

MinterEllison

5 November 2015

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

Dear Richard

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

The application for minor variation concerns further minor amendments to the Operation and Maintenance Agreement relating to the Gladstone Power Station (**OMA**).

The Applicant requests the parts of the non-confidential version of the submission which are currently 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 and its release 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 requests that the references to the "Former Submission" in 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 and Restatement of the OMA together with a compare of the OMA against the version provided to the Commission on 11 November 2010 in relation to the application for minor variation lodged on 17 November 2010, 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 Kathryn Finlayson on (07) 3119 6380.

Yours faithfully
MinterEllison



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Partner: Mark Carkeet
OUR REF: 1118584



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 (ABN 51 009 679 127) as Manager of the Gladstone Power Station on behalf of itself and the participants in the Gladstone Power Station Joint Venture:

- GPS Energy Pty Ltd (ABN 36 063 207 456);
- GPS Power Pty Ltd (ABN 34 009 103 422);
- Southern Cross GPS Pty Ltd (ABN 50 063 779 028);
- Ryowa II GPS Pty Limited (ABN 16 063 780 058);
- YKK GPS (Queensland) Pty Ltd (ABN 21 062 905 275);
- Sunshine State Power BV (ABN 40 062 295 425); and
- Sunshine State Power (No. 2) BV (ABN 27 063 382 829).

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

See section 1 and Annexure A of the attached submission.

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

c/- Kathryn Finlayson, MinterEllison, Waterfront Place, 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):

See section 1 of attached submission.

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

See section 2 of 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:

See section 3 of attached submission.

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

See section 3 of 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:

NRG Gladstone Operating Services Pty Ltd (ABN 90 061 519 275) c/- Gladstone Power Station Hanson Road, Gladstone, Qld.

- (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)

See Annexure A of 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:

See section 6 of attached submission.

(See Direction 6 of this Form)

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

See section 6 of 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):

See section 5 of 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:

See section 6 of attached submission

(See Direction 8 of this Form)

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

See section 6 of 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:

Kathryn Finlayson, MinterEllison, Waterfront Place, 1 Eagle Street, Brisbane Qld 4000.

Dated 5 November 2015

Signed by/on behalf of the applicant



Mark Carkeet
MinterEllison
Partner

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.

RESTRICTION OF PUBLICATION OF PART CLAIMED

Pages 6 and 8 as marked.

Submission in support of application for minor variation

Authorisation no. A91205 – A91207

Rio Tinto Aluminium Limited (ACN 009 679 127)

MinterEllison



Submission in support of application for minor variation

Authorisation no. A91205 – A91207

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Executive summary

Rio Tinto Aluminium Limited ACN 009 679 127 (**RTA**), the manager of the Gladstone Power Station Joint Venture, is seeking a minor variation of authorisation no. A91205 – A91207 dated 2 June 2010 as amended by the Determination for the Application for Minor Variation for Authorisations dated 19 January 2011 (the **Authorisation**) on behalf of itself and participants in the Gladstone Power Station Joint Venture.

The Authorisation authorised amendments to a number of agreements relating to the Gladstone Power Station (**GPS**) and the Boyne Island Aluminium Smelter (the **Smelter**) (the **amended GPS agreements**). Arrangements in relation to the GPS and the Smelter have been the subject of previous authorisations in 1979 and 1994.

Similarly to the previous application for Minor Variation approved by the Commission in January 2011, a minor variation is sought to authorise further amendments to the Restated Operation and Maintenance Agreement relating to the Gladstone Power Station (the **OMA**), specifically amendments to Schedule 6 of the OMA. Schedule 6 sets out the fee to be paid to the operator for the provision of services for the GPS. It is submitted that the variation sought satisfies the definition of a minor variation and will not result in any reduction in the extent to which the benefit to the public of the Authorisation outweighs any detriment to the public caused by the Authorisation.

It is submitted that the variation will not detract from the significant public benefits of the arrangements under the amended GPS agreements and will have little or no anti-competitive effect in the relevant markets, being the Queensland market for the supply and acquisition of wholesale electricity and the separate national markets for the supply of primary aluminium for (i) remelt purposes and (ii) extrusion purposes.

For the reasons set out in the attached submission the Commission is requested to grant a minor variation of the Authorisation to authorise further amendments to Schedule 6 of the OMA. No change to the term of the Authorisation is requested.

Submission

1. Introduction

Rio Tinto Aluminium Limited ACN 009 679 127 (**RTA**), the manager of the Gladstone Power Station Joint Venture, makes an application for a minor variation of authorisation no. A91205 – A91207 dated 2 June 2010 (the **Authorisation**) on behalf of itself and the Gladstone Power Station Joint Venture Participants (the **JV Participants**) (together, the **Applicant**). The application concerns further amendments to the Restated Operation and Maintenance Agreement relating to the Gladstone Power Station (the **OMA**).

Agreements relating to the Gladstone Power Station (the **GPS**) and the Boyne Island Aluminium Smelter (the **Smelter**) have been the subject of previous authorisations. In 1979 the formation of a joint venture for the construction and operation of the Smelter received authorisation. In 1994, authorisation was granted in relation to the expansion of the Smelter and the formation of a joint venture for the acquisition and operation of the GPS. In June 2010 authorisation was granted for certain amendments in the amended GPS agreements, including the OMA; the agreements were amended in 2009 to accommodate certain changes to commercial arrangements which occurred against the background of the introduction and operation of the National Electricity Market (**NEM**). On 19 January 2011, the Australian Competition and Consumer Commission (**Commission**) approved a minor variation to the June 2010 authorisation in respect of certain amendments to Schedule 6 of the OMA which sets out the fees to be paid by the Participants to the operator for the provision of services for the GPS.

The Applicant is now seeking a minor variation of the Authorisation to authorise further amendments to the OMA, specifically further amendments to Schedule 6 to reflect a revised fee structure and Schedule 2 to include a revised organisational chart for the operator. Additionally, further minor amendments have been made to the OMA to capture updated entity names and addresses for the JV Participants and the Manager as well as minor drafting amendments to record the commercial arrangements of the revised fee structure. The amendments to the OMA have been executed by the parties but the amendments will not take effect unless and until those amendments are authorised by the Commission or the Commission grants a minor variation.

It is submitted that the variation sought by the Applicants satisfies the definition of a minor variation under the *Competition and Consumer Act 2010 (Cth)* (**CCA**) and that the proposed minor variation will not result in any reduction to the net benefit of the arrangements authorised. In assessing the application, the Commission is requested to have regard to the submission made by the Applicant in support of its applications for authorisation A91205-A91207, lodged on 24 December 2009 (the **Former Submission**).

1.1 The Applicant

RTA is the manager of the GPS Joint Venture and Boyne Smelters Limited ACN 010 061 935, the incorporated joint venture that owns the Smelter.

The GPS Joint Venture is an unincorporated joint venture of the following JV Participants:

- GPS Energy Pty Limited ACN 063 207 456;¹
- GPS Power Pty. Limited ACN 009 103 422;
- Sunshine State Power B.V. ARBN 062 295 425;

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

- 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.

Annexure A sets out the contact details and a short description of the business carried out by each of the JV Participants.

1.2 The Application

The Applicant makes an application under subsection 91A(1) of the CCA for a minor variation of the Authorisation to authorise further amendments to the OMA, primarily amendments to Schedule 6 of the OMA (see details in section 3).

2. The Authorisation

In December 2009, the Applicant made the following applications seeking authorisation for certain amendments in the amended GPS agreements:

- (a) an application under subsections 88(1A) and 88(1) of the then *Trade Practises Act 1974* (Cth) ('TPA') for an authorisation:
 - (i) to make a contract a provision of which may be a cartel provision within the meaning of Division 1 of Part IV of the TPA and which may also be an exclusionary provision within the meaning of section 45 of the TPA; and
 - (ii) to give effect to a provision of a contract that may be a cartel provision within the meaning of Division 1 of Part IV of the TPA and which may also be an exclusionary provision within the meaning of section 45 of the TPA;
- (b) an application under subsection(s) 88(1A)/88(1) of the TPA for an authorisation:
 - (i) to make a contract a provision of which may be a cartel provision within the meaning of Division 1 of Part IV of the TPA (other than a provision which would also be, or may also be, an exclusionary provision within the meaning of section 45 of the TPA);
 - (ii) to give effect to a provision of a contract that may be a cartel provision within the meaning of Division 1 of Part IV of the TPA (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of the TPA);
 - (iii) to make a contract a provision of which may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the TPA; and
 - (iv) to give effect to a provision of a contract which provision may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the TPA; and
- (c) an application under subsection 88(8) of the TPA for an authorisation under that subsection to engage in conduct that constitutes or may constitute the practice of exclusive dealing.

On 2 June 2010 the Commission made a determination granting authorisation for certain amendments to the GPS Agreements until 29 March 2029. Specifically, the Commission

authorised amendments to the OMA that reflected the amendments to the Interconnection and Power Pooling Agreement (IPPA) (clauses 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).²

The determination stated that any changes to the amended GPS agreements during the term of the Authorisation would not be covered by the Authorisation.³

In making the determination, the Commission found that the conduct for which authorisation was sought is likely to result in a public benefit that would outweigh the detriment to the public constituted by any lessening of competition arising from the conduct.⁴

Detailed information regarding the Applicant, the history of the arrangements and the history of authorisations and applications is set out in section 2 of the Former Submission.

3. Minor Variation

A minor variation of the Authorisation is sought to authorise further amendments to the OMA.

The further amendments to the OMA reflect changes to the commercial arrangements between the parties against the background of the expiry of the first secondary term of the OMA in [REDACTED]. The OMA as provided to the Commission in 2009 had an initial term of [REDACTED] years, commencing from March 1994. After commercial negotiations, the parties agreed to extend the term of the OMA for a period of [REDACTED] years with a rolling option to further extend the agreement for subsequent periods of [REDACTED] years each.⁵ These current amendments are a result of such an extension. [REDACTED]

The primary changes made to the OMA are contained within Schedule 6.

Schedule 6 sets out the fee to be paid to the operator of the GPS for the provision of operating and maintenance services for the GPS. As provided to the Commission in 2009 and 2010, [REDACTED]

Schedule 6 has been amended to set out a new fee to be paid to the operator for a further secondary period of the OMA and for any subsequent extensions of the operator's appointment. Schedule 6 has also been amended to introduce a new [REDACTED] payment for the operator [REDACTED]. The formula for calculating the adjusted fee has also been amended.

In addition to the changes to Schedule 6, there are further minor changes to the OMA as follows:

- updated name and address details for the JV Participants;
- in clause 1.1 'Definitions' to update certain definitions and to include a new definition;
- in clause 8.1(c)(iii) to include provision for a new [REDACTED] payment to be paid to the operator; and
- in Schedule 2 to include an updated organisational chart for the operator.

² Determination, 2 June 2010, page 33.

³ Determination, 2 June 2010, page 33.

⁴ Determination, 2 June 2010, page 30.

⁵ Clause 11.2 of the OMA.

⁶ Clause 11.2 of the OMA.

It is submitted that the variation sought to authorise the further amendments to the OMA satisfies the definition of minor variation in subsection 87ZP(1) of the CCA, as the variation is a single variation that does not involve a material change in the effect of the Authorisation. In particular, the conduct being authorised has not changed.

4. Competition Issues – Effect on Competition

Under the OMA, the JV Participants agree to appoint NRG Gladstone Operating Services Pty Limited ACN 061 519 275 (**NRGGOS**) as operator to manage the GPS on a day-to-day basis and agree the terms and conditions of that appointment, including the fee payable to NRGGOS. Authorisation was sought for amendments to the OMA because these provisions raise issues in relation to price fixing under the cartel conduct provisions and arrangements or contracts containing a provision which may substantially lessen competition under section 45.

As was submitted in the 1994 and 2009 applications and the application for Minor Variation approved by the Commission in January 2011, the appointment of NRGGOS by the JV Participants does not result in a lessening in competition in respect of the acquisition of various services or supplies for the GPS because, absent the joint venture, the JV Participants would not otherwise be in competition with each other. It is also necessary on a practical level for the operation of the GPS that there be a single operator.

Further, the joint payment of NRGGOS by the JV Participants does not amount to price fixing because the JV Participants are not competitors and, in any event, the exemption for collective acquisition of services in section 44ZZRV applies.

Although the effect of these provisions is that the JV Participants are acquiring all operating and maintenance services for the GPS from NRGGOS, because the JV Participants are not in competition with one another and given the importance of a single operator as a practical matter, there is no issue of exclusive dealing under section 47(2).

In summary, the Applicant submits that there is little or no anti-competitive effect in any of the relevant markets.

5. The Relevant Markets

In the determination granting the Authorisation, the Commission identified the relevant areas of competition affected by the proposed conduct as likely to be:

- the Queensland market for the supply and acquisition of wholesale electricity; and
- separate national markets for the supply of primary aluminium for (i) remelt purposes and (ii) extrusion purposes.

Sections 3, 6 and 7 of the Former Submission set out in detail the Applicant's submissions in relation to the relevant markets.

It is submitted that a minor variation to the Authorisation to authorise further amendments to the OMA, primarily amendments to Schedule 6 that set the operator's fee for a further period, will have little or no effect on competition in the Queensland market for the supply and acquisition of wholesale electricity or national markets for the supply of primary aluminium.

6. Effect on Net Benefit of the Arrangements

The Commission may make a determination varying an authorisation if the Commission is satisfied in all the circumstances that the variation would not result in a reduction in the extent to

which the benefit to the public of the authorisation outweighs any detriment to the public caused by the authorisation.⁷

In the Former Submission the Commission was requested to consider the interdependent relationship between the expanded Smelter and the GPS in assessing the public benefits of the arrangements under the amended GPS Agreements. Section 8 of the Former Submission sets out in detail the Applicant's submissions in relation to the benefits to the public of the arrangements under the amended GPS agreements.

In the determination granting the Authorisation, the Commission found that the amendments to the GPS agreements would be likely to give rise to continued public benefits as follows:

- benefits associated with a mechanism that provides for a secure, reliable and cost effective supply of power to the Smelter, including contributions to the value of exports and the development of the Australian economy; and
- a mechanism that facilitates the supply of electricity into the NEM and enhances the flexibility of Stanwell Corporation Limited's ability to utilise the GPS to participate in the NEM.⁸

In assessing the public detriment of the arrangements, the Commission did not consider that the amendments would be likely to give rise to an anti-competitive detriment in any of the relevant markets, in particular because it would be unlikely that the Applicant would be able to influence the domestic price of aluminium or the price of electricity in Queensland.⁹ The Commission concluded that the public benefit that is likely to result from the conduct is likely to outweigh the public detriment.¹⁰

Similarly to the application for Minor Variation approved by the Commission in January 2011, this application concerns an adjustment to the price payable to the operator to reflect their engagement to operate GPS being extended for a further five year period.

It is submitted that the minor variation sought by the Applicant will not result in any reduction in the extent to which the benefit to the public of the Authorisation outweighs any detriment to the public caused by the Authorisation for the following reasons:

- (a) Schedule 6 sets out a mechanism for the calculation of the operator's fee. Schedule 6 has been amended to (i) set the [REDACTED] fee to be paid to the operator for a further secondary period of the OMA and any subsequent extensions of the operator's appointment, (ii) to adjust the formula for calculating the rate [REDACTED] payable and (iii) introduce a new [REDACTED]. The nature of the amendments is such that the conduct in respect of which a minor variation is sought is the same species of conduct previously authorised by the Commission;
- (b) as such, the variation would not detract in any way from the public benefits identified by the Commission in granting the Authorisation; and
- (c) the variation is unlikely to give rise to an anti-competitive effect in any of the relevant markets (see section 4 above).

It is submitted that the further amendments to the OMA, specifically the amendments to Schedule 6, do not change the substantive arrangements under the OMA or the amended GPS agreements

⁷ Subsection 91A(4) of the CCA.

⁸ Determination, 2 June 2010, page 24.

⁹ Determination, 2 June 2010, page 25.

¹⁰ Determination, 2 June 2010, page 27.

more broadly. The amendments are mechanical in nature and reflect changes to the commercial arrangements between the parties.

7. Summary

For the reasons set out above, it is submitted that the variation to the Authorisation sought by the Applicant to authorise further amendments to the OMA satisfies the definition of a minor variation and will not result in any reduction in the extent to which the benefit to the public of the Authorisation outweighs any detriment to the public caused by the Authorisation.

Annexure A Contact Details of Joint Venture Participants

Parent Entity	JV Participant	Description of business	Contact details
NRG Energy, Inc (NRG)	<ul style="list-style-type: none"> Sunshine State Power B.V.; and Sunshine State Power (No 2) B.V. 	<p>NRG owns Sunshine State Power B.V. and Sunshine State Power (No 2) B.V.. Sunshine State Power B.V. has a 20 % interest in the GPS Joint Venture. Sunshine State Power (No 2) B.V. has a 17.5 % interest in the GPS Joint Venture.</p> <p>Founded in 1989, NRG is a wholesale power generation company, registered in Delaware, USA, primarily engaged in the ownership and operation of power generation facilities and the sale of energy, capacity and related products in the United States and internationally. NRG has a diverse portfolio of electric generation facilities in terms of geography, fuel type and dispatch levels, which helps NRG mitigate risk. NRG has ownership interest in 44 power generating facilities having approximately 24,000 MW net ownership.</p>	<p>Sunshine State Power B.V. Gladstone Power Station Hanson Road GLADSTONE QLD 4680 Fax No: +61 7 4976 5211</p> <p>with a copy to: NRG Energy, Inc. 211 Carnegie Center PRINCETON NJ 08540 UNITED STATES OF AMERICA Attention: The Corporate Secretary Fax No: +1 (609) 524 1941</p> <p>Sunshine State Power (No 2) B.V. Gladstone Power Station Hanson Road GLADSTONE QLD 4680 Fax No: +61 7 4976 5211</p>

			<p>with a copy to:</p> <p>NRG Energy, Inc. 211 Carnegie Center PRINCETON NJ 08540 UNITED STATES OF AMERICA Attention: The Corporate Secretary Fax No: +1 (609) 524 1941</p>
Sumitomo Light Metal Industries Ltd (SLM)	Southern Cross GPS Pty Ltd (formerly SLMA. GPS Pty Ltd)	<p>SLM (directly or indirectly) owns 5.9 % of the shares in Southern Cross Aluminium Pty Ltd, which is the holding company of Southern Cross GPS Pty Ltd which in turn owns a 8.5 % interest in the GPS Joint Venture.</p> <p>SLM is a Japanese company whose main products include aluminium, aluminium alloy, copper and copper alloy.</p>	<p>Southern Cross GPS Pty Ltd c/- Marubeni Aluminium Australia Pty Ltd Level 19 367 Collins Street MELBOURNE VIC 3000 Attention: The Directors Fax No: +61 3 9618 8150</p>
Marubeni Corporation (Marubeni)	Southern Cross GPS Pty Ltd (formerly SLMA. GPS Pty Ltd)	<p>Marubeni (directly or indirectly) owns 47.05 % of the shares in Southern Cross Aluminium Pty Ltd, the holding company of Southern Cross GPS Pty Ltd which in turn owns an 8.5 % interest in the GPS Joint Venture.</p> <p>Marubeni is a Japanese company with eight main operating groups, including textiles, metals, machinery, development and construction, energy, chemicals, agri-marine</p>	<p>Southern Cross GPS Pty Ltd c/- Marubeni Aluminium Australia Pty Ltd Level 19 367 Collins Street MELBOURNE VIC 3000</p>

		and forest products, and general merchandise.	Attention: The Directors Fax No: +61 3 9618 8150
Sumitomo Corporation (Sumitomo Corp)	Southern Cross GPS Pty Ltd (formerly SLMA. GPS Pty Ltd)	Sumitomo Corp (directly or indirectly) owns 47.05 % of the shares in Southern Cross Aluminium Pty Ltd, the holding company of Southern Cross GPS Pty Ltd which in turn owns an 8.5 % interest in the GPS Joint Venture. Sumitomo Corp is a Japanese company with seven main operating groups including metals, machinery, chemicals and fuels, foodstuffs, textiles, construction and real estate and general products.	Southern Cross GPS Pty Ltd c/- Marubeni Aluminium Australia Pty Ltd Level 19 367 Collins Street MELBOURNE VIC 3000 Attention: The Directors Fax No: +61 3 9618 8150
Mitsubishi Corporation (Mitsubishi) and Mitsubishi Materials Corporation (Mitsubishi Materials)	Ryowa II GPS Pty Ltd	Mitsubishi ($66\frac{2}{3}\%$) and Mitsubishi Materials ($33\frac{1}{3}\%$) own (directly or indirectly) the shares in Ryowa Development II Pty Ltd, the holding company of Ryowa II GPS Pty Ltd which in turn owns a 7.125 % interest in the GPS Joint Venture. Mitsubishi is one of Japan's largest trading companies with major interest in information systems and services, fuels, metals (including aluminium), machinery, foods, chemicals and textiles. Mitsubishi Materials is a leading metal and ceramics firm, specialising in super hard tools, aluminium cans and electronic metals such as silicon.	Ryowa II GPS Pty Ltd Level 36 120 Collins Street MELBOURNE VIC 3000 Attention: The Directors Fax No: +61 3 9275 3919

YKK Corporation (YKK)	YKK GPS (Queensland) Pty Limited	<p>YKK's Australian subsidiary, YKK GPS (Queensland) Pty Limited, owns (indirectly) a 4.75 % interest in the GPS Joint Venture.</p> <p>YKK's major product lines include slide fasteners, aluminium architectural products, ferrous and nonferrous metal products, cotton, synthetic yard and narrow fabrics, precision machinery and die sets, and personal computer equipment.</p>	<p>YKK GPS (Queensland) Pty Limited C/- Ernst & Young 680 George Street Sydney NSW 2001</p> <p>Copy to: Mr Eiichi Kuwano YKK AP Inc. Purchasing Department Kanda Awaji-cho Nichome Bldg 2-6 Kanda Awaji-cho Chiyoda-ku Tokyo 101-0063 JAPAN</p>
Rio Tinto Aluminium (Holdings) Limited (RTAHL) ¹¹	<ul style="list-style-type: none"> • GPS Power Pty. Ltd; • GPS Energy Pty Limited; and • GPS Nominee Pty Limited 	<p>RTAHL owns GPS Power Pty. Limited and GPS Nominee Pty Limited. GPS Nominee Pty Limited owns GPS Energy Pty Ltd. GPS Power Pty. Ltd has a 20 % interest in the GPS Joint Venture. GPS Energy Pty Ltd has a 22.125 % interest in the GPS Joint Venture.</p> <p>RTAHL is involved in all three stages of aluminium production: bauxite mining, alumina refining and aluminium smelting, supplying products to both domestic and overseas markets.</p>	<p>GPS Power Pty. Limited Level 3 500 Queen Street BRISBANE QLD 4000</p> <p>Attention: The Company Secretary Fax No: +61 7 3028 2013</p> <p>GPS Energy Pty Ltd</p>

¹¹ This entity was formerly known as Comalco Limited.

			Level 3 500 Queen Street BRISBANE QLD 4000 Attention: The Company Secretary Fax No: +61 7 3028 2013
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