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Central Petroleum Mereenie Pty Ltd as trustee for the Central Petroleum Mereenie Unit Trust, Central Petroleum Limited and Macquarie Mereenie Pty Limited

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Submission to the Australian Competition and Consumer Commission

in response to the submission provided by Power and Water Corporation dated 1 November 2017.

10 November 2017

1 Introduction

This submission:

(a) supports the application made to the Australian Competition and Consumer Commission (***ACCC***) under section 88(1A) and (1) of the *Competition and Consumer Act 2010* (Cth) (***CCA***) for authorisation to make and give effect to provisions of a contract, arrangement or understanding which may be a cartel provision within the meaning of Division 1 of Part IV of the CCA, or may result in a substantial lessening of competition in a market (the ***Application***); and

(b) responds to the submission opposing interim authorisation provided to the ACCC by Power and Water Corporation (***PWC***) dated 1 November 2017 (the ***PWC Submission***).

We note that the PWC Submission raises the prospect of a further submission from PWC which has not been provided at that date of this submission. We would appreciate the opportunity to address that in due course if such further submission is made.

2 The Applicants

The Application, and this submission, is made on behalf of the following parties (the ***Applicants***):

(a) Macquarie Mereenie Pty Ltd (***Macquarie Mereenie***); and

(b) Central Petroleum Mereenie Pty Ltd as trustee for the Central Petroleum Mereenie Unit Trust and Central Petroleum Limited (together, ***Central***).

Macquarie Mereenie and Central Petroleum Mereenie Pty Ltd as trustee for the Central Petroleum Mereenie Unit Trust are the participants in the Mereenie joint venture (the ***Mereenie JV Participants***), which is currently the subject of the Mereenie Joint Operating Agreement dated 1 September 2015 (as amended) (***JOA***).

Central Petroleum Limited is the operator of the Mereenie joint venture and employer of the key commercial personnel who would be involved in marketing arrangements on behalf of Central Petroleum Mereenie Pty Ltd as trustee for the Central Petroleum Mereenie Unit Trust.

3 Key Issues with PWC's submission

While the Applicants have responded to the entirety of the PWC Submission in this response, there are six key points that that the Applicants wish to emphasise as set out in sections 4 to 9.

These points are critical in understanding why:

(a) the various assertions made in the PWC Submission are incorrect, disingenuous or based on an unsound analysis of the market or likely impact of the market; and

(b) interim authorisation and authorisation should be granted.

4 PWC is not a buyer of gas concerned about scarce sources of supply – they are a seller of gas concerned about facing greater competition

PWC has framed its submission opposing interim authorisation by reference to concerns that it asserts it holds as a major buyer of gas and claims that it is 'critically important to PWC that it is able to source gas from as wide a range of producers as possible'.[1]

However, it is fundamentally untrue that PWC's current and likely future position (during the term of authorisation sought) is as a net gas purchaser. Rather, PWC is a significant supplier of gas in

[1] PWC Submission, p 2.

the markets in which the Macquarie Mereenie and Central joint venture compete (supplying approximately 75-80% of Northern Territory demand as discussed in section 9 of this submission) – and a direct and vigorous competitor for the sale of gas.

In the PWC Submission, PWC acknowledges that it supplies gas to Territory Generation and industrial customers and has 'entered into contracts to supply gas to a customer in western Queensland, contingent on the commissioning of [the NGP]'.[2]

What the PWC Submission fails to acknowledge is that PWC has purchased such extensive gas quantities that it now has significant surplus gas contracted above its current or future needs. As a consequence, PWC is, and for the period for which authorisation is being sought will remain, a significant seller of gas – not a buyer.

This position is clearly affirmed by a number of publicly available documents containing statements and representations from PWC itself. For example:

(a) PWC has publicly acknowledged in submissions to the AEMC that it is 'in competition with independent gas producers, for on-sale to third party users';[3]

(b) the 2016 Annual Report of PWC acknowledges that PWC has surplus gas contracted, and that the NGP will 'enable sale of [PWC]'s surplus gas to the eastern seaboard';[4]

(c) the PWC Annual Report also notes that PWC 'executed several new sales and transportation agreements to support the supply and delivery of gas through the NGP to Eastern Seaboard markets';[5]

(d) in the recent "Connecting the Northern Territory to the Eastern States gas market" presentation by PWC Chief Executive Officer, Michael Thomson, during NT Resources Week on 6 September 2017, Mr Thomson commented that 'we have lots of excess gas, come and talk to us'; and

(e) Mr Thomson also made similar comments regarding PWC having excess gas to sell in his presentation at the Australian Domestic Gas Outlook Conference on 13-16 March 2017.[6]

PWC's oversupply of gas is also widely known and reported in the media. For example:

(a) it was reported in May 2017 that PWC had been left with an oversupply of gas worth $50 million and was flaring more than 10 PJ of unused Blacktip gas;[7]

(b) the same reports indicated that PWC has significant excess gas available, and that it has an effective monopoly of gas transportation through both the Amadeus and Bonaparte gas pipelines';[8]

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2 PWC Submission, p 2.

3 Submission of Power and Water Corporation to Australian Energy Market Commission – Review into the Scope of Economic Regulation Applied to Covered Pipelines, August 2014, p 4 (available: http://www.aemc.gov.au/getattachment/23c5c148-1863-4450-91d7-01d6b19eabd5/Power-and-Water-Corporation-(NT).aspx).

4 PWC Annual Report, 2016, p 35.

5 Ibid, p 35.

6 Representatives from both Macquarie Mereenie and Central attended this conference and Mr Thomson's presentation.

7 'PowerWater Outsmarted in $50m gas deal', NT News, 10 May 2017.

8 Ibid.

(c) indeed, it has been claimed by some groups that the NGP has been supported by the Northern Territory government to "compensate for a poor decision by [PWC] to contract to buy too much gas'.[9]

This is also borne out clearly by PWC's actual conduct including:

(a) PWC contracting to supply gas for 10 years to Incitec Pivot for its Phosphate Hill plant (in Queensland), utilising capacity contracted as the foundation customer of the Northern Gas Pipeline;[10]

(b) PWC bidding to supply gas to EDL in the Northern Territory in 2017 (in competition to the ultimately successful bid from Central Petroleum);

(c) PWC currently not taking significant quantities of gas available to it under an existing contract with Central Petroleum – which is causing Central Petroleum to report significant deferred revenue as shown in its 2017 Annual Report,[11] because of PWC's right to take the quantities of gas it is not currently using at a later point in time; and

(d) PWC not having entered a new contract to acquire gas since 2013.

PWC has also provided no evidence to support its assertion in the PWC Submission that it intends to 'buy additional quantities of gas in the NT over the next few years',[12] and no evidence that its needs over that period would be in excess of its significant surplus gas position. The Applicants can only note that PWC's surplus gas position and clear representations and conduct as a seller of gas (as noted above) is deeply inconsistent with that submission.

The above is also to be taken in the context that PWC is neither a user nor producer of gas nor does PWC invest in bringing in new supplies on stream. The PWC Submission is seeking to prevent the Mereenie joint venture, as a competitor of PWC, from making new gas supply investment.

All of that makes it abundantly clear that PWC's opposition to interim authorisation – and the Applicants' joint marketing – is as a self-interested seller opposing its competitors marketing the higher volume of gas that would be available following further development of the Mereenie field.

PWC opposes the authorisation of the Mereenie joint marketing not because of any concerns about a lessening of competition – but in an attempt to prevent and/or delay future gas volumes entering the market, such that PWC faces less competition in making sales of its own surplus gas.

PWC should not be permitted to abuse the regulatory process in that manner.

5 Central is not a current or potential supplier from Mereenie in the absence of authorisation

PWC asserts in its submission that each of Central and Macquarie Mereenie would be able to market Mereenie gas separately in the absence of authorisation.

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9 'NEGI pipeline project slammed by US pro-renewables think tank', ABC News, 19 May 2016.

10 'Power and Water positioned to enter the Australian gas market', 17 July 2017 (available: https://www.powerwater.com.au/news_and_publications/news/2017/power_and_water_positioned_to_enter_the_australian_gas_market).

11 Central Petroleum Limited 2017 Annual Report, 8 and 55.

12 PWC Submission, p 2.

That completely ignores the commercial and contractual reality of the situation, namely that **Central Petroleum is not able to sell Mereenie production**.

In that regard, the Applicants wish to re-emphasise the facts set out in the submission supporting authorisation application (***the Applicant's Initial Submission***), regarding Central Petroleum's inability to sell Mereenie production:

(a) The Mereenie joint venture is an equally owned (50%/50%) joint venture. The existing joint venture arrangements for the Mereenie field provide for separate marketing of gas production by each of the Mereenie JV Participants. To manage the fact that such independent sales may result in Mereenie JV Participants taking a share of product that diverges from their proportionate joint venture interest, the joint venture arrangements include an interim gas lifting arrangement. This interim lifting arrangement deals with existing installed production capacity and allows each Mereenie JV Participant to individually market and sell its share of gas subject to a specific maximum daily production limit (***Production Limit***) as detailed in the Interim Gas Balancing Agreement that was attached to the Applicant's Initial Submission. The Production Limit took into account the limitations of the Mereenie field at the time it was negotiated with Santos on Central's acquisition of a participating interest in the Mereenie field in 2015 (and continues to apply as between Central and Macquarie Mereenie).

(b) Central disclosed to the ASX on 26 April 2017 that it had entered into a conditional delivered fixed price gas supply agreement with EDL NGD (NT) Pty Ltd. Central subsequently announced on 26 May 2017 that this agreement had become unconditional.

(c) As a result of this gas sales agreement, Central has now fully contracted its share of the Production Limit. This effectively precludes Central from contracting any further firm gas sales from the Mereenie field until a permanent marketing arrangement is in place with Macquarie Mereenie which would allow for further investment in the Mereenie field and permit additional sales to be contracted.

This means that, **in the absence of joint marketing, Central is not a current or potential supplier from Mereenie.**

Consequently, the likely state of the market, both with and without the authorisation is that there is a single supplier from Mereenie, namely:

(a) without authorisation – Macquarie Mereenie, with the interim gas lifting arrangements limited to the Production Limit; and

(b) with authorisation – the combined Mereenie joint venture.

The joint marketing sought to be authorised will therefore not produce any increase in concentration. In fact, for the reasons discussed in section 6 below, competition will be greater under an authorisation.

Essentially, irrespective of the outcome of the Applicants' authorisation application, in the short to medium term there will be 3 competitors in the NT market: PWC, Mereenie gas (with or without the Production Limit) and Central Petroleum Limited with respect to its other 100% owned gas producing assets.

As such, PWC's main arguments about the impact on competition are based on a complete mischaracterisation of the likely state of the market without authorisation.

6 There is no lessening of competition in any market – only a pro-competitive increase in supply and unlocking a future of two Mereenie suppliers

The incorrect assertion that Central is a potential supplier of Mereenie gas in the absence of authorisation, appears to have led PWC to the erroneous conclusion that the joint marketing involves a lessening of competition due to removing a potential supplier.

However, given Central's current inability to sell Mereenie production, it is absolutely clear that the proposed conduct would not result in removal or a supplier or a lessening of competition.

The Applicant's appreciate that whether there is a likely lessening of competition is assessed by reference to the 'with and without' test.

An appropriate application of that test to these circumstances involves a comparison of:

(a) the future market state without the conduct to be authorised, where Central is not a supplier of Mereenie gas and Macquarie Mereenie may, but is not guaranteed, to engage in marketing of Mereenie gas individually up to the Production Limit that applies to Macquarie Mereenie under the interim gas lifting arrangements; and

(b) the future market state with the conduct to be authorised, where Macquarie Mereenie and Central jointly market gas production from the expanded Mereenie field, with an increased volume of supply because investment has been undertaken to increase Mereenie production and the Applicants have sufficient commercial certainty to amend the relevant agreements to allow joint marketing of the gas produced from the expanded Mereenie field.

This means that under each scenario there is only one Mereenie supplier and no increase in concentration in the market.

However, the market will clearly be more competitive with the joint marketing conduct to be authorised, because:

(a) there will be an increase in supply available from the Mereenie supplier;

(b) once the authorisation period has expired, there will be two Mereenie suppliers; and

(c) during the joint marketing period, the seller of Mereenie gas will be a more effective competitor for sales of Northern Territory sourced gas given the ability to draw on the Applicants' combined experience and industry knowledge (which is important given PWC's dominant position so that there is vigorous competition from the Amadeus Basin as well as competition between gas basins for meeting East Coast gas market demand).

In relation to the impact on competition of increase supply, the Applicants note that the ACCC's estimated annual domestic demand of the Northern Territory is 25 PJ.[13] Between Mereenie gas and Central Petroleum Limited, approximately 5.3 PJ is supplied into the Northern Territory to meet that domestic demand. Of that amount, 0.7 PJ of that is sold to PWC who onsells gas in the market. This means that the balance of the demand – being roughly 75 – 80% of the market – is being met by PWC as a supplier. PWC clearly holds a dominant position in the market, and any increase in supplies available to its competition can only have positive pro-competitive effects on the market.

[13] ACCC, Gas Inquiry 2017 – 2020 – Interim Report, p 13.

7 Joint marketing opens the way to the Mereenie development

Joint marketing is critical to providing certainty to justify progressing development of Mereenie in the current circumstances.

To the extent that PWC genuinely considered the language used in the Application somehow fell short of stating that[14] – it has misunderstood the Applicant's commercial and contractual position.

As Central Petroleum Limited's ASX release of 25 September 2017[15] makes clear, joint marketing will provide the certainty required to obtain the budget approvals for investment in the Mereenie development:

> *In the Supplementary Scheme Booklet distributed during the recent Scheme of Arrangement proposal by Macquarie MPVD Pty Limited, Central outlined to shareholders the complexities the company needed to address before further development of the Mereenie Gas Field. These arose particularly due to Mereenie being a 50:50 joint venture, with each party having a veto on the joint venture budget other than those expenditures required by law.*
>
> *With joint marketing in place, budget approvals to commercialise future Mereenie gas reserves can be sought with parties being able to feasibly and efficiently progress various joint production and appraisal activities, including appraisal and development of the Stairway as a commercial production zone. Additionally it provides the certainty of being able to pursue sales for additional gas produced by allowing both parties to approve the capital investment required for any appraisal and development work to expand production.*

That release refers to the Supplementary Scheme Booklet of 31 May 2017[16] (the ***Supplementary Scheme Booklet***) which also makes clear the need to resolve marketing issues (see pages 3 and 4). This is not a newly formed view as the PWC Submission seeks to imply.

In particular, the Supplementary Scheme Booklet states the following about the gas sales agreement entered with EDL and its resulting inability to continue selling gas independently from Mereenie:[17]

> *The agreement completes Central's gas sales capacity from Mereenie under the Interim Gas Balancing Agreement negotiated with Santos on Central's acquisition of Mereenie and inherited by Macquarie Mereenie. This effectively precludes any additional Central-only gas sales from Mereenie until a permanent marketing arrangement is negotiated with Macquarie Mereenie as Central's Mereenie joint venture partner.*

As noted in the earlier submissions, Mereenie is a 50:50 joint venture, and Macquarie Mereenie's approval is required for a joint venture investment in further appraisal and development activities at Mereenie.

Central's view on Mereenie is made clear in the Supplementary Scheme Booklet:[18]

> *Central's prime asset is the Mereenie oil & gas field which is not only Central's lowest cost per GJ producer but also the field that has the quickest, lowest risk and cheapest potential to increase reserves.*

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14 PWC Submission, p5.

15 Available: https://wcsecure.weblink.com.au/pdf/CTP/01899384.pdf

16 Available: http://centralpetroleum.com.au/wp-content/uploads/2017/06/20170531-CTP_Supp_Scheme_Booklet_Final.pdf

17 Supplementary Scheme Booklet, p3.

18 Ibid.

However, Central is a junior company, with significant debt funding and financial commitments. It is not in a position to undertake a sole risk development, and is therefore dependent on Macquarie Mereenie's joint support for any future development of the Mereenie field.

Macquarie Mereenie's position is significantly different to that of Central. As the Supplementary Scheme Booklet notes:[19]

> *As neither Macquarie Mereenie (nor Santos before that) has used a material portion of their entitlement under the Mereenie Interim Gas Balancing Agreement, Macquarie Mereenie has substantial volumes of gas to sell under that arrangement.*

Macquarie Mereenie does not have the same need as Central to develop Mereenie to be a seller. It currently has substantial gas available to it under the Production Limit set by the interim gas lifting arrangement.

Given the impact of a further development of Mereenie (without joint marketing) would be to reintroduce Central as a seller from Mereenie it is hard to see how Macquarie Mereenie would be economically incentivised to approve such a development, when it already has gas to sell. Macquarie Mereenie logically is only incentivised to proceed with the development if it has a high degree of certainty that it will be able to sell its additional gas production from the development. That certainty does not exist without joint marketing.

The investment in the Mereenie development is anticipated to be approximately $20 million in initial drilling alone with substantial further development costs which can only be quantified when the flow rates from the initial drilling are known, which is a material further investment compared to the $52 million acquisition price for Santos' 50% stake in the Mereenie joint venture. Macquarie Mereenie is similarly unwilling to take the sole risk on a development of that materiality and is therefore dependent on Central’s support for any future development of the Mereenie field.

The parties are therefore effectively at an impasse on the further development of Mereenie in the absence of joint marketing, and consequently the public benefits arising from such further development will be delivered if the joint marketing is authorised.

8 The continuing urgency of resolving Australia's East Coast gas shortage

PWC asserts in its submission that there is no urgency to the proposed conduct because there have been 'recent developments that suggest any shortage [in the East Coast gas market] has now been addressed'.[20]

As the ACCC would appreciate, that is an overly simplistic and misleading analysis. Less than two months ago, the ACCC concluded there was likely to be a 'substantial gas supply shortfall in 2018'.[21]

While the Applicants acknowledge that the Federal Government has taken some steps towards ensuring that domestic gas demand is supplied at the expense of spot sales of LNG by under-utilising the capacity of the existing LNG trains, the inherent East Coast gas market demand remains the full utilisation of the LNG trains plus the domestic market requirement.

That is, the East Coast gas market is not only made up of domestic demand, but both the domestic demand *and* demand for LNG exports. As such, in saying the shortfall has been fixed, PWC are mischaracterising the political agreement which was that domestic gas

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19 Ibid, p4.

20 PWC Submission, p 4.

21 ACCC, Gas Inquiry 2017 – 2020 – Interim Report, p 10.

would be ensured at the expense of gas for LNG exports. In totality, the market remains clearly short.

These steps have been taken to alleviate the projected shortfall in 2018[22] of a segment of the total East Cost gas market demand profile. As such, the quantities of gas that have been redirected from meeting export demand to meeting domestic demand by recent government intervention have only addressed a shortfall in the domestic requirements of the total demand profile that would arise in the market ***prior*** to the NGP being commissioned (such that they are irrelevant to the assessment of the joint marketing). While the government is seeking a similar arrangement with major LNG exporters for 2019 as well – those are clearly also one year only 'band-aid' solutions – that do not resolve the long term gas shortfall that is projected.

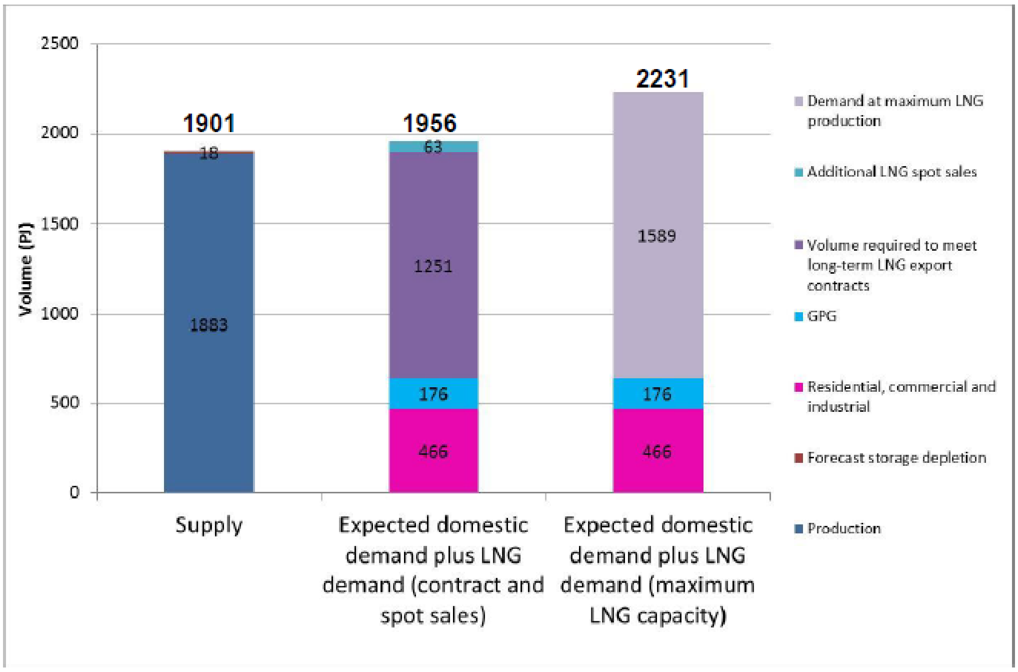
The intervention by the Federal Government has not brought on any new supply in the market – but has only reallocated the market segment where the shortage exists and does not address the price of gas nor the requirement for long term contracts. As such, it is incorrect for PWC to allege that the crisis in the East Coast gas market has been resolved – as there is clearly still an existing shortfall between supply and demand.

As noted previously by the ACCC, 'supply side options will provide more lasting solutions to address shortages in gas and are more likely to result in pricing returning to reasonable levels'.[23] None of the existing intervention proposals by the Federal Government result in new supply side options – whereas the proposed conduct would clearly and unequivocally mean that new supply is available to the East Coast Gas Market upon the commissioning of the NGP. The below graph demonstrates the forecast supply-demand balance in the East Coast gas market for 2018 and clearly demonstrates the need for material supply to 'bridge the gap' between supply and demand:

[22] See 'Gas export controls on hold as government strikes deal with suppliers', ABC news, available http://www.abc.net.au/news/2017-09-27/gas-export-controls-on-hold-amid-government-agreement/8993254.

[23] ACCC, Gas Inquiry 2017 – 2020 – Interim Report, p 23.

Chart 2.3 – Forecast supply-demand balance in the East Coast Gas Market for 2018 (based on AEMO's expected domestic demand)



Source: ACCC and AEMO data. [24]

Upon the NGP being commissioned the Applicants will become a new supplier in the East Coast gas market (which includes the demand as a result of LNG exports from Gladstone). This is clearly the type of relief the East Coast gas market requires to alleviate demand pressure and generate price relief. PWC's assertion that the issues in the market have been fixed by the recent Federal Government demonstrate a concerning lack of meaningful analysis of the relevant market.

The Applicants are looking to sell gas for significantly longer terms – to customers who need long term certainty of supply in order to make investment and contracting decisions in relation to their own operations. These contracts will be underwritten with new supply that is not currently available in the East Coast gas market. The existing and proposed one year political 'fixes' may be effective in lowering spot gas prices (by artificially and temporarily excluding certain demand), but they do not ease the structural East Coast gas shortage during the period for which authorisation is sought. The proposed conduct would, however, have that effect.

Supply from the Northern Territory – including from the Mereenie field – would therefore still contribute to alleviating the forecast shortfall in the East Coast gas market once the NGP is commissioned. The fact that other steps are being taken to address the crisis in the East Coast gas market does not detract from the existence of a crisis – it simply underscores the importance of ensuring supply to the market.

[24] ACCC, Gas Inquiry 2017 – 2020 – Interim Report p 31.

PWC appears to suggest that other supply options may emerge in a time frame to be capable of being a realistic substitute for the Mereenie gas.[25] However, the examples it provides indicate how doubtful that is:

(a) the Galilee Energy project in the company's own release is described as only getting to the Front-End Engineering and Design phase in 2019;[26]

(b) while Cooper Energy's Sole gas project is scheduled to commence production in 2019, its production is anticipated to be 24 PJ/annum[27] (well short of eliminating the gas shortfall on any view) and is already contracted under gas sales agreements that have become unconditional following the final investment decision on the project;[28] and

(c) the West coast to East coast gas pipeline has only recently been the subject of a contract to undertake a pre-feasibility study.

Even if there are examples, as noted in the Applicant's initial submissions, resolution of the East Coast gas shortage comes from increasing volume of supply and diversity of the sources of supply.

The east coast gas shortage remains in urgent need of resolution, and Mereenie gas is one of the few real sources of supply that can be brought into production and increase the diversity of sources of supply in the near term.

9 Interim authorisation will not cause any anti-competitive detriment that would not be unwound if final authorisation was refused

PWC has asserted that any anti-competitive detriment caused by the proposed conduct could not be easily unwound if the ACCC ultimately refused authorisation.

This is untrue for the following reasons:

(a) Joint marketing will not 'create expectations concerning the price and terms of gas supply'[29] as alleged by PWC. Price and terms will reflect market conditions – and any expectation that may be set at a point in time will quickly become redundant as market conditions shift. The ACCC found in its Gas Inquiry 2017-2010 Interim Report that both price and non-price terms reflect the state of the market[30] – which means that any engagement that the individual Applicants were to have with potential customers following any potential refusal of a final authorisation determination would be informed by the market, rather than discussions about pricing which had occurred previously.

(b) The conduct will not cause significant commercially sensitive and strategic information to be shared by the Applicants as alleged by PWC.[31] As PWC does not given any examples of the sensitive information it is concerned about, it is difficult for the Applicants to envisage what sort of information sharing PWC is concerned about, particularly

25 PWC Submission, p 5.

26 Galilee Energy and Jemena Fast Track Pipeline, 17 October 2017; available: http://galilee-energy.com.au/wp/wp-content/uploads/2017/10/Galilee-Energy-and-Jemena.pdf

27 ACCC, Gas Inquiry 2017 – 2020 – Interim Report, p 40.

28 Sole gas project final investment decision, 29 August 2017; available: http://www.cooperenergy.com.au/Upload/4.-Sole-FID.pdf

29 PWC Submission, p 6.

30 ACCC, Gas Inquiry 2017 – 2020 – Interim Report, see section 3 – experience of gas users.

31 PWC Submission, p 6.

considering the Applicants existing independent marketing knowledge and capabilities. The Applicants are already joint venture partners in the Mereenie project. This means both Applicants already know the operating costs, reserves and resources, geology, production, potential for expansion and anticipated costs of expansion of the Mereenie project. The only additional commercially sensitive information which would be shared by the Applicants through joint marketing is the pricing at which they are each willing to sell gas. As noted above, any exchange of the price at which an Applicant is willing to sell will not have a lasting anti-competitive effect as such positions are only true at a point in time (informed by the market and circumstances of the seller at that time) and will change with the passage of time.

(c) PWC's concern that the 'primary activity carried on under the proposed arrangements in the interim period' will be the sharing of intellectual property and confidential information[32] is baseless, and unfounded. As set out in the Applicants' Initial Submission, the primary activity conducted by the Applicants in the interim period will be the joint marketing of gas to East Coast gas customers. It is unclear what confidential information PWC is concerned about, particularly given PWC has not sought to offer any specific examples to illustrate its concerns. As noted above, the Applicants are already joint venture partners in the Mereenie project and each have access to all of the relevant information – strategic or otherwise – about that project. Macquarie Mereenie is a SPV set up for the purpose of the Mereenie Project and does not possess competitively sensitive information with respect to any other gas projects. PWC has not sought to justify its nebulous concerns that the exchange of non-specific information may result in the Applicants using such information to the detriment of PWC – who, as noted above, is a major competitor of the Applicants, and who the Applicants would not have any sensitive information about. The absence of such substantiation should lead the ACCC to genuinely consider whether these concerns are justified.

The Applicants maintain their previous position that any contracts entered into during the interim period would be conditional on the Applicants receiving final authorisation from the ACCC. This conditionality – combined with the fact that any discussions between the Applicants about the gas pricing they would accept for new sales will quickly lose relevance with the passage of time and changes in the market - means that if the ACCC ultimately refuses authorisation, then any potential anti-competitive detriment will easily be unwound.

10 Other matters raised in the PWC Submission

10.1 Urgency of the matter

(a) Assertion that the gas shortage is resolved

As noted in section 8 above, the East Coast gas shortage remains a structural issue that has not been resolved (with the one-off measures implemented for 2018 and 2019, not resolving the long term needs of customers or removing the demand for additional long term gas supply) and only prioritises gas to a segment of the East Coast market namely domestic consumption.

For downstream industries and uses dependent on gas it is critical the shortage is resolved. Doing so remains urgent, and Mereenie gas remains one of the few sources which can be brought into production in the near term.

(b) Assertion that the urgency is self-imposed

[32] PWC Submission, p 6.

PWC alleges that the urgency claimed by the Applicants is simply driven by a self-imposed commercial desire to have gas available for the commissioning of the NGP.

The Applicants note the following in response:

(i) as noted above, there is a predicted, ongoing shortfall in supply the East Coast gas market so there are significant public benefits in ensuring that gas is available to flow into the NGP upon its commissioning (i.e. at the earliest possible point in time);

(ii) ensuring that suppliers are able to utilise the NGP upon its commissioning sends positive signals to investors in Australia's gas markets and is an important part of the solution to the ongoing gas crisis – significant investment in gas infrastructure that does not get immediately utilised will disincentivise such investment going forward;

(iii) the need to have the gas available for the commissioning of the NGP is driven by the opportunity of the clearly oversupplied Northern Territory market (prior to connection via the NGP) becoming part of the East Coast gas market. For example:

(A) the Environmental Impact Statement of the NGP noted the following:

At a high level, Central Petroleum and Santos have 232 PJ of proven and probable (2P) gas reserves and ENI has 860 PJ of proven and probable (2P) gas to supply the [PWC] gas transport agreement and the Northern Territory's demand (22 PJ p.a.). This is sufficient to supply the NGP and Northern Territory demand for 21 years.

(B) Jemena has indicated publicly that the NGP has been deliberately sized to reflect the widely acknowledged surplus gas production in the Northern Territory.[33]

There is likely to be a flurry of contracting when Northern Territory gas becomes available – and if the Applicants are not in a position to be part of that, then there is real risks of the Mereenie field not being further developed. PWC are plainly interested in ensuring that Applicants are unable to market Mereenie gas into the East Coast gas market via the NGP, given the commercial position it has created for itself where it has a publicly known and widely reported over-contracted gas position and therefore a surplus of gas it is intending to sell into the East Coast gas market via the NGP upon its commissioning. Delaying its competitors in entering that market is clearly a commercial strategy designed to preserve market opportunities for itself; and

(iv) the Applicants require joint marketing in order to ensure that Mereenie gas is available for supply into the under-supplied East Coast gas market as soon as such gas could be transported to that market – and that date is an externality imposed on the Applicants by the developer of the pipeline (and not a self-imposed commercial deadline, or a date over which the Applicants have any meaningful control).

(c) Assertion that it would be possible for each Applicant to individually engage with customers prior to authorisation without interim authorisation

33 See Jemena Environmental Impact Statement for NGP, Chapter one, p 1-11.

PWC seems to suggest that it would be possible for the Applicants to tacitly pre-agree terms and separately engage with customers in relation to potential Mereenie expansion gas (without interim authorisation) while waiting for a final authorisation determination. It is frankly difficult to see how that would be effective while ensuring that the Applicants continue to comply with competition laws and the cartel prohibitions. The key issue that gas customers are interested in understanding, and the main basis upon which they choose between competing gas suppliers, is, unsurprisingly, price. In the absence of authorisation each Applicant would be left being unable to actually put forward a price that it could be sure the other Applicants would agree to post-authorisation. Given that severe limitation, discussions with customers are highly unlikely to be fruitful and the Applicants will not be able to effectively participate in tender processes (in competition with a seller like PWC who can provide a firm price). These issues demonstrate exactly why interim authorisation is required.

(d) Assertion about urgency not existing due to 'small quantity'

PWC queries why, if the quantities of Mereenie gas that would be supplied into the East Coast gas market are relatively small, it is necessary for interim authorisation to allow joint marketing prior to final authorisation.

The Applicants note the following in response:

(i) the quantity of additional gas from Mereenie may be small in the context of the overall East Coast Gas Market – but it is material when compared to the gas shortfall;

(ii) the Applicants wish to engage in joint marketing to lock in long term contracts prior to final authorisation to ensure that the contracts that would ultimately underwrite the development of the Mereenie field to supply the relevant gas are finalised and there is commercial certainty of outcome (the urgency is driven by the materiality of the cost not just the volume);

(iii) significant, long term gas arrangements take time for parties to negotiate and document (particularly given they often involve a tender and selection process rather than just bilateral negotiations) such that a 4-5 month delay (as claimed by PWC)[34] is likely to mean that the supply is not ready for the commencement of the NGP;

(iv) as noted in section 8 of this submission above, it is doubtful other sources of supply with come into production so as to be potential substitutes for Mereenie gas;

(v) in any case, other forms of supply emerging in the interim period does not reduce the relevance or urgency of this supply – the shortage in the East Coast gas market is significant and multiple suppliers could be accommodated by the market, with eager buyers irrespective of what other options become available in the interim. As noted in the Applicant's initial submissions, the ACCC's East Coast Market Inquiry recognised the need for greater diversity of sources of supply; and

(vi) the Applicant's experience in relation to the Amadeus pipeline is that PWC has contracted substantial surplus capacity, which makes it difficult for other sellers to obtain firm pipeline capacity to makes gas sales within the Northern Territory – and it is concerned that PWC may employ similar tactics in relation to the NGP.

[34] PWC Submission, p 5,

(e) Assertions about impact on development of the field

PWC seems to suggest in its submission that the request for interim authorisation cannot be urgent because the Applicants did not publicly announce that they intended to jointly market gas prior to making an application for authorisation to the ACCC.

The Applicants make the following points in response:

(i) given the Applicants understood that authorisation would likely be required to engage in joint marketing, the Applicants were conscious of not announcing publicly that they were intending to jointly market prior to engaging with the ACCC (as the Applicants are conscious of, and compliant with, their obligations under the *Competition and Consumer Act 2010* (Cth) and did not consider it prudent to suggest that they intended to forge ahead with a marketing strategy that they considered would likely require approval);

(ii) the Applicants first contacted the ACCC on 1 September 2017 via email to confirm that they did intend to make an authorisation application relating to joint marketing;

(iii) only following the Applicants contacting the ACCC did they make public statements about joint marketing (as they were more comfortable at that point that the ACCC understood that such conduct would not occur without appropriate steps, such as authorisation, first being taken);

(iv) the Applicants are not, and have never been, under any obligation to disclose to their competitors (such as PWC) what their commercial strategy is, so it should not come as a surprise to the ACCC that PWC were not aware of the development and marketing plans for Mereenie in any great detail;

(v) Central had considered potential joint marketing with Santos prior to Macquarie Mereenie acquiring Santos' interest in the Mereenie field, such that Central has been contemplating strategies for joint marketing with its joint venture partner for some time;

(vi) As noted in section 7 of this submission above, the May 2017 Supplementary Scheme Booklet Central made clear that marketing issues needed to be resolved; and

(vii) While Central has always intended to develop the Mereenie reserves and has taken relevant steps to ensure that it is capable of doing so (such as the capital raising referred to by PWC in its submission), those steps do not mean that joint marketing is unnecessary or has not been part of the commercialise strategy for Central and PWC does not have any basis on which to claim that it has not.[35]

(f) Assertion that Mereenie development will not be in production until 2019 financial year

The Applicants consider that if interim authorisation is granted they will be able to proceed with further development of the Mereenie field quickly and achieve first production for NGP commissioning, given the existing reserves and presently existing installed field capacity.

In any case, surely there is greater public benefit in providing interim authorisation such that the Mereenie field development occurs as quickly as possible given the urgent need to ease the East Coast gas market shortage as soon as possible, rather than stymieing it based on speculation

35 PWC Submission, p 5.

about whether it will be delayed by a short period. Pages 30 and 31 of the ACCC, Gas Inquiry 2017 – 2020 – Interim Report shows that in 2018, a further 330 to 383PJ of supply is needed to satisfy all existing demand (being the difference between Supply and the Expected and Upper Band domestic demand plus LNG demand (maximum LNG capacity), respectively).

The Applicants note that PWC has asserted that there may be delays in the development work at Mereenie, and have raised questions about the development timetable released by the Applicants. The Applicants note three points in response:

(a) PWC is not a developer of gas projects, and as such, is not well-qualified to make assessments of the production and development forecasts of the Applicants;

(b) even if the Applicants were delayed in their development of the Mereenie field, there are still significant public benefits to bringing on new supply into the East Coast gas market as soon as possible – given the long term forecasted shortfall in supply, and the significant consequences of not addressing the supply in shortfall for both domestic and export markets; and

(c) the Applicants have 150 PJ of existing 2P gas reserves at Mereenie that authorisation would facilitate being brought to the market by allowing the production limits to be lifted (given the commercial certainty that joint marketing would bring). This means that even if development were delayed, there would nonetheless be gas available for supply to the East Coast gas market through the existing reserves at Mereenie being able to be made available to customers via the NGP while the development work required to meet the supply commitments across the remainder of the term of gas supply contracts entered were finalised.

(d) Assertion about nature of development work

The development work in relation to the Mereenie field is not simply an incremental increase of existing production. It is new drilling to turn a predominantly oil production project into a predominantly gas production project. The cost of the development is anticipated to be $20 million in initial drilling with substantial further costs which are feasibly able to be calculated until the flow rates as a result of that drilling are known, which is material compared to the consideration paid by Central and Macquarie Mereenie for their interests in the project. For the reasons set out in section 7, joint marketing is necessary for the parties to invest the capital required for the development to occur. The urgency is driven by market conditions, and having to allow for delays resulting from the Northern Territory wet season, not the nature of the development work.

10.2 Extent to which the market will change

For the reasons noted in section 9 of the submission above and the Applicant's initial submission, the Applicant's strongly reject the assertion that the market will somehow be irrevocably changed by interim authorisation.

All joint gas sales conducted following interim authorisation will be subject to and fully conditional upon final authorisation by the ACCC and, in light of changing market conditions, any exchange of pricing information will quickly lose its relevance if authorisation is ultimately denied.

10.3 Alleged harm arising from the conduct

The Applicants outright reject any suggestion by PWC that they have 'already entered into or arrived at a contract, arrangement or understanding' as to the terms of the GSAs proposed to be negotiated during the interim period.[36] However, as the ACCC would appreciate from its East Coast Gas Market Inquiry, all gas sales agreements do have significant similarities, such that the points to be negotiated (and the negotiating position of a seller) are not likely to change with joint marketing.

The Applicants also reject that PWC will be 'forced to expose [its] position' the Applicants,[37] given (as discussed in section 4 of this submission) PWC intends to sell gas into the NGP, has a documented surplus of gas, and has not demonstrated any basis on which it would enter into any contracts for the acquisition of gas from either Applicant during the interim period.

As noted above, there is no future, with or without authorisation, in which the Applicants would act in competition to each other for the sale of Mereenie gas, as without authorisation, Central will not have access to any Mereenie gas to bring on into the market. As such, PWC's concern that the conduct will resulted in an inability to 'create competition among several suppliers in order to get the most competitive result' is not founded in the realities of the market. It is publicly known that Central is currently not a source of Mereenie gas (as discussed in section 5 of this submission).

The Applicants note for completeness that interim authorisation would facilitate the Applicants being able to market gas in competition with PWC into the East Coast gas market – which would actually facilitate an increase in competition and likely more competitive terms for potential purchasers of that gas.

As noted above, the Applicants do not consider that there will be any lasting market harm if interim authorisation is granted and final authorisation is refused, as any conditional gas supply agreements entered would be terminated and changes in market conditions will quickly mean that the relevance of any terms negotiated will quickly diminish in relevance.

10.4 Public benefits arising from the conduct

PWC alleges that minimal – if any – public benefit will arise from the proposed conduct in the interim period, should interim authorisation be granted.

The Applicants stand behind the Applicants' Initial Submission, and the public benefit analysis set-out therein.

In response to the particular claims made by PWC, the Applicants note:

(a) the appropriate test for considering the appropriateness of interim authorisation is whether the public benefits outweigh any anti-competitive detriment. As such, the Applicants are not attempting to 'have their cake and eat it'[38] by noting that there will be significant public benefits arising from the inflow of Mereenie gas into the East Coast gas market – whilst noting the reality that any theoretical anti-competitive detriment arising from the conduct will be minimal as the quantity will not represent a large percentage of the market;

(b) any contracts entered into by the Applicants during the interim period will be conditional on final authorisation, and fall away immediately if final authorisation is not granted. As such, the lasting anti-competitive detriment is (as discussed above) likely to be negligible;

(c) there are significant public benefits that would arise from the proposed conduct, which would include:

[36] PWC Submission, p 7.

[37] PWC Submission, p 7.

[38] PWC Submission, p 8.

(i) increase of supply of gas into the east coast gas market, greater competition and impact on downstream gas users;

(ii) increase of available gas supply to Northern Territory customers;

(iii) expansion of regional and indigenous employment opportunities;

(iv) increase of Government revenues;

(v) increase of land access compensation to traditional owners;

(vi) incentives and positive signals to infrastructure investors;

(vii) cost savings and synergies; and

(viii) environmental benefits.

Even if the ACCC does not accept that all of these public benefits would arise during the interim period, even some of these public benefits arising means that the public benefits from the proposed interim conduct would outweigh any negligible anti-competitive detriment;

(d) given the fact that the joint marketing is not increasing concentration or removing a supplier from the market and the relatively small amounts of gas produced by Mereenie in the context of the entire East Coast gas market, it is completely unsustainable to assert that joint marketing will have the result of significantly and sustainably increasing price in that market;

(e) given the East Coast gas market shortage, there is no question as to whether 'new buyers in Mt Isa and/or the NT [will be able] to absorb the additional output of Mereenie gas';[39]

(f) PWC's query about market definition appears to ignore the fact that Mt Isa buyers will effectively face alternative sources of supply from basins feeding Ballera (such as the Cooper and Surat basins) and Northern Territory gas – and that Northern Territory gas will therefore impact on the price for gas sales from the Cooper/Surat region – which in turn will impact on the prices in the remainder of the East Coast gas market. It also ignores the potential for arrangements like gas swaps that may make delivery to other parts of the East Coast gas market economically viable;

(g) the Applicants do not consider that the assertion that the production of Mereenie gas not matching exactly the increased demand of gas from buyers in Mt Isa or the NT will lead to an increase in prices – nor have they ever suggested that the production and demand will be a precise match. Rather, they anticipate ongoing and growing demand in the East Coast gas market, recognising that the NGP is the only commercial opportunity they have to import into that market in the near term, and that joint marketing is necessary for the Applicants to be able to engage in that opportunity. To the extent that there is surplus gas available – economics would typically indicate that would reduce prices for Northern Territory customers not increase prices as PWC appears to be alleging;

(h) the Applicants are confident that interim authorisation will allow them to effectively jointly market gas based on the preliminary discussions that they have individually had with customers to date;

(i) as discussed in section 4 of this submission, there is no risk that joint marketing of Mereenie gas will somehow result in a public detriment by harming PWC's ability to

[39] PWC Submission, p 8.

ensure 'the lights stay on' in the Northern Territory. PWC has provided no evidence of its alleged future needs. PWC's claims about needing to be able to source gas from as wide a range of suppliers as possible completely ignores that without joint marketing Central will not return to the market as a seller of Mereenie gas – such that joint marketing does not reduce the range of suppliers in the market (after the authorisation period it will actually increase it) and in fact introduces greater volume to the market; and

(j) the authorisation will, in fact, increase competition by lessening the substantial market power of PWC and introduce a new, contractually unlimited competitor in the market as a result of new investment.

11 Conclusion

For the reasons set out above, the Applicants consider that:

(a) PWC's submission is clearly motivated by a commercial desire to prevent Mereenie production becoming a greater competitor for PWC's gas sales – and PWC should not be permitted to abuse the regulatory process in an attempt to maintain their near monopoly position in the NT and hinder competition in that way;

(b) PWC's submission ignores the commercial reality that Central has fully contracted its share of the Production Limit and is currently precluded from making firm sales of Mereenie gas without joint marketing – such that joint marketing does not remove a potential supplier from the market rather it facilitates competition in the market;

(c) the joint marketing will not lessen, but actually increase competition – there will still be a single Mereenie supplier – but now with a greater volume to supply and the potential for there to be two Mereenie suppliers once the term of the authorisation has passed;

(d) without joint marketing neither Central or Macquarie Mereenie will proceed with development of the Mereenie field, such that the public benefits of Mereenie's further development are dependent on authorisation;

(e) the East Coast gas market shortage is significant and continuing with recent political efforts not resolving the near term structural shortage – such that there remains an urgent need to bring into production Northern Territory gas in the timeframes in which it will become part of the East Coast gas market;

(f) interim authorisation will not result in any ongoing anti-competitive detriment if for any reason a final authorisation determination is refused by the ACCC; and

(g) in any case, there are numerous public benefits arising from the proposed joint marketing which outweigh any alleged public detriments.

Consequently, the Applicants continue to firmly believe that it is appropriate for the ACCC to grant the interim authorisation and authorisation sought by the Applicants.