

Form A

Commonwealth of Australia

Trade Practices Act 1974 — subsections 88 (1A) and (1)

EXCLUSIONARY PROVISIONS AND ASSOCIATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Trade Practices Act 1974* for an authorisation:

to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act.

to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act.

- ~~to make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of that Act.~~
- ~~to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision within the meaning of section 45 of that Act.~~

(Strike out whichever is not applicable)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of Applicant:
(Refer to direction 2)

A91205

Rio Tinto Aluminium Limited ACN 009 679 127

GPS Energy Pty Limited ACN 063 207 456

GPS Power Pty. Limited ACN 009 103 422

Sunshine State Power B.V. ARBN 062 295 425

Sunshine State Power (No. 2) B.V. ABRN 063 382 829

SLMA. GPS Pty Ltd ACN 063 779 028

Ryowa II GPS Pty. Limited ACN 063 780 058

YKK GPS (Queensland) Pty Limited ACN 062 905 275

- (b) Description of business carried on by applicant:

(Refer to direction 3)

Please see section 1 and annexure A of the **attached** submission.

- (c) Address in Australia for service of documents on the applicant:

Margaret Brown
Minter Ellison Lawyers
1 Eagle Street
BRISBANE QLD 4000

2. **Contract, arrangement or understanding**

- (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:

(Refer to direction 4)

- the Restated Joint Venture Agreement for the GPS Joint Venture;
- the Restated Interconnection and Power Pooling Agreement relating to the Gladstone Power Station;
- the Restated Capacity Purchase Agreements relating to the Gladstone Power Station;
- the Restated Master Power Purchase Agreement relating to the Boyne Island Smelter;
- the Restated Block A Power Purchase Agreement relating to the Boyne Island Smelter;
- the Restated Block B Power Purchase Agreement relating to the Boyne Island Smelter;
- the Restated Operation and Maintenance Agreement relating to the Gladstone Power Station; and
- the Restated Power Sales Administration Agreements relating to the Gladstone Power Station,

(the amended GPS agreements).

Please see section 4 of the **attached** submission.

- (b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, exclusionary provisions and (if applicable) are, or would or might be, cartel provisions:

(Refer to direction 4)

Please see section 5 of the **attached** submission.

- (c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

Please see section 1 of the **attached** submission.

- (d) The term for which authorisation of the provision of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

The Applicant requests authorisation for the arrangements under the amended GPS agreements for a period of:

- 45 years; or
- the term of the Interconnection and Power Pooling Agreement (which extends to 29 March 2029) and any extended term pursuant to the exercise of the option under the terms of the Interconnection and Power Pooling Agreement,

whichever is the shorter.

3. Parties to the proposed arrangement

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

Please see Annexure A of the **attached** submission.

Stanwell Corporation Limited is a Queensland Government Owned Corporation with an energy portfolio comprising coal, hydro and wind generation facilities across Queensland and in Western Australia.

Stanwell Corporation Limited
Level 12 Waterfront Place
1 Eagle Street
BRISBANE QLD 4000
Attention: The Company Secretary

NRG Gladstone Operating Services Pty Ltd operates the Gladstone Power Station.

NRG Gladstone Operating Services Pty Ltd
"Gladstone Power Station"
Hanson Road
PO Box 5046
GLADSTONE QLD 4680
Attention: The General Manager, Gladstone Operations

Rio Tinto Aluminium Limited is involved in all three stages of aluminium production: bauxite mining, alumina refining and aluminium smelting, supplying products to both domestic and overseas markets.

Rio Tinto Aluminium Limited
Level 2

443 Queen Street
BRISBANE QLD 4000

Boyne Smelters Limited is Australia's largest aluminium smelter. Production activities at the smelter include manufacturing of carbon anodes, aluminium production (smelting) in reduction lines, and casting of molten metal into aluminium products.

Boyne Smelters Limited
Handley Drive
Boyne Island
Queensland

It is requested that any authorisation granted by the Commission be expressed to apply to a person who becomes a party to the amended GPS agreements after they are amended or after authorisation is granted, as is permitted by section 88(10).

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:
(Refer to direction 5)

Please see Annexure A of the **attached** submission.

4. **Public benefit claims**

- (a) Arguments in support of application for authorisation:
(Refer to direction 6)

Please see section 8 of the **attached** submission.

- (b) Facts and evidence relied upon in support of these claims:

Please see section 8 of the **attached** submission.

5. **Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):
(Refer to direction 7)

Please see sections 3, 6 and 7 of the **attached** submission.

6. **Public detriments**

- (a) Detriments to the public resulting or likely to result from the contract arrangement or understanding for which authorisation is sought, in particular the likely effect of the contract arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:
(Refer to direction 8)

Please see sections 5 and 8 of the **attached** submission.

- (b) Facts and evidence relevant to these detriments:

Please see sections 5 and 8 of the **attached** submission.

7. Contracts, arrangements or understandings in similar terms

- (a) This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding:
- (b) Is this application to be so expressed?
No.
- (c) If so, the following information is to be furnished:
- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:
(Refer to direction 9)
N/A.
- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:
(Refer to direction 10)
N/A.
- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:
N/A.

8. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?
Yes.
- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?
Yes.
- (c) If so, by whom or on whose behalf are those other applications being made?
Rio Tinto Aluminium Limited ACN 009 679 127 and the Gladstone Power Station Joint Venture Participants listed below:

GPS Energy Pty Limited ACN 063 207 456
GPS Power Pty. Limited ACN 009 103 422
Sunshine State Power B.V. ARBN 062 295 425
Sunshine State Power (No. 2) B.V. ABRN 063 382 829
SLMA. GPS Pty Ltd ACN 063 779 028
Ryowa II GPS Pty. Limited ACN 063 780 058
YKK GPS (Queensland) Pty Limited ACN 062 905 275

9. Further information

- (a) Name, postal address and telephone contact details of the person authorised by the applicant seeking authorisation to provide additional information in relation to this application:

Margaret Brown
Minter Ellison Lawyers
1 Eagle Street
BRISBANE QLD 4000

Dated 23 December 2009

Signed by/on behalf of the applicant

M. A. Brown

.....
(Signature)

Margaret Alice Brown
Minter Ellison Lawyers
Consultant

DIRECTIONS

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

In lodging this form, applicants must include all information, including supporting evidence, that they wish the Commission to take into account in assessing their application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which authorisation is sought.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, exclusionary provisions. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and
 - (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
 6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
 7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for authorisation.
 8. Provide details of the detriments to the public, including those resulting from any lessening of competition, which may result from the proposed contract, arrangement or understanding. Provide quantification of those detriments where possible.

9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.
10. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, and descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.

Form B

Commonwealth of Australia

Trade Practices Act 1974 — subsections 88 (1A) and (1)

AGREEMENTS AFFECTING COMPETITION OR INCORPORATING RELATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Trade Practices Act 1974* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act).
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act).
- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

(Strike out whichever is not applicable)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of Applicant:
(Refer to direction 2)

A91206 Rio Tinto Aluminium Limited ACN 009 679 127
GPS Energy Pty Limited ACN 063 207 456
GPS Power Pty. Limited ACN 009 103 422
Sunshine State Power B.V. ARBN 062 295 425
Sunshine State Power (No. 2) B.V. ABRN 063 382 829
SLMA. GPS Pty Ltd ACN 063 779 028
Ryowa II GPS Pty. Limited ACN 063 780 058
YKK GPS (Queensland) Pty Limited ACN 062 905 275

- (b) Short description of business carried on by applicant:
(Refer to direction 3)

Please see section 1 and Annexure A of the **attached** submission.

- (c) Address in Australia for service of documents on the applicant:

Margaret Brown
Minter Ellison Lawyers
1 Eagle Street
BRISBANE QLD 4000

2. **Contract, arrangement or understanding**

- (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:
(Refer to direction 4)

- the Restated Joint Venture Agreement for the GPS Joint Venture;
- the Restated Interconnection and Power Pooling Agreement relating to the Gladstone Power Station;
- the Restated Capacity Purchase Agreements relating to the Gladstone Power Station;
- the Restated Master Power Purchase Agreement relating to the Boyne Island Smelter;
- the Restated Block A Power Purchase Agreement relating to the Boyne Island Smelter;
- the Restated Block B Power Purchase Agreement relating to the Boyne Island Smelter;
- the Restated Operation and Maintenance Agreement relating to the Gladstone Power Station; and
- the Restated Power Sales Administration Agreements relating to the Gladstone Power Station,

(the amended GPS agreements).

Please see section 4 of the **attached** submission.

- (b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, cartel provisions, or that do, or would or might, have the effect of substantially lessening competition:
(Refer to direction 4)

Please see section 5 of the **attached** submission.

- (c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

Please see section 1 of the **attached** submission.

- (d) The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

The Applicant requests authorisation for the arrangements under the amended GPS agreements for a period of:

- 45 years; or
- the term of the Interconnection and Power Pooling Agreement (which extends to 29 March 2029) and any extended term pursuant to the exercise of the option under the terms of the Interconnection and Power Pooling Agreement,

whichever is the shorter.

3. **Parties to the proposed arrangement**

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

Please see Annexure A of the **attached** submission.

Stanwell Corporation Limited is a Queensland Government Owned Corporation with an energy portfolio comprising coal, hydro and wind generation facilities across Queensland and in Western Australia.

Stanwell Corporation Limited
Level 12 Waterfront Place
1 Eagle Street
BRISBANE QLD 4000
Attention: The Company Secretary

NRG Gladstone Operating Services Pty Ltd operates the Gladstone Power Station.

NRG Gladstone Operating Services Pty Ltd
"Gladstone Power Station"
Hanson Road
PO Box 5046
GLADSTONE QLD 4680
Attention: The General Manager, Gladstone Operations

Rio Tinto Aluminium Limited is involved in all three stages of aluminium production: bauxite mining, alumina refining and aluminium smelting, supplying products to both domestic and overseas markets.

Rio Tinto Aluminium Limited
Level 2
443 Queen Street
BRISBANE QLD 4000

Boyne Smelters Limited is Australia's largest aluminium smelter. Production activities at the smelter include manufacturing of carbon anodes, aluminium production (smelting) in reduction lines, and casting of molten metal into aluminium products.

Boyne Smelters Limited
Handley Drive
Boyne Island
Queensland

It is requested that any authorisation granted by the Commission be expressed to apply to a person who becomes a party to the amended GPS agreements after they are amended or after authorisation is granted, as is permitted by section 88(10).

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:
(Refer to direction 5)

Please see Annexure A of the **attached** submission.

4. **Public benefit claims**

- (a) Arguments in support of authorisation:
(Refer to direction 6)

Please see section 8 of the **attached** submission.

- (b) Facts and evidence relied upon in support of these claims:

Please see section 8 of the **attached** submission.

5. **Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

(Refer to direction 7)

Please see sections 3, 6 and 7 of the **attached** submission.

6. **Public detriments**

- (a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:

(Refer to direction 8)

Please see sections 5 and 8 of the **attached** submission.

- (b) Facts and evidence relevant to these detriments:

Please see sections 5 and 8 of the **attached** submission.

7. Contract, arrangements or understandings in similar terms

This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.

- (a) Is this application to be so expressed?

No.

- (b) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:

(Refer to direction 9)

N/A.

- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

N/A.

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

N/A.

8. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?

Yes.

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Yes.

- (c) If so, by whom or on whose behalf are those other applications being made?

Rio Tinto Aluminium Limited ACN 009 679 127 and the Gladstone Power Station Joint Venture Participants listed below:

GPS Energy Pty Limited ACN 063 207 456

GPS Power Pty. Limited ACN 009 103 422

Sunshine State Power B.V. ARBN 062 295 425

Sunshine State Power (No. 2) B.V. ABRN 063 382 829

SLMA. GPS Pty Ltd ACN 063 779 028

Ryowa II GPS Pty. Limited ACN 063 780 058

YKK GPS (Queensland) Pty Limited ACN 062 905 275

9. Further information

- (a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

Margaret Brown
Minter Ellison Lawyers
1 Eagle Street
BRISBANE QLD 4000

Dated 23 December 2009

Signed by/on behalf of the applicant

.....

(Signature)

Margaret Alice Brown
Minter Ellison Lawyers
Consultant

DIRECTIONS

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

In lodging this form, applicants must include all information, including supporting evidence, that they wish the Commission to take into account in assessing the application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions. Provide details of those provisions of the contract, arrangement or understanding that do, or would or might, substantially lessen competition.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and
 - (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
 6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
 7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the authorisation.
 8. Provide details of the detriments to the public which may result from the proposed contract, arrangement or understanding including quantification of those detriments where possible.

9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.

Form E

Commonwealth of Australia

Trade Practices Act 1974 — subsection 88 (8)

EXCLUSIVE DEALING: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 88 (8) of the *Trade Practices Act 1974* for an authorisation under that subsection to engage in conduct that constitutes or may constitute the practice of exclusive dealing.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of applicant:
(Refer to direction 2)

A91207 Rio Tinto Aluminium Limited ACN 009 679 127
GPS Energy Pty Limited ACN 063 207 456
GPS Power Pty. Limited ACN 009 103 422
Sunshine State Power B.V. ARBN 062 295 425
Sunshine State Power (No. 2) B.V. ABRN 063 382 829
SLMA. GPS Pty Ltd ACN 063 779 028
Ryowa II GPS Pty. Limited ACN 063 780 058
YKK GPS (Queensland) Pty Limited ACN 062 905 275

- (b) Short description of business carried on by applicant:
(Refer to direction 3)

Please see section 1 and Annexure A of the **attached** submission.

- (c) Address in Australia for service of documents on the applicant:

Margaret Brown
Minter Ellison Lawyers
1 Eagle Street
BRISBANE QLD 4000

2. Contract, arrangement or understanding

- (a) Description of the conduct that would or may constitute the practice of exclusive dealing:
(Refer to direction 4)

Please see sections 4 and 5 of the **attached** submission.

- (b) Description of the goods or services in relation to the supply or acquisition of which this application relates:

Please see section 1 of the **attached** submission.

- (c) The term for which authorisation of the conduct is being sought and grounds for supporting this period of authorisation:

The Applicant requests authorisation for the arrangements under the amended GPS agreements for a period of:

- 45 years; or
- the term of the Interconnection and Power Pooling Agreement (which extends to 29 March 2029) and any extended term pursuant to the exercise of the option under the terms of the Interconnection and Power Pooling Agreement,

whichever is the shorter.

3. Parties to the proposed arrangement

- (a) Class or classes of persons to which the conduct relates:
(Refer to direction 5)

- GPS Energy Pty Limited ACN 063 207 456, GPS Power Pty. Limited ACN 009 103 422, Sunshine State Power B.V. ARBN 062 295 425, Sunshine State Power (No. 2) B.V. ABRN 063 382 829, SLMA. GPS Pty Ltd ACN 063 779 028, Ryowa II GPS Pty. Limited ACN 063 780 058 and YKK GPS (Queensland) Pty Limited ACN 062 905 275 (the **JV Participants**);
- NRG Gladstone Operating Services Pty Limited ACN 061 519 275 (**NRGGOS**) as operator;
- Rio Tinto Aluminium Limited ACN 009 679 127 (**RTA**) as manager of the Gladstone Power Station Joint Venture;
- Stanwell Corporation Limited (**Stanwell**) as Nominated Generator; and
- Boyne Smelters Limited ACN 010 061 935 (**BSL**).

It is requested that any authorisation granted by the Commission be expressed to apply to a person who becomes a party to the amended GPS agreements after they are amended or after authorisation is granted, as is permitted by section 88(10).

- (b) Number of those persons:

- (i) At present time:

11 (the JV Participants, NRGGOS, RTA, Stanwell and BSL).

- (ii) Estimated within the next year:
(Refer to direction 6)
- 11 (the JV Participants, NRGOS, RTA, Stanwell and BSL).
- (c) Where number of persons stated in item 3 (b)(i) is less than 50, their names and addresses:

For the JV Participants, please see Annexure A of the **attached** submission.

NRG Gladstone Operating Services Pty Ltd
"Gladstone Power Station"
Hanson Road
PO Box 5046
GLADSTONE QLD 4680
Attention: The General Manager, Gladstone Operations

Rio Tinto Aluminium Limited
Level 2
443 Queen Street
BRISBANE QLD 4000

Stanwell Corporation Limited
Level 12 Waterfront Place
1 Eagle Street
BRISBANE QLD 4000
Attention: The Company Secretary

Boyne Smelters Limited
Handley Drive
Boyne Island
Queensland

4. **Public benefit claims**

- (a) Arguments in support of authorisation:
(Refer to direction 6)
- Please see section 8 of the **attached** submission.
- (b) Facts and evidence relied upon in support of these claims:
- Please see section 8 of the **attached** submission.

5. **Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (b) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):
(Refer to direction 7)

Please see sections 3, 6 and 7 of the **attached** submission.

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the conduct on the prices of the goods or services described at 2 (b) above and the prices of goods or services in other affected markets:

(Refer to direction 8)

Please see sections 5 and 8 of the **attached** submission.

- (b) Facts and evidence relevant to these detriments:

Please see sections 5 and 8 of the **attached** submission.

7. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?

Yes.

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Yes.

- (c) If so, by whom or on whose behalf are those other applications being made?

Rio Tinto Aluminium Limited ACN 009 679 127 and the Gladstone Power Station Joint Venture Participants listed below:

GPS Energy Pty Limited ACN 063 207 456

GPS Power Pty. Limited ACN 009 103 422

Sunshine State Power B.V. ARBN 062 295 425

Sunshine State Power (No. 2) B.V. ABRN 063 382 829

SLMA. GPS Pty Ltd ACN 063 779 028

Ryowa II GPS Pty. Limited ACN 063 780 058

YKK GPS (Queensland) Pty Limited ACN 062 905 275

8. Further Information

- (a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

Margaret Brown
Minter Ellison Lawyers
1 Eagle Street
BRISBANE QLD 4000

Dated 23 December 2009

Signed by/on behalf of the applicant



(Signature)

Margaret Alice Brown
Minter Ellison Lawyers
Consultant

DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business in the course of which the conduct is engaged in.
4. Provide details of the conduct (whether proposed or actual) which may constitute the practice of exclusive dealing in respect of which this authorisation is sought.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing — provide a true copy of the writing; and
 - (b) to the extent that any of the details have not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
 6. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
 7. Provide details of the market(s) likely to be effected by the conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the authorisation.
 8. Provide details of the detriments to the public which may result from the conduct including quantification of those detriments where possible.