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Mr John Feil  
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Dear John

**GLNG Operations Pty Ltd – application for a no-coverage determination regarding the CRWP Loop**

This letter responds to your request for additional information regarding GLNG Operations Pty Ltd's (**GLNG's**) application dated 12 February 2015 (**Application**) for a no-coverage determination regarding the pipeline between Comet Ridge and Wallumbilla described in part 3.9 of the Application (**CRWP Loop**). Specifically, you requested that GLNG provide further information on the basis on which GLNG submits that, if, contrary to GLNG's submissions, the CRWP Loop is determined not to be "structurally separate" for the purpose of section 149 of the National Gas Law (**NGL**), the CRWP Loop would nonetheless be a "greenfields pipeline project" on the basis that it would satisfy paragraph (b) of the definition of that term in section 149 of the NGL.

GLNG maintains its submission that the CRWP Loop is "structurally separate from any existing pipeline" within the meaning of section 149(a) of the NGL, on the bases set out in part 3.11 of the Application (including on the basis that this interpretation is consistent with the NCC's previous decisions on the application of section 149(a)).

However, GLNG submits in the alternative that if the CRWP Loop is determined not to be "structurally separate" for the purpose of section 149(a), then the CRWP Loop is "a major extension to an existing pipeline that is not a covered pipeline" within the meaning of section 149(b).

The factual information set out below regarding the CRWP Loop and nearby pipelines is drawn from the Application; capitalised words in the remaining paragraphs of this letter have the same meaning as in the Application.

**1. MEANING OF "MAJOR EXTENSION"**

The phrase "major extension" in sections 149(b) and (c) of the NGL is not defined or used elsewhere in the NGL, has not been the subject of judicial consideration, and is not addressed in the explanatory materials accompanying the introduction of the NGL or equivalent provisions in the previous legislation. The NCC has not considered or applied section 149(b) or (c) of the NGL in its previous decisions on no-coverage applications. The NCC's Gas Guide does note, in relation to the phrase "greenfields pipeline project", that the phrase captures "a broad range of new pipeline investment". However the Gas Guide's other observations on this phrase relate to pipelines which are part of a covered pipeline or a pipeline which is used to provide light regulation services; since the CRWP Loop is not in any way part of either of those types of pipelines, those further observations are not relevant here. Accordingly, the construction of the terms "major" and "extension" should be understood by reference to their ordinary meaning.

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The Macquarie Dictionary identifies 17 meanings of the word "major"; of potential relevance here are the use of "major" as an adjective to mean "very important or significant: [eg] *a major problem*", and the use of "major" as an adjective of comparison to mean "greater, as in size, amount, extent, importance, rank, etc: [eg] *the major part of the town*". Since section 149(b) is concerned with a single expansion, and not a comparison between multiple expansions, the first definition is the appropriate interpretation of "major" in the context of section 149(b).

As noted above, there is no case law on the meaning of "extension" in section 149(b); while other sections of the NGL refer to "extensions or expansions", and so arguably distinguish between the two concepts, no such distinction is drawn in section 149.<sup>1</sup> There is, however, current case law on the meaning of "extension" in the context of the access regime in Part IIIA of the (then) *Trade Practices Act 1974* (Cth).<sup>2</sup> In that case, the Australian Competition Tribunal noted that dictionaries give several meanings of "extension", including "stretching out or lengthening in a particular (or various) direction", and also "to increase the size, or enlarge the scope of a thing." The Tribunal considered that the term "extension" did not mean "merely to elongate a facility", but would also include "works that would increase the capacity of a facility." The Tribunal expressly noted that not all extensions by way of elongation would involve an increase in capacity (ie an expansion of capacity); however it did not limit in any way the class of expansions which might fall within the scope of the term "extension". The Tribunal's analysis is consistent with the definitions of "extend" and "extension" in the Macquarie Dictionary, which include "to stretch out; draw out to the full length", "to stretch out in various or all directions; expand; spread out in area", "to enlarge the scope of, or make more comprehensive, as operations or influence", and "to increase in length, area, scope, etc". However the conclusion that the CRWP Loop will (if it is not considered to be "structurally separate") constitute a "major extension" within the meaning of section 149(b) does not turn on any fine distinction as to the particular definition of "extension" which is adopted.

## 2. APPLICATION TO THE CRWP LOOP

The CRWP Loop falls within the definition of a "major extension to an existing pipeline that is not a covered pipeline" on the basis that:

- the CRWP Loop constitutes a "major extension" to both the GLNG GTP and the CRWP; and
- neither the GLNG GTP nor the CRWP is a covered pipeline.

### 2.1 "Major extension" to the GLNG GTP

The GLNG GTP covers a 420km route from Fairview to the LNG Facility; it has an average estimated capacity of 1400 TJ/d across the course of a year. The GLNG GTP is the subject of a no-coverage determination, and so is not a covered pipeline. The GLNG GTP is described in more detail in part 3.4 of the Application.

The CRWP Loop (including the R-HCS-02 Transmission Line) covers a 119km route from the Roma gas fields, the Roma Underground Gas Storage facility and the Wallumbilla Gas Hub to Fairview (at which point gas from the CRWP Loop will pass through a compressor station, for transport on the GLNG GTP). The CRWP Loop has a design capacity of 750 TJ/d; as described in the Application, this capacity will vary throughout the year.

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<sup>1</sup> There is one decision which mentions, without analysis, the meaning of the term "expansion" (Application by *DBNGP (WA) Transmission Pty Ltd (No 3)* [2012] ACompT 14); the Tribunal in that case did not cite authority on this point, did not specifically consider the meaning of "extension", did not address the Tribunal's consideration of the meaning of "extension" in *Re Fortescue* (see following footnote), and did not address the relationship between "extensions" and "expansions" under the NGL. Accordingly, it does not assist for present purposes.

<sup>2</sup> *Re Fortescue Metals Group Limited* [2010] ACompT 2; see chapter 12 of the Tribunal's reasons.

If the CRWP Loop is determined not to be "structurally separate" from the GLNG GTP, then the CRWP Loop should be considered to be an "extension" of the GLNG GTP. In particular, as a result of its connection to the compressor station at Fairfield, the CRWP Loop will "elongate", "spread out in area", and "enlarge the scope of" the GLNG GTP. It will do this by adding to the route covered by the GLNG GTP a further route of 119km to Roma, the Roma Underground Gas Storage Facility and the Wallumbilla Gas Hub. The fact that that enlargement of the GLNG GTP is major, in the sense of important or of significance, is also demonstrated by:

- (a) the fact that the 119km CRWP Loop will increase by approximately 28% the distance covered by the 420km GLNG GTP;
- (b) the fact that the CRWP Loop's design capacity of 750 TJ/day, which will be fully used for the purpose of the GLNG Project, will allow it to deliver gas equivalent to over half the estimated capacity of the GLNG GTP across the course of a year (ie 1400 TJ/d) – by comparison to the CRWP Loop (24 inch diameter), the CRWP has a much lower capacity (14 inch diameter);
- (c) the substantial value of the funds committed by the Participants to the design and construction of the CRWP Loop (described at part 3.9 of the Application);
- (d) the critical role played by the CRWP Loop in the GLNG Project (described at part 3.2 and 3.9(k) of the Application); and
- (e) the scale of the benefits associated with economic and regional development which are expected to be created as a result of LNG investments, such as the GLNG Project (of which the CRWP Loop is a part) (as described at part 9.9 of the Application).

The fact that the CRWP Loop is in large part constructed adjacent to and along the same route as the CRWP does not undermine this conclusion – in particular, the Minister's non-coverage determination in relation to the GLNG GTP determined that the GLNG GTP is "structurally separate" from the CRWP, and accordingly, the CRWP cannot be considered to be a part of the GLNG GTP.<sup>3</sup>

## 2.2 "Major extension" to the CRWP

The CRWP transports gas along a route that is similar to the CRWP Loop. The CRWP covers a route from the Wallumbilla Gas Hub to Fairview (at which point, in future, gas from the CRWP will pass through a compressor station, for transport on the GLNG GTP); it also has intermediate connections to the Roma Underground Gas Storage Facility. However there are important differences between the CRWP and the CRWP Loop – in particular:

- (a) the CRWP has a much smaller diameter and capacity than the CRWP Loop (as noted above);
- (b) as a result, the fact that the CRWP Loop (including the R-HCS-02 Transmission Line) will also connect the Wallumbilla Gas Hub, Roma Gas Fields and Roma Underground Storage Facility to a compressor station at Fairview will result in a material increase in the extent to which gas from those sources can be transported to Fairview; and

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<sup>3</sup> Even if, contrary to the Minister's decision, the CRWP was considered to be part of the GLNG GTP, the CRWP Loop would nonetheless still be a "major extension" of the GLNG GTP, by reason that:

- it covers physical terrain which is separate from (though proximate to) the terrain covered by the CRWP, and in doing so constitutes an enlargement or a spreading out of the current route covered by the CRWP and GLNG GTP in combination; and
- further, it would be a "major extension" of a combined GLNG GTP/CRWP on the bases set out in parts 2.2(d), 2.2(e) and 2.2(f) below.

- (c) whereas the CRWP currently transports gas in a southward direction, the CRWP Loop will only be used to transport gas north to the LNG Facility.

In these circumstances, if the CRWP Loop is determined not to be "structurally separate" from the CRWP, then the CRWP Loop should be considered to be an "extension" of the CRWP. In particular, the CRWP Loop (including the R-HCS-02 Transmission Line) will "elongate", "spread out in area", and "enlarge the scope of" the CRWP. It will do this by materially increasing the extent to which the CRWP can be used to transport gas from the Wallumbilla Gas Hub and Roma Underground Gas Storage Facility to the compressor station at Fairview, ultimately for transport on the GLNG GTP. This is particularly significant in circumstances where the CRWP currently transports gas southward but the CRWP Loop will be used to transport gas northward. In a practical sense, the CRWP Loop will also extend the CRWP to the extent that it will cover discrete terrain to that covered by the CRWP.

The fact that that this enlargement of the CRWP is major, in the sense of important or of significance, is also demonstrated by:

- (d) the fact that the extension of the CRWP, through construction of the CRWP Loop, will enable the CRWP to transport material volumes of gas in excess of those currently serviced by the CRWP (ie gas from the Roma gas fields, as well as from the Wallumbilla Gas Hub);
- (e) the fact that the CRWP Loop will more than double the capacity available on the route covered by the CRWP ; and
- (f) the matters described in paragraphs 2.1(c), 2.1(d) and 2.1(e) above.

3. **CONFIDENTIALITY**

GLNG understands that the NCC will make this letter available on the NCC's website, and does not claim confidentiality over this letter.

Please contact me if you wish to discuss any of the matters addressed in this letter.

Yours sincerely



**Alice Muhlebach**  
Partner