Agreements:

- the Restated Joint Venture Agreement for the GPS Joint Venture, as annexed to the Deed of Amendment and Restatement of the Joint Venture Agreement (**the JVA**);
- the Restated Interconnection and Power Pooling Agreement relating to the GPS, as annexed to the Deed of Amendment and Restatement of the Interconnection and Power Pooling Agreement (**the IPPA**);
- the Restated Capacity Purchase Agreements relating to the GPS, as annexed to the Deed of Amendment and Restatement of the Capacity Purchase Agreement (**the CPAs**); there are seven CPAs as each JV Participant is a party to a separate CPA;
- the Restated Master Power Purchase Agreement relating to the Boyne Island Smelter, as annexed to the Deed of Amendment and Restatement of the Master Power Purchase Agreement; the Restated Block A Power Purchase Agreement relating to the Boyne Island Smelter, as annexed to the Deed of Amendment and Restatement of the Block A Power Purchase Agreement (for the first and second potlines) and the Restated Block B Power Purchase Agreement relating to the Boyne Island Smelter, as annexed to the Deed of Amendment and Restatement of the Block B Power Purchase Agreement (for the third potline) (**the PPAs**);
- the Restated Operation and Maintenance Agreement relating to the GPS, as annexed to the Deed of Amendment and Restatement of the Operation and Maintenance Agreement (**the OMA**); and
- the Restated Power Sales Administration Agreements relating to the GPS, as annexed to the Deed of Amendment and Restatement of the Power Sales Administration Agreements (**the PSAAs**); there are seven PSAAs as each JV Participant is a party to a separate PSAA.

(amended GPS Agreements)

Annexure H contains a table identifying the parties to each of the amended GPS Agreements.

The other agreements which are part of the arrangements but not the subject of the applications are:

- [REDACTED] Gladstone Power Station Coal Supply Agreement between [REDACTED] and the JV Participants;
- Gladstone Power Station Coal Purchase Agreement between [REDACTED] and the JV Participants;
- Gladstone Power Station Rail Transportation Agreement between [REDACTED] and the JV Participants; and

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Both the [REDACTED] Gladstone Power Station Coal Supply Agreement and the Gladstone Power Station Coal Purchase Agreement set out the terms and conditions on which the JV Participants acquire coal from [REDACTED] for use in the GPS.

The Gladstone Power Station Rail Transportation Agreement sets out the terms and conditions on which [REDACTED] agrees to make available above rail capacity to transport the JV Participants' coal.

4.1 Joint Venture Agreement

The JVA (as did the earlier authorised Joint Venture Agreement) records the JV Participants' agreement to form an unincorporated joint venture for the acquisition, operation and maintenance of the GPS to generate electricity.²⁴ The JV Participants are associated as joint venturers to pursue the following objects:

- to acquire the GPS from QEC;
- to make the capacity of the GPS available and to operate and maintain it to generate electricity as and when required by the JV Participants;
- to deliver electricity generated by the GPS to the JV Participants at the point of interconnection between the Queensland power system and the GPS; and
- to improve the GPS as contemplated by the Refurbishment and Testing Deed and any further plant improvement and refurbishment programs.

Under the JVA, the JV Participants have reached arrangements or understandings regarding their participation having the following purpose and effect:

- the GPS generated electricity will be offered by the Nominated Generator on behalf of each JV Participant at the same (or similar) prices; and
- all of the GPS generated electricity supplied to the NEM will be through the Nominated Generator.

4.2 Interconnection and Power Pooling Agreement

²⁴ The key amendments are to clauses 6.5A, 6.5B, 8.3, 10.6A, 10.10A and Schedules 2-4.

The IPPA establishes arrangements whereby the GPS and the Smelter are interconnected with the Power System (as defined in the NER) and arrangements to ensure security of power supply to the Smelter. [REDACTED]

[REDACTED] Under the arrangements, the GPS operates as an integral part of the power system.

The parties have agreed to amend the IPPA to take account of:

- the introduction of the NEM, the NEL and the National Electricity Code (NEC) on 13 December 1998 (which substantially restructured the electricity supply industry in Queensland);²⁵
- the subsequent amendments of the NEC to become the NER on 1 July 2005;
- the cessation on 1 July 1997 of the responsibilities of QTSC (as successor of QEC and predecessor of QPTC) for the planning and co-ordination of the State electricity system;
- the appointment of Stanwell as the Nominated Generator for the GPS under the NER;²⁶
- the disaggregation of QGC and the establishment of successor entities to QGC;

- other matters agreed between the parties.

In summary, the key amendments to the IPPA relate to:²⁷

- the designation of Stanwell as the Nominated Generator in the NEM for the GPS;²⁸
- provision for Stanwell to bid the capacity of the GPS into the NEM;²⁹
- requirements for the JV Participants (and the Operator) to dispatch the GPS in accordance with dispatch instructions received from AEMO;³⁰
- provisions for ancillary services provided to the NEM;³¹

[REDACTED]

²⁵ IPPA, Recital H.

²⁶ IPPA, Recital I.

²⁷ The other key amendments are to clause 7.5 and Schedule 6 in relation to the interruptibility regime and clause 11 in relation to the Combustion Turbine.

²⁸ IPPA, clause 1.15.

²⁹ IPPA, clauses 5A, 6.2-6.3 and 6.5(b).

³⁰ IPPA, clauses 5.2(b) and 6.4.

³¹ IPPA, clause 12 and Schedule 2.

[REDACTED] ³³

[REDACTED] ³⁴

- amendments to reflect the current names of each of the parties and to remove certain redundant terms and clauses;³⁵
- replacing what were previously the system control obligations with provisions that reflect the operation of the GPS in the NEM and the role of Powerlink;³⁶
- amendments to deal with the reimbursement or indemnification of liabilities incurred by Stanwell in respect of the Smelter base load (810 MW) in its role as Nominated Generator in the NEM for the GPS under the *Renewable Energy (Electricity) Act 2000 (Cth)*, and [REDACTED] ³⁷
- amendments to include dispatch incentives for the GPS to proactively maximise the available capacity of the GPS consistent with Stanwell's market interests.³⁸

Specifically the amendments to the IPPA have the effect that:

- Stanwell, as the Nominated Generator, will make dispatch offers in the NEM in respect of the GPS capacity;
- Stanwell will compensate the JV Participants on the same terms for having the GPS available for sales of electricity in the NEM, excess generation, and in event of Stanwell's wilful default; and
- JV Participants will continue to supply BSL on the same terms, pay and receive a common price for capacity support and economy interchange energy and (only in the case of financial default by Stanwell) may direct Stanwell as to how the GPS capacity (not paid for by Stanwell) should be bid.

[REDACTED] ³⁹

The Smelter arrangements (as authorised in 1994) are not significantly affected by the introduction of the NEM and will not be materially altered as part of the restructuring of

³² IPPA, clauses 6.10-6.11, 14 and Schedule 16.

³³ IPPA, clause 9.5 and Schedules 7 and 16.

³⁴ IPPA, clauses 5A, 23, 30.6 and Schedule 4 clause 4 and Schedules 13 and 16.

³⁵ See for example, IPPA, clauses 2.3 and 3.4 (to reflect current names of each of the parties) and IPPA, clauses 5.7(b) and 8.4 (to remove certain redundant terms and clauses).

³⁶ See for example IPPA, clauses 7.4 and 20.

³⁷ IPPA clauses 8.1, 8.3 and 26.8 and Schedule 17.

³⁸ IPPA, clauses 6.9 and 14 and Schedule 16.

³⁹ IPPA, clause 7.3 and Schedule 16.

the parties' arrangements. Apart from the amendments to the PPAs outlined in section 4.4 below which reflect, on a back-to-back basis, changes to the IPPA pricing and security of supply arrangements, the agreements involving the Smelter will remain in effect and, accordingly, further authorisation is not being sought for those arrangements.

4.3 Capacity Purchase Agreements

The CPAs provide for the balance of capacity of the GPS to be made available by the JV Participants to Stanwell by way of seven separate CPAs between Stanwell and each of the JV Participants, on the same or similar terms. As under the arrangements authorised in 1994, each JV Participant will, under the CPA, make 'contract capacity'⁴⁰ available to Stanwell, which is the difference between the total capacity of the GPS and the capacity required to supply the Smelter.⁴¹ The contract capacity is approximately [REDACTED].

4.4 Power Purchase Agreements (Master Power Purchase Agreement and Block A and Block B Power Purchase Agreements)

The Master Power Purchase Agreement (MPPA) defines the general conditions under which electricity is purchased by BSL for the purpose of supplying electricity to the Smelter (including the original two potlines and the third potline expansion). There are two long term take-or-pay power purchase agreements between the JV Participants and BSL related to the MPPA, the Block A and Block B Power Purchase Agreements.

The Block A Power Purchase Agreement records the arrangements by which power is purchased by BSL for the purpose of supplying electricity to the first two potlines of the original Smelter. The Block B Power Purchase Agreement records the arrangements by which power is to be purchased by BSL for the purpose of supplying electricity to the third potline expansion.

The PPAs have generally been amended, on a back to back basis, with the amendments to the IPPA. The most significant amendments to the PPAs are related to those IPPA changes concerning:⁴²

- the basis for calculating capacity support payments in certain circumstances;⁴³
- [REDACTED]⁴⁴
- [REDACTED]⁴⁵

⁴⁰ Each JV Participant will make available to Stanwell the residual capacity of GPS remaining after dedication of capacity to supply the demand for power at the Smelter (together with the Smelter reserve margin and transmission capacity losses).

⁴¹ The key amendments are to clauses 8.2(a), 9.16 and 10.8.

⁴² Other key amendments to the MPPA are to clauses 3.1, 3.2, 3.3, 4.3, 5.2, 5.6 and 8.6. Other key amendments to the Block A PPA are to clauses 3-4 and 5 and Schedule 1. Other key amendments to the Block B PPA are to clause 3.

⁴³ MPPA, clause 5.1.

⁴⁴ MPPA, clause 5.1.

- the security of supply provisions.⁴⁶

4.5 Operation and Maintenance Agreement

As under the Operation and Maintenance Agreement authorised in 1994, the OMA provides for the appointment of NRGGOS as operator to manage the GPS on a day-to-day basis. The amendments modify the OMA to reflect changes made in the IPPA including [REDACTED].⁴⁷

4.6 Power Sales Administration Agreements

The PSAAs establish arrangements for the administration of the sale of each JV Participant's share of power from the GPS, such administration to be carried out by NRGGOS as operator. This has the effect of appointing NRGGOS to administer the IPPA, CPAs and PPAs on behalf of each JV Participant.

The only amendments to the PSAAs are those necessary to reflect changes in the IPPA and related GPS agreements.⁴⁸ It is necessary on a practical level for the operation of the GPS that there be a single operator.

5. Trade Practices Issues – Effect on Competition

The Applicant submits that the amended GPS Agreements referred to in section 4 will not contravene the TPA or otherwise have a negative impact on competition. The amendments incorporated in the amended GPS Agreements seek to:

- preserve, to the extent possible, the financial arrangements that underpinned the acquisition of the GPS;
- ensure that BSL, through Stanwell as the Nominated Generator, has security of supply and can take its energy entitlement from the GPS; and
- [REDACTED]

[REDACTED]

Authorisation is sought:

- *under section 88(1A) for the amended GPS Agreements and specifically provisions which may be cartel provisions;*⁴⁹

⁴⁵ MPPA, clauses 8.1 and 11.8 and Schedule 7.

⁴⁶ MPPA, clauses 3.1-3.2 and Schedule 1.

⁴⁷ The key amendments are to clauses 1.1, 1.7-1.9, 3.1, 3.4(b), 3.9(h), 3.10, 4.1, 6.8(b), 6.9 and Schedule 1, Part II 25-35 and Schedules 5A and 6.

⁴⁸ The key amendments are to clauses 1.1, 5.3 and 5.4.

⁴⁹ Sections 44ZZRF, 44ZZRG, 44ZZRJ and 44ZZRK for cartel provisions as defined in section 44ZZRD.