

# CS Energy Limited & Ors – Authorisation – A91378

## Submission by Applicants regarding length of authorisation

### Applicants:

CS Energy Limited (**CS Energy**), Callide Energy Pty Ltd (**CEPL**), IG Power (Callide) Limited (**InterGen**) and Callide Power Management Pty Limited (**CPM**)

### Summary of submission:

- The Applicants propose that the Australian Competition and Consumer Commission (**ACCC**) grant authorisation for a 20 year period.
- The Applicants would like to confirm that if authorisation is granted for a 20 year period, joint negotiations to vary or replace executed coal supply agreements within the 20 year period would be covered by the authorisation.

## 1 Background

- 1.1 On 20 June 2013, the Applicants lodged an application for authorisation with the ACCC.
- 1.2 The Applicants sought authorisation to jointly negotiate with Anglo Coal in relation to the terms and conditions (including price) of coal to be supplied by Anglo Coal to power stations operated by the Applicants.
- 1.3 The Applicants expect the joint negotiations will result in new supply arrangements, which may take the form of a variation to existing agreements or new agreements. Any concluded new supply arrangements will be reflected in separate agreements between Anglo Coal and CS Energy and Anglo Coal and CPM.
- 1.4 The Applicants sought authorisation for a five year period.
- 1.5 The ACCC granted authorisation (A50027) for similar conduct – price review negotiations in respect of the coal supply contracts – in 2006 (**2006 Authorisation**).
- 1.6 The ACCC granted interim authorisation on 17 July 2013 to allow the Applicants and Anglo Coal to commence joint negotiations.
- 1.7 On 12 September 2013, the ACCC issued its draft determination in respect of the authorisation.
- 1.8 In the draft determination, the ACCC stated that it was open to the possibility of granting authorisation for a longer period of time than the five year period requested by the Applicants and expressed its interest in receiving submissions on this issue.
- 1.9 For the reasons outlined in this submission, the Applicants propose that the ACCC grant the authorisation for a 20 year period.

## 2 Relevant factors

- 2.1 According to the ACCC's Authorisation Guidelines (June 2013), the ACCC is inclined to grant authorisation for longer periods of time if parties seek re-authorisation of the same or similar conduct at the conclusion of the initial authorisation period, particularly where there is evidence that:
- (a) the conduct authorised by the initial authorisation delivered the anticipated benefits;
  - (b) relevant parties continue to support the arrangements; and
  - (c) the market conditions are stable.
- 2.2 In addition, the ACCC considers authorising conduct for longer periods if an arrangement requires significant investments that would only be likely if the proposed conduct is authorised for a longer period.
- 2.3 We note that the ACCC has previously granted authorisation for up to 20 years.

## 3 Reasons

- 3.1 Factors in support of granting authorisation for the longer period proposed by the Applicants are:
- (a) there are identifiable and ongoing benefits for the Applicants if the current authorisation is granted for the longer time period proposed;
  - (b) Anglo Coal does not object to the joint negotiation process;
  - (c) the relevant market conditions are expected to remain the same over the longer time period;
  - (d) there is no identifiable public detriment that would result from the proposed joint negotiation process; and
  - (e) other parties are unlikely to be negatively affected if authorisation is granted for the longer time period proposed.

### **Identifiable and ongoing identifiable benefits**

**THE FOLLOWING PARAGRAPHS ARE CONFIDENTIAL**

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## END OF CONFIDENTIAL PARAGRAPHS

### **Anglo Coal does not oppose the joint negotiations**

- 3.2 As was the case with the 2006 authorisation, Anglo Coal does not oppose the joint negotiation process.
- 3.3 Anglo Coal is the party most likely to be affected by the joint negotiation conduct and its continued lack of objection to the conduct is significant.

### **Market stability**

- 3.4 In paragraph 27 of the draft determination, the ACCC identified the supply of black coal in Queensland as the relevant area of competition likely to be affected by the joint negotiation process.
- 3.5 The Applicants submit that the impact of the joint negotiation process on this area of competition is unlikely to change significantly in the longer time period proposed by the Applicants. It is also unlikely that the grant of authorisation for the longer time period will affect competition in this market.

### **No identifiable public detriment**

- 3.6 The Applicants cannot identify any public detriment that would arise from the conduct for which authorisation is sought and no public detriment is likely to result if this conduct is authorised for the longer time period proposed by the Applicants.
- 3.7 In paragraph 40 of the draft determination, the ACCC accepted that it was unlikely that the proposed conduct would result in significant public detriment.

### **Other parties will not be negatively affected**

- 3.8 The ACCC has not received any submissions from other parties in relation to the current authorisation.
- 3.9 No parties (other than Anglo Coal) responded to the 2006 authorisation.
- 3.10 This suggests that is unlikely that other parties will be negatively affected if the current authorisation is granted for the longer time period proposed by the Applicants.

## 4 Conclusion

- 4.1 The Applicants have identified a number of genuine, meaningful benefits associated with the joint negotiations. A longer authorisation period would allow the Applicants to achieve these benefits with greater certainty and stability.
- 4.2 In addition, the Applicants cannot identify any detriment to competition arising from the joint negotiation process.