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21st November 2006

Dear Mr Hall

**APPLICATION FOR TREATMENT AS AN EXCLUDED SERVICE
CAPCOAL NETWORK SERVICE**

The National Electricity Market Management Company Limited ("NEMMCO") has registered and admitted Anglo Coal (Capcoal Management) Pty Ltd ("Capcoal") as a Participant in the category of Network Service Provider in respect of the Capcoal Network Service.

Capcoal has received an exemption from the operation of Chapter 5 of the National Electricity Rules and the requirement to provide an access undertaking to the ACCC. The Capcoal Network Service has only one customer, being a 32 MW power station registered with NEMMCO.

Capcoal hereby applies to the Queensland Competition Authority ("QCA") for the services of the Capcoal Network Service Provider ("CAPNSP") to be treated as excluded services.

1. Background

Capcoal is the operator of a 66kV network supporting the operations of its mine, located 45 km north-north-east of Emerald in central Queensland. This private network is connected to the Ergon Energy Corporation Limited ("EECL") distribution network at the Lilyvale substation. The network is operated under Special Approval 11/98 granted by the Queensland Department of Energy ("DoE") to Capcoal.

An independent party, Energy Developments Ltd ("EDL"), has established a 32 MW power station on the German Creek mining lease. It is connected to the Capcoal Network Service and fuelled by coal seam methane from the Anglo Coal coal mines. The project presents an opportunity to reduce emissions of greenhouse gases by using waste coal mine gas to generate electricity.

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2. Registration of Capcoal as a Network Service Provider

Capcoal has registered the following assets with NEMMCO as a distribution service:

[CONFIDENTIAL]

Confidential Diagram 1 (attached to this letter) shows CAPNSP's assets, their location within the German Creek mine premises and connection to the EECL distribution network.

In the course of registering as a network service provider, Capcoal applied to the National Electricity Code Administrator ("NECA") for partial exemption as described in clause 2.5.1(d)(2) of the National Electricity Code. Capcoal has received an exemption from the operation of Chapter 5 of the National Electricity Code and the requirement to provide an access undertaking with an effective date of 30 June 2005. This is recorded in the register of exemptions which can be downloaded from the Australian Energy Regulator's website at <http://www.aer.gov.au>.

3. Declaration of the CAPNSP Service as an Excluded Service

Clause 6.10.4 of the National Electricity Rules ("NER") identifies the Jurisdictional Regulator as being responsible for determining which distribution services are 'excluded' distribution services.

In preparing this application for treatment of the services of CAPNSP as excluded services, we have referred to the 'Electricity Distribution: Determination of Prescribed Services Final Determination' ("Determination") prepared by the QCA and dated September 2000. The Determination provides guidance on how the QCA might assess an application for treatment as an excluded service. In particular, the Determination requires an application to:

- (i) define the market; and
- (ii) demonstrate that the current level of competition or, alternatively, the lack of significant barriers to entry mean that the Distribution Network Service Provider lacks substantial influence in the market.

These items are addressed below.

Market definition

Services comprising the market

The services provided by CAPNSP are limited to generator access for an embedded generator.

This service can also be provided by the EECL network service and other private networks situated and operating on nearby mine sites. However, the price of the service must be negotiated with the respective service providers.

In this regard, we request QCA note that EDL independently chose the site for its power station and wanted to connect to the Capcoal Network Service rather than the EECL distribution network or any of the other private mine networks.

Geographical region

The geographic dimension of the market is, in effect, set by electricity networks connecting coal mines to the National Electricity Market near to the Lilyvale substation in central Queensland. This is because the EDL generator is fuelled by coal seam methane.

Time

The proximity of the EECL distribution network, and other private coal mine networks, to the German Creek coal mine site means that connection alternatives are available to the EDL generator. That is, effective competitors are currently operating in the market and the time involved in providing the required service to the embedded generator would be subject to negotiation between the parties.

The level of competition in the market

Market share

The Capcoal Network Service is connected to the EECL distribution network and the parties have established a NSP Connection Agreement.

The German Creek coal mine, which is currently a contestable electricity customer and able to choose its electricity retailer, will continue to be a customer of EECL and has established a Connection Agreement to this effect.

The Capcoal Network Service has only one customer, being the EDL power station registered with NEMMCO.

CAPNSP will provide distribution network services to the EDL power station. EECL is a competitor to CAPNSP for the provision of distribution services to the power station, as CAPNSP operates within the geographic area of the market which has historically been allocated to EECL. Furthermore, load growth in the area has been due to expansion of existing mines or connection of new mines. The establishment of CAPNSP, with exemption from Chapter 5 and the access principles, will not limit access to the national electricity market for any known loads or generators in the area as these parties will continue to be able to connect to the existing 22 kV and 66 kV EECL lines. CAPNSP is not actively seeking to increase its market share.

Barriers to entry

The 'Guidelines for exemption from the requirement to register as a network service provider' ("Guidelines") dated July 1998, as published on the NECA website, required the following principles to be met.

- Principle 6.1 the relevant network should be wholly contained within premises owned or controlled by the applicant.
- Principle 6.2 the provision of the network (and any supply of electricity to other parties) must be incidental to the business of the applicant.
- Principle 6.3 standards or other regulatory controls should be in place in respect of the relevant network.

- Principle 6.4 the granting of the exemption should not unduly limit access of parties to the national electricity market contrary to the market objectives (clause 1.3 of the National Electricity Code).

As CAPNSP has been granted an exemption from the requirements of Chapter 5 of the NER, on the basis of satisfying the Guidelines, we believe that treatment as an excluded service is warranted for CAPNSP.

We request QCA note that EDL independently chose the site for its power station and wanted to connect to the Capcoal Network Service rather than the EECL distribution network. The establishment of the Capcoal Network Service ensures that the power station has the opportunity to export energy to the national electricity market and thereby facilitates its participation in the NSW Greenhouse Gas Abatement Scheme.

Furthermore, as both the German Creek mine and the power station are able to connect to either the CAPNSP or EECL distribution networks, we do not believe there are any structural barriers to the provision of the relevant network services.

4. Application of a “light handed” regulatory approach to CAPNSP

In satisfying itself that the services of CAPNSP are able to be excluded services, we request QCA note the following:

- CAPNSP’s operations are not on the scale of those undertaken by EECL and Energex Limited in Queensland. The value of CAPNSP’s assets is less than \$20 million. This is significantly lower than the approximately \$6 billion of assets managed by EECL and Energex Limited;
- CAPNSP has only one customer. Although the network was originally established to support the operations of the German Creek coal mine, no significant changes were required to be made to the network to allow the connection of the power station; and
- CAPNSP operates its electric network in accordance with the requirements of the *Electricity Act 1994 (Qld)* and the Special Approval (No. SA11/98) granted under the associated Regulations. CAPNSP also operates and maintains the assets connecting the mine to the EECL distribution network in accordance with the requirements of the NSP Connection Agreement established with EECL.

In addition, because CAPNSP has:

- (i) entered into a Generator Connection Agreement with EDL establishing the terms and conditions of the provision of distribution network services;
- (ii) contractually agreed with EDL that the amount of [CONFIDENTIAL] per calendar year (excluding any applicable GST) will be the charge for the distribution network services provided by CAPNSP; and
- (iii) been granted an exemption from the requirements of Chapter 5 of the NER and the requirement to provide an access undertaking to the ACCC,

we believe that the interests of the distribution network service provider (i.e. CAPNSP) and the distribution network user (i.e. EDL) are appropriately balanced. Therefore, we believe it to also be in the public interest that QCA’s regulatory approach to CAPNSP should be light-handed and with minimum administrative burden on all parties, including QCA.

We also propose that, as CAPNSP has been granted an exemption from the requirements of Chapter 5 of the NER, the QCA should not impose service standards on CAPNSP as these have been addressed in the Generator Connection Agreement.

5. Contact for additional information

We trust the above provides sufficient information and detail for the QCA to declare the services provided by CAPNSP as excluded distribution services.

If you require any additional information or clarification, please contact Mr John O'Brien (HMA Consulting) on 0418 888 652 who is acting on our behalf in relation to this application.

Yours faithfully

A handwritten signature in black ink, consisting of a large, loopy 'I' and 'L' followed by a horizontal line that extends to the right and then loops back down to the end of the signature.

Ian Livingstone-Blevins
General Manager – Underground Operations
Director – Anglo Coal (Capcoal Management) Pty Ltd

att.

Confidential Diagram 1 – CAPCOAL NETWORK SERVICE