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Your ref

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Panel on Economic Development
Legislative Council Complex
1 Legislative Council Road,
Central, Hong Kong

Attn. Ms. Shirley Chan (Clerk to Panel on Economic Development)

Secretary for Transport and Housing
Transport and Housing Bureau
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2 Tim Mei Avenue
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Attn: Ms. Maisie Cheng, JP

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Dear Sirs

Re: Legislative Council Paper No. CB(4)1252/17-18(03)

We act for CNOOC Gas and Power Trading & Marketing Limited (the “**Company**”).

We are instructed by the Company to make written submissions, on its behalf, to the Panel on Economic Development of the Legislative Council, the Transport and Housing Bureau (the “**THB**”) and the Marine Department (the “**MD**”) in relation to the proposed amendments to the Pilotage Ordinance (Cap. 84) (the “**Ordinance**”) and the Pilotage (Dues) Order (Cap.84D) (the “**Order**”) described in the Legislative Council Paper No. CB(4)1252/17-18(03) (the “**LC Paper**”) that were

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submitted by the THB and the MD to the Legislative Counsel Panel on Economic Development in June 2018 (the “**Proposed Amendments**”).

We are instructed to object to the Proposed Amendments. Below are our written submissions:

1. Background

1.1 In the LC Paper, the THB and the MD proposed the following amendments to the Ordinance and the Order:

- First, three pilot boarding stations at the following locations be added to Schedule 2 to the Ordinance: (i) Area off Shek Ngau Chau; (ii) Area off Crooked Island; and (iii) Area off Ping Chau.
- Second, standard pilotage dues specified in the Schedule to the Order be revised.

1.2 As is apparent from the LC Paper, one of the underlying reasons for the Proposed Amendments is that the THB and the MD intend to change the existing pilotage arrangements in Mirs Bay.

1.3 The existing pilotage arrangements in Mirs Bay exempt vessels transiting Mirs Bay from the piloting requirement under the Ordinance. Such arrangements were approved by the Pilotage Advisory Committee (the “**PAC**”) in, and have been applied since, 1998.

1.4 In paragraph 6 of the LC Paper, it is said that “*With the establishment of three additional Liquefied Natural Gas (“LNG”) receiving facilities at East Shenzhen in the proximity of Mirs Bay since 2014, the navigation risk in the region has increased. Meanwhile, marine traffic in the region has become heavier. In 2017, the average number of daily trips transiting Mirs Bay made by OGVs (ocean-going vessels) of 3000 gross tonnage or above has grown to about 36. Moreover, OGVs transiting Mirs Bay nowadays, including container vessels, are much bigger than those in 1998. The increase in number and size of vessels including LNG vessels means that pilotage would be necessary to mitigate the increasing navigation risk in the Mirs Bay region. In taking forward the exercise, it has also transpired that the decision to exempt vessels transiting Mirs Bay from the pilotage requirement in 1998 was without legal backing, and hence must be rectified as soon as possible.*”

1.5 In other words, while the Proposed Amendments relate only to the establishment of three pilot boarding stations and to a revision of the standard pilotage dues, the LC Paper has indicated that the THB and the MD are planning to change the existing pilotage arrangements applicable in Mirs Bay.

1.6 For the reasons to be explained below, the Company objects to the Proposed Amendments, and more importantly, to the plan of the THB and the MD to change the existing pilotage arrangements in Mirs Bay.

2. The Company

2.1 The Company is a Hong Kong company. It is a wholly-owned subsidiary of CNOOC Gas and Power Group Limited, and engages in the business of trading of LNG.

2.2 The Company supplies LNG to end-users (including plants and residents in Hong Kong and Mainland) via the LNG receiving facilities of Guangdong Dapeng LNG Co Ltd. (the “**Dapeng Terminal**”) and CNOOC Shenzhen Gas Co Ltd. (the “**CNOOC Terminal**”) at Mirs Bay.

2.3 Hong Kong Electric and Towngas are customers of the Company. The Company supplied LNG in a total amount of over 255.23 million ton to them since September 2010.

3. Existing pilotage arrangements in Mirs Bay

3.1 Under section 10C of the Ordinance, *“every ship specified in Schedule 1, other than an exempted ship, while navigating in the pilotage area shall be under the pilotage of a licensed pilot or pilots, whose number shall be determined by the Authority under section 10E(3)”*.

3.2 *“Authority”* under the Ordinance refers to the Director of Marine.

3.3 Section 10D(3) of the Ordinance provides that *“the Authority may exempt a ship other than one referred to in subsection (1) or (2) from compulsory pilotage if satisfied (a) that no licensed pilot is available to pilot the ship; or (b) that compliance with the requirement of compulsory pilotage is unnecessary in the circumstances of the case”*.

3.4 In 1998, as noted in the LC Paper, the Pilotage Advisory Committee (the **“PAC”**) decided to exempt vessels transiting Mirs Bay from the compulsory pilotage requirement under the Ordinance.

3.5 PAC is a committee established under section 4 of the Ordinance. Director of Marine (the Authority as defined under the Ordinance) is the chairman of the PAC.

3.6 In the circumstances, so far as vessels transiting Mirs Bay are concerned, they are exempted from compliance of compulsory pilotage by reason of section 10D(3) of the Ordinance.

3.7 (NB. At this juncture, we should note that we disagree with the assertion made in the LC Paper that *“the decision to exempt vessels transiting Mirs Bay from the pilotage requirement in 1998 was without legal backing”* – it is clear that section 10D(3) of the Ordinance supplies the legal justification for the exemption granted by the PAC (and hence the Authority) in 1998.)

3.8 For the past 20 years, vessels transiting Mirs Bay were managed by the Shenzhen Maritime Safety Administration (深圳海事局) – the vessels were piloted by pilots from the Shenzhen pilot station of the Shenzhen Maritime Safety Administration in accordance with the relevant regulations. There was no involvement of any pilots from Hong Kong in the process.

3.9 The existing pilotage arrangements in Mirs Bay have been operating satisfactorily. Up to date, there has been no safety incidents or concerns relating to such arrangements.

4. Grounds of objection

4.1 If the THB and the MD decide to change the existing pilotage arrangements in Mirs Bay (by revoking the exemption previously granted by the PAC and by insisting on compulsory pilotage by Hong Kong licensed pilots within Hong Kong waters), this will result in *“double pilotage”* for vessels simply transiting Mirs Bay – the vessels being piloted by both Shenzhen pilot station of Shenzhen Maritime Safety Administration and Hong Kong pilot station at the same time.

4.2 In our submissions, as will be explained further below, the *“double pilotage”* is objectionable, for the following reasons:

- It is wholly unnecessary.
- It would create safety hazards to navigation of LNG vessels and the pilots.
- It would unduly increase costs and business risks.
- It would harm the LNG industry and the economy.

Wholly unnecessary

- 4.3 The existing pilotage arrangements for vessels transiting Mirs Bay have been operating satisfactorily for the past 20 years:
- 4.4 Sufficient controls and safeguards are in place to ensure the safety of navigation in the Mirs Bay region.
- 4.5 Among other matters, the controls include:
- Vessels are monitored by both the Shenzhen Maritime Safety Administration and the Hong Kong Marine Department by way of a comprehensive VTS marine traffic monitoring system. The radar monitoring capability of the Shenzhen VTS is able to track up to 400 moving targets and 200 static targets at any given time at a range of 12 nautical miles, and a traffic management system which has a maximum processing capacity of 100,000 ships. It serves all foreign vessels, local Chinese vessels of 300 gross tonnage and above, ships carrying dangerous goods and their related units and personnel. The Hong Kong VTS is able to track up to 4,000 moving targets and 2,000 static targets at a range of 25 nautical miles. The combined monitoring capabilities of the Shenzhen and Hong Kong VTS systems are more than sufficient to cover the entirety of Mirs Bay, and each are equipped with telecommunication functions to provide navigation advice to vessels entering Hong Kong waters.
 - Vessels are piloted by pilots from the Shenzhen pilot station of the Shenzhen Maritime Safety Administration, who have the necessary professional qualification and good knowledge and experience in piloting vessels in Mirs Bay water.
 - In particular, LNG vessels are only piloted by senior pilots with more than 5 years of experience in piloting vessels. The senior pilots at the Shenzhen pilot station have good experience in piloting vessels calling at the Dapeng terminal and the CNOOC terminal and are familiar with all the relevant local conditions at Mirs Bay.
 - The pilotage of vessels by Shenzhen pilots in Mirs Bay is in accordance with the international standard. The International Maritime Organization has adopted resolutions which recommended the use of licensed deep sea pilots in the Baltic Sea and English Channels which did not necessarily have to be from coastal countries, as long as they were adequately qualified.¹

¹ IMO Resolution A.1080(28), IMO Resolution A. 1081(28)

- All LNG vessels transiting Mirs Bay region are accompanied by escort boats, and no vessel (other than the escort boat) is allowed to navigate within the safety zone of the LNG vessels (0.5 nautical mile on the sides and 1 nautical mile to the bow/ stern).

- 4.6 According to the LC Paper, the THB and the MD seems to assume that the increase in number and size of the vessels including LNG vessels would increase the navigation risks in the Mirs Bay region, rendering it necessary to impose a double pilotage for vessels transiting Mirs Bay.
- 4.7 We submit that such an assumption is unwarranted – no research is done, and no evidence is supplied, to substantiate any assertion of the “increased” risk of navigation.
- 4.8 The reality is that there was no double pilotage for vessels transiting Mirs Bay for the past 20 years, and that there has been no major safety incidents attributable to navigation in Mirs Bay, notwithstanding the fact that the number and size of vessels transiting Mirs Bay has increased during such period.²
- 4.9 Accordingly, we submit that there is no good reasons (and hence, it is wholly unnecessary) for the THB and the MD to change the existing pilotage arrangements in Mirs Bay.

Safety hazards created by double pilotage

- 4.10 It is a rather dangerous procedure for pilots to board and disembark LNG vessels, and accidents happened during such process from time to time, resulting in injuries to the pilots.
- 4.11 During the boarding and disembarking of pilots, LNG vessels would need to vary their speed to facilitate the process.
- 4.12 Also, in order to provide safe conditions for pilots boarding and disembarking a LNG vessel, the LNG vessel would need to change its course and let the tugboat stay on its downwind side, which may result in the LNG vessel moving towards a direction perpendicular to the channel (and hence occupying/ blocking the entire channel). Any faulty handling could result in catastrophic consequences.
- 4.13 Moreover, the Hong Kong pilot station is located in the vicinity of Hong Kong’s “Shek Niu Chau riprap area”, where the width of the channel is around 2,000 metres. As vessels are required to maintain a minimum distance of 500 metres to 100 metres from any vessels transporting dangerous goods (such as LNG vessels), so the likelihood is that the boarding/ disembarkation of pilots at the Hong Kong pilot station will result in a congestion of vessels (including LNG vessels) and may increase the risk of collision.
- 4.14 All of the above would significantly increase the navigation and operational risks in the Mirs Bay region and would create serious safety hazards to the pilots and the LNG vessels.
- 4.15 We submit that the above safety hazards would out-weight any potential benefits that “double pilotage” may bring in terms of the safety of navigation in the Mirs Bay region.

Increased costs and business risks

² According to statistics on waterborne traffic accidents compiled by the Shenzhen Maritime Safety Administration, in the period from January 2007 to March 2018, only 11 incidents occurred in Mirs Bay, none of which arose from navigation issues.

- 4.16 “Double pilotage” would substantially increase the costs to the shipment.
- 4.17 Under the Proposed Amendments, the pilotage fee for LNG vessels is around USD10,000/voyage. Such a fee is much higher than the costs of Shenzhen pilotage services (USD3,000/voyage). Apart from the pilotage fee, the Company would need to pay the Hong Kong vessel agency fees, tugboat expenses and other related charges.
- 4.18 On the basis of around 90 LNG shipment per year, the Company estimates that its operating costs will increase by USD1.5 million per year as a result of the implementation of “double pilotage”.
- 4.19 “Double pilotage” would also inevitably increase the length of the voyage.
- 4.20 In particular, mindful of the number of vessels calling at Hong Kong each year (over 10,000 vessels) and the limited number of Hong Kong qualified pilots (around 110 pilots) and tugboats, it is doubtful as to whether there is sufficient Hong Kong qualified pilots and tugboats to handle the traffic at Mirs Bay. In the LC Paper, it is unclear as to how the government could ensure that the voyage would not be unduly delayed by the double pilotage arrangements.
- 4.21 It is important to note that the shipment of LNG is generally under very tight timetable. The process would involve complicated procedures (and scheduling) and many stakeholders. For example, the Shenzhen Maritime Safety Administration will not allow LNG vessels to berth or unberth at night, and hence, it is crucial that LNG vessels do not miss the scheduled loading day.
- 4.22 We are concerned that the double pilotage requirement in Hong Kong for vessels transiting Mirs Bay would increase the risk of delay to the voyage, resulting in significant losses to the Company including but not limited to demurrage charges.
- 4.23 In the LC Paper, the THB and the MD have failed to address the relevant impacts of “double pilotage” to the business of the stakeholders (and in particular, those involved in the LNG industry) and their concerns, save as the interest of the service providers of pilotage services in Hong Kong.
- 4.24 It is submitted that it is important that the THB and the MD would need to consult all relevant stakeholders before any change being made to the existing pilotage arrangements in Mirs Bay.

Harming the LNG industry and the economy

- 4.25 It is important to the Company (and to the users of gas in Guangdong and Hong Kong region) and to the economy of China (including Hong Kong) that there is a stable and reliable supply of natural gas.
- 4.26 A stable and reliable supply of natural gas during winter period is also a priority for the PRC government.
- 4.27 As we understand matters, the National Development and Reform Commission (国家发改委) and National Energy Administration (能源局) have directed that the Guangdong area would need to supply 3,000 million cubic meters gas per day to the northern parts of China during the 2018/2019 winter period, and 6,000 million cubic meters gas per day during the 2019/2020 winter period.

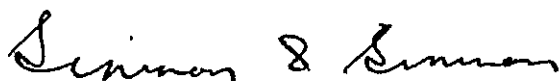
- 4.28 The Company, Dapeng Terminal, CNOOC Terminal and other relevant stakeholders would play important roles in the natural gas supply chain.
- 4.29 Any disruption or obstruction to the natural gas supply chain as a result of the implementation of "double pilotage" would be harmful to the LNG industry and to the economy of China (including Hong Kong) in general. It may also adversely affect the daily life of the residences in China (including Hong Kong).
- 4.30 The economic and social impacts associated with the implementation of "double pilotage" are important issues that would need to be duly considered. It appears to us that the LC Paper has failed to take them into account.

5. Conclusion

- 5.1 The existing pilotage arrangements in Mirs Bay (which exempt compulsory pilotage under the Ordinance for vessels transiting Mirs Bay) have been operating satisfactorily for the past 20 years.
- 5.2 As a matter of fact, there was no safety incidents or concerns over such arrangements.
- 5.3 We submit that it is wholly unnecessary to impose any "double pilotage" on vessels transiting Mirs Bay – there is no justifiable reasons for "double pilotage"; "double pilotage" may create safety hazards to the navigation of LNG vessels and the pilots, increases costs and business risks to the stakeholders in the natural gas supply chain, and harm the LNG industry and the economy.
- 5.4 Accordingly, we object to the Proposed Amendments.
- 5.5 We invite the Panel on Economic Development of Legislative Council to give due consideration to our Objections. We also invite the THB and the MD to reconsider their plan to change the existing pilotage arrangements in Mirs Bay; and insofar as any change is being contemplated, given the potential significant impacts to the relevant stakeholders (including but not limited to the Shenzhen authorities) and to the public (China (including Hong Kong)) in general, we invite the THB and the MD to conduct a comprehensive public consultation.

Thank you for your attention. Please do not hesitate to contact our Mr. Joseph Chu ([REDACTED]@simmons-simmons.com) at [REDACTED] if you wish to discuss any matters.

Yours faithfully



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