

1 July 2011

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Dr Richard Chadwick
General Manager
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Dear Dr Chadwick

Application for minor variation of authorisation A91205 – A91207

We refer to our recent telephone conversation.

We confirm that we act on behalf of Rio Tinto Aluminium Limited ACN 009 679 127 and the Gladstone Power Station Joint Venture Participants in relation to an application for a minor variation of authorisation A91205-A91207 (the **Authorisation**).

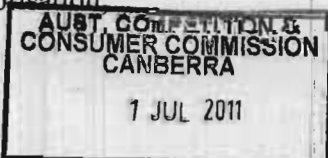
The application for minor variation is made by Rio Tinto Aluminium Limited on behalf of itself as Manager of the Gladstone Power Station Joint Venture and the participants in the Gladstone Power Station Joint Venture (together, **the Applicant**) which are listed below:

- (a) GPS Energy Pty Limited ACN 063 207 456;¹
- (b) GPS Power Pty. Limited ACN 009 103 422;
- (c) Sunshine State Power B.V. ARBN 062 295 425;
- (d) Sunshine State Power (No. 2) B.V. ABRN 063 382 829;
- (e) SLMA. GPS Pty Ltd ACN 063 779 028;
- (f) Ryowa II GPS Pty. Limited ACN 063 780 058; and
- (g) YKK GPS (Queensland) Pty Limited ACN 062 905 275.

Please find **enclosed**:

- (a) a Form FA: Application for minor variation of a non-merger authorisation;
- (b) a confidential submission in support of the application; and

¹ GPS Energy Pty Limited and GPS Power Pty. Limited are wholly owned subsidiaries of RTA.



(c) a non-confidential submission in support of the application.

The application for minor variation concerns further minor amendments to the Restated Interconnection and Power Pooling Agreement relating to the Gladstone Power Station (**IPPA**). The amendments have been made to Schedule 16 of the IPPA only. Schedule 16 sets out the definitions and rules (including formulae) used to calculate payments between the parties under the IPPA.

The Applicant requests that the parts of the non-confidential version of the submission which are redacted be excluded from the public register on the basis that they are confidential.

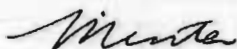
The Applicant submits that the information over which confidentiality is claimed is commercially sensitive as it refers to specific formulae and components of formulae used to calculate energy volumes and sums of money payable by the JV Participants and Stanwell under the IPPA. The release of this information may give the Applicant's domestic and/or international competitors a commercial advantage. We are instructed that the information over which confidentiality is claimed is not otherwise in the public domain.

The Applicant also requests that the references to the "Former Submission" in the non-confidential version of the submission be taken to be references to the non-confidential version of the submission supporting the Applicant's applications for authorisation lodged with the Commission on 24 December 2009.

The Applicant will provide a copy of the Deed of Amendment – IPPA together with a clean copy of Schedule 16 as further amended and a compare of Schedule 16 against the version provided to the Commission with the 2009 applications for authorisation (A91205-A91207) to the Commission on a confidential basis under separate cover.

If you have any questions in relation to this application or require further information, please contact Tamlyn Mills on (07) 3119 6398.

Yours faithfully
MINTER ELLISON



Contact: Tamlyn Mills Direct phone: +61 7 3119 6398
Email: tamlyn.mills@minterellison.com
Partner responsible: Mark Carkeet Direct phone: +61 7 3119 6215
Our reference: MLC 40-6446559

enclosure

Form FA

Commonwealth of Australia

Competition and Consumer Act 2010 — subsection 91A (1)

APPLICATION FOR MINOR VARIATION OF A NON-MERGER AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 91A (1) of the *Competition and Consumer Act 2010* for a minor variation of an authorisation.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

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

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. Minor variation of authorisation

- (a) Description of the contract, arrangement or understanding, or the relevant conduct, for which authorisation was granted, including, but not limited to,

the registration number assigned to that authorisation (the original authorisation):

Authorisation A91205 – A91207 (Public Register number C2010/40) granted for amendments in:

- 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).

- (b) Provide a description of the goods or services that relate to the authorisation for which variation is sought:

Please see sections 1, 2 and 4 of the **attached** submission.

- (c) Provide details of the variation for which authorisation is sought, including but not limited to identification of differences between the contract, arrangement or understanding, or the relevant conduct, that was originally authorised and the contract, arrangement or understanding, or the relevant conduct, for which a minor variation of authorisation is sought:
(Refer to direction 4)

Please see section 3 of the **attached** submission.

- (d) Facts and evidence relied upon in support of the claim that the variation is a minor variation:

Please see section 3 of the **attached** submission.

3. Parties to the contract, arrangement or understanding (whether proposed or actual), or conduct, for which variation of authorisation is sought

- (a) Names, addresses and description of business carried on by those other parties to the contract, arrangement or understanding, or the relevant conduct:

Please see section 1 and 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,
Queensland 4000

- (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 section 1 and annexure A of the **attached** submission.

- (c) Where those parties on whose behalf the application is made are not known - description of the class of business carried on by those possible parties to the contract or proposed contract, arrangement or understanding:

N/A

4. Public benefit claims

- (a) Provide submissions regarding the effect of the minor variation upon the public benefits resulting or likely to result from the original authorisation:

Please see section 6 of the **attached** submission.

(See Direction 6 of this Form)

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

Please see section 6 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):

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

(See Direction 7 of this Form)

6. Public detriments

- (a) Provide submissions regarding the effect of the minor variation upon the detriments to the public resulting or likely to result from the original 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:

Please see sections 4 and 6 of the **attached** submission.

(See Direction 8 of this Form)

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

Please see sections 4 and 6 of the **attached** submission.

7. Further information

- (a) Name, postal address and telephone contact details of the 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 1 July 2011

Signed by/on behalf of the applicant



Margaret Alice Brown
Minter Ellison Lawyers
Consultant

DIRECTIONS

1. 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. In item 1 (b), describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding, or the relevant conduct, in respect of which the authorisation is sought.
4. In completing this form, provide details of the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct, in respect of which minor variation of authorisation is sought.

In providing these details:

- (a) to the extent that the contract, arrangement or understanding, or the relevant conduct, has been reduced to writing — provide a true copy of the writing; and
 - (b) to the extent that the contract, arrangement or understanding, or the relevant conduct, has not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing; and
 - (c) If minor variation of authorisation is sought for a contract, arrangement or understanding (whether proposed or actual) which may contain an exclusionary provision — provide details of that provision.
5. Where minor variation of an 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 the likely effect of the minor variation upon those public benefits considered to result or to be likely to result from the original authorisation, including quantification of those effects where possible.
 7. Provide details of the market(s) likely to be affected by the contract, arrangement or understanding (whether proposed or actual), 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 likely effect of the minor variation upon those detriments to the public, including those resulting from the lessening of competition, which may result from the original authorisation. Provide quantification of these effects where possible.