

# OFFICE OF THE CONTRACTOR GENERAL OF JAMAICA

## Special Report of Investigation

### Allegations Regarding the Proposal for the Financing, Development, Ownership and Operation of a FSRU LNG Re-Gasification Terminal and Natural Gas Transportation System

Office of the Prime Minister (OPM) /

Ministry of Energy and Mining (MEM) / Petroleum Corporation of Jamaica (PCJ)

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#### EXECUTIVE SUMMARY

On 2010 September 15, the Office of the Contractor General (OCG), acting on behalf of the Contractor General, and pursuant to Sections 15 (1) and 16 of the Contractor General Act, formally initiated an Investigation into the circumstances surrounding the recommendation by the Petroleum Corporation of Jamaica (PCJ), to enter into negotiations with the selected ‘preferred bidder’, the Exmar Consortium, for the proposed Financing, Development, Ownership and Operation of a FSRU LNG Re-gasification Terminal and Natural Gas Transportation System in Jamaica (‘hereinafter referred to as ‘FSRU LNG Project’).

Section 15 (1) of the Act provides that “... a Contractor-General may, if he considers it necessary or desirable, conduct an investigation into any or all of the following matters –

- (a) the registration of contractors;
- (b) tender procedures relating to contracts awarded by public bodies;
- (c) the award of any government contract;
- (d) the implementation of the terms of any government contract;
- (e) the circumstances of the grant, issue, use, suspension or revocation of any prescribed licence;
- (f) the practice and procedures relating to the grant, issue, suspension or revocation of

*prescribed licences”.*

Section 16 of the Contractor General Act expressly provides that “*An investigation pursuant to section 15 may be undertaken by a Contractor-General on his own initiative or as a result of representations made to him, if in his opinion such investigation is warranted*”.

It is instructive to note that prior to the initiation of the OCG’s Investigation on 2010 September 15, the OCG was in the process of monitoring the referenced project. In this regard, the monitoring of the proposed ‘FSRU LNG Project’ was prompted by the receipt of a letter from a ‘*Concerned Citizen of Jamaica*’, which was dated 2009 September 8. In the referenced letter, the ‘*Concerned Citizen of Jamaica*’ stated, *inter alia*, the following:

*“There has been much talk recently about Government moving from oil to liquefied natural gas (LNG). From my own checks it seems that the Minister of Energy and Mining has unilaterally appointed someone to lead the charge in this direction. Unfortunately my checks have also revealed that the person so selected is a good friend of the Minister and only last year was fired from the PCJ.*

*Kindly use your good office to investigate the procurement procedures which led to this person being assigned such an important role and whether this appointment can stand the tests of probity and transparency. I believe it was the same LNG that this individual was in charge of at the PCJ and he seemed to have gone off with substantial intellectual property which belongs to the Government of Jamaica as no one in the PCJ appears to know what he was about...”<sup>1</sup>*

Subsequent to the foregoing allegation, the OCG wrote to the Permanent Secretary in the Ministry of Energy and Mining (MEM), Mrs. Hillary Alexander, on 2009 September 25, in the interest of probity, to ascertain the veracity of the allegations which were detailed in the aforementioned letter.

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<sup>1</sup> Letter from a “Concerned Citizen”, which was dated 2009 September 8.

It is instructive to note that the Permanent Secretary responded to same on 2009 October 1, at which time she indicated, *inter alia*, that “...there is no truth to any of the allegations in the 2009 September 8 letter.”<sup>2</sup>

Subsequently, on 2009 December 9, an article was published in the Daily Gleaner, which was entitled “*Four vying for LNG project – Bids due Jan 5 – Jamaica seeking ‘BOT’ investors for floating platform*”, and in which it was reported, *inter alia*, as follows:

*“Four foreign energy companies are now vying for the job to develop a floating natural gas platform for Jamaica, under an arrangement that requires the selected investor to ‘build, own and operate’ the system.*

*Jamaica has opted to develop an offshore platform – earmarked for Port Esquivel in St. Catherine, saying it could be more than 40 per cent cheaper than a land-based facility – at US\$400 million...*

*Joint venture partners Korea Gas Corporation and Samsung Corporation of Korea, Hoegh LNG and BW Gas both of Norway, as well as Belgian firm Exmar, are expected to submit proposals by the January 5, 2010 deadline to finance, construct and operate the LNG Floating Storage and Regasification Unit (FSRU) for the Jamaican Government.*

*“The limited tender process for identification of the infrastructure provider is already under way,” Stephen Wedderburn, project coordinator for LNG...said via email...*

*A request for proposal was, he said, sent to nine companies on November 12, but five declined to participate...”*<sup>3</sup>

Consequently, the OCG, by way of a letter which was dated 2009 December 21, wrote to Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, requesting a copy of certain pre-tender

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<sup>2</sup> Letter from Mrs. Hillary Alexander, Permanent Secretary, MEM, which was dated 2009 October 1.

<sup>3</sup> Daily Gleaner article entitled “Four vying for LNG project – Bids due Jan 5 – Jamaica seeking ‘BOT’ investors for floating platform” which was dated 2009 December 9.

documents inclusive of: a) a copy of the Request for Proposal (RFP); b) copies of the letters of invitation which were sent to the nine (9) companies; and c) a Status Report.

During the course of the OCG's monitoring of the referenced project, the OCG received another complaint by way of an email, on 2010 May 6, from a concerned individual who was purportedly involved in the LNG process from 2007. The referenced email, which was captioned the "Jamaica LNG Project" stated, *inter alia*, the following:

*"...the RFP and the evaluation of the existing bids are under way. We see that there are several postponements and i wish to say that...almost all the invited companies, chose to decline participation...Needless to say we have all put a lot of work into this project and...are disappointed with the way things have turned out, **especially with the background were we were asked to come up with solutions and did so.** We were in the [sic] Jamaica on july 09 and after that we were asked to tailor a solution to the spec given...the process has been somewhat strange and hard to understand.*

*The reason for this is that...**the RFP...was not very well founded. There was no technical and FEED studies done, also no technical consultant was engaged to assist in the development.** This is the first and so far the only time that has been the case. **This means that there was no real spec and that made it difficult to develop a bid that was accurate on financial and technical planning.** There was a clause that the ship/FSRU must be 10 years or younger. There was a requirement that said the bidder must bear all the investments, also for the infrastructure onshore... The reasons mentioned here are why most invited companies did not participate. Industry sources more than once mentioned that **this RFP is tailormade to the Belgian company that chose to participate.** We have **also heard rumours about very close ties between this company and officials high up in the MOE & Mining** as well as the business community...Our sources in the industry, as well the [sic] press, points out that the credibility of Jamaica is at stake here and that is needed if this is going to be a success. No supply of LNG will be contracted to Jamaica as long as there is no formal project, this everybody know [sic] for sure. This in*

*spite of Mr. Wedderburns [sic] optimistic statements in the press.”<sup>4</sup> (OCG’s Emphasis)*

The OCG’s concerns were further heightened upon the receipt of another anonymous complaint on 2010 June 16, regarding the alleged ‘*preferred bidder*’ for the ‘FSRU LNG Project’, that is, the Exmar Consortium.

The referenced complaint asserted the following:

*“...So who are the local player [sic] in Exmar, who the government announced as the preferred bidder for LNG. What is their personal and professional relationship with the current energy minister. how much did they donate to him in the last campaign. How much support did he provide to their bid. Have they been in business with him before in providing international bypass facilities. You are worried about the bauxite deal. This one is worse”.*

Upon receipt of the foregoing allegation, the OCG, by way of a Statutory Requisition which was dated 2010 June 18, requisitioned the Hon. James Robertson, Minister of Energy and Mining, and asked him to respond to certain interrogatories which were related to the said allegation.

The OCG’s concerns were further heightened on 2010 June 18, by certain media reports and public disclosures and pronouncements, regarding the ‘*Liquid Natural Gas (LNG) Deal*’, which were made, *inter alia*, on the Nationwide News Network (NNN) during its 5:00 PM News broadcast and its 5:30 PM News Commentary Programme.

In particular, the media reports and associated pronouncements alleged that Caribbean LNG (Jamaica) Limited was a part of the ‘*Exmar Consortium*’ and has as one of its majority Shareholder and Directors, one Mr. Ian Moore, the former Chairman of the Board of Directors of the PCJ, whose tenure was terminated in 2008 November by the then Minister of Energy, Mr. Clive Mullings.

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<sup>4</sup> Email received from a concerned citizen on 2010 May 6.

The OCG's concerns were further compounded when a review of the records of the Office of the Registrar of Companies, Jamaica, (ORC) did not corroborate the reports and disclosures, which were made in the media, with respect to Mr. Ian Moore's shareholder status in Caribbean LNG (Jamaica) Limited – a company which the Registrar's records indicated, *inter alia*, was incorporated in Jamaica on 2009 June 19, approximately seven (7) months after Mr. Moore demitted office as the Chairman of the Board of Directors of the PCJ.

The records indicated that the company, Caribbean LNG (B.V.I) Limited, which was organized and registered in the British Virgin Islands, was the majority shareholder, of the company Caribbean LNG (Jamaica) Limited, with 5.2 million shares or approximately 80% of the indicative issued share capital. Other listed shareholders of the referenced company included, *inter alia*, A.C. Kerr LLC (800,000 shares), Andrew Bogle (197,827 shares), Old Harbour Estates Ltd., (47,826 shares), Maritime & Transport Services Ltd. (47,826 shares), and Albert Donaldson (50,001 shares).

The records of the ORC also indicated that whilst Mr. Ian Moore and one Mr. Paul East were listed as Directors of the company, Caribbean LNG (Jamaica) Limited, they were not listed amongst the shareholders.

Based upon the referenced records, the OCG was unaware of the identity of the majority beneficial owner(s) of Caribbean LNG (Jamaica) Limited and the true relationship(s) which subsist(s)/subsisted, if any, between that entity and any person and/or entity which is/was a party to, or which is/was or has been involved in the 'FSRU LNG Project'.

Having regard to the foregoing, several concerns were raised for the OCG in light of, *inter alia*, the following:

- (a) The possibility of a potential conflict of interest, taking into consideration Mr. Ian Moore's former position as the Chairman of the Board of Directors of the PCJ and his now documented position as a Director of the 'local' company, Caribbean LNG

(Jamaica) Limited, which was alleged to be a partner of the prospective PCJ contract awardee, the Exmar Consortium;

- (b) Mr. Moore's probable prior involvement in (i) the underlying considerations which would have informed the current procurement process, a process which was initiated in 2007 April and which overlapped with Mr. Moore's tenure as the PCJ Board of Directors Chairman, (ii) the prospective contract award to the Exmar Consortium as the selected '*preferred bidder*' and/or (iii) Mr. Moore's probable exposure to and use of '*sensitive*' information by virtue of his former position as the Chairman of the PCJ Board of Directors;
- (c) The OCG's suspicions, *inter alia*, about the possibility of 'bid rigging', the use of proprietary insider information, and/or the consequential potential for a *prima facie* finding of corruption in the underlying processes which would have informed the Bid(s) which was/were submitted in response to the PCJ's Procurement Process; and
- (d) The fact that because the majority shareholder of Caribbean LNG (Jamaica) Limited is an off-shore company, which was registered in the British Virgin Islands, and whose current human shareholders were unknown, there was the unknown factor of whether there were any 'connected persons' or Public Officers who, by virtue of their being beneficial shareholders of Caribbean LNG (Jamaica) Limited, could improperly benefit from the contract which was to be prospectively awarded to the Exmar Consortium.

In light of the foregoing, the OCG, by way of two (2) separate letters<sup>5</sup> which were dated 2010 June 22, and which were addressed to Mr. Nigel Logan, Acting Group Managing Director, PCJ, and Mrs. Hilary Alexander, the MEM Permanent Secretary, issued a written '*Notice of Enquiry*' concerning the tender and contract award processes for the 'FSRU LNG Project'.

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<sup>5</sup> For the full text of both letters, please see Appendix 1.

In the referenced letters, the OCG advised both Mr Logan and Mrs. Alexander that the OCG had taken the decision to secure, without delay or reservation, certain documents and associated correspondence which would inform its Enquiry.

The OCG's Enquiry, into the referenced tender and contract award processes, was undertaken pursuant to the powers which are vested in a Contractor General, by the Contractor General Act (1983) and, in particular, pursuant to the provisions which are contained in Sections 4, 15 (1) and 18 of the Act.

On 2010 June 22, the date of the OCG's two (2) Letters of Enquiry, the OCG took into custody a number of files, both hardcopy and electronic, from the PCJ and the MEM, which were related to the 'FSRU LNG Project'. The OCG's actions were undertaken pursuant, *inter alia*, to Sections 4 (2) (b) and 4 (3) of the Contractor General Act, which empower a Contractor General "...to have access to all books, records, documents, stores or other property belonging to government, whether in the possession of any officer of a public body or a contractor or any other person" and to "...require any public body to furnish in such manner and at such times as may be specified by the Contractor-General, information with regard to the award of any contract and such other information in relation thereto as the Contractor-General consider desirable".

The OCG's decision to proceed as it did was fortified and deemed necessary by, among other things, the following considerations:

- (a) The referenced anonymous complaint of 2010 June 16, which appeared to have originated from a seemingly knowledgeable source and which made certain allegations with respect to impropriety and irregularity in the selection of the Exmar Consortium as the '*preferred bidder*';
- (b) Certain then identifiable and pronounced concerns which were predicated, *inter alia*, upon certain recent disclosures, allegations and/or reports which were disseminated through the local print and electronic media;

- (c) A review of the unedited Hansard of the Sitting of the House of Representatives of 2010 June 15 at which time the Hon. James Robertson formally announced the selection of the Exmar Consortium as the '*preferred bidder*'; and
- (d) A review of the official documents, which were disclosed as having being entered upon the official records of the ORC, in relation to Caribbean LNG (Jamaica) Limited, as at 2010 June 21.

It is instructive to note that documentation, which was retained from the MEM and the PCJ, was comprehensively reviewed by the OCG prior to the commencement of its Investigation.

Further, it is instructive to note that several other complaints, pronounced concerns, disclosures and reports were received and reviewed, by the OCG, which further compelled the OCG to undertake a more comprehensive investigation into the matter. These included, *inter alia*, the following:

- A. A complaint which was received on 2010 June 23, in which the following information was provided:

*“LNG FSRU Contract - Exmar Consortium Questions to consider LNG Coordinator Who is the LNG Coordinator? Was he engaged iwth [sic] the full support of the Board and the then Permanent Secretary? Is or was hen [sic] connected to Exmar? Did he prepare the RFP? Did he receive and answer queries from the bidders? Was he at the tender opening? Did he and how many times did he meet with the Evaluation Committee? Did he attend any meetings of the Sector Committee, NCC and Infrastructure Committee? LNG Task Force Who chairs the LNG Task Force? What is the role of this body? Where do they fit into PCJ's corporate governance framework? Did the OCG receive minutes of the meetings of the Task Force? Should the Task Force be giving instructions to the PCJ? Evaluation Committee Who were the members of the Evaluation Committee? Were any of them also members of the PCJ Board? Were any of them also members of the Task Force? Did the Committee highlight the ownership structure of CLNG? There should be*

*much information in the minutes of the various meetings. Please note carefully the contents of these minutes.”*

B. An email which was received on 2010 June 25, from a concerned citizen, which stated, *inter alia*, as follows:

*“...Of the preapproved 9 bidders, 7 were from the previous tender for a land-based facility. Board expressed concerned but it was advised that it wasn’t much difference and that the opinion of the ministry and that the minister had cabinet approve such list. **This was done purposely knowing that over half of the bidders were not providers of FSRU as it is a new technology and would not bid on the process.***

*Limited time was given for submission of tenders. **The BOD made continuous argument against the timeline and which the minister himself came to a gathering of the board members clearly stated that there will be no extensions and basically threatening the Board for changes.** Not until the Chair brought it to the attention of the prime minister that a [sic] extension was provided for **it was clear that the minister was not advising the cabinet accordingly.** After which on numerous occasions bidders requested additional extensions and to be discovered Stephen wedderburn was responding to the bidders, which it was clearly stated at the board level that he should not be part of the procurement process. Extensions were requested based on Limited information in order to make comprehensive submissions, e.g. weather studies., rejected by the ministry and Wedderburn.*

***There is a requirement in the tender, that clearly states that bidders have to have experience in certain volumes of processing LNG under certain technology.** At a Board meeting it was clearly asked how many bidders has such experience this requirement and Stephen Wedderburn stated 2 bidders, when asked if Exxmar was one of the two he said yes. This brought grave concern to the board and continued to express the process is not being administered properly and simply told by the minister and the PS Aexander [sic] that the task force agreed to wedderburns [sic] recommendations which Minister is the*

Chairman of.

**Several correspondences after showed that wedderburn was responding to bidders that the BOD agreed or disagreed to request which was untrue.**

**Board was being told the urgency of energy to afterwhich find out from JPS that they would not be able to take LNG until minimum 2014 which simply meant the need for a floating facility was untrue and actually moe [sic] expensive.** This was simply done to ensure that exmar would get the contract

The board stated that since it was a new technology why limit the age of the ships as brazil had older ships and **even a member of the board knowledgeable in shipping stated that a 20 year old ship retrofitted would not be a concern as it would be refurbished and would be in standstill not at sea moving continuously. This was rejected by the minister.**

Dr. Potopsingh and Director Watson were members of the Task force and members of the board **and continuously the board expressed dissatisfaction that they were not advising the board of the actions of the task force and the task force were advancing without board approval and then asking the board to approve after the fact. Then when the board expressed concerns, being advised by the minister it was being sabotaging.** Several occasions the board made Itself [sic] clear it would not be a rubber stamp for the ministry especially in the case of breaches and that of compromising integrity.

PS Forbe [sic] made it clear to the board that she had concerns re WEdderburn [sic] and after especially issuing a letter instructed by the Minister to have PCJ employ Wedderburn at great resistance by certain members to later find out **that wedderburn has admitted to receiving financial benefit for work done with Exmar in Columbia.** Again expressed to the ministry. Few members withdrew from voting in this decision as against. **Very much so that Director Watson sent an email to the then corporate secretary requesting that such minutes be voided from the minutes as they were**

**unsubstantiated, the board felt this was completely inappropriate of Director Watson as this was the Permanent Secretary making a declaration to the board in which she confirms her own conversation directly with Mr. Wedderburn...**

*Evaluation committee: to my understanding after the procurement committee received the evaluation report from the evaluation committee. It was very much expressed that 2 company were only bidders which one received 70+ points (Exxmar) [sic] Hoegh (38 points). When brought forward to the board. It was expressed by the procurement committee that solely on the view that exxmar [sic] was the only tender based on the following facts:*

○ *Hoegh response was not compliant to the terms of the RFP therefore technically should not even be considered a bid and being that this is based solely on the recommendation of the evaluation committee the procurement endorses it but makes note of the following pending the following which will have to be submitted and such endorsement was submitted to the ministry to follow with. The conditions were:*

- **CLNG has to disclose the directors**
- **Financials of CLNG**
- **Company profile of CLNG**
- *This was based on information presented in the consortium tender which clearly showed that CLNG placed 1/3 of the tender bond which would have to be assumed they would have a significantly larger portion in the consortium than indicated and that also **letters from several banks included showed CLNG was attempting to the [sic] be LNG supplier therefore attempting to dominate such fuel source***

**During Mr Moore term at PCJ he was very proactive in support of LNG versus the previous minister choice of Coal/Petcoke/ CNG vs LNG and also very supportive of Exmar over Golar [sic] at the time.**

Mr. Moore on a trip to Bangkok which was solely to meet with Golar for a presentation as they were providing 100% financing. Left the meeting and went with Mr. Wedderburn to meet with Exmar people. Which Mr Wedderburn was directed not to attend the travels and Mr. Moore paid for Mr Wedderburn travels as he was the bridge to Exmar. Inclusive of this many activities are now being discovered where during Mr Moore Term as Chairman he was approving activities without proper board approval.

*I highly recommend rather than reading the minutes of the meetings, it may be more suggestive to listen to the tapes of the meetings.” (OCG’s Emphasis)*

- C. An email which was received on 2010 June 26, from a concerned citizen, which stated, *inter alia*, as follows:

“Again you will see recent activities copied below in RED demonstrating [sic] the activities of Mr. Wedderburn acting without approval of the board and/or the GM yet working directly with the Ministry.

he is proposing a structure to be presented to off takers, yet the board or executive management has yet to approve such structure. Only the Ministry is aware yet it is suppose to be a PCJ project.

*Also 2 recommendations to your case would be the following:*

- Timelines between when cabinet submissions were made and pcj approvals. You will find that cabinet was done before PCJ yet cabinet was under the impression that PCJ had signed off. Typical activity would be to tell cabinet pcj [sic] approved it vice versa telling PCJ that cabinet had approved it already therefore being forced to comply.
- *Seizing the Mail server of PCJ, will be much more comprehensive than that of documents seized.” (OCG’s Emphasis)*

Attached to the foregoing emails, were the following correspondence in support of the allegations which were made:

1. An email from Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, which was captioned “*LNG Meeting with Major Propective [sic] Gas Users -- Tuesday 29 June 2010*” and, which was dated 2010 June 25, to prospective Gas Users and copied to, *inter alia*, Mr. Glenford Watson, Legal Counsel, MEM, Mrs. Hillary Alexander, Permanent Secretary, MEM, Mr. Nigel Logan, Acting Group Managing Director, PCJ, Dr. Carlton Davis, Mr. Parris Lyew-Ayee, Jamaica Bauxite Institute (JBI). In the referenced email, Mr. Wedderburn indicated as follows:

*“Dear Colleagues,*

*As you will be aware from various news reports, **a preferred LNG infrastructure provider, Exmar Consortium, has been identified through the recently conducted tender process.** As we move beyond this important juncture **it is expected that the prospective offtakers of gas will be required to play a much more central and active role in bringing the LNG Project to realization.***

*I am inviting you to attend a meeting between gas offtakers and MEM/PCJ to be held in the PCJ Auditorium next week Tuesday 29 June 1:00 - 3:30 p.m. If you are unable to attend personally, please make every effort to ensure that your organization is represented. You are free to bring other representatives from your organization in order to ensure that you have the most appropriate team participating in the meeting.*

*The agenda items for this meeting will include:*

- *Presentation [sic] by Exmar Consortium on their Proposal*
- *Proposed Commercial Structure of LNG Project (see attached)*

- *Proposed Memeorandum [sic] of Cooperation amongst Offtakers (as a precursor to establishment of special purpose vehicle)*
  - *Proposed Strategy for Procuring LNG Supply...*”(OCG’s Emphasis)
2. An email from Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, which was dated 2010 June 25, to Mrs. Hillary Alexander, Permanent Secretary, MEM, and which was copied to Mr. Glenford Watson, Legal Counsel, MEM, and Mr. Nigel Logan, Acting Group Managing Director, PCJ, in which he stated the following:

*“Dear PS,*

*When I sent out this meeting invitation to the oftakers, I saw the meeting as primarily a technical briefing for the oftakers, to bring them up to speed on the Exmar proposal for developing the infrastructure and to discuss cooperation amongst PCJ and the oftakers to deal with the procurement of LNG and the establishment of the special purpose company.*

*However, with the subsequent announcement of an investigation by the OCG, I think an important aspect of the meeting becomes a policy level matter of instilling confidence amongst the oftakers that the LNG Project is still on track. With this in mind I am asking that the Ministry chair the meeting with the oftakers -- set for 1 - 3:30 p.m. Tuesday.”* (OCG’s Emphasis)

3. An email from Mr. Glenford Watson, Senior Legal Counsel, MEM, to a Wahkeen Murray, which was dated 2009 August 31, and which was captioned “*Stephen Wedderburn*”, in which he stated the following:

*“It is my understanding that at the Board meeting of Friday last, certain statements, that may have been slanderous, were made in relation to Mr. Wedderburn without any evidence or attempt to substantiate same. To avoid the possibility of the corporation reducing the statements into writing (libel) and*

*publishing same, may I recommend that the statements be kept out of the minutes of the meeting (at least for the time being) until the next sitting of the Board. At this sitting, we can suspend the agenda to take, as the first order of business, a motion that, "in the absence of any evidence in support of the allegations made, the statements be kept out of the official records (minutes) of the corporation as their inclusion may constitute a libel and make the corporation liable for the publishing of said libel..."* (OCG's Emphasis)

The foregoing allegations raised several critical questions and concerns with respect to the pre-contractual stage and the process(es) which led to the identification of the 'preferred bidder', the Exmar Consortium. Further, the allegations inferred, *inter alia*: (a) a lack of transparency; (b) a lack of impartiality; (c) a potential conflict of interest; (d) potential bid-rigging; (e) a potential benefit from insider information; and (f) potential corruption.

These allegations and inferences, amongst others, raised several concerns for the OCG, especially in light of the perceived absence of adherence to the Government contract award principles which are enshrined in Section 4 (1) of the Contractor General Act.

Section 4 (1) of the referenced Act requires, *inter alia*, that GOJ contracts should be awarded "impartially and on merit" and that the circumstances of award should "not involve impropriety or irregularity".

The OCG's Investigation primarily sought to determine, *inter alia*, the merits of the allegations and to ascertain whether there was compliance with the provisions of the Contractor General Act (1983) and the Government Public Sector Procurement Guidelines in relation to the recommended selection of the 'preferred bidder', the Exmar Consortium, for the 'FSRU LNG Project'.

Additionally, the OCG was guided by the recognition of the very important responsibilities which are imposed upon Public Officials and Officers by the Contractor General Act, the 2008 Public Sector Procurement Regulations, the Financial Administration and Audit Act, the Public

Bodies Management and Accountability Act, as well as the Corruption Prevention Act.

The OCG was also guided by the expressed provisions which are contained in Section 21 of the Contractor General Act. Section 21 specifically mandates that a Contractor General shall consider whether he has found, in the course of his Investigation, or upon the conclusion thereof, evidence of a breach of duty, misconduct or criminal offence on the part of an officer or member of a Public Body and, if so, to refer same to the competent authority to take such disciplinary or other proceedings as may be appropriate against that officer or member.

The Findings of the OCG's Investigation into the circumstances which surrounded the recommendation of the PCJ and the MEM to enter into negotiations with the selected '*preferred bidder*', the Exmar Consortium, for the 'FSRU LNG Project', are premised primarily upon an analysis of the sworn statements and the documents which were provided by the Respondents who were requisitioned by the OCG during the course of the Investigation.

In keeping with the OCG's stated intent to initiate an Investigation, the OCG formally requisitioned the Heads of Department and the Accounting/Accountable Officers of the PCJ and the MEM, and other Public Officials, to ascertain the circumstances which surrounded, *inter alia*, the referenced recommendation to enter into negotiations with the selected '*preferred bidder*', the Exmar Consortium, for the 'FSRU LNG Project'.

### **Summary of Key Findings**

Based upon a comprehensive review of the hard copy and electronic documentation which was sequestered from the PCJ and the MEM, and the sworn written statements which were furnished to the OCG by the Public Officials/Officers and other persons of interest who were statutorily requisitioned by the OCG, the following key OCG Findings, amongst others, were identified:

1. Liquefied Natural Gas (LNG) was being considered by the then Minister of MME and the MoFAFT, Mr. Anthony Hylton, since 2001, at which time "...*the Ministry commenced*

*the formulation of an energy policy and strategy, which called for the diversification of energy sources to include LNG, coal and renewables i.e. wind, solar, thermal etc.”<sup>6</sup>*

2. The OCG found that, up to 2007, the GOJ was uncertain about the preferred and most suitable fuel type for Jamaica. The MEM and the respective Entities were said to have conducted research on several types of fuel to determine which would be more suitable.
3. The OCG found that between the period of 2007 September into early 2009, under the stewardship of the then Minister, Mr. Clive Mullings, coal was being pursued as the alternative energy source and the LNG project was ‘officially’ halted.

However, the OCG found that during the said period, both Mr. Ian Moore and Mr. Stephen Wedderburn were lobbying for the introduction of LNG. In this regard, there were several meetings and correspondence, with various LNG stakeholders, including Merrill Lynch, Hoegh LNG, Golar LNG and Exmar Marine NV.

In point of fact, the OCG found several pieces of correspondence which were shared between Mr. Stephen Wedderburn, Mr. Ian Moore and, primarily, Mr. Bart Lavent of Exmar Marine NV, which demonstrates an attempt by the named parties to promote LNG in Jamaica.

4. By way of an email, which was dated 2008 April 21, Mr. Stephen Wedderburn, the then Group Technical Director, PCJ, informed Mr. Ian Moore, the then Chairman of the PCJ Board of Directors, *inter alia*, as follows:

**“...Noel Hylton will meet with Exmar Marine NV in Belgium this week. *I have asked Bart to share Exmar’s views on CNG (Compressed Natural Gas) (which are not very positive) with him.*”** (OCG’s Emphasis)

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<sup>6</sup> Response from the former Minister of MME and the MoFAFT, Mr. Anthony Hylton, which was dated 2011 February 4. Response #1

In another email, which was dated 2008 April 23, Mr. Bart Lavent informed Mr. Stephen Wedderburn, *inter alia*, that “*I had the chance to explain to Mr Hylton and Ms Bennett the LNG project and the dangers of coal and CNG...*”<sup>7</sup>

By way of another email, which was also dated 2008 April 23, Mr. Stephen Wedderburn informed Mr. Ian Moore, *inter alia*, that “**It appears we have another supporter in Jamaica House.** Please see Bart’s report on the first meeting with Sancia Bennett Templer and Noel Hylton...”<sup>8</sup> (OCG’s Emphasis)

The foregoing emails were just three (3) of many which the OCG reviewed and which allude to the following:

- i. Evidence to suggest that Exmar Marine NV was not in favour of the use of CNG in Jamaica and used the opportunity to introduce the concept of the LNG Project to certain specified GOJ Officials;
- ii. Exmar Marine NV appears to have been instrumental in the attempts to influence the Government’s policy decision away from coal and CNG, as has been evidenced by the email from Mr. Stephen Wedderburn regarding the apparent support which was emerging in ‘Jamaica House’;
- iii. A working relationship, of some sort, existed between Exmar Marine NV, Mr. Stephen Wedderburn and Mr. Ian Moore, the then Chairman of the PCJ Board of Directors; and
- iv. There were several pieces of email correspondence in 2008 between Mr. Ian Moore, the then Chairman of the PCJ Board of Directors, Mr. Stephen Wedderburn, in his capacity as the Group Technical Director, and Mr. Bart Lavent of Exmar Marine NV.

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<sup>7</sup> Email dated 2008 April 23, from a Mr. Bart Lavent, Exmar Marine NV, to Mr. Stephen Wedderburn, PCJ.

<sup>8</sup> Email dated 2008 April 23, Mr. Stephen Wedderburn to Mr. Ian Moore.

The foregoing would suggest that the three (3) named gentlemen would have, at a minimum, been in dialogue, in whatever capacity, regarding the prospects of alternative fuel types in Jamaica.

5. The OCG found that neither the MEM nor the PCJ conducted any Front End Engineering Design (FEED) study and/or other form of a formal pre-assessment for the 'FSRU LNG Project'. To the contrary, the only FEED study which was conducted was for a land-based facility which was undertaken by Mustang Engineering for the LNG Project in 2006.
6. The OCG found that from as early as 2006, Exmar Marine NV had been courting the GOJ with respect to the introduction of LNG to Jamaica. This was evidenced, *inter alia*, by way of a document which was submitted to the OCG by the Permanent Secretary in the MOFAFT, Ambassador Evadne Coye, which was entitled "*Report of Meeting: CEO EXMAR, Hilton Hotel, Brussels*", which was dated 2006 December 1.

In the referenced document, the OCG found that Minister Hylton had "...*outlined that the meeting was of an exploratory nature. He proceeded to give an overview of Jamaica's present situation as it relates to reliance on fuel oil and the possibilities for a convergence of interest between Jamaica and EXMAR...*"

7. The OCG found that the 'FSRU LNG Project' is a sub-component of the overall "*LNG Project*" in Jamaica and reflects the GOJ's decision to adopt the changing technologies which are associated with obtaining and distributing LNG.
8. The OCG found that the Invitation to Pre-qualify was issued by the PCJ in 2007 April. In response to the referenced pre-qualification exercise, nine (9) potential LNG Providers submitted proposals on 2007 May 25. The OCG also found that the referenced pre-qualification exercise was not completed and that the 'FSRU LNG Project', was not formally reconsidered until late 2009.

9. It is instructive to note that the former Minister, Mr. Clive Mullings, stated that among the persons who spearheaded the LNG Project, during his tenure, were Mr. Ian Moore, the former Chairman of the PCJ Board of Directors and Mr. Stephen Wedderburn, the then Group Technical Director, PCJ.
  
10. The OCG was advised by Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, in his sworn response to the OCG's Statutory Requisition, which was dated 2010 November 15, that several meetings were held in respect to the LNG Project both locally and internationally.

It is instructive to note that the majority of the meetings, which were allegedly attended by various Public Officers and/or Officials, were held prior to the commencement of the tender process for the 'FSRU LNG Project' in 2009 November.

Of the nine (9) companies which expressed an interest in the LNG Project from 2007, the OCG found, based upon representations from Mr. Stephen Wedderburn, that meetings were held with only six (6) of the potential bidders, as prospective '*FSRU Providers*' for Jamaica.

11. Mr. Stephen Wedderburn also provided the OCG, at the request of the OCG, with tabular representations of, *inter alia*, (a) all the places he had travelled, (b) the respective meetings which were attended, and (c) the persons with whom he travelled in each instance, in regard to the 'FSRU LNG Project'.

Based upon the referenced tabular representations, which were provided by Mr. Stephen Wedderburn, the OCG found, *inter alia*, the following:

- i. Meetings were attended by GOJ representatives between the period of 2003 to 2010 in regard to the LNG Project.
  
- ii. Meetings were attended by GOJ representatives with potential bidders between

the period of 2005 to 2010, with specific regard to the 'FSRU LNG Project'.

- iii. Between the period of 2005 to 2010, Mr. Stephen Wedderburn indicated that he attended several meetings to, *inter alia*, promote LNG awareness, investigate potential FSRU and/or LNG suppliers and to investigate the feasibility of the FSRU technology. He also indicated that conferences and training courses were attended with potential LNG Providers/Suppliers, in regard to the 'FSRU LNG Project'.
- iv. Three (3) meetings were alleged to have been attended, between the period of 2006 to 2007, by representatives of the GOJ in Brussels, Belgium. Of the three (3) meetings, two (2) were with Exmar Marine NV and Besix and Dredging International, and the third with Hoegh LNG.
- v. Mr. Stephen Wedderburn, in 2008 June, '*travelled on the same flight*' with Mr. Bart Lavent, Director LNG, Exmar Marine NV, from Jamaica to Havana for a '*PetroCaribe Gas Working Group Meeting*'. Mr. Wedderburn indicated that he "*...attended the meeting as a Working Group Member. Mr. Lavent attended to brief the Working Group on FSRU technology.*"<sup>9</sup>
- vi. Several meetings were held with potential LNG suppliers between the period of 2006 to 2007. Of note, this was during the period in which the former Minister, Mr. Anthony Hylton, MoFAFT, indicated that the GOJ was in search of sourcing supplies of LNG in regard to the agreement between Jamaica and Trinidad. The OCG found that the then Minister, was in attendance at several of these meetings.
- vii. Mr. Stephen Wedderburn, in 2009 May, '*travelled on the same flights*' with Mr. Bart Lavent of Exmar Marine NV, from Jamaica to Colombia to '*Private gas supply meetings*'. Mr. Wedderburn also stated that Mr. Bart Lavent had been in Jamaica for a meeting with the MEM. It is instructive to note that in 2009 May,

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<sup>9</sup> Response from Mr. Stephen Wedderburn which was dated 2010 November 15. Response to question # 8

Mr. Stephen Wedderburn, who was not employed to the GOJ at the time, submitted a proposal to the MEM to coordinate the LNG Project. (OCG's Emphasis)

viii. Meetings were held in 2010 with potential LNG suppliers, among others, with respect to the LNG Project.

12. Based upon the foregoing representations from Mr. Stephen Wedderburn, it would appear that the trips which were undertaken by GOJ representatives, from 2003, were specifically with respect to FSRU LNG Re-gasification. However, the OCG found that contrary to the foregoing assertion by Mr. Stephen Wedderburn, Mr. Anthony Hylton indicated that during his tenure as Minister of MoFAFT and MEM, the GOJ's energy policy was with respect to diversification and the use of alternative sources such as LNG, coal and renewables.

In this regard, Mr. Anthony Hylton, in his response to the OCG's Statutory Requisition, which was dated 2011 February 4, stated that "*Useful and cutting edge information was gathered from trips to Japan, South Korea, Algeria, Trinidad & Tobago, Belgium, Norway and Venezuela.*"<sup>10</sup>

13. The OCG found that the GOJ held several meetings with Golar LNG and Exmar Marine NV between the period of 2008 to 2009. In this regard, both companies were required to provide updated proposals, on separate occasions, to different Public Officials/Officers, with respect to the LNG Project.

14. In 2009 June, representatives of Exmar Marine NV met with the current Minister of Energy and Mining, the Hon. James Robertson, and the then Permanent Secretary, Ms. Marcia Forbes (together with Promigas, EDC LNG and Merrill Lynch). The goal of the meeting was to advise the Government of its intent to conduct the pre-feasibility studies

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<sup>10</sup> Response from the former Minister of MME and MOFAFT, Mr. Anthony Hylton, which was dated 2011 February 4. Response to Question #1

to determine the economic and technical viability of developing a private project to import LNG and supply natural gas for use by private bauxite sector entities.

It should be noted that neither the MEM and/or the PCJ conducted a pre-feasibility study for the 'FSRU LNG Project'. Interestingly, EDC LNG (now CLNG) conducted its own feasibility study, which was completed 2009 October, one (1) month prior to the commencement of the tender period for the 'FSRU LNG Project'.

15. The OCG also found that Exmar Marine NV signed a 'Mandate', which was dated 2007 March 17, with the Ministry of Foreign Affairs and Foreign Trade, under the then Minister, Mr. Anthony Hylton, "*...to act as an agent for and on behalf of the Government of Jamaica to assist the Government, in purchasing liquefied natural gas ("LNG") and/or natural gas...*" The mandate remained valid until and including the termination date of 2007 September 30.

Mr. Anthony Hylton also indicated in his response to the OCG's Statutory Requisition, which was dated 2011 February 4, that 'Mandates' were signed between 2006 - 2007 between a number of possible LNG providers in an effort to source supplies of LNG.

It is instructive to note that despite Mr. Anthony Hylton's assertion that '*an identical mandate*' was signed with Hoegh LNG, Ambassador Evadne Coye, in her sworn response to the OCG, which was dated 2011 February 4, advised that "*There is no evidence in this Ministry that any other 'Mandate' was signed between the Ministry of Foreign Affairs and Foreign Trade and Exmar Marine NV and/or any other company in regard to assisting the GOJ in purchasing liquefied natural gas.*"<sup>11</sup>

The OCG has not seen any other documentary evidence to support the assertions which were made by Mr. Anthony Hylton, former Minister, MEM and MOFAFT.

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<sup>11</sup> Response from Ambassador Evadne Coye, Permanent Secretary, MOFAFT, which was dated 2011 February 4. Response to Question # 5

16. The OCG sent a Follow-Up Letter of Invitation (LOI) to Mr. Sveinung Stohle, President & CEO, Hoegh LNG, which was dated 2011 February 23, and questioned, *inter alia*, “... whether Hoegh LNG signed a ‘Mandate’ with the GOJ in 2007, and/or at any time, in regard to the purchasing of LNG...”

Hoegh LNG responded to the OCG’s LOI, by way of a letter which was dated 2011 March 9, and stated, *inter alia*, that “...please be informed that HLNG AS was in discussions in 2007 for appointment; however no original copy of a formal appointment letter has yet been found in our archives...”

Having regard to the lack of documentation and the conflicting statements which have been presented to the OCG by Ambassador Evadne Coye, Mr. Anthony Hylton and Hoegh LNG, the OCG is unable to corroborate Mr. Hylton’s assertion that “*an identical mandate*” was signed with Hoegh LNG.

17. Mr. Stephen Wedderburn submitted a proposal to the MEM in 2009 May, to coordinate the Liquefied Natural Gas Project.

It is instructive to note that the proposal, which was submitted to the MEM by Mr. Stephen Wedderburn, recommended, *inter alia*, that the formal GOJ Public Sector Procurement Procedures should be bypassed in the selection and award of a contract to a FSRU provider for the ‘FSRU LNG Project’, for the sake of expedience.

In this regard, the OCG found that Mr. Stephen Wedderburn not only proposed an unorthodox approach to the issue, but simultaneously sought to justify same by indicating that “...rather than going through a formal procurement system to select an [sic] FSRU provider (which will waste time and unduly delay the execution of more important aspects of the Project such as the identification of LNG supply) that one of these two companies be selected by interview.”<sup>12</sup>

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<sup>12</sup> Ibid.

Nonetheless, Mr. Wedderburn, in his 2009 May proposal also recommended that if the MEM was desirous of utilizing the traditional procurement methodology, consideration would have to be given to the contracting of Technical Consultants in order to ensure that a proper RFP would be developed.

The proposal further revealed that Mr. Stephen Wedderburn had already identified two (2) companies in the industry as having an interest, namely, Exmar Marine NV and Golar LNG. In this regard, Mr. Wedderburn expressed that the referenced companies were the only ones to “...*actually have floating regasification systems in operation...*”<sup>13</sup>

It is instructive to note that Mr. Wedderburn, in his referenced proposal, also indicated that “*Two other companies, Hoegh LNG and Suez Gaz de France, will join the floating regasification club in the next year when they jointly begin to supply LNG...*”<sup>14</sup>

18. The OCG found that irrespective of Mr. Stephen Wedderburn’s recommendation to bypass the procurement process to contract one (1) of the two (2) recommended LNG Providers for the ‘FSRU LNG Project’, the GOJ, through the PCJ, utilized the GOJ Public Sector Procurement Procedures in accordance with the Limited Tender Procurement Methodology, to contract a suitable LNG FSRU Re-gasification provider.

19. The OCG found that several Public Officers, Officials and Consultants, since 2001, contributed in different forms and manner to the progress of the LNG Project in Jamaica.

Notwithstanding the foregoing, the OCG found that there are certain key players who were affiliated with the project from the inception to present, namely:

- i. Mr. Stephen Wedderburn; and
- ii. CH-IV International.

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<sup>13</sup> Ibid.

<sup>14</sup> Footnote #1 as stated in 2009 May proposal from Mr. Stephen Wedderburn. Page # 6

The OCG also found that the following Public Officials/Public Officers, between November 2009 to December 2010, were primarily responsible for the tender process of the 'FSRU LNG Project', within the MEM and the PCJ:

- i. The Hon. James Robertson – Minister, MEM;
- ii. Mrs. Hillary Alexander – Permanent Secretary, MEM;
- iii. Dr. Ruth Potopsingh – former PCJ Group Managing Director;
- iv. Mr. Nigel Logan – PCJ Acting Group Managing Director;
- v. Mr. Stephen Wedderburn – LNG Project Coordinator;
- vi. The PCJ Board of Directors (2009 to 2010)

20. The OCG found that the following Committees, outside of the PCJ Procurement Committee and the Evaluation Committee (referred to as the LNG Technical Evaluation Committee), were established by the MEM for the 'FSRU LNG Project':

- i. The LNG Steering Committee / LNG Task Force;
- ii. The LNG Negotiating Team; and
- iii. Natural Gas Project Team.

The OCG also found that the PCJ established a LNG Project Unit which was headed by Mr. Stephen Wedderburn.

The OCG further found evidence to suggest that the established LNG Steering Committee/LNG Task Force was a key decision-making body in the tender process for the 'FSRU LNG Project'. However, the Permanent Secretary in her response to the OCG's Statutory Requisition, which was dated 2010 November 12, stated that "*The Task Force is not a part of the PCJ's Corporate Governance Framework as it represents an attempt to have a grouping of the various Ministries/Agencies/Bodies of Government identify and contribute to the best course for implementation of an [sic] LNG Project. The critical nature of the project and the various activities involved required the matters to be considered and addressed by a wider grouping of individuals than under the umbrella of*

*the PCJ.*"<sup>15</sup>

21. The OCG found that several of the Public Officers within the PCJ served on more than one (1) Committee, which was established for the 'FSRU LNG Project'.

In accordance with information which was provided by Mrs. Hillary Alexander, Permanent Secretary, MEM, and Mr. Nigel Logan, Acting Group Managing Director, PCJ, the OCG found that members of the PCJ Board of Directors and the LNG Steering Committee/LNG Task Force also served on the LNG Technical Evaluation Committee.

The Permanent Secretary indicated that three (3) of the members who served on the LNG Steering Committee/LNG Task Force, a Committee which was integral in the decision-making process of the 'FSRU LNG Project', also served on the Evaluation Committee.

The OCG found that Mr. Stephen Wedderburn was a member of the LNG Steering Committee and that he also played an integral role in guiding the LNG Technical Evaluation Committee, prior to the commencement of the Evaluation process.

22. It is instructive to note that Mr. Stephen Wedderburn declared a financial interest with one (1) of the potential partners of the Exmar Consortium, Exmar Marine NV, to the PCJ and the MEM. However, and as stated by Mr. Wedderburn, in an email to the former Group Managing Director, Dr. Ruth Potopsingh, "*Given this background it has already been decided that I would not be involved in the evaluation of any LNG FSRU proposals for Jamaica...*"

Notwithstanding, the OCG, however, found the following:

- i. The LNG Technical Evaluation Committee, which was chaired by Dr. Audley Darmand was found to have been guided by Mr. Stephen Wedderburn, despite

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<sup>15</sup> Response from Mrs. Hillary Alexander, Permanent Secretary, MEM, which was dated 2010 November 12. Response #28(i)

knowing that Mr. Wedderburn declared a prior affiliation with one of the potential bidders for the 'FSRU LNG Project'.

The OCG also found that the then PCJ Board of Directors, indicated that Mr. Wedderburn "...*was present at nine of the eleven evaluation meetings and was present at the opening of the bids.*"

- ii. The Minutes of the Special Meeting of the PCJ Board of Directors, which was held on 2010 March 31, revealed that the Evaluation Committee met prior to the opening of the bids.
- iii. The referenced Minutes of the Special Meeting of the PCJ Board of Directors, also indicated that Dr. Darmand stated, *inter alia*, that "...**the meetings that Mr. Wedderburn attended, his presence was necessary as he was required to develop the instrument of measure.**"
- iv. The referenced Minutes of the Special Meeting of the PCJ Board of Directors, also revealed that Mr. Wedderburn was involved in the development of the RFP.
- v. According to Mr. Wedderburn, he was involved in a floating LNG liquefaction project in Colombia which also involved Exmar Marine NV. Mr. Wedderburn also stated that he does "...**not have any commercial relationship with Exmar. Nevertheless, if the project is successful both Exmar and I will benefit.**"
- vi. It is instructive to note that Mr. Wedderburn, in his response to the OCG's Statutory Requisition, which was dated 2010 November 15, revealed, *inter alia*, that in 2009 May, he '*travelled on the same flights*' with Mr. Bart Lavent of Exmar Marine NV, from Jamaica to Colombia to '**Private gas supply meetings**'.

Of note, this was during the same period (2009 May) in which he submitted a proposal to the MEM to coordinate the LNG Project. Further, Mr. Wedderburn

stated that he was employed to the PCJ, 'retroactive to July 2009'. However, he stated that his employment contract became official in 2009 October. It must be noted that the RFP was issued by the PCJ on 2009 November 12.

23. The OCG, in an effort to ascertain whether the PCJ, the MEM and/or any other Public Body had identified, leased and/or purchased any land with respect to the sitting of the 'FSRU LNG Project', requisitioned the Port Authority of Jamaica (PAJ) and the respective Accounting/Accountable Officers in the MEM and the PCJ, with respect to same.

The OCG found that no form of an agreement has been signed between the PAJ and any other GOJ Entity, Public Official/Officer and/or any of the potential bidders for the 'FSRU LNG Project'.

It is instructive to note, however, that the PAJ provided the OCG with a table which revealed that the PAJ had had several meetings with EDC LNG (now CLNG), amongst others, with respect to the LNG Project.

Based upon the referenced tabular representation, the OCG found the following:

- i. Exmar Marine NV had a meeting with the PAJ one (1) day before the issuance of the RFP, to "...determine the suitability of harbor facilities as against the scope of the project".
- ii. The other meetings which were held with the PAJ were undertaken after the PCJ's recommendation to enter into negotiations with the selected 'preferred bidder', the Exmar Consortium, for the 'FSRU LNG Project', was made.
- iii. On 2010 September 22, the Minister, the Hon. James Robertson, invited the PAJ, amongst other relevant Public Sector Entities, to attend a 'LNG briefing meeting',

in which the Exmar Consortium was present and presentations were made “...on technical aspects of industry and provided responses to queries.”

- iv. The basis, however, upon which several meetings were held with Exmar Marine NV and/or EDC LNG (now CLNG), was in regard to identifying and/or selecting a location for the project. Of note, the meeting of 2010 August 9 revealed that the PAJ “...expressed concerns regarding having a gas facility close to the container terminal” and as such the PAJ rejected a proposal to have the LNG facility in close proximity to the terminal.
- v. The PAJ has not sold and/or granted any lease and/or license to any GOJ Entity and/or any of the potential bidders for any prospective property for the ‘FSRU LNG Project’.

24. The OCG found that a new procurement process for the ‘FSRU LNG Project’ commenced with the issuance of the RFP to the potential nine (9) companies/consortia which were invited to tender on 2009 November 12 and 13.

25. The OCG found that there were several concerns expressed in regard to the RFP. These concerns are as follows: (a) the circumstances surrounding the preparation of the RFP; (b) certain requirements for qualification which were outlined in the RFP; and (c) the approval process of the RFP.

Based upon a review of the Minutes of the then PCJ Board of Directors’ meetings, which were dated 2009 December 8 and 10, the OCG found the following, among other things:

- i. Cabinet approval of the RFP preceded the approval of the PCJ Procurement Committee.
- ii. The Minutes of the Meeting of the PCJ Board of Directors, which was held on 2009 December 10, revealed that Mr. Wedderburn was waiting on the proposals

from the potential bidders to guide him in the planning of the project.

- iii. A FEED Study was not undertaken for the 'FSRU LNG Project'.
- iv. There appears to have been certain internal issues between the PCJ Board of Directors and the LNG Steering Committee/LNG Task Force in regard to the preparation of the RFP and the urgency with which the RFP was issued to the potential bidders.
- v. It is instructive to note that the issues which arose in regard to the drafting of the RFP were in relation to: a) the age of the ship; and b) the timeline, which was considered to be inadequate, that was given for the potential bidders to submit their proposals.

26. The OCG found that the 'Form of Questionnaire', within the RFP, contained a requirement that "*...the maximum age of the FSRU vessel should be no more than ten (10) years at the start of the operation.*"

The OCG found that one (1) of the bidders, Golar LNG, wrote to the PCJ, on 2009 November 25, indicating that having been in meetings with the GOJ, in which no specific concerns were raised, they were "*...surprised that LNG carriers older than 10 years were specifically excluded from the Request for Proposal...*"

The OCG found that the then PCJ Board of Directors deliberated upon same on 2010 January 13, and a unanimous resolution had been passed to reconsider a previous decision to amend the RFP to reflect ten (10) years instead of twenty (20) years. Hence, the Board agreed on the decision for the age of the ship to be ten (10) years.

27. The OCG has noted several concerns with respect to the timelines which were given for the submission of the bids. These include, *inter alia*, the following:

- i. Four (4) requests for extensions to the submission deadline were received by the PCJ. Two (2) of the requests were for the deadline to be extended between 2010 April-May. However, the Permanent Secretary in the MEM, alleged that the World Bank and the OUR were consulted with respect to the extensions. In this regard, ninety (90) days was deemed to be an appropriate timeframe for the submission of bids.
- ii. The bidders were given approximately ninety (90) days to prepare a proposal in accordance with the RFP, which was issued on 2009 November 12.

It is instructive to note that it is stated in Clause IV, Sub-Section S-2090 of the GOJ Public Sector Procurement Procedures (2008 November), for Contracts which are in excess of JA\$150 million, that a minimum of 45 days should be allotted to a Bid Submission. It is further stated that *“For large complex projects might be as long as three months.”*

- iii. The only potential bidder that did not request an extension of the deadline for submission was the Exmar Consortium.
- iv. The PCJ Board of Directors was not informed by Mr. Stephen Wedderburn of the decisions, which were being made, in respect of the requests for extensions of the submission deadline. The Minutes of the Meeting of the PCJ Board of Directors, which was held on 2009 December 22, indicated that the Board was not consulted on same, however, there were *“...letters going out indicating that a decision was taken to grant an extension after consultation with the PCJ and with the Ministry.”*

28. It is instructive to note that Mr. Stephen Wedderburn informed the OCG that he was unaware of the circumstances which led to the decision not to extend the deadline beyond 2010 February 16, as per the request from Samsung/Kogas.

However, contrary to Mr. Stephen Wedderburn's assertion, the OCG found that Mr. Wedderburn sent an email to the Permanent Secretary, Mrs. Hillary Alexander, MEM, which was dated 2010 January 28, which outlined his reasons why the deadline for submission should not be extended and made his recommendations accordingly.

29. The OCG found that the Technical Consultants, CH-IV International, prepared a document which was entitled "*FRAMEWORK FOR REVIEW AND EVALUATION OF PROPOSALS*", which was dated 2010 February 12, to evaluate the proposals which were received for the 'FSRU LNG Project'.

The referenced document stated, *inter alia*, that "*The purpose of this Report is to describe the framework that CH-IV proposes to use to complete its review of Proposals received in accordance with Section 2.17 of the RFP.*"<sup>16</sup> The OCG also found that the referenced document contained an appended "*Review Matrix*" which was designed by the Consultants, CH-IV International, to review the bids which were received for the 'FSRU LNG Project'.

It is instructive to note that by way of a letter, which was dated 2010 March 28, a Mr. Joseph Fossella, CH-IV International, informed Dr. Audley Darmand, Chairman, FSRU LNG Bid Evaluation Committee, PCJ, *inter alia*, that "*This final weighted matrix was reviewed by the LNG team and a consensus was reached on the matrix and weighting...*"<sup>17</sup>

30. It is instructive to note that the OCG was not provided with and/or found any evidence to suggest that the referenced 'Review Matrix', which was designed by the Consultants, CH-IV International, for and on behalf of the PCJ, was issued to the potential bidders, via an Addendum or otherwise, prior to the submission deadline.

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<sup>16</sup> Bid Evaluation Matrix Report: Framework for Review and Evaluation of Proposals, dated 2010 February 12, and which was prepared by CH-IV International. Pg. 1

<sup>17</sup> Letter from Mr. Joseph Fossella, CH-IV International informed Dr. Audley Darmand, Chairman, FSRU LNG Bid Evaluation Committee, MEM, which was dated 2010 March 28.

The OCG also found that the referenced 'Review Matrix' broadened the scope of the evaluation criteria.

Sub-Section No. S-3100 of the GOJ Public Sector Procurement Procedures (2008 November) provides, *inter alia*, that **"All adopted sub-criteria should be specified in the RFP... If points allocated to these sub-criteria are not disclosed in the RFP, the Evaluation Committee should allocate them before proposal submission, to reduce the risk of manipulations during the evaluation process..."** (OCG's Emphasis)

Consequently, the OCG found the foregoing to be irregular and a breach of the GOJ Public Sector Procurement Guidelines.

31. The OCG found that two (2) proposals were received from Hoegh LNG and the Exmar Consortium, prior to the deadline for submission.
32. The OCG was advised by Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, on 2010 February 21, that Golar LNG submitted a proposal, by way of an email on 2010 February 15, after the deadline for submission.

By way of a letter, which was dated 2010 February 24, the OCG responded to the foregoing email and stated, *inter alia*, that "...In accordance with the provisions of the Request for Proposal (RFP), which states, "Proposals must be physically received at PCJ's office...no later than 4:00 p.m. Electronically transmitted Proposals will not be considered a valid response to the Request for Proposal", Golar LNG's proposal cannot be considered...the OCG posits that the late proposal, which was electronically submitted, be rejected..."

The OCG found that the bids which were received from Hoegh LNG and the Exmar Consortium proceeded to the evaluation stage.

33. It is instructive to note that the OCG also found that information which was requested, by the PCJ, in Clause 2.21.2 “*Form of Questionnaire*’ which was contained in the RFP, included qualification requirements which were not reflected in the Evaluation Criteria of the RFP.
34. It is also instructive to note, that Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, in his response to the OCG’s Statutory Requisition, which was dated 2010 November 15, stated, *inter alia*, that “...**the PCJ FSRU tender did not ask for a binding price or a firm financing proposal** as would be normal in a 90 – 120 day tender. *The absence of these requirements made the shorter timeline feasible. **Section 3.4 of the RFP Questionnaire would have indicated to the bidders that PCJ was not requiring a completed FEED-level or detailed engineering design**, another factor making the 54 day timeline feasible.*”<sup>18</sup>

However, the ‘Review Matrix’ which CH-IV International used to evaluate the bids indicated that the bids were going to be assessed, *inter alia*, on:

- i. The “*Commercial Proposal*”, which would assess, *inter alia*, the bidders capability and commitment to finance the project and would consider details of the financing plan and structure considerations along with the bidder projected cost estimate and pricing.
- ii. The “*Technical Proposal*”, which included, *inter alia*, the proposed design with particular consideration of the “*Status of the proposed design, i.e. feasibility, pre-FEED or FEED.*”

Further, while Mr. Wedderburn stated that the PCJ was not requesting bidders to provide “...*completed FEED-level or detailed engineering design*...”, the technical component of the evaluation criteria, as detailed in the ‘Review Matrix’, also examined the project execution and construction plan, where the credibility

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<sup>18</sup> Response from Mr. Stephen Wedderburn, which was dated 2010 November 15. Response # 11(j) – (l)

of the construction schedule, commissioning plan and operating plan were to be assessed.

It is also instructive to note that despite Mr. Wedderburn's assertion that the bidders were not required to provide "...*completed FEED-level or detailed engineering design...*", one (1) of the nine (9) invited bidders indicated, in writing, its unwillingness to participate in the referenced tender process because of, *inter alia*, "...*the absence of site specific information (maritime and weather data)...*"

35. The OCG found that the LNG Technical Evaluation Committee, by way of a Final Report, which was dated 2010 March 29, recommended the Exmar Consortium as the '*preferred bidder*' for the 'FSRU LNG Project'.

It is instructive to also note that CH-IV International, by way of a letter to Dr. Audley Darmand, Chairman, FSRU LNG Bid Evaluation Committee, which was dated 2010 March 29 and subjected "*PCJ Procurement Committee – Preferred Supplier*", provided "...*a summary of the attributes of each proposal submitted and the final score that CH-IV presented to the Committee.*"

Based upon the foregoing letter, the OCG found that the Exmar Consortium received a score of 68.2 and that Hoegh LNG received a score of 33 from the Consultant's Report.

36. The OCG found that the PCJ Procurement Committee, and the then PCJ Board of Directors, expressed concerns with respect to the Evaluation Report which was prepared by the Technical Advisors, CH-IV International, in which the composition of the Exmar Consortium, and in particular, CLNG, and its financial viability, was questioned.

The OCG found that on 2010 April 12, the Secretary for the PCJ Procurement Committee, Mr. Godfrey Perkins, wrote to Dr. Ruth Potopsingh, expressing certain concerns in regard to the Evaluation Report for the proposed 'FSRU LNG Project'. The

referenced letter stated, *inter alia*, that “...*The report which was received was grossly inadequate in quite a number of particulars.*”

37. The OCG also found that several concerns were expressed by both the PCJ Procurement Committee and the PCJ Board of Directors in regard to (a) the report which was submitted by CH-IV International and (b) subsequent letters which were received from same in respect of the Evaluation of the Bids. In particular, however, and based upon the referenced letter, the OCG found, that the following information was requested, by the PCJ:

- a) *Particulars of the principals of each of the three entities within the Exmar consortium;*
- b) *Corporate and financial profile of CLNG as well as the experience of this company in the business of LNG supplies;*
- c) *Financial analysis of the two tenders...*

38. By way of a letter, which was dated 2010 April 14, Mr. Godfrey Perkins, Secretary, PCJ Procurement Committee, informed Ms. Kathryn Phipps, the then Chairman of the PCJ Board of Directors, that the PCJ Procurement Committee had approved the recommendation in accordance with the final report of the Technical Consultants, CH-IV International and the LNG Technical Evaluation Committee.

39. On 2010 April 14, the then PCJ Board of Directors “...*approved the bid Evaluation Report being forwarded to the Accounting Officer in the Ministry of Energy and Mining subject to the corporate profile being obtained and incorporated...*”<sup>19</sup> for CLNG.

40. It is instructive to note that Mrs. Hillary Alexander, Permanent Secretary, MEM, by way of a letter which was dated 2010 April 28, wrote to Mr. John Wright, Chairman of the NWA Sector Committee, seeking “... *the approval of the NCC to select Exmar as the preferred bidder and to conduct detailed negotiations with Exmar in relation to the*

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<sup>19</sup> PCJ Minutes of Special Meeting of Board of Directors, which was held on 2010 April 14. Pg. 9.

*financing, building, owning and operation of the FSRU.*”<sup>20</sup>

The NCC, on 2010 May 13, endorsed the recommendation of the MEM to enter into negotiations with the ‘*preferred bidder*’, the Exmar Consortium.

41. The Cabinet approved the recommendation for the selection of the ‘*preferred bidder*’, the Exmar Consortium, and also for the PCJ to enter into negotiations with the said bidder, for the ‘FSRU LNG Project’ on 2010 June 14.

However, finalization of the negotiation was subject to the completion of a technical assessment of the project and the procurement procedures utilized. The assessment was to be undertaken by an ‘*independent consultant*’ which was obtained through the World Bank.

42. It is instructive to note, that the PCJ, prior to the approval of the Negotiation Team by the Cabinet, on 2010 October 25, commenced negotiations with the ‘*preferred bidder*’, the Exmar Consortium, from 2010 July.

43. The OCG found that the ‘*preferred bidder*’, which was recommended for the proposed ‘FSRU LNG Project’, is a Consortium, referred to as the “Exmar Consortium” which is composed of the following partners:

- i. Exmar Marine NV;
- ii. Promigas S.A.; and
- iii. Caribbean LNG (Jamaica) Limited (CLNG).

44. The OCG found that a MOU was signed between CLNG, Promigas S.A. ESP and Exmar Marine NV on 2010 February 15. It is instructive to note that the deadline for submission of the bids and Tender Opening was extended to 2010 February 15.

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<sup>20</sup> Letter from Mrs. Hillary Alexander, Permanent Secretary, MEM which was dated 2010 April 28 and which was addressed to Mr. John Wright, Chairman of the NWA Sector Committee.

45. The OCG conducted a company search, on the Companies Office of Jamaica (COJ) website, for CLNG and found that the Directors and Shareholders of the company, as at 2010 June 22, were as follows:

Directors:

- i. Andrew Bogle (ceased);
- ii. Paul East;
- iii. Ian Moore;
- iv. Al Kerr;

Shareholders:

i. Caribbean LNG (BVI) Limited	5,200,000 shares	(81.9%)
ii. AC. Kerr LLC	800,000 shares	(12.6%)
iii. Old Harbour Estates Limited	47,826 shares	(0.75%)
iv. Maritime & Transport Services Limited	47,826 shares	(0.75%)
v. Andrew Bogle	197,827 shares	(3.12%)
vi. Albert Donaldson	50,001 shares	(0.79%)
vii. Martin Phillips	0 shares	
viii. Sandra Martin	-	
ix. Marco Mirst	0 shares	
x. Nicole Mirst	-	

The OCG further found that the total shares in the company amounted to 6,343,480.

Based upon the foregoing breakdown of the shareholding of CLNG, the company, Caribbean LNG (BVI) Limited, was found by the OCG to be the majority shareholder of CLNG with a shareholding of 81.9%.

46. The OCG found that Mr. Conrad Kerr, Chief Executive Officer (CEO), CLNG, wrote to Mr. Bart Lavent, on 2010 July 6, and provided confirmation of the Directors of and Shareholders in both CLNG and Caribbean LNG (BVI) Limited.

It is instructive to note that the share allotment of CLNG, which was provided by Mr. Kerr, differed from that which was detailed on the COJ's website as at 2010 June 22. In this regard, the total shares in CLNG was reported by Mr. Kerr as 6,539,130, with Caribbean LNG (BVI) Limited having a majority share allotment of 79.52%.

47. It is also instructive to note that by way of a letter, which was dated 2010 June 23, Mr. Ian Moore wrote to the OCG and advised, *inter alia*, that “*Kindly see enclosed herewith our correspondence directed to Messrs. Coverdale Trust Services Ltd. who is the corporate secretary for Caribbean LNG (B.V.I.) Ltd. We have already given verbal instruction to Messrs. Coverdale Trust Services Ltd, for them to cooperate with your office to the fullest extent, and concurrent with this letter we are providing them with the original of the enclosed authority... For your immediate attention we inform you that the shareholders of Caribbean LNG (B.V.I.) Ltd. are:*

*Mr. Ian Moore*

*Mr. Paul East.”<sup>21</sup>*

Consequently, the OCG, by way of a letter which was dated 2010 December 16, extended an invitation to Coverdale Trust Services Limited, the Corporate Secretary of Caribbean LNG (BVI) Limited, to provide a formal statement and/or information in regard to the circumstances which surrounded its role(s), responsibility(ies), contribution, and/or involvement, if any, in the referenced ‘FSRU LNG Project’.

Based upon the documentation which was provided by Coverdale Trust Services Limited, the OCG found the following information:

- i. The Certificate of Incumbency for the company, Caribbean LNG (BVI) Limited, was dated 2010 December 28.

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<sup>21</sup> Letter from Mr. Ian Moore to the OCG which was dated 2010 June 23

- ii. The company, Caribbean LNG (BVI) Limited, was incorporated on 2009 December 22.
- iii. The Directors of the company are ‘Paul East’ and ‘Ian Moore’. Of note, both Directors were appointed on the date the company was incorporated (2009 December 22).
- iv. The Shareholders of the company are ‘Paul East’ and ‘Ian Moore’. Of note, is the fact that the shares were issued on the date the company was incorporated and divided as follows: a) Paul East - 20,000 and b) Ian Moore - 30,000.
- v. No fiduciary services were being provided by the company Caribbean LNG (BVI) Limited and, under BVI Law, there is no requirement for the company to have audited financial statements.

48. The OCG found that the company, Caribbean LNG (B.V.I.) Limited, the primary Shareholder of CLNG (Jamaica) Limited, was incorporated on 2009 December 22, approximately one (1) month after the issuance of the RFP for the ‘FSRU LNG Project’.

49. The OCG conducted a review of the final evaluation document, which was prepared by CH-IV International for the PCJ, that was entitled “*REVIEW OF PROPOSALS*”, with respect to the ‘FSRU LNG Project’, and dated 2010 April 8, against the proposal which was submitted by the Exmar Consortium and entitled “*EXMAR CONSORTIUM – JAMAICA LNG FSRU TENDER*”.

Having regard to the foregoing, the OCG found the following:

- i. That although the bid proposal which was submitted by the Exmar Consortium made mention of Excelebrate Energy LP being a partner of Exmar Marine NV, the proposal does not include Excelebrate Energy LP as a partner of the Consortium.

- ii. Appendix B, which was prepared by CH-IV International, assessed the strengths of the Exmar Consortium by including the capabilities of an Exmar Marine NV/Excelerate Energy LP partnership.

In this regard, the referenced report indicated, as a strength of the proposal, that “*Exmar and partner Excelerate have demonstrated since 2005 the ability to develop offshore regasification projects*”<sup>22</sup>. However, the proposal was assessed to be weak as it “...*does not state clearly the relationship between Exmar and Excelerate...*”<sup>23</sup>

Nonetheless, CH-IV International, after highlighting the foregoing weakness and strength, noted that the Exmar Marine NV had a “*Very good response*”.

Having regard to the foregoing, and the fact that Excelerate Energy LP is not a party to the Exmar Consortium, the OCG is unable to determine the basis upon which CH-IV International arrived at its conclusion that the Exmar Consortium had a “*Very good response*” with respect to its capabilities to carry out its project, despite the noted ambiguity.

- iii. The referenced Appendix B further stated that “**Exmar demonstrates experience in the construction of LNG Regas Vessels (LNGRV), with a total number of 7 constructed and operating through Excelerate, in a range of 138,000m<sup>3</sup> to 151,000m<sup>3</sup> storage capacity.**”<sup>24</sup> (OCG’s Emphasis)
- iv. The referenced Appendix B, further stated that “*Exmar and its partner Excelerate commissioned and continued to operate the first deepwater port Gulf Gateway project in the gulf of Mexico...*”<sup>25</sup>

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<sup>22</sup> The final issued “Review of Proposals” which was prepared by CH-IV International which was dated 2010 April 8. Appendix B, Proposal Review Findings – Exmar Consortium.

<sup>23</sup> The final issued “Review of Proposals” which was prepared by CH-IV International which was dated 2010 April 8. Appendix B, Proposal Review Findings – Exmar Consortium.

<sup>24</sup> The final issued “Review of Proposals” which was prepared by CH-IV International which was dated 2010 April 8. Appendix B, Proposal Review Findings – Exmar Consortium.

<sup>25</sup> The final issued “Review of Proposals” which was prepared by CH-IV International which was dated 2010 April 8. Appendix

- v. CH-IV International utilized information which was obtained from the websites of Excelerate Energy LP and Exmar Marine NV as a part of the evaluation of the proposals. Therefore, this suggests that the Technical Consultants used information which was not submitted by the Exmar Consortium, in its proposal on 2010 February 15, to evaluate the bid.
- vi. The OCG found that CH-IV International evaluated the strength of the Exmar Consortium with respect to the partnership between Exmar Marine NV and Excelerate Energy LP.

50. It is instructive to note that CH-IV International, in assessing the specific experience and capabilities of the Exmar Marine NV, in relation to the assignment, did not undertake an independent assessment of same with respect to its capabilities outside of the partnership with Excelerate Energy LP. Therefore, the OCG is unable to state definitively whether Exmar Marine NV, on its own, is capable of performing the required tasks for the 'FSRU LNG Project', given that a substantial portion of its experience has been attributed to its partnership with Excelerate Energy LP.

The OCG further found the following:

- i. Mr. Stephen Wedderburn did not recommend Excelerate Energy LP as one of the potential companies in the FSRU Industry as having the experience and capability of providing the 'FSRU LNG Project'.
- ii. Upon the enquires of Mr. Shaun Davison, Excelerate Energy LP, as to the reasons why Excelerate Energy LP was not invited to tender, Mr. Stephen Wedderburn indicated that because Excelerate Energy LP's initial proposal was submitted late in 2007, the referenced company was not eligible to bid in the current process.

This reason was premised upon the basis that (a) the tender process was restricted to the nine (9) companies which had submitted a bid; (b) the Cabinet and the Jamaican Government had decided upon the nine (9) companies; and (c) that the tender rules were strict in respect of late proposals.

- iii. It is clear from email correspondence, which was dated 2009 December 11, between Mr. Glenford Watson, the Senior Legal Counsel, MEM, Mrs. Hilary Alexander, the Permanent Secretary, MEM, and Mr. Stephen Wedderburn, that Mr. Stephen Wedderburn was the Public Official who was charged with the responsibility of informing the Accounting/Accountable Officers within the PCJ and the MEM of, *inter alia*, the potential bidders within the LNG Industry and the capabilities of same.
- iv. Mr. Stephen Wedderburn, gave, at a minimum, both the Permanent Secretary and the Senior Legal Officer in the MEM, the impression that Excelerate Energy LP and Exmar Marine NV were one (1) entity and that there were no other companies outside of the nine (9) companies which were invited to tender “... *that have FSRU operating experience*”.

51. Based upon the assertions of Mr. Shaun Davison of Excelerate Energy LP, the OCG found that Exmar Marine NV (a) operated the vessels on behalf of Excelerate Energy LP, by providing physical crew; (b) did not design or build any fixed infrastructure facility; (c) does not control operationally or commercially the vessels; and (d) does not have the technology patents.

52. According to Mr. Nigel Logan, Acting Group Managing Director, PCJ, the Legal Consultants, Latham and Watkins, and the Technical Consultants, CH-IV International, were initially engaged prior to 2007 via competitive tenders. However, both entities were re-engaged via the Sole Source Procurement Methodology, specifically for the current project.

The basis upon which both entities were re-selected was (a) familiarity with the project; (b) the previous contracts had not been executed and/or cancelled and the Consultants provided “...*limited services*”; (c) the entities were re-selected based upon a previous open tender and endorsed by the NCC; and (d) the experience of the firm in developing LNG projects.

53. The OCG found that on 2010 November 1, the NCC endorsed the request of the PCJ to utilize the Sole Source Procurement Methodology to award a contract to Taylor-DeJongh as the Financial Advisors for the LNG Project in the amount of US\$200,000.00.

54. The OCG found that the aggregate value of Consultancy Fees, which have been paid by the GOJ for the period of 2005 December 31 to 2010 September 30, in respect of the LNG Project, was \$149,354,533.95.

55. It is instructive to note that since the re-engagement of CH-IV International, between 2010 April 30 to 2010 September 30, the Consultant has been paid **\$29,123,712.53**.

Mr. Nigel Logan further indicated in his response to the OCG’s Follow-up Requisition which was dated 2011 February 15 that “*The second contract dated April 2010 was between PCJ and CH IV and is for US\$387,000 of which US\$425,923.02 has been paid.*”

56. The recommendation for the award of the services contract for the Technical Consultants was first endorsed by the NCC on 2005 August 12.

The OCG found that the requisite approvals were received from the NCC and the Cabinet in 2005 for the award of contract to CH-IV International for the provision of Technical Services in accordance with the GOJ Public Sector Procurement Procedures (2001 May).

57. Notwithstanding the foregoing, approval for the 2005 contract with CH-IV International, the OCG has not been provided with any evidence to suggest that approval was sought

from the NCC and the Cabinet for the re-engagement of the Technical Advisors in respect of an undated consultancy services contract.

The OCG found that the PCJ took the decision to re-engage CH-IV International, by utilizing its previous contract to prevent the process of re-tendering. In this regard, the Board of Directors indicated that if the contract was re-tendered then the process would not have been completed until 2010 January 5. Of note, is the fact that this was the original deadline for submission for the bids for the 'FSRU LNG Project'.

Based upon the foregoing, the OCG found that the re-engagement of the Technical Consultants, CH-IV International, was irregular. The OCG's Finding is also premised upon the following:

- A. The 2005 contract between CH-IV International, the PCJ and the National Gas Company (NGC) of Trinidad and Tobago, was in regard to an Interim Governance Arrangement for the LNG Project.
- B. CH-IV International was re-engaged in 2010 April based upon the pre-existing approvals which were obtained for the 2005 contract. The PCJ's justification for same, was that the scope of the initial contract included provisions for CH-IV International to provide technical supervision of the FEED, EPC and Commissioning phases of the project and acceptance of a LNG receiving terminal, storage facilities, re-gasification plant and distribution system.
- C. The Consultants were said to have been re-engaged in 2010 January and have been operating within the terms and conditions of the contract which was signed between the PCJ and CH-IV International since 2005 and that they were not paid the full amount which was approved by the Cabinet in 2005.

However, it is instructive to note that the National Gas Company (NGC) of Trinidad and Tobago was no longer a party to the contract and the scope of works that was required of CH-IV International was modified for the 2010 contract.

- D. The OCG found that a new contract was signed between CH-IV International and the PCJ on 2010 April 8. Attached to the contract was a Review Matrix which increased the scope of works of the Consultant.
- E. The OCG found that the PCJ did not issue an Addendum to the contract and/or seek the approval of the NCC and/or the Cabinet for the variation to the contract, despite the fact that the parties to the contract had been altered.
- F. Further, according to Mr. Nigel Logan, as at 2011 February 15, the PCJ paid CH-IV International, a total of US\$425,923.02, pursuant to the contract which was awarded on 2010 April 8. However, based upon the thresholds as outlined under Sub-Section S-2040, Clause VII and VIII of the GOJ Public Sector Procurement Procedures (2008 November), such a variation to the contract of 2005 would have required the approval of the NCC and the Cabinet.

In this regard, the PCJ would have been in contravention of the referenced Sub-Section of the GOJ Procurement Guidelines.

58. Further, the OCG found that a contract was not signed, by the PCJ, until 2010 April 8, after services were performed by the Technical Consultant for the 'FSRU LNG Project'. In this regard, it should be noted that CH-IV International had already begun to evaluate the bids which were received on 2010 February 15.

59. The OCG found that representatives from Merrill Lynch, albeit that their proposal had been rejected by the MEM, had multiple discussions and/or meetings with Exmar Marine NV of which Mr. Stephen Wedderburn and Mr. Ian Moore were fully informed.

It is instructive to note that Mr. Conrad Kerr, the CEO of CLNG and a 12.6% shareholder of the company, previously worked with Merrill Lynch as the Global Head of LNG and was part of a team which courted the GOJ with respect to the LNG Project to Jamaica.

60. Based upon the assertion of Mr. Conrad Kerr, the OCG has found that Merrill Lynch was not involved in the 'FSRU LNG Project'. However, based upon the assertions of Mr. Ian Moore, the OCG found that representatives of Merrill Lynch, along with EDC LNG (now CLNG), Exmar Marine NV and Promigas, met with Minister James Robertson and the then Permanent Secretary, Ms. Marcia Forbes, to inform them of the intent of the aforementioned companies to conduct a pre-feasibility study to determine the economic and technical viability of developing a private project to import LNG and supply natural gas for use by the bauxite sector. Of note, is the fact that the referenced pre-feasibility study was completed approximately one (1) month prior to the commencement of the tender period for the 'FSRU LNG Project'.

61. The OCG found the expenditure and financing of the LNG Project, on the part of the GOJ, to be as follows:

- i. It has been asserted that the GOJ's expenditure to-date included payments for the planning, conceptualisation and implementation of the project.
- ii. A total of \$251,408,280.88 was expended from 2003 to 2010.
- iii. A total of \$43,497,589.88 was expended in 2010.
- iv. The PetroCaribe Development Fund, by way of a grant, is to finance a total of US\$5.3M for '*pre-development expenses*' and implementation of the LNG Project over a two (2) year period.
- v. The PCJ will be providing US\$1.65M from its "LNG Project Implementation Budget" to finance the '*pre-development expenses*' for the LNG Project.

- vi. The Permanent Secretary, Mrs. Hillary Alexander, MEM, asserted that the World Bank, via a proposed US\$15M loan to the GOJ, will, in part, provide funding for the LNG Project with respect to technical assistance for the development of the legislative and regulatory framework for LNG by the Office of the Utilities Regulation (OUR).
- vii. The Permanent Secretary further indicated that the Exmar Consortium will be responsible for financing the ‘FSRU LNG Project’.

62. Mr. Glenford Watson, in his response to the OCG’s Statutory Requisition, which was dated 2011 January 26, stated, *inter alia*, that “**I am aware that on November 12, 2010, negotiations were being undertaken between the GOJ and the preferred bidder Exmar Consortium, as to, the terms and condition of an Implementation Agreement that would explicitly set out the detailed roles and responsibilities of the Exmar Consortium and the GOJ in the implementation of the project...**”<sup>26</sup> (OCG’s Emphasis)

63. The OCG found that the deadline which was set for the signing of the Implementation Agreement was in accordance with the timeline which was given by the Exmar Consortium. The ‘Notes on the LNG Negotiating Team Tele Conference with Latham & Watkins...and CH-IV...’, which was held on 2010 September 7, indicated that “...*The Exmar Consortium by way of letter to the LNG Project Coordinator has indicated that they would not be able to hold the price after the November 15 deadline...Exmar had secured a shipyard for the FSRU until November 15 and would have to re-negotiate the price with the managers of the shipyard and this may incur additional cost...*” (OCG’s Emphasis)

64. By way of Cabinet Decision No. 45/10, which was dated 2010 December 6, in regard to Submission No. 531/MEM-52/10 regarding “*Permission to Negotiate an Implementation Agreement with the Preferred Bidder for the Liquefied Natural Gas (LNG) Project*”, the OCG was informed that “**The Cabinet agreed that the Submission would be withdrawn**

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<sup>26</sup> Response from Mr. Glenford Watson, Senior Legal Counsel, MEM, which was dated 2011 January 26. Response #6.

*from the Agenda; and noted that the draft Implementation Agreement had been finalized and would be referred to the Project Committee established to oversee the direction of the LNG Project, along with the report from the Independent Consultants and the response thereto...*” (OCG’s Emphasis)

65. The OCG found that certain emails revealed that of the companies with which discussions were being held there were significantly more communications between Mr. Ian Moore and Mr. Stephen Wedderburn, with respect to Exmar Marine NV and what Exmar Marine NV was bringing to the table.

66. The OCG found that the former Chairman of the PCJ Board of Directors, Mr. Ian Moore, who was appointed on 2007 December 7, is presently a Director and Shareholder, of the company, CLNG, a partner of the Exmar Consortium, the selected ‘*preferred bidder*’ for the ‘FSRU LNG Project’. The OCG has also found that Mr. Ian Moore is the Beneficial Majority Shareholder of CLNG.

It is also instructive to note that Mr. Conrad Kerr, former executive of the company, Merrill Lynch, is also a Director of the company, CLNG and a 12.6% shareholder of the company.

67. The OCG conducted a review of the Minutes of the Meetings of the PCJ Board of Directors, for the period during which Mr. Ian Moore was appointed the Chairman. The referenced Minutes revealed that the LNG Project and/or any other component of same were deliberated upon in at least two (2) distinct meetings. These are as follows:

- i. The Minutes of the Regular Meeting of the PCJ Board of Directors, which was held on 2008 May 27, stated, *inter alia*, that “... *if the FSRU route was taken then 50% of the project would be paid for by proceeds from the carbon credits and 100% if all the bauxite companies came on board.*”<sup>27</sup>

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<sup>27</sup> Minutes of the Regular Meeting of the PCJ Board of Directors which was held on 2008 May 27. Pg. 8

- ii. The Minutes of the Regular Meeting of the PCJ Board of Directors, which was held on 2008 June 30, stated, *inter alia*, that “*Enquiries were made as to whether the LNG project was being delayed because of a lack of support from the PCJ Board or the Government. The Chairman noted that the Project has the support of the Board but would also need the support of the Ministry of Energy and the Office of the Prime Minister.*”<sup>28</sup>

Based upon the foregoing, the OCG found that the LNG Project was halted during Mr. Moore’s tenure, as the Chairman of the PCJ Board of Directors. There was no evidence found in the Minutes of the PCJ Board of Directors, during Mr. Moore’s tenure, that any form of discussion was held in respect of the LNG Project, as an alternative source of energy. As such, the OCG found no evidence to suggest that approvals and/or recommendations were made, by the then PCJ Board of Directors, in regard to the LNG Project.

However, the OCG found evidence in the form of several email correspondence from Mr. Stephen Wedderburn to Mr. Ian Moore, and Mr. Conrad Kerr, amongst others, which indicated that preparations were being made, and information on the LNG Project was being shared, on the project during Mr. Moore’s tenure.

Based upon the emails which have been reviewed, the OCG found, *inter alia*, the following:

- i. There is evidence to suggest that Mr. Bart Lavent of Exmar Marine NV, was informing Mr. Stephen Wedderburn of certain strategic steps which should be taken for the LNG project to materialize.
- ii. It is also instructive to note that Mr. Ian Moore, during his tenure as Chairman of the PCJ Board of Directors, was copied on the majority of the emails from Mr. Stephen Wedderburn, in regard to the LNG Project. Hence, the OCG found that

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<sup>28</sup> Minutes of the Regular Meeting of the PCJ Board of Directors, which was held on 2008 June 30. Pg. 10

during Mr. Moore's tenure, Mr. Stephen Wedderburn informed Mr. Moore, at every step of the way, of the progress of the LNG Project, in which his input was required in most instances.

- iii. Of critical note, is the fact that both Mr. Ian Moore and Mr. Stephen Wedderburn, appeared to have been aggressively working to bring LNG to Jamaica during the time in which Mr. Wedderburn asserted that LNG was 'halted' because the then Minister, Mr. Clive Mullings, was promoting coal.
- iv. Based upon an email from Mr. Stephen Wedderburn to Mr. Conrad Kerr, which was dated 2008 February 6, the OCG found that Mr. Stephen Wedderburn was instructed to prepare a diagram of the pipeline network throughout the island. The referenced email was copied to Exmar Marine NV, representatives from Merrill Lynch, and Mr. Ian Moore, as the representative from the PCJ. The OCG has seen no evidence to suggest that, unlike Exmar Marine NV, the other potential bidders were made aware of this information.
- v. The OCG also found that Mr. Wedderburn informed Golar LNG of his personal ranking of four (4) of the entities which were involved in the pre-qualification exercise which was undertaken in 2007 by the PCJ and which were subsequently invited to tender in 2009 November. Of note, is the fact that Mr. Wedderburn ranked Exmar Marine NV as the number one (1) company and used Exmar Marine NV and its invested interest to compare the other entities.
- vi. Mr. Bart Lavent of Exmar Marine NV, hosted several meetings with Jamaican Public Officials/Officers, in which discussions were held with respect to Exmar Marine NV's progress and the LNG prospects for Jamaica.

68. The OCG also found that (a) Mr. Stephen Wedderburn sent several emails to Mr. Ian Moore, during his, Mr. Moore's tenure, at the PCJ, informing him of meetings and other

forms of communications and that (b) Mr. Ian Moore convened other meetings in regard to the LNG Project.

69. The OCG found that even during the time that Mr. Stephen Wedderburn had demitted office at the PCJ, between 2008 September to 2009 July, he was still promoting LNG as the preferred energy choice for Jamaica.

The OCG found that Mr. Wedderburn sent an email to Mr. Ahmad Zia Mian, Director General, OUR, which was dated 2009 March 26, in which he indicated, *inter alia*, that “*If you are able to talk with the Prime Minister, please encourage him not to go down the coal path...I have contacts who can initiate serious LNG supply meetings with existing suppliers, but they have to be sure that the Government is willing to move forward and will not just waste their time as has happened in the past.*”

*I had mentioned to you that I am in Colombia. The reason I am here is that I am providing assistance to a project to liquefy gas here. We expect to have an agreement signed next week to proceed with the FEED...*

*Again, if you get the chance please stress to the Prime Minister that there are real options for gas. However, *if he were to depend on Minister Mullings to procure gas for Jamaica it will never happen...*”<sup>29</sup> (OCG’s Emphasis)*

70. It is instructive to note, that during the time that Mr. Wedderburn was not employed to the PCJ, he was involved in a LNG liquefaction project in Colombia in which Exmar Marine NV was also involved. In this regard, upon being re-engaged by the MEM, Mr. Stephen Wedderburn, by way of an email to Dr. Ruth Potopsingh, the then Group Managing Director, PCJ, which was dated 2009 September 6, disclosed that “*...I have been involved in a project to develop floating LNG liquefaction in Colombia. Exmar is also involved in this project, but I do not have any commercial relationship with Exmar. Nevertheless, if the project is successful both Exmar and I will benefit.* My involvement

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<sup>29</sup> Email from from Mr. Stephen Wedderburn to Mr. Zia Mian, which was dated 2009 March 26.

*in the project was on a success fee basis and even where I have ceased active involvement in the project, I will still have a financial interest...”*

Further, Mr. Zia Mian, in his response to the OCG’s Statutory Requisition of 2010 September 10, which was dated 2010 October 1, stated that “...*Mr. Wedderburn was brought on board to spearhead the project. At a meeting at Jamaica House, the Minister, and Messrs. Wedderburn and Moore strongly recommended that a negotiated deal with Exmar could deliver the LNG to Jamaica on a fast track basis...*”<sup>30</sup> (OCG’s Emphasis)

71. The OCG found that Mr. Stephen Wedderburn was integrally involved in the drafting of the RFP and was the primary point of contact with the potential bidders during the tender process for the ‘FSRU LNG Project’.

72. The OCG found that Mr. Stephen Wedderburn played an integral role in the re-engagement of the Technical Consultants, CH-IV International.

In addition, the OCG found that Mr. Stephen Wedderburn recommended and guided the Technical Consultants, CH-IV International and Clean Skies LLC, with regard to the pricing of their quotation whilst informing the Consultants of the deliberations of the PCJ Board of Directors. As such, Mr. Wedderburn, by way of an email, which was dated 2009 December 20, advised Mr. Arthur Ransome, *inter alia*, as follows:

*“I just wanted to let you know that things are progressing in terms of moving to finalize the re-engagement of CH-IV...”*

*...There is some concern that some elements of your quotation are too high and the main issue now is to establish that your quotation represents value for money. There is also some concern in the PCJ Board to relate the current quotation back to the quotations you made in 2005 to ensure that the current quotations are reasonable...”*

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<sup>30</sup> Response from Mr. Zia Mian, which was dated 2010 October 1. Response to Question #1.

Of note, is that several of the emails, between Mr. Stephen Wedderburn and the referenced companies, occurred subsequent to the issuance of the RFP and prior to the signing of a contract with CH-IV International in 2010 April. It is also instructive to note that the PCJ Board of Directors held discussions with respect to the re-engagement of CH-IV on 2009 December 22 and the foregoing emails from Mr. Stephen Wedderburn, preceded that date.

73. The OCG found that based upon the assertion of Mr. Authur Ransome, Vice President and General Manager, CH-IV International, the PCJ wanted to use Clean Skies LLC to provide commercial services for the LNG Project. However, due to poor planning on the part of the PCJ, there was limited time to allow for the proper use of the procurement guidelines in the contracting of Clean Skies LLC and, as such, the OCG has found that it was asserted that Mr. Stephen Wedderburn recommended that Clean Skies LLC, which is owned by Mr. Joseph Fossella, enter into a sub-contract with CH-IV International, given that there was a pre-existing contract between CH-IV International and the PCJ from 2005.
74. It is instructive to note that the sub-contracting of Clean Skies LLC was allegedly done pursuant to a recommendation which was made by Mr. Stephen Wedderburn. The referenced recommendation was made with the intention to circumvent the procurement procedures. In this regard, Mr. Arthur Ransome, CH-IV International, in an email which was dated 2011 January 17, indicated, *inter alia*, that “PCJ mentioned to us that although it wanted to use the services of Clean Skies to provide commercial services its procurement guidelines prevented it from directly hiring them. However, since CH-IV had an existing contract with PCJ...it was suggested that we consider hiring Clean Skies on a subcontract basis.”
75. The OCG found that one of the Technical Consultants, Mr. Joseph Fossella, is the owner of the company, Clean Skies LLC. Mr. Joseph Fossella is also the former employee of Black & Veatch, a company with which Exmar Marine NV has an alliance and who was a member of the ‘negotiation team’ for Black & Veatch, prior to his retirement.

76. It is instructive to note that by way of an email, which was dated 2008 November 5, Mr. Stephen Wedderburn informed Mr. Ian Moore, *inter alia*, that “*For information please see press release from Exmar indicating that they are pursuing a floating liquefaction deal in partnership with Excelerate and Black & Veatch...**I am pleased to have played a role in introducing Exmar and Black & Veatch to each other.***” (OCG’s Emphasis)

77. Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, disclosed his interest in a project in Colombia in which Exmar Marine NV was a party. However, the OCG has found no evidence to suggest that Mr. Wedderburn disclosed his relationship with Mr. Joseph Fossella, a sub-contractor of CH-IV International, who was actively involved in the Evaluation of the Bids for the ‘FSRU LNG Project’.

78. Based upon the foregoing, the OCG has found the following:

- i. That Mr. Stephen Wedderburn had discussions with both Mr. Joseph Fossella and Mr. Patrick LaStrapes of Clean Skies LLC in 2009 November, around the time of the commencement of the tender period for the ‘FSRU LNG Project’, to provide commercial services on the said project.
- ii. Mr. Joseph Fossella was a part of the LNG Technical Evaluation Team which had the core responsibility to assist with the Evaluation of the Bids.
- iii. Mr. Stephen Wedderburn explicitly stated that he played a role in introducing Exmar Marine NV and Black & Veatch to each other.
- iv. Mr. Stephen Wedderburn recommended that CH-IV International sub-contract Mr. Joseph Fossella’s company, Clean Skies LLC, to work on the ‘FSRU LNG Project’.

79. Based upon the information which has been provided to the OCG, the OCG found that there were significant collaborative efforts between Mr. Stephen Wedderburn and Mr. Ian

Moore during his tenure as Chairman of the PCJ Board of Directors. In this regard, the OCG found several pieces of correspondence from which it can be inferred that both Mr. Wedderburn and Mr. Ian Moore were actively pursuing LNG as an energy option and, in so doing, attempted to divert from the GOJ policy agenda of the then Minister.

Further, the OCG found that prior to the bidding process in 2009 November, Mr. Stephen Wedderburn and Mr. Ian Moore, in their attempts to divert from the policy agenda towards LNG, shared more information with Exmar Marine NV, than any of the other nine (9) potential bidders.

In point of fact, in one correspondence the OCG found that Exmar Marine NV was identified by Mr. Stephen Wedderburn as his first choice based upon his assessment prior to the commencement of the tender process in 2009 November.

80. The OCG found in an email which was dated 2008 January 23, that Mr. Stephen Wedderburn informed Mr. Stephen Hanan, Mr. Conrad Kerr and Mr. Ian Moore, *inter alia*, that “...**To clarify the role of Exmar, PCJ wants the Exmar proposal to be treated as the base case for the implementation of the LNG Project in Jamaica and the proposal being developed for the Prime Minister should reflect this...**” (OCG’s Emphasis)

81. In another email, which was dated 2008 February 1, Mr. Stephen Wedderburn informed Mr. Ian Moore, *inter alia*, that “**I do believe that Exmar stands out by way of the significant development work it has done in coming up with customized solutions for Jamaica and by the initiatives it has undertaken to present a turnkey solution that takes into account all the infrastructure...There are therefore solid reasons why Exmar is a clear frontrunner. However, because other companies have expressed interest, if we make an announcement that we have selected Exmar there are likely to be complaints by these other companies that they were not given a fair chance to compete with Exmar on an equal footing...However, it is safe to say that Exmar would have been ranked number one...Should I invite these companies to put proposals**”

**forward with respect to their technical solution, cost and time of implementation within the next month, or should we just let sleeping dogs lie?**<sup>31</sup> (OCG's Emphasis)

It is also instructive to note that Exmar Marine NV worked behind the scenes developing their technical and commercial proposals prior to the RFP being issued in 2009 November.

In addition to the foregoing emails, the OCG also found the following:

- i. That the LNG project was officially inactive during Mr. Ian Moore's tenure as Chairman of the PCJ Board of Director as the then Minister was pursuing another agenda. However, while the official policy agenda was coal, Mr. Stephen Wedderburn and Mr. Ian Moore were actively pursuing LNG opportunities behind the scenes.
- ii. That Mr. Stephen Wedderburn had explicitly identified his assessment of the LNG providers in respect of which he has consistently ranked Exmar Marine NV as his number one choice.

82. The OCG received an anonymous allegation, by way of an email, which was dated 2010 December 11, which stated the following:

*"if you really want to find the link between moore and robertson, go back fifteen years and investigate a call bypass business – precision enterprises – that they were involved and check out an account held by moore at wachovia that is used for political funding."*<sup>[1]</sup>

Consequently, by way of written Statutory Requisitions, which were dated 2010 December 16, the OCG required the Hon. James Robertson, Minister of Energy and

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<sup>31</sup> Email from Mr. Stephen Wedderburn which was dated 2008 February 1, to Mr. Ian Moore.

Mining, and Mr. Ian Moore, former Chairman of the PCJ Board of Directors, to respond to the aforementioned allegations.

In the case of Mr. Ian Moore, the OCG required Mr. Moore to disclose if he and/or any entity with which he was/is associated had/has a Wachovia Bank Account.

Mr. Moore complied with the OCG's request and furnished the OCG with the relevant Bank Statements for the period of 1999 November through to 2010 December.

It is instructive to note that the sworn responses, and documentary evidence, which were provided by Minister James Robertson and Mr. Ian Moore, respectively, did not provide the OCG with sufficient evidence which would lend credence to the allegations which were made against Minister James Robertson and Mr. Ian Moore.

83. The OCG found that an independent assessment of the 'FSRU LNG Project' was undertaken by a Mr. Donald Hertzmark and a Mr. Haydn Furlonge of DMP Resources. The referenced report was dated 2010 November 3.

84. In its reports, DMP Resources indicated, *inter alia*, as follows:

- i. *A second issue concerns the absence of regulation for the entire Project, but especially for construction and economic aspects. **The consultants recommend that the GoJ task its regulator with presenting a proposed framework to the Government by early-mid-2011...***
- ii. *Uncertainty about final design parameters and gas demand prevent a detailed engineering design for the Project. **The consultants recommend that a focused economic and financial feasibility study be completed quickly leading to a final design specification for the FSRU and pipeline system.***

- *This study should ultimately lead to a more accurate cost estimate, which would feed into a more detailed and useful economic evaluation of the Project.*
  - *Further, the consultants recommend that the technical advisors be tasked with a due diligence regarding the costs of comparable physical facilities as long as the construction and equipment supply bids are based on the current limited competition.*
- iii. *Timing issues remain problematic. The consultant believe that the Project is likely to encounter delays in its current form, due in large measure to the uncertainties created by the absence of a legal structure for the gas industry in Jamaica and by continuing uncertainties over participation by Jamalco...* *Consequently, there is less financial risk if the power plants are completed earlier than the gas plant than there is from the obverse. Realistically, the new power plants are not likely to be ready to receive gas until at least mid-2014, more than 40 months from now. This is sufficient time to remedy the defects in the current process noted in this report and the consultants recommend that this extra time be employed to effect the remedies suggested for the procurement, design and regulatory sides of the Project.*
- iv. *The current active proposal for the SPV creates serious conflict-of-interest issues and could well retard the spread of gas use to other companies in the country and create negative perceptions of the degree of transparency surrounding this transaction. At the same time the consultants believe that launching an entirely new round of bidding would create negative perceptions and delays that could potentially doom the Project. Therefore, it will indeed be necessary to have the support of Jamalco and “Power Co” as launch customers. However the current process with regard to the Implementation Agreement and establishment of the SPV is deeply flawed on grounds of transparency, risks to the GOJ, sizing, technical specifications and absence of an appropriate legal*

structure. Correspondingly, the consultants recommend that the SPV be subject to the following specific remedies:

- *OUR should create regulations that become part of the setup parameters of the SPV...*
- *The studies of demand, sizing, location, cost must be improved significantly between now and mid-2011*
- *The Implementation Agreement should be executed only when there is a letter of intent to purchase gas from one or both of the launch customers and a regulatory framework for the legal basis of the gas industry in Jamaica.*
- *The SPV sponsors must be willing to provide Letters of Intent to Purchase Gas that relieve the GOJ of its exposure to gas purchase contracts and to abide by the type of regulation contained in the OUR Framework (early mid-2011). If this is not the case then the Consultants recommend that the current process be scrapped and that a new round of bidding be instituted with a separate owner-operator for the FSRU who will also undertake responsibility to purchase gas. This company would operate as a regulated monopolist and would be subject to open access requirements, as would the companion, independently owned and operated pipeline company.*<sup>32</sup> (OCG's Emphasis)

85. By way of letter which was dated 2010 December 7, Ambassador Douglas Saunders provided the OCG with a copy of a document entitled “LNG Assessment Report: Assessment Report Comments”, which was prepared by CH-IV International for the Jamaica LNG Task Force. Of note, the referenced report was not dated.

The referenced report stated, *inter alia*, the following:

**“The LNG Team has critically reviewed the DMP Report, and its recommendations**

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<sup>32</sup> Independent LNG Assessment Final Report which was dated 2010 November 3. A copy is appended.

**and is of the opinion that the Report is not sufficiently informed** nor captures the vast information developed by the LNG Team. **Should this have been possible, it would have facilitated a better understanding of the decision making process, of the rich history of studies and Front-End Engineering work done to date and the importance of adhering to the process and schedule currently underway...**

**The Advisory team therefore recommends that the government of Jamaica proceed with the current strategy and plan** to acquire a long term, competitive supply of LNG... ”<sup>33</sup> (OCG’s Emphasis)

86. It is instructive to note that at a private meeting which was convened on 2010 November 5 at the instance of the Hon. Bruce Golding, the Prime Minister of Jamaica, with the Contractor General, Greg Christie, the Prime Minister provided the Contractor General with a draft copy of the referenced LNG Assessment Report.

In the referenced meeting, the Prime Minister also expressed his concerns with regard to the Findings of the referenced Report. He informed the Contractor General, *inter alia*, that in the upcoming week he would be addressing the issue by removing the project from the current Ministry (MEM) to the Office of the Prime Minister (OPM), which would assume full responsibility for overseeing the entire project.

87. The OCG found that the Prime Minister, in a Cabinet meeting which was held on 2010 November 29, advised the Cabinet that “...he would assume overall direction for the LNG Project, and a Project Coordination Unit would be established in the Office of the Prime Minister. He also said he would convene a preliminary meeting that week with the relevant entities to arrive at a definitive position which incorporated all the factors necessary to move the Project forward...”<sup>34</sup>

On 2010 December 6, the Cabinet “...agreed that the Submission should be withdrawn

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<sup>33</sup> LNG Final Assessment Report Comments which were prepared by CH-IV International.

<sup>34</sup> Cabinet Decision No. 45/10 submitted to the OCG by the Cabinet Secretary, under the cover of letter dated 2010 December 22.

*from the Agenda; and noted that the draft Implementation Agreement had been finalized and would be referred to the Project Committee established to oversee the direction of the LNG Project, along with the report from the Independent Consultants and the response thereto...”<sup>35</sup>*

88. It is instructive to note that the Prime Minister, the Hon. Bruce Golding, submitted Cabinet Submission No. 631/CO 10/2010, which was dated 2010 December 9, in which it was indicated that three (3) new Committees were to be established within the Office of the Prime Minister, namely, (a) Steering Committee, (b) Core Technical Team and (c) Ministerial Committee.

Further, by way of a News Release from the OPM, which was dated 2010 December 15, and which was entitled “*PM NAMES COMMITTEE AND SETS TARGET FOR LNG PROJECT*” it was reported that “*Cabinet has approved the new arrangements for the Liquefied Natural Gas (LNG) Project for which Prime Minister Bruce Golding has assumed responsibility.*”

89. The OCG further identified a letter that was prepared by the Cabinet Secretary, Ambassador Douglas Saunders, on 2010 December 9, and which was addressed to the NCC, requesting permission to use the Direct Contracting Procurement Methodology to contract Mr. Ernest Megginson as the Project Manager for three (3) months in the amount of US\$105,000.00.

The NCC, by way of a letter, which was dated 2010 December 20, endorsed the recommendation of the Cabinet Secretary, and further stated, *inter alia*, that “*The National Contracts Commission’s approval is subject to the Cabinet Office utilizing the three (3) month period to conduct a tender process aimed at procuring the services of a full Time Project Manager for the LNG Project.*”

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<sup>35</sup> Cabinet Decision No. 45/10 submitted to the OCG by the Cabinet Secretary, under the cover of letter dated 2010 December 22.

90. The Cabinet Secretary, Ambassador Douglas Saunders, also wrote two (2) letters to the NCC on 2011 January 17 requesting permission to utilize the Limited Tender Procurement Methodology to procure the services of (a) LNG Commercial Services and (b) LNG Technical Services.
91. The OCG further found, by way of Notes from the Meeting of the Liquefied Natural Gas (LNG) Core Project Team which was held on 2011 January 13, that “*Mr. Megginson informed the meeting that he has requested that the representatives from CH-IV, namely, Mr. Joseph Fossella and Mr. Pat LaStrapes have been removed [sic] from the project. Discussions were ongoing regarding a replacement...*”
92. The Hon. Bruce Golding, on 2011 April 7, submitted to the Contractor General, a copy of two (2) Legal Opinions, which were dated 2011 March 24 and 29, respectively, and which were reportedly prepared by Attorney-at-Laws, Livingston, Alexander & Levy, with respect to the ‘*procurement procedures for the LNG project*’.

The first Legal Opinion, which was dated 2011 March 24, stated, *inter alia*, the following:

- i. *It is submitted that **Mr. Fossella ought not to have participated in the evaluation of the rival bids so soon after working with Exmar in the alliance up to 2009 because he would not have been able to bring an independent and open mind.***
- ii. *A review of **Stephen Wedderburn’s statements concerning Exmar clearly shows that he ought not to have participated in the evaluation process,** particularly the e-mail of the 6<sup>th</sup> September 2009 which clearly shows that he had a pecuniary interest in a project with Exmar.*

**It is trite law that a person who has the proprietary or pecuniary interest in a matter should not participate in a situation where a decision has to be made concerning a party in which the participants has such an interest.**

- iii. *Consequently, it is clear that the decision is tarnished as the tender process could not be considered as transparent, fair or unbiased.*
- iv. *It is manifestly clear therefore that the evaluation done by CH-IV International is incorrect as Excelerate Energy was not a part of the Exmar Consortium...The review having stated the relationship between Exmar and Excelerate, as joint venture partners, clearly shows that Excelerate ought to have been invited to tender. This certainly casts a very serious and grave concern on the tender process for Exmar to have been declared the preferred bidder, when its joint venture partner who the review determined as Exmar's strength was excluded.*

**The only reasonable conclusion that can be drawn is that the Request For Proposal was not sent to Excelerate so as to exclude them.**

- v. **The tender...is flawed and could not withstand scrutiny under judicial review.**

The second Legal Opinion, which was dated 2011 March 29, stated, *inter alia*, the following:

- i. *...There can be no doubt that his [Mr. Stephen Wedderburn's] views in favour of Exmar as frontrunner and other laudatory comments on Exmar would have some influence on Moore.*
- ii. *It is of paramount importance to appreciate that the Request for Proposals was issued on the 12<sup>th</sup> day of November 2009, shortly thereafter, Moore had the name of the company changed to "Caribbean LNG (Jamaica) Limited"... Thereafter, even more remarkable that when the Exmar Consortium sent in its proposals, that CLNG was a member of the Exmar Consortium. **It is therefore clearly obvious that the name change bore relationship to the submission by the Exmar Consortium.***

- iii. ...CLNG was a partner in Exmar Consortium. **Comment must also be made that it was a partner in a venture that it could not be making any substantial financial contribution to the capital expenditure thereof.** This raises the question, when was it then necessary to involve CLNG as a partner to the Consortium in an venture of this nature as far as the tender process is concerned. **Certainly, Moore's corporate profile shows that he lacks the expertise necessary to play a pivotal role in any project of this nature.**
- iv. ...It is known that other parties who should have participated were not given the opportunity to do so, as the Request For Proposals [sic] were not given to them...This is clearly as [sic] case of being biased and **was certainly designed to reduce any competition that Exmar may have had particularly from Excelerate who was the leader in the field.**" (OCG's Emphasis)

The OCG notes that the referenced Legal Opinions, which were obtained from the private Bar, support certain of the OCG's considered Conclusions which have been detailed herein. More specifically, the Legal Opinions have been able to establish a *prima facie* case of improper and irregular conduct on the part of certain present and former Public Officials/Officers and, in consequence, support certain of the OCG's Findings which are detailed herein.

93. The Office of the Cabinet, in its response to the OCG's Statutory Requisition which was dated 2011 2010 April 18, informed the OCG, *inter alia*, that "...**Meeting was held with Ministerial Sub-Committee on April 13, 2011 where the LNG Steering Committee submitted its recommendation for cancelling the former tender for the Financing, Development, Ownership, Operation of an [sic] FSRU LNG Re-gasification Terminal and Natural Gas Transmission System issued by PCJ in November 2008 and re-tender the FSRU and onshore natural gas pipelines in separate RFPs.**

94. The Office of the Cabinet, by way of its response to the OCG's Statutory Requisition, which was dated 2010 April 18, submitted a copy of a Memo that was prepared by the

Solicitor General, Mr. Douglas Leys, which was dated 2011 April 11, and which was captioned “*Opinion by Livingston Alexander & Levy concerning Tender Process for the LNG Project*”.

The referenced Memo stated, *inter alia*, that “...**I have reviewed the said opinion and am in substantial agreement with the views posited by the Attorneys...**”

The OCG found that the referenced opinion from the Solicitor General, which is the Attorney for the GOJ, supports and confirms the reasoning and substantive legal issues which were delineated in the Legal Opinions from Livingston, Alexander and Levy, private Attorneys-at-Law.

95. The OCG found that collectively, the Legal Opinions from the Solicitor General and Livingston, Alexander and Levy, Attorneys-at-Law, have unequivocally brought into sharp focus the issue of the lack of fairness and transparency in the tender process for the ‘FSRU LNG Project’. Further, the issues of a conflict of interest and the implicit use of ‘insider information’ on the part of Mr. Ian Moore, the former Chairman of the Board, PCJ, and Mr. Stephen Wedderburn, the LNG Project Coordinator, PCJ, are matters which have compromised and which have brought into disrepute the integrity, legitimacy, fairness and transparency of a poorly planned and executed tender process which was driven, in large, by the technical expertise and questionable multi-faceted and conflicted involvement of Mr. Wedderburn.
96. The OCG received a letter from Mr. Glenford Watson, Senior Legal Officer, MEM, which was dated 2010 November 11, in which he requested the OCG’s opinion with respect to whether, “... **it would be permissible for the Government to enter into an Implementation/Direct Agreement with the Project Company and the members of the Project Company (Consortium) as co-signees?** This Agreement would contain the normal boiler plate provisions expected in a project of this nature. **The intent would be to also hold Exmar and Promigas, developers of the FSRU and pipelines, respectively, directly liable for their respective operations.** This would allow the Government to look

*to both the Project Company and the individual members of the Consortium for any redress...*” (OCG’s Emphasis)

It is instructive to note that the OCG, by way of a letter which was dated 2010 November 16, responded to Mr. Watson’s query and stated, *inter alia*, that **“Having regard, among other things, to (a) the matters which are outlined in the OCG’s Notice of Enquiry which was dated June 22, 2010, and which was formally conveyed to your Ministry and to the PCJ, and (b) the fact that a major and extensive OCG Investigation is currently under way, it would be highly inappropriate for the OCG to render any advice to you other than for you to summarily and immediately abort the subject process.”** (OCG’s Emphasis).

It is critical to note that the referenced letter was copied to the Honourable Prime Minister, the Honourable Minister of Energy and Mining, the MEM Permanent Secretary and the Group Managing Director (Acg.) of the PCJ.

## **Conclusions**

Based upon the sworn responses which were received from certain Public Officials/Officers within the MEM, the PCJ, the Cabinet Office and other persons of interest, who were affiliated with, and/or involved in, the LNG Project and/or the recommendation for the selection of the ‘preferred bidder’ for the ‘FSRU LNG Project’, which have been reviewed and cross-referenced, the OCG has arrived at the following considered Conclusions:

1. The OCG has concluded that since 2001, the GOJ’s energy policy has evolved significantly. The OCG has found that over the period, 2001 to 2011, the GOJ, has pursued the LNG Project at different stages and having regard to various technical considerations.

In this regard, the OCG has found that, prior to 2008, the GOJ undertook a Front End Engineering Design (FEED) study and engaged in significant research with respect to

the suitability of LNG, specifically with regard to the development of a land-based facility.

It is instructive to note that Ms. Marcia Forbes, the then Permanent Secretary, MEM, also indicated, to the OCG, that the GOJ had discussions regarding “... *land-based versus off-shore system and the implications, the pros and cons of each concerned me in terms of long-term benefits/threats to Jamaica.*”

However, during the tenure of the then Minister, Mr. Clive Mulling, coal was the preferred choice as an energy source and the LNG Project was officially halted. Hence, the LNG project was formally halted until 2009, when the present Prime Minister, the Hon. Bruce Golding, made an announcement in his Budget Presentation that Jamaica would once again be pursuing LNG.

2. The OCG has found and concluded that between the period of 2005 through to 2006, Mustang Engineering undertook a Front End Engineering Design (FEED) Study, on behalf of the PCJ, in regard to the setting up of a local land-based LNG Project.
3. Based upon the sworn documentary evidence which has been adduced to the OCG, by representatives of the PCJ and the MEM, the OCG has found, and concluded, that there were no formal pre-assessments and/or studies which were undertaken and/or conducted on behalf of the PCJ and/or the MEM for the ‘FSRU LNG Project’.
4. The OCG has concluded that both Exmar Marine NV and Merrill Lynch presented proposals to the GOJ with respect to the introduction of LNG in Jamaica. However, the GOJ did not act upon any of the referenced proposals and, instead, sought to pursue the introduction of LNG, to Jamaica, via the competitive route.

As such, a pre-qualification exercise was undertaken by the PCJ in 2007 April, and, consequently, nine (9) prospective bidders responded to an ‘Invitation to Pre-Qualify’ as LNG providers in 2007 May. However, this process was not completed.

Subsequently, in 2009 November, following upon the GOJ's resumed consideration of LNG as a viable fuel source, the Limited Tender Procurement Methodology was utilized, by the PCJ, to invite the nine (9) entities which had previously responded to the request for pre-qualification in 2007.

5. Based upon the documentary evidence which has been provided to the OCG, the OCG has found and concluded that, over the period of 2001 to 2009, Exmar Marine NV has been actively seeking to introduce LNG in Jamaica.

In point of fact, Exmar Marine NV made unsolicited overtures to the PCJ, in 2007, to develop LNG facilities in Jamaica and held discussions with GOJ officials during the period of time in which there was an ongoing debate regarding the benefits of coal versus LNG and CNG, as alternative energy sources.

Exmar Marine NV also informed the OCG that it had its first meeting with the then Minister of Foreign Affairs and Foreign Trade in Brussels, Mr. Anthony Hylton, in 2006 December and, for the first time, was made aware of the potential interest of Jamaica in the FSRU Technology.

Subsequently, in 2007 March, following upon a presentation by Exmar Marine NV, a 'Mandate' was signed between the GOJ and Exmar Marine NV. The referenced 'Mandate' authorized Exmar Marine NV to act as an agent for and/or on behalf of the GOJ, to assist it in the purchasing of LNG and/or natural gas. In the same year, Exmar Marine NV participated in the 2007 Pre-Qualification exercise which was initiated by the PCJ.

However, after the Pre-Qualification process was halted, Exmar Marine NV stated that it continued "...unsolicited meetings in respect of sharing ideas on the feasibility of importing LNG and natural gas use in Jamaica..."

Further, the OCG found that Exmar Marine NV held meetings with representatives of

the PCJ at the Gastech Conference on 2008 March 10-13, in Bangkok. Of import, is the fact that the GOJ Representatives who were involved in the referenced Conference included Mr. Ian Moore, the then Chairman of the Board of Directors of the PCJ and current Director of CLNG – the local Jamaica corporate partner in the Exmar Consortium, Mr. Stephen Wedderburn, LNG Project Coordinator, and Mr. Patrick Dallas, Advisor to the then Minister, Mr. Clive Mullings.

6. The OCG has found, and concluded, that, in 2009 June, Exmar Marine NV held a meeting with the Minister of Energy and Mining, the Hon. James Robertson, the then Permanent Secretary, Ms. Marcia Forbes, representatives of Promigas, Merrill Lynch and EDC LNG, now known as CLNG (Jamaica) Ltd., and that **“The goal of the meeting was to advise the Government of the intent to conduct the pre-feasibility studies to determine the economic and technical viability of developing a private project to import LNG and supply natural gas for use by private bauxite sector entities.”**<sup>36</sup>(OCG Emphasis)

The OCG has also concluded, based upon the documentary evidence with which it is seized, that in 2009 July, Exmar Marine NV met with representatives of the MEM and presented “... **the approach that would be taken by the group to demonstrate the feasibility of providing LNG to the bauxite sector.**”<sup>37</sup>

7. The OCG has found and concluded that the company, EDC LNG Limited (which was renamed Caribbean LNG (Jamaica) Limited on 2009 December 8), was incorporated in Jamaica on 2009 June 19.
8. The OCG has also found and concluded that the Directors and the three (3) majority beneficial shareholders of Caribbean LNG (Jamaica) Limited are as follows:
  - i. Mr. Ian Moore, former Chairman of the PCJ Board of Directors;

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<sup>36</sup> Response from Exmar Marine NV, which was dated 2010 December 22. Response #4

<sup>37</sup> Response from Exmar Marine NV, which was dated 2010 December 22. Response #4

- ii. Mr. Paul East; and
  - iii. 'Mr. Al Kerr', otherwise known as Mr. Conrad Kerr, former Global Head of LNG, Merrill Lynch.
9. Based upon the documentary evidence which has been presented to the OCG, the OCG has found and has been led to conclude the following:
- i. That a MOU was signed between CLNG and Promigas on 2009 July 17.
  - ii. That a MOU was signed between CLNG and Exmar Marine NV on 2009 July 22.
  - iii. That a MOU between Exmar Marine NV, Promigas S. A., and CLNG was signed on 2010 February 15, the same date as the extended deadline for the submission of the bids for the 'FSRU LNG Project'. The referenced MOU of 2010 February 15, had replaced the two (2) previous MOU's.
10. The OCG is of the considered opinion that the company, Caribbean LNG (Jamaica) Limited was formed for the sole purpose of the 'FSRU LNG Project'. This is based upon (a) the nature of the company and the date on which it was formed; (b) the fact that approximately one (1) month after the incorporation of the company, two (2) MOU's were signed between EDC LNG (the then name of the company) and Promigas and Exmar Marine NV, on 2009 July 17 and 22, respectively, (c) the fact that despite being formed in 2009 June, EDC LNG, on its own apparent initiative, was able to successfully undertake and complete a feasibility study, by 2009 October, in regard to the introduction of FSRU LNG technology to Jamaica, and (d) the fact that a qualification requirement of the RFP, which was issued in 2009 November, was that the potential bidder ought to have the '*use of local expertise*'.
11. The OCG has concluded that the GOJ, through the PCJ, utilized the GOJ Public Sector Procurement Procedures (2008 November), in accordance with the Limited Tender Procurement Methodology, to contract a suitable provider for the 'FSRU LNG Project'.

In this regard, the NCC, by way of a letter which was dated 2009 November 5, endorsed the proposal of the MEM to utilize the Limited Tender Procurement Methodology to invite the nine (9) entities, which had submitted applications for Pre-Qualification in 2007 May, to re-submit proposals for the 'FSRU LNG Project'.

12. The OCG found that the MEM and the PCJ received certain approvals from the PCJ Procurement Committee, the PCJ Board of Directors, the NCC and the Cabinet in respect of the 'FSRU LNG Project'.

However, the OCG found that the then PCJ Board of Directors expressed several concerns with respect to the manner in which approvals were being requested for the referenced project. In point of fact, the Minutes of the PCJ Board of Directors which was dated 2009 December 10, indicated that the approval from the Cabinet preceded the approval from the Procurement Committee “...and the Committee could not interfere with Cabinet’s decision...”

Further, the Minutes of the Meeting of the PCJ Board of Directors, which was held on 2009 December 22, indicated, *inter alia*, that “...the Board took a decision that if an application was received for extension then the Board would consider it...that has not been done and yet there are letters going out indicating that a decision was taken to grant an extension after consultation with the PCJ and with the Ministry.”

The foregoing has led the OCG to conclude that there was indeed irregularity with respect to at least one (1) component of the approval process for the 'FSRU LNG Project'. In point of fact, the OCG has concluded that the very approval process itself was improper due to the fact that the approval of PCJ Board of Directors was circumvented.

13. The OCG has concluded that the MEM and the PCJ breached Sub-section S-3100 of the GOJ Public Sector Procurement Procedures (2008 November) which provides, *inter alia*, that “**All adopted sub-criteria should be specified in the RFP...** If points

*allocated to these sub-criteria are not disclosed in the RFP, the Evaluation Committee should allocate them before proposal submission, to reduce the risk of manipulations during the evaluation process...*”

In this regard, the OCG found that the PCJ and/or the MEM, did not provide the potential bidders with the amended evaluation criteria, as detailed in the ‘Review Matrix’, which was dated 2010 February 12. It should be noted that the referenced ‘Review Matrix’ was dated three (3) days before the deadline for the submission of bids on 2010 February 15.

14. The OCG has concluded that the initial oversight structure which was established, within the PCJ, to guide the ‘FSRU LNG Project’, did not promote the principles of good corporate governance.

In this regard, the OCG found that at least three (3) of the members of the PCJ Board of Directors served on the LNG Task Force, which is not a part of the approved PCJ Corporate Governance structure, and the LNG Evaluation Committee. Further, there were instances in which the PCJ Board of Directors raised concerns with respect to the decision-making process for the ‘FSRU LNG Project’.

Further, the OCG has found and concluded that the PCJ was responsible for the implementation of the ‘FSRU LNG Project’. However, the parent Ministry, the MEM, had direct responsibility with regard to the overall policy guideline for the project.

The OCG has not seen any evidence to suggest that any of the Accounting and/or Accountable Officers within the MEM and/or the PCJ took effective and decisive steps to ensure good corporate governance in the reporting structure which was established to guide the ‘FSRU LNG Project’.

15. The OCG is of the considered opinion, and has concluded, herein, that Mr. Stephen Wedderburn’s (a) prior involvement and/or affiliation with Exmar Marine NV and Mr.

Joseph Fossella, a representative of CH-IV International and (b) current involvement in guiding the Tender process for the 'FSRU LNG Project', has compromised the integrity of the entire 'FSRU LNG Project'.

The OCG's Conclusion is premised, *inter alia*, upon the following:

- i. Mr. Stephen Wedderburn, in 2009, in his then private and personal capacity, had submitted a proposal to the MEM in which he recommended, *inter alia*, that the formal GOJ procurement procedures be by-passed in order to expedite the LNG project.

The OCG also found another instance in which Mr. Arthur Ransome of CH-IV International indicated that, based upon the recommendation of Mr. Stephen Wedderburn, CH-IV International subcontracted Mr. Joseph Fossella's company, Clean Skies, in order to by-pass the stringencies of the GOJ's procurement process.

- ii. Mr. Stephen Wedderburn, in several pieces of written correspondence, has consistently identified Exmar Marine NV as a company with which the GOJ should negotiate in regard to the LNG Project. In point of fact, Mr. Wedderburn, on 2008 May 16, ranked several of the prospective LNG providers and placed Exmar Marine NV as the number one contender. Such a ranking was undertaken by Mr. Wedderburn prior to an actual tender process and is, without question, indicative of a demonstrated bias towards Exmar Marine NV.
- iii. Questions are also raised with respect to Mr. Stephen Wedderburn's relationship with Mr. Joseph Fossella who was instrumental in the evaluation of the bids for the 'FSRU LNG Project'. Mr. Fossella is a former employee of Black & Veatch and the proprietor of Clean Skies LLC. Further, the OCG has found, based upon the documentary evidence, that Mr. Wedderburn has taken credit for introducing Exmar Marine NV to Black & Veatch.

Incidentally, the OCG has also found and concluded that Mr. Fossella was a part of the 'negotiating team' for and on behalf of Black & Veatch, which led to the formation of an alliance between Exmar Marine NV and Black & Veatch.

- iv. Prior to the PCJ's Board of Directors deliberations on 2009 December 22, for the re-engagement of CH-IV International, Mr. Stephen Wedderburn had exchanged several pieces of correspondence with representatives of CH-IV International and Clean Skies and passed information to CH-IV International with respect to the PCJ Board of Directors' discussion in regard to the requirements for the technical services for the 'FSRU LNG Project'.
- v. Having regard to the foregoing, it is instructive to note that Mr. Stephen Wedderburn disclosed to the PCJ his pecuniary interest in a project in which Exmar Marine NV was involved. However, the OCG has found no evidence to suggest that Mr. Stephen Wedderburn disclosed his relationship with Mr. Joseph Fossella, a sub-contractor of CH-IV International, who was actively involved in the Evaluation of the Bids for the 'FSRU LNG Project'.

Based upon the foregoing, the OCG has concluded that Mr. Stephen Wedderburn's actions were professionally unethical, tantamount to a flagrant conflict of interest and, in consequence, breached Sub-Section S-1040 of the Revised GOJ Public Sector Procurement Procedures (2008 November).

The OCG's conclusions and concerns are further compounded by the fact that Mr. Stephen Wedderburn, in his sworn response to the OCG, asserted that "*As LNG Project Coordinator I am responsible for overseeing the day-to-day activities of the LNG Project and acting as the focal point for communications in respect of the project. In respect of procurement activities this includes drafting RFPs and issuing these RFPs once they have been approved, handling bidders' queries and drafting clarification responses.*"

The foregoing puts it beyond doubt that, due to Mr. Stephen Wedderburn's prior associations and demonstrated bias, and the critical role which he has played in the 'FSRU LNG Project', the entire integrity of the tender process has been compromised, brought into disrepute and is tainted by a conflict of interest and a gross lack of objectivity which has been evidenced, *inter alia*, by certain email correspondence which were either written by or sent to Mr. Stephen Wedderburn.

16. The OCG has concluded that Exmar Marine NV had a distinct advantage over the other potential bidders for the 'FSRU LNG Project' as a result of the extensive work which it undertook with respect to introducing LNG to Jamaica since 2006.

In point of fact, prior to the commencement of the tender period in 2009 November, Exmar Marine NV had meetings with EDC LNG (now CLNG) and Promigas (now members of the Exmar Consortium), in which it was disclosed that they were undertaking a pre-feasibility study to “...**determine the economic and technical viability of developing a private project to import LNG and supply natural gas for use by private bauxite sector entities.**”<sup>38</sup> (OCG Emphasis)

It must be reiterated that EDC LNG (now CLNG) is the company which was formed by Mr. Ian Moore, former PCJ Board Chairman, and other interested parties in 2009 June.

Further, and having regard to the fact that Exmar Marine NV was also privy to information which was not made available to the other bidders and was afforded the privilege of having an ongoing working relationship with representatives of the PCJ, in the persons of Mr. Stephen Wedderburn and Mr. Ian Moore, the involvement of Exmar Marine NV in the tender process was highly irregular and unfair to the other bidders which were involved in the process.

Consequently, the foregoing initiative would have given the Exmar Consortium a distinct, and hence, irregular, improper and unfair advantage in the tender process.

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<sup>38</sup> Response from Exmar Marine NV, which was dated 2010 December 22. Response #4

17. The OCG has concluded that the overall tender process for the ‘FSRU LNG Project’ has been compromised having regard, *inter alia*, to the following:

- i. Mr. Ian Moore, during his tenure as the PCJ Board Chairman, was, at a minimum, (a) privy to information with respect to the possibilities of introducing LNG to Jamaica; (b) privy to discussions which Mr. Stephen Wedderburn had with Mr. Bart Lavent of Exmar Marine NV; (c) found to have requested information from Mr. Stephen Wedderburn regarding, *inter alia*, the feasibility of LNG to Jamaica; and (d) attended several meetings and had numerous discussions with potential bidders.
- ii. Subsequently, after Mr. Ian Moore’s tenure ended as the Chairman of the PCJ Board of Directors in 2008 November, he established the company, EDC LNG (now CLNG), approximately seven (7) months after. EDC LNG (now CLNG) subsequently formed a business partnership with the said Exmar Marine NV, which was found to have been lobbying for the introduction of LNG to Jamaica from 2006. The CEO of EDC LNG (now CLNG), Mr. Conrad Kerr, happens to be the former Global Head of LNG for Merrill Lynch, a company that (a) proposed to joint venture with the GOJ for the introduction of LNG to Jamaica, albeit being rejected; and (b) had had several meetings and discussions with Mr. Bart Lavent of Exmar Marine NV, in respect of which both Mr. Stephen Wedderburn and Mr. Moore were informed.
- iii. Mr. Stephen Wedderburn was also found to have played a key role in establishing (a) the alliance between Exmar Marine NV and Black & Veatch and (b) the sub-contract between Mr. Joseph Fossella’s company, Clean Skies LLC, and CH-IV International.

Of note, is the fact that Mr. Joseph Fossella was the former Vice President, Business Development for Black & Veatch and had also worked with the company, as a Consultant, up to April 18, 2009. The OCG has also found that Mr.

Fossella played an integral role in the evaluation of the bids for the ‘FSRU LNG Project’. Mr. Fossella was further found to have “...started the LNG Liquefaction Alliance Project between Black & Veatch, Excelerate and Exmar, and worked on the project for six or seven months up to his retirement.”

- iv. Mr. Stephen Wedderburn was also found to have played a key role in establishing (a) the alliance between Exmar Marine NV and Black & Veatch and (b) the sub-contract between Mr. Joseph Fossella’s company, Clean Skies LLC, and CH-IV International. Mr. Fossella was further found to have “...started the LNG Liquefaction Alliance Project between Black & Veatch, Excelerate and Exmar, and worked on the project for six or seven months up to his retirement.”
  - v. Exmar Marine NV, having been identified as trying to introduce LNG to Jamaica since 2006, was found to have been considerably more favoured over the other bidders. Further, the Exmar Consortium was found to have been at an advantage with respect to the preparation of a proposal, as Exmar Marine NV’s previous proposal was used as a benchmark for the ‘FSRU LNG Project’. The OCG’s conclusion is buttressed by the fact that the Exmar Consortium was the only bidder that did not request an extension of the submission deadline.
18. The OCG has concluded that there are several questions which have been raised with respect to the Exmar Consortium’s capabilities to fulfill the requirements for the ‘FSRU LNG Project’, specifically with respect to its abilities to (a) design and build any fixed infrastructure facilities; and (b) to commercially operate the vessels.

The OCG’s foregoing conclusion is premised upon the fact that Exmar Marine NV has substantially partnered with Excelerate Energy LP on projects of a similar nature. In this regard, Mr. Shaun Davison of Excelerate Energy LP, asserted that Exmar Marine NV (a) operated the vessels, on behalf of Excelerate Energy LP, by providing physical crew; (b) did not design or build any fixed infrastructure facility; (c) does not control

operationally or commercially the vessels; and (d) does not have the technology patents.

Further, the OCG found that CH-IV International evaluated the strength of the Exmar Consortium with respect to the partnership between Exmar Marine NV and Excelerate Energy LP. However, of import is the fact that Excelerate Energy LP is not a part of the Exmar Consortium.

Also, and quite importantly, is the fact that CH-IV International, in assessing the specific experience and capabilities of the Exmar Consortium, in relation to the assignment, did not undertake an independent assessment of Exmar Marine NV's capabilities outside of its partnership with Excelerate Energy LP.

Therefore, the OCG is unable to state definitively whether Exmar Marine NV, on its own, is capable of performing the required tasks for the 'FSRU LNG Project', given that a substantial portion of its experience has been in partnership with Excelerate Energy LP.

19. The OCG has concluded that the evaluation process, which led to the recommendation to award the contract to the Exmar Consortium, was flawed. This is premised, *inter alia*, upon the following:

- i. The Technical Consultants, CH-IV International, in assessing the proposal from the Exmar Consortium, utilized information which was not presented in the Consortium's bid. In this regard, CH-IV indicated in its report that **"...information obtained from their websites demonstrate clearly the nature of the joint venture between Exmar and Excelerate in terms of development, construction, management and operation of the LNGRV fleet."**

- ii. The Technical Consultants, CH-IV International, evaluated the strength of the Exmar Consortium with respect to the partnership between Exmar Marine NV and Excelerate Energy LP. However, Excelerate Energy LP is not a part of the Exmar Consortium.
  
- iii. The Technical Consultants, CH-IV International, in assessing the specific experience and capabilities of the Exmar Consortium, in relation to the assignment, did not undertake an independent assessment of the Exmar Marine NV's capabilities outside of its partnership with Excelerate Energy LP.

Consequently, the OCG is unable to substantiate the recommendation which was made to award the contract to the Exmar Consortium based upon the flaws which have been identified above.

20. Notwithstanding the initiative of Exmar Marine NV, during 2008, there was significant sharing of information between Exmar Marine NV, Mr. Stephen Wedderburn, Mr. Conrad Kerr and Mr. Ian Moore with respect to Exmar Marine NV's lobbying for the introduction of LNG in Jamaica.

During the tenure of Mr. Ian Moore as the Chair of the PCJ Board of Directors (2007 December to 2008 November), the LNG Project was purportedly inactive. However, the documentary evidence which has been provided to the OCG suggests that Mr. Ian Moore and Mr. Stephen spearheaded an initiative to steer the GOJ's energy policy away from coal to LNG.

Consequently, the OCG found that a relationship between Mr. Bart Lavent of Exmar Marine NV, Mr. Stephen Wedderburn, Mr. Conrad Kerr and Mr. Ian Moore developed, wherein the named parties collaborated in an effort to promote LNG.

Having regard to the foregoing, the OCG is of the considered opinion that Mr. Stephen

Wedderburn's involvement in the LNG project (a) created a conflict of interest situation specifically with respect to the roles and responsibilities which were assigned to him during the tender process and (b) raised questions of impropriety and irregularity. The OCG's conclusion is also premised upon the following:

- i. Mr. Wedderburn was instrumental in developing the RFP which was issued to the prospective bidders on 2009 November 12 and 13. It should be noted that the RFP was drafted in the absence of a comprehensive project plan for the 'FSRU LNG Project'. In this regard, Mr. Wedderburn, in the Meeting of the PCJ Board of Directors, which was held on 2009 December 10, indicated that *"...the team did not really have a master plan, so it is looking for the proposals to come and then dissect from there adding that he was waiting on the proposals to guide him in terms of plans for the project..."*
- ii. Further, the RFP which was prepared by Mr. Stephen Wedderburn, and the LNG Task Force, amongst others, was alleged to have been rushed for same to be issued by 2009 November. In this regard, it was reported by Mr. Nigel Logan, the Acting Group Managing Director, PCJ, that the RFP *"...was sent to the members of the Procurement Committee by email...for the Committee to approve, for it to be sent out that same day by midnight... **the Procurement Committee of course would not have been able to meet at such short notice and essentially did not have a chance to read over the RFP,** before it went out..."*

Having regard to the foregoing, the OCG found that the RFP was not duly approved by the PCJ Procurement Committee prior to it being issued.

- iii. It was reported that Mr. Stephen Wedderburn, who was not supposed to have been involved in the process for the evaluation of the bids, was present at several of the meetings of the LNG Technical Evaluation Committee in which the Chairman, Dr. Audley Darmand, indicated that Mr. Wedderburn's

presence was necessary as he was required to develop the *'instrument of measure'*.

Of note, Mr. Stephen Wedderburn was fully aware that his involvement in the evaluation process would have been unethical as he stated in an email to Dr. Ruth Potopsingh, which was dated 2009 September 6, prior to his official re-engagement at the PCJ, *inter alia*, that "... it has already been decided that I would not be involved in the evaluation of any LNG FSRU proposals for Jamaica. I therefore hope that people are not creating a red herring out of this matter. I also note that my involvement in the Colombia project was widely known by officials of the Ministry, PCJ and JBI long before I was approached to assist with the Jamaican project..."

- iv. By way of an email which was dated 2008 January 23, Mr. Stephen Wedderburn also informed Mr. Ian Moore and Mr. Conrad Kerr, amongst others, that "...PCJ wants the Exmar proposal to be treated as the base case for the implementation of the LNG project in Jamaica..."

21. The OCG has concluded that Merrill Lynch had approached the GOJ in 2007 proposing a willingness to be a joint venture partner in developing the LNG project. However, the proposal was rejected by the GOJ.

The OCG further found that representatives from Merrill Lynch, namely, Mr. Conrad Kerr, then Global Head of LNG, Mr. Stephen Hanan and Mr. Andrew Gray (Chief Operating Officer – Latin America & the Caribbean), communicated with Mr. Stephen Wedderburn, during the period. There were several pieces of email correspondence which were identified, by the OCG, which indicated that Merrill Lynch had discussions and meetings with Mr. Bart Lavent, Director - LNG, Exmar Marine NV, with respect to the LNG Project in Jamaica.

In at least one instance, the OCG found that information was being shared on the “...existing and potential future LNG demand at the various prospective end-users in Jamaica”, between Mr. Stephen Wedderburn, Mr. Conrad Kerr, and Mr. Bart Lavent, amongst the other referenced representatives of Merrill Lynch.

Having regard to the foregoing, the OCG found that information was being shared between both Mr. Conrad Kerr and Mr. Ian Moore, who are now Directors and Shareholders of CLNG, a partner company of the Exmar Consortium, and Mr. Stephen Wedderburn, within the period of 2007 to 2008. Further, the said information was being shared with Mr. Bart Lavent of Exmar Marine NV.

The OCG is of the considered opinion that the apparent working relationship which existed between the named individuals, which involved the sharing of information regarding LNG, and the subsequent establishment of a corporate entity, CLNG, in 2009, by Mr. Conrad Kerr and Mr. Ian Moore, which is a principal member of the consortium which submitted a bid for the ‘FSRU LNG Project’, has compromised the entire LNG Project.

It is abundantly clear from the documentary evidence that both Mr. Ian Moore and Mr. Conrad Kerr, who have now partnered with the preferred bidder, the Exmar Consortium, via the formation of CLNG, were, in their then respective substantive capacities, involved in some form of information trading with a representative of Exmar Marine NV, a company which has been lobbying for the introduction of LNG to Jamaica from as early as 2006.

The OCG is of the considered opinion that the collective fact circumstances surrounding the events, meetings, networking, and subsequent business ventures which have developed between the named individuals, rises above mere coincidence and closely resembles that of a contrived and collusive collaborative effort which was driven by their knowledge of Jamaica’s prospective requirements for LNG based upon

information which was previously garnered by the named persons in their then respective employment capacities.

22. The OCG identified an email from Mr. Stephen Wedderburn, which was dated 2008 January 23, that was addressed to Mr. Stephen Hanan of Merrill Lynch, and which was copied to Mr. Ian Moore and other representatives from Merrill Lynch, in which Mr. Wedderburn stated, *inter alia*, that “...**PCJ wants the Exmar proposal to be treated as the base case for the implementation of the LNG Project in Jamaica and the proposal being developed for the Prime Minister should reflect this...**”

The foregoing statement made by Mr. Stephen Wedderburn suggests that the ‘implementation’ of the LNG Project to Jamaica was tailored in accordance with a proposal of Exmar Marine NV.

The OCG further found, by way of an email which was dated 2008 January 9, from Mr. Stephen Wedderburn to Mr. Ian Moore and Mr. Conrad Kerr, amongst other, that the Exmar Marine NV had given a presentation on “...*an adjusted proposal from Exmar...*” which was attached to the referenced email.

Having regard to the foregoing, the OCG is of the view that once the referenced proposal was used as a base-case for the implementation of the LNG Project, by whatever means, the entire ‘FSRU LNG Project’ would have been compromised and skewed in favour of Exmar Marine NV and, consequently irregular, improper and unfair to the other bidders.

23. The OCG has concluded that the Accounting and Accountable Officers within the MEM and the PCJ, whilst having knowledge of Mr. Wedderburn’s prior affiliation with Exmar Marine NV, allowed Mr. Stephen Wedderburn to (a) participate in the process which preceded the evaluation of the bids, (b) serve on the decision-making Committees/Task Forces for the ‘FSRU LNG Project’ and (c) communicate with the potential bidders during the tender process with respect to the ‘FSRU LNG Project’.

The OCG has, therefore, concluded that the Accounting and Accountable Officers of the MEM and the PCJ were complicit in their duties as it regards mitigating and/or preventing the conflict of interest situation in which Mr. Stephen Wedderburn has become embroiled.

24. The OCG has concluded that the re-engagement of CH-IV International was highly irregular, improper and breached the GOJ Public Sector Procurement Procedures.

This is premised upon the fact that (a) the NGC of Trinidad and Tobago was also a party to the 2005 contract with the PCJ and CH-IV International; and (b) the scope of work which was required by the technical consultant for the 'FSRU LNG Project' was different from the scope of work which was detailed in the 2005 contract.

Consequently, the new contract which was signed with CH-IV International, in 2010 April, included the development and utilization of a 'Review Matrix' which effectively increased the consultant's scope of works.

Having regard to the changes to the parties in the contract and the increased scope of works, the OCG is of the considered opinion that the PCJ should have initiated a new tender process for the Technical Advisors. However, having failed to undertake this new tender process, the PCJ should have, at a minimum, sought the approval of the NCC and the Cabinet with respect to the variation of the contract pursuant to Sub-section S-2040 of the GOJ Public Sector Procurement Procedures.

25. The OCG has, therefore, concluded that the re-engagement of the Technical Consultants, CH-IV International, was done in contravention of Section S-2040 of the GOJ Public Sector Procurement Procedures (2008, November).

26. The OCG has concluded that Mr. Ian Moore, on one of his official trips in March 2008, held discussions with Exmar Marine NV with respect to the introduction of LNG in Jamaica.

The OCG, having considered the information which was provided to it, herein concludes that a relationship seems to have been fostered between representatives of Exmar Marine NV, Mr. Stephen Wedderburn and Mr. Ian Moore during the period 2007 December to 2008 November, wherein, all the named parties were working together and sharing ideas on the feasibility of LNG and natural gas in Jamaica. This relationship is demonstrated by the numerous email correspondence which continued to be exchanged up to the time at which Mr. Ian Moore demitted office from the PCJ, in 2008 November, as the company's chair.

27. With respect to the role, involvement and/or affiliation of the former Chairman of the PCJ Board of Directors, Mr. Ian Moore, in the overall LNG project, the OCG has made the following determinations:

- i. During Mr. Ian Moore's tenure he actively sought to promote LNG and was in communication with Mr. Stephen Wedderburn and Mr. Bart Lavent of Exmar Marine NV.
- ii. Mr. Ian Moore's active lobbying for LNG involved the attendance of several meetings with LNG stakeholders such as Golar LNG, Merrill Lynch and Exmar Marine NV.
- iii. Mr. Ian Moore's active lobbying for LNG occurred at a time when the LNG project was officially halted as the then Minister, Mr. Clive Mullings, was pursuing coal as the preferred fuel choice for Jamaica.
- iv. Mr. Ian Moore, as the then Chairman of the PCJ Board of Directors, working in conjunction with Mr. Stephen Wedderburn, was sufficiently provided with a wealth of information regarding LNG and the prospects for LNG in Jamaica.
- v. During Mr. Ian Moore's tenure, Exmar Marine NV continued its courting of the GOJ with respect to the introduction of LNG in Jamaica.

Consequently, the OCG has concluded that Mr. Ian Moore, during his tenure at the PCJ (2007 December to 2008 November), (a) worked with Mr. Stephen Wedderburn to promote LNG in Jamaica; (b) gained a wealth of knowledge on LNG and was exposed and/or had access to the propriety information which the GOJ had in its custody with respect to LNG; (c) came into contact with representatives of Exmar Marine NV and Mr. Conrad Kerr, formerly of Merrill Lynch; and (d) participated in at least one (1) GOJ funded trip in which he held discussions with representatives of Exmar Marine NV with respect to introducing LNG in Jamaica.

28. Having regard to (a) Mr. Moore's lobbying for LNG during his tenure as Chairman of the PCJ Board of Director, and (b) the apparent mutual working relationship between Mr. Bart Lavent of Exmar Marine NV, Mr. Stephen Wedderburn and Mr. Ian Moore, several questions of impropriety and irregularity with respect to bidding process are raised.

This is premised, *inter alia*, upon the following:

- i. Approximately seven (7) months after demitting office at the PCJ in 2008 November, Mr. Ian Moore became the Majority Beneficial Shareholder of EDC LNG (now CLNG) on 2009 June 19.
- ii. The OCG found that the company Caribbean LNG (B.V.I.) Limited, the primary Shareholder of CLNG (Jamaica) Limited, was incorporated on 2009 December 22, approximately one (1) month after the issuance of the RFP for the 'FSRU LNG Project'.
- iii. The sole Shareholders of the company, Caribbean LNG (B.V.I.) Limited, are Mr. Ian Moore and Mr. Paul East.
- iv. CLNG and Promigas, another party to the Exmar Consortium, signed a MOU on 2009 July 17.

- v. CLNG and Exmar Marine NV signed a MOU on 2009 July 22.
- vi. Exmar Marine NV, Promigas and CLNG, signed a MOU replacing all other MOUs on 2010 February 15, the same day which was the deadline for the submission of the bids for the 'FSRU LNG Project'.
- vii. In 2009 June, Exmar Marine NV indicated that a meeting was held with Mr. James Robertson and the then Permanent Secretary, Ms. Marcia Forbes and EDC LNG (now CLNG) to advise the GOJ of its intent to conduct a pre-feasibility study to determine the economic and technical viability of a private project to import LNG and supply natural gas.

It is instructive to note that Mr. Ian Moore, in his response to the OCG's Requisition of 2010 December 3, indicated that EDC LNG (now CLNG) engaged an engineering firm called Bechtel Oil and Gas in 2009 July to conduct the pre-feasibility study.

- viii. EDC LNG (now CLNG) completed a pre-feasibility study in 2009 October on its own volition which was one (1) month prior to the issuance of the RFP in 2009 November.
- ix. Coincidentally, Exmar Marine NV was the only company which did not request an extension of time for submitting its bid.
- x. By way of an email which was dated 2008 January 23, Mr. Stephen Wedderburn informed Mr. Ian Moore and Mr. Conrad Kerr, amongst others, that "...PCJ wants the Exmar proposal to be treated as the base case for the implementation of the LNG project in Jamaica..."
- xi. Mr. Stephen Wedderburn, in a meeting at the PCJ Board of Directors, which was held 2009 December 10, indicated that the Team did not have a master plan for

the project and, as such, was looking for the proposals which would be received in response to the RFP to guide the plan for the project.

- xii. Mr. Conrad Kerr, a director and shareholder of CLNG, who was also in communication with Mr. Ian Moore, during his tenure as Chairman of the PCJ Board of Directors, and Mr. Bart Lavent of Exmar Marine NV, was an executive employee of Merrill Lynch at the time that Merrill Lynch had submitted a proposal to the GOJ with respect to LNG, albeit that Merrill Lynch's proposal was rejected by the PCJ.

29. Mr. Ian Moore, in his capacity as a Director and Majority Beneficial Shareholder of CLNG, indicated in his sworn response to OCG's Statutory Requisition, which was dated 2010 December 3, that "**There was no approved and/or active LNG Project during my tenure at the PCJ.** *The entire period of my tenure was consumed by an ongoing debate between the merits of coal and LNG as an energy source.*"

Mr. Moore further indicated to the OCG that "*The PCJ Board of Directors, as a whole, received recommendations from the Petroleum Corporation of Jamaica (PCJ) Procurement Committee for review and endorsement by the Board, as appropriate, and on-ward recommendation to the Ministry of Mining and Energy (MEM) PC.*"

Upon a review of the Minutes of the PCJ Board of Directors, during Mr. Ian Moore's tenure, the OCG found that the LNG Project was only mentioned in the formal Minutes of the PCJ's Board of Directors on two (2) occasions.

However, and despite the sworn assertions of Mr. Ian Moore, the OCG has seen evidence of several pieces of email correspondence, in 2008, which revealed that Mr. Ian Moore, during his tenure, was in frequent communication and attended several meetings, with Mr. Stephen Wedderburn, then Group Technical Director, PCJ, Mr. Conrad Kerr, then Global Head of LNG, and other representatives of Merrill Lynch,

Mr. Bart Lavent of Exmar Marine NV, and other individuals, with respect to lobbying for LNG in Jamaica.

In at least one instance, Mr. Stephen Wedderburn was identified as requesting information, for and on behalf of Mr. Ian Moore, regarding the “*Floating Energy Solution concept*” and, amongst other things, enquiring how long it would take for same to be delivered.

The OCG also found evidence to indicate that Mr. Stephen Wedderburn advised and updated Mr. Ian Moore in regard to developments and issues which concerned LNG, and in particular, provided Mr. Ian Moore with information which was continuously being shared between Mr. Bart Lavent of Exmar Marine NV and himself (Mr. Stephen Wedderburn).

In addition, the OCG was also provided with information from Mr. Nigel Logan, Acting Group Managing Director, PCJ, which indicated that the PCJ incurred expenses in the sum of \$24,430,345.82 and \$1,829,198.42 in the years 2007 and 2008, respectively, in regard to the LNG Project.

Irrespective of Mr. Ian Moore’s statement that “**There was no approved and/or active LNG Project during my tenure at the PCJ**”, the fact circumstances and documentation which have been provided to the OCG sharply contradict such an assertion. It is the OCG’s considered opinion that (a) since email correspondence was being exchanged between Mr. Ian Moore, Mr. Stephen Wedderburn and Mr. Bart Lavent of Exmar Marine NV, regarding the feasibility of LNG in Jamaica, (b) the PCJ was expending money during the tenure of Mr. Ian Moore, and (c) since Mr. Ian Moore was in fact copied on certain emails, he would have been privy to ongoing considerations and discussions. In this regard, Mr. Moore’s assertions raise serious questions regarding the credibility of such a response and whether the LNG was in fact inactive as has been suggested.

30. For the period of 2003 to 2010, the PCJ expended a total of \$251,408,280.88 with respect to the LNG Project.

It is instructive to note that of this amount, an aggregated value of \$16,345,677.61 was expended on *'Travel Expenses (Foreign)'* and \$212,353,624.67 was spent on *'Consultancy Fees (Foreign)'*.

Further, of the \$212,353,624.67 which was expended on *'Consultancy Fees (Foreign)'* Mustang Engineering was paid \$96,608,451.25 between the period of 2005 to 2007. It is instructive to note that the FEED Study which was undertaken by Mustang Engineering was for a *'land-based facility'* and not the *'FSRU LNG Project'*.

Pursuant to the 2010 April 8 contract between PCJ and CH-IV International, Mr. Nigel Logan, Acting Group Managing Director, PCJ, in his response to the OCG's Statutory Requisition, which was dated 2011 February 15, indicated, *inter alia*, that the contract "... is for US\$387,000 of which **US\$425,923.02** has been paid."

31. Given the fact that during Mr. Ian Moore's tenure the official GOJ Energy Policy was geared towards coal, and Mr. Ian Moore's sworn assertion that "**There was no approved and/or active LNG Project during my tenure at the PCJ**", the OCG is unable to determine (a) on whose behalf Mr. Stephen Wedderburn and Mr. Ian Moore were working in all instances; and (b) under whose Authority both gentlemen were sharing information and/or correspondence with, *inter alia*, Mr. Conrad Kerr and Mr. Bart Lavent of Exmar Marine NV.

Consequently, the OCG is unable to determine under whose authority and for whose benefit Mr. Stephen Wedderburn and Mr. Ian Moore were acting given (a) that several of the referenced correspondence were not shared with any other Accounting and/or Accountable Officers of the PCJ and/or the MEM, (b) the curious and seeming conspiratory circumstances surrounding the Exmar Consortium's exposure to information, (c) the timing and formation of CLNG and (d) the fact that CLNG, in

conjunction with Exmar Marine NV, were sufficiently poised to have completed a feasibility study one month prior to the issuance of the RFP by the PCJ.

However, the OCG found at least one (1) instance in which both Mr. Ian Moore and Mr. Stephen Wedderburn, while on an official GOJ trip, met with representatives of Exmar Marine NV and shared information with respect to the promotion of LNG.

32. Having regard to any questions in respect of (a) insider information trading; (b) bid rigging and/or (c) corruption, the OCG has made, *inter alia*, the following determinations:

- i. As previously highlighted, Exmar Marine NV was placed at a distinct advantage based upon (a) its 2007 Mandate with the GOJ; (b) the prior sharing of information with Mr. Stephen Wedderburn and Mr. Ian Moore between 2007 and 2008; (c) work which was undertaken in 2007; and (d) the pre-feasibility study which was undertaken in 2009 October.
- ii. During Mr. Ian Moore's tenure (2007 December – 2008 November) there were several pieces of email correspondence between Mr. Bart Lavent of Exmar Marine NV, Mr. Stephen Wedderburn, Mr. Ian Moore, and Mr. Conrad Kerr then of Merrill Lynch. In the referenced correspondence, all parties were privy to information on LNG and it appears that they were collectively working to introduce LNG in Jamaica.
- iii. Two (2) of the parties who were privy to the above referenced correspondence, namely, Mr. Ian Moore and Mr. Conrad Kerr, subsequently formed a company, EDC LNG (now CLNG) in 2009 June.
- iv. The referenced company was formed approximately seven (7) months after Mr. Ian Moore demitted office.

- v. Mr. Ian Moore, as the then Chairman of the PCJ Board of Directors would have been privy to all the information with respect to LNG which was in the possession of the PCJ.
  
- vi. Mr. Stephen Wedderburn, who was in prior communication with Exmar Marine NV and who, by all accounts, had a working relationship of some sort with Exmar Marine NV (a) was a key person responsible for the drafting of the RFP; (b) in communication with the bidders throughout the tender period; (c) was assisting the Evaluation Committee to develop the *'instrument of measure'*; (d) had communicated on more than one occasion that Exmar Marine NV was his number one ranked company in the FSRU industry; and (e) had on several occasions recommended that the formal procurement process be undermined and/or bypassed in the name of expediency.

Based upon the foregoing determinations, the OCG is of the considered view that the referenced matter is one which presents adequate evidence which would demand that further investigations and consultations be undertaken by the State's law enforcement and criminal prosecutorial agencies with the objective of determining whether Mr. Ian Moore, Mr. Stephen Wedderburn and/or Mr. Conrad Kerr, and/or any other Public Official/Officer or person, conspired or attempted to use insider information and/or proprietary information to enure a benefit to themselves and/or to any person or entity with which they were/are associated and/or in which they had or may have a pecuniary interest.

### **Referrals**

The OCG, in the conduct of its Investigation, is required to be guided by Section 21 of the Contractor-General Act.

**Section 21 of the Contractor-General Act** provides as follows:

**"If a Contractor-General finds, during the course of his Investigations or on the conclusion**

**thereof that there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body, he shall refer the matter to the person or persons competent to take such disciplinary or other proceeding as may be appropriate against that officer or member and in all such cases shall lay a special report before Parliament.”** (OCG’s Emphasis)

1. Pursuant to the mandatory statutory obligations which are imposed upon a Contractor General by Section 21 of the Contractor General Act, the OCG is hereby formally referring a copy of this Report to the Learned Director of Public Prosecutions, the Auditor General and the Financial Secretary in the MOFPS, for them to determine and to advise what steps may be taken to hold to account the Accounting and/or the Accountable Officers within the MEM and the PCJ, with respect to certain irregularities and improprieties, in the planning, conceptualization and implementation of the ‘FSRU LNG Project’, which were identified by the OCG during the course of its Investigation.

This Referral is being made having regard to the identified breaches of the Revised GOJ Public Sector Procurement Procedures Handbook (2008 November) and, in consequence, the breaches of the attendant Public Sector Regulations which were promulgated in 2008 December, which resulted from the referenced irregularities and improprieties.

The Referral is being made on the basis that there is sufficient *prima facie* evidence which is contained herein and, more particularly and importantly, in the sworn statements that were furnished to the OCG by the relevant Respondents, to suggest, *inter alia*:

- a. That the entire tender process for the ‘FSRU LNG Project’ has been compromised, brought into disrepute and tainted by a conflict of interest and a gross lack of objectivity and impartiality due to (i) Mr. Stephen Wedderburn’s prior associations with certain named contractors, (ii) Mr. Wedderburn’s demonstrated bias towards Exmar Marine NV, and (iii) the critical role which was played by Mr. Wedderburn in the ‘FSRU LNG Project’, as has been evidenced by, *inter alia*, certain email correspondence which was either written by and/or sent to Mr. Stephen Wedderburn.

Having regard to the foregoing, the OCG is also of the considered opinion that Mr. Stephen Wedderburn's actions were professionally unethical and constituted a conflict of interest and, in consequence, constituted a breach of Sub-Section S-1040 of the Revised GOJ Public Sector Procurement Procedures (2008 November).

Sub-Section S-1040 of the Revised GOJ Public Sector Procurement Procedures (2008 November) provides, *inter alia*, as follows:

*“CONFLICT OF INTEREST*

*All personnel involved in handling a procurement process are expected to observe the GOJ Code of Conduct for Civil Servants outlined in the Staff Orders and to be free of interests or relationships that are actually or potentially detrimental to the best interests of GOJ and shall not engage or participate in any transaction involving a company, its affiliates, divisions or subsidiaries in which they have even minor interests.*

*Any GOJ personnel involved in a procurement process that has assumed, or is about to assume, a financial or other outside business relationship that might involve a conflict of interest, must immediately inform their supervisors in writing of the circumstances involved. This information is to be reviewed at an appropriate level for a decision whether a conflict of interest is present, and if so, what course of action will be taken.”*

- b. That the re-engagement of the Technical Advisors, CH-IV International, in 2010 April, was undertaken, without the stipulated approvals, in contravention of Sub-section S-2040 of the Revised GOJ Public Sector Procurement Procedures Handbook (2008 November) and, in consequence, in contravention of the attendant Public Sector Regulations which were promulgated in 2008 December.

Sub-Section S-2040 of the Revised GOJ Public Sector Procurement Procedures (2008

November) provides, *inter alia*, as follows:

***“EXPENDITURE AUTHORITIES***

*The expenditure authorities required before a Procuring Entity may enter into a contract are currently as follows:*

<b><i>Threshold</i></b>	<b><i>Authority</i></b>
<b><i>J\$10,000,000 and below</i></b>	<i>The Accounting Officer/Head of Entity shall approve subject to procedures included herein.</i>
<b><i>Above J\$10,000,000 – J\$30,000,000</i></b>	<i>The Accounting Officer/Head of Entity shall endorse on the recommendation of the NCC.</i>
<b><i>Above J\$30,000,000</i></b>	<i>Cabinet, on the recommendation of the NCC and the Accounting Officer/Head of Entity shall approve.</i>

*The threshold values above relate to gross amount payable to contractors. These figures will be revised from time to time as approved by Cabinet.”*

- c. That in respect of a document which was entitled “*Framework for Review and Evaluation of Proposals*”, which was dated 2010 February 12 and the subsequent use of a “*Review Matrix*” to evaluate the proposals which were received for the ‘FSRU LNG Project’, the OCG was not provided with, nor has it seen, any evidence to suggest that the referenced ‘*Review Matrix*’, which was designed by the Consultants, CH-IV International, for and on behalf of the PCJ, was issued to the potential bidders, via an Addendum or otherwise, prior to the submission deadline.

The non-disclosure of same, to the bidders, is in contravention of Sub-Section No. S-3100 of the GOJ Public Sector Procurement Procedures (2008 November), which provides that:

**“All adopted sub-criteria should be specified in the RFP... If points allocated to these sub-criteria are not disclosed in the RFP, the Evaluation Committee should allocate them before proposal submission, to reduce the risk of manipulations during the evaluation process...”** Consequently, the OCG found the foregoing to be irregular and in breach of the GOJ’s Public Sector Procurement Guidelines and Regulations.

- d. That the OCG has found no evidence to suggest that Mr. Stephen Wedderburn disclosed his relationship with Mr. Joseph Fossella, a sub-contractor of CH-IV International, who was actively involved in the Evaluation of the Bids for the ‘FSRU LNG Project’.

It is important to note that Section 36 (1) of the Public Sector Procurement Regulations (2008 December) imposes a duty upon **“...any public officer directly or indirectly involved with the procurement process and particularly in the preparation of bidding documents, evaluation, contract negotiations and contract management and payments** to-(a) declare to the head of his entity or chairman of the entity's procurement committee any potential conflict of interest in relation to a proposed Government contract;(b) **declare to the head or chairman, any relationship with a bidder, supplier, contractor or consultant and refrain from taking part in either the decision making process or the implementation of any prospective Government contract where such a relationship exists.** (OCG Emphasis)

The OCG, is of the considered opinion, that it is within the purview of the Director of Public Prosecutions, the Auditor General and the Financial Secretary, in the Ministry of Finance and the Public Service (MOFPS), to determine and to advise what appropriate and/or applicable actions may be taken or initiated against the representatives of the

MEM and the PCJ, having regard to all of the circumstances of the case.

In the foregoing regard, it is of critical import to note the following sections of the Public Sector Procurement Regulations:

*39. A person who-(a) contravenes any provision of these Regulations;(b) aids, abets, counsels or procures the contravention of any such provision;(c) is knowingly involved in or is a party to any such contravention;(d) conspires with any other person to contravene any such provision, is liable in damages for any loss caused to any other person by such conduct. Civil liability.*

*40. A person who-(a) contravenes these Regulations; or (b) aids, abets or otherwise knowingly facilitates or is an accessory to the contravention of these Regulations, commit an offence and is liable, on summary conviction in a Resident Magistrate's Court, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding three months or to both such fine and Offences and penalties.*

2. Pursuant to the mandatory statutory obligations which are imposed upon a Contractor General by Section 21 of the Contractor General Act, the OCG is hereby formally referring a copy of this Report to the Commissioner of Police and the Learned DPP for them to undertake such further investigations, as they may deem to be appropriate, into the actions of Mr. Ian Moore, Mr. Stephen Wedderburn and Mr. Conrad Kerr with respect to the multiple irregularities and improprieties which have been identified by the OCG during the course of its Investigation and which have been documented herein.

In particular, the matter is being referred to the Commissioner of Police and the DPP for them to determine whether Mr. Ian Moore and/or Mr. Stephen Wedderburn used their respective Public Offices in a conspiratory, fraudulent, corrupt, clandestine and/or surreptitious manner to enure a future illicit benefit for themselves, Caribbean LNG (Jamaica) Limited and/or the Exmar Consortium through, *inter alia*, the irregular utilization of proprietary insider information and/or through the exhibition of a bias or

preferential treatment towards Exmar Marine NV, in the referenced tender process for the 'FSRU LNG Project'.

The investigations should, among other things, specifically seek to determine whether there was a conspiracy or agreement between Mr. Ian Moore and/or Mr. Stephen Wedderburn and/or any or all of the named persons to facilitate, *inter alia*, what could be the possible commission, on the part of any and/or all of them, of an act or acts of corruption, contrary to Section 14 of the Corruption Prevention Act, or to otherwise determine if Mr. Ian Moore and/or Mr. Stephen Wedderburn and/or any or all of the named persons may have committed or aided and abetted an act or acts of corruption or other criminal offence.

3. Pursuant to the mandatory statutory obligations which are imposed upon a Contractor General by Section 21 of the Contractor General Act, the OCG is hereby formally referring a copy of this Report to the Learned Director of Public Prosecutions (DPP) for such further action as she may deem to be appropriate on the basis that the OCG has found that there is sufficient evidence which is contained herein and, more particularly and importantly, in the sworn statements that were furnished to the OCG by the relevant Respondents, to suggest that the PCJ and, more precisely, its lawful Accounting Officer, Mrs. Hillary Alexander, aided and abetted by Mr. Stephen Wedderburn, caused a Government contract to be irregularly, improperly and unlawfully awarded to CH-IV International, in contravention of the approval requirements of the RPPH and, consequently, in contravention of the Public Sector Procurement Regulations which make such breaches a criminal offence.

It is instructive to note that the Public Sector Procurement Regulations were promulgated with the approval of the Cabinet of the Government of Jamaica, effective 2008 December, with the intent of giving legal force to, and imposing criminal sanctions for, breaches of the GOJ's Procurement Rules.

The OCG has found that the 2010 April contract which was awarded to CH-IV

International, by the PCJ, was awarded in breach of Subsection S-2040 of the RPPH. These are the applicable provisions which govern the approval requirements which were applicable to the award of a contract to CH-IV International. Further, the OCG has found that CH-IV had already begun to evaluate bids for the 'FSRU LNG Project' prior to the signing of a formal contract on 2010 April 8.

The evidence which was provided to the OCG indicates that the PCJ failed to secure the necessary prior approvals of the NCC which would have been required for the increase in the scope of works which the Technical Consultants were re-engaged to provide.

Section 7 of the Public Sector Procurement Regulations provides as follows:

*"7. Tender Proceedings for prospective government contracts shall be conducted according to the procedures outlined in the Handbook, as amended from time to time, and more particularly for the purposes of these Regulations the procedures as regards-*

- (a) invitations to tender;*
- (b) qualification of suppliers;*
- (c) requirements for the publicising of bid Opportunities and Contracts;*
- (d) receipt and opening of bids;*
- (e) bid validity; and*
- (f) bid evaluation"*

Section 40 of the Public Sector Procurement Regulations provides as follows:

*"40. A person who-*

- (a) contravenes these Regulations; or*
- (b) aids, abets or otherwise knowingly facilitates or is an accessory to the contravention of these Regulations, commit an offence and is liable, on summary conviction in a Resident Magistrate's Court, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding three months or to both such fine..."*

4. Pursuant to the mandatory statutory obligations which are imposed upon a Contractor General by Section 21 of the Contractor General Act, the OCG is hereby formally referring a copy of this Report to the Attorney General, for her to determine whether the members of the PCJ Board of Directors and/or the respective Accountable Officers within the MEM and/or the PCJ, were complicit in their statutory obligations by allowing Mr. Stephen Wedderburn to be integrally involved in the tender process for the 'FSRU LNG Project' despite his prior disclosure of having had commercial dealings with Exmar Marine NV.

The OCG has found that there is evidence which is recorded herein and, more particularly and importantly, in the sworn statements that were furnished to the OCG by the relevant Respondents, which would suggest that there was, *inter alia*, a breach of duty on the part of the then PCJ Board of Directors, in contravention, *inter alia*, of Sections 17(1) (a) and (b) and 6 of the Public Bodies Management and Accountability Act.

It is instructive to record that Sections 6 and 17 of the Public Bodies Management and Accountability Act impose certain specific responsibilities upon the Board of Directors of Public Bodies as well as Board Members themselves.

Had these and other responsibilities been fully discharged in the instant matter, the affairs of the PCJ and, in particular, the tender process for the 'FSRU LNG Project', would not have been shrouded in the appearance of unethical and/or improper practices.

It is particularly important to record that Boards of Directors of Public Bodies are appointed, *inter alia*, to efficiently and effectively manage the affairs of Public Bodies and to ensure the accountability of all individuals who manage and administer the affairs and resources of the said Public Bodies.

**Section 6 of the Public Bodies Management and Accountability Act** provides, *inter alia*, as follows:

*“6. Every board shall-*

*(a) take such steps as are necessary-*

*(i) for the efficient and effective management of the Public Body;*

*(ii) to ensure the accountability of all persons who manage the resources of the Public Body;*

*(b) develop adequate information, control, evaluation and reporting systems within the body;*

*(c) develop specific and measurable objectives and performance targets for that body;*

*(d) advise the responsible Minister on matters of general policy relating to the management of the body”.*

**Section 17 (1) of the Public Bodies Management and Accountability Act** provides, *inter alia*, as follows:

*17- (1) “Every director and officer of a Public Body shall, in the exercise of his powers and the performance of his duties-*

*(a) act honestly and in good faith in the best interests of the Public Body; and*

*(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances including, but not limited to the general knowledge, skill and experience of the director or officer.*

**Section 25 of the Public Bodies Management and Accountability Act** provides, *inter alia*, as follows:

*25. (1) If the Court is satisfied on an application by the Attorney-General that any person has contravened any of the provisions of-*

*(a) section 4 (acquisition of shares and payment of dividends);*

*(b) section 5 (exercise of borrowing powers);*

*(c) section 6 (corporate governance);*

*(d) section 14 (general duties of auditors);*

*(e) section 15 (failure to furnish information to auditor);*

- (f) section 20 (levels of emoluments);
- (g) section 21 (restriction on formation of new companies),

*the Court may exercise any of the powers referred to in subsection (2).*

*(2) The Court may-*

- (a) order the person concerned to pay to the Crown such pecuniary penalty not exceeding one million dollars; or*
- (b) grant an injunction restraining that person from engaging in conduct described in subsection (1).*

*(3) In exercising its powers under this section the Court shall have regard to*

- a) the nature and extent of the default;*
  - (b) the nature and extent of any loss suffered by any person as a result of the default;*
  - (c) the circumstances of the default;*
  - (d) any previous determination against the person concerned.*
- (4) If in the opinion of the Attorney General there is a contravention of section 7, 8 or 9, he may make an application to the Court and the provisions of subsections (1), (2) and (3) shall apply in relation thereto.*

## **Recommendations**

Section 20 (1) of the Contractor-General Act mandates that “*after conducting an Investigation under this Act, a Contractor-General shall, in writing, inform the principal officer of the public body concerned and the Minister having responsibility therefore of the result of that Investigation and make such Recommendations as he considers necessary in respect of the matter which was investigated.*” (OCG Emphasis)

In light of the foregoing, and having regard to the Findings and Conclusions that are detailed herein, the OCG now makes the following considered Recommendations:

1. The OCG must strongly recommend that the current tender process for the 'FSRU LNG Project' be immediately and summarily aborted and a new OCG supervised and scrutinized process be undertaken by the PCJ and the MEM.

The foregoing Recommendation is one which is buttressed by the OCG's unearthing of overwhelming and incontrovertible evidence which is indicative, *inter alia*, of a lack of transparency, the absence of fairness, and a glaring demonstration of impropriety and irregularity in the circumstances which surrounded the bidding process for the referenced FSRU LNG Project. The OCG's Recommendation is also founded upon the conflict of interest issues, and the documented bias and preferential treatment, which were displayed by Mr. Stephen Wedderburn in favour of the '*preferred bidder*', Exmar Marine NV – a company with which Mr. Wedderburn had himself declared that he had a previous working relationship, as well as a pecuniary interest which was predicated upon the success of an Exmar Marine NV related project which was to be executed in Colombia.

2. The OCG must recommend that Accounting and/or Accountable Officers should scrupulously adhere to the GOJ Procurement Guidelines and Regulations in the award of contracts.

Further, the OCG must also highlight and recommend that in instances in which approval for the award of a Government contract is being granted by an Accounting and/or Accountable Officer, any such approval must be given within the parameters of the established GOJ procurement and accounting procedures.

3. The OCG recommends that in instances in which a Public Body has identified that there is a breach of the procurement procedures, the responsible agency should seek to remedy the said breach in an expeditious and effective manner, as opposed to continuing with the implementation of the project in violation of applicable GOJ Public Sector Procurement Procedures, the Regulations and other governing laws.

4. The OCG also feels compelled to strongly recommend that the Cabinet should move with expedition to develop and to implement a comprehensive and over-riding policy to be applicable to all Public Body Boards, to govern, restrict or prohibit, for a specified time, as the case may be, the award of Government contracts (or the divestment of publicly owned assets) by a Public Body, to former members of its Board of Directors, or to any entity in which a former Board member may have a pecuniary interest.
  
5. Transparency, the appearance of fairness and the need to avoid the possibility of a conflict of interest, in the public procurement process, require that there should be, among other things, a distinct separation of the Public Officials and Officers who sit and vote on a Public Body's established Procurement Committee with respect to a particular procurement, and the Officials and Officers who grant final approval for the procurement.

Consequently, the OCG recommends that these considerations should be borne in mind when appointing persons to the PCJ's Board of Directors, the PCJ's Evaluation Committee, the PCJ's Procurement Committee and any other established PCJ Committee, so as to ensure that the highest possible degree of integrity and objectivity in the execution of the respective functions of the said Committees is attained.

6. The OCG is compelled to remind Public Officials who are involved in the procurement process that they are required to uphold the highest standards of ethical conduct, and to observe the GOJ's Code of Conduct for Civil Servants which is outlined in the Staff Orders. Above all, Public Officials should, at all times, remain free of interest in relationships that could be potentially detrimental to the best interests of the GOJ.

Consequently, Public Officials should not participate and/or engage in any GOJ process which is related to a transaction which is to be executed between the GOJ and a company or entity, or its associated affiliates, divisions or subsidiaries, in which the Public Official has an interest.

Further, Public Body individuals who are involved in the procurement process should

disclose any personal or other relationships and interests which they may have with a bidder, supplier, contractor and/or consultant. Pursuant to Section 4, Volume 1, of the Revised GOJ Public Sector Procedures (2010 October), such Public Body individuals should not take part in either the decision-making process, or the implementation of any contract, where any such relationship or interest exist.

7. Heads of Ministries, Departments and Agencies who are aware that a Public Officer is in a conflict of interest situation are strongly recommended to take the necessary action, in accordance with applicable administrative procedures, to remove such an officer from the conflicted situation. Such action will ensure legitimacy and good governance in the administration and management of the GOJ's procurement process and the GOJ's affairs.
8. The OCG believes that it is timely to remind all Public Officials/Officers, who abuse their office and authority for personal gain and/or for the benefit of others, that there are circumstances in which such conduct is likely to rise to the level of a criminal act of corruption. The provisions that are contained in Section 14 (1) (b) of the Corruption Prevention Act are instructive in this regard. They provide simply that "*A public servant commits an act of corruption if he, in the performance of his public functions, does any act or omits to do any act for the purpose of obtaining any illicit benefit for himself or any other person*".

An act of corruption is punishable upon summary conviction in a Resident Magistrate's Court, in the case of a first offence, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment; and in the case of a second or subsequent offence, to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment;

Upon conviction in a Circuit Court, an act of corruption is punishable, in the case of a first offence, to a fine not exceeding five million dollars or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment; and in the case of a

second or subsequent offence, to a fine not exceeding ten million dollars, or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

9. The OCG wishes to strongly reiterate a recommendation that it has previously made that the GOJ should implement and adopt an anti-corruption measure to impose the following mandatory requirements as a part of the its contracting and procurement processes:

- i. All Private Entities that are desirous of bidding or tendering on Government contracts which exceed \$275,000 in value and/or who are part of a ‘Consortium’ which is bidding on a Government contract should be required to disclose sworn particulars of all of its beneficial owners.
- ii. A “**Private Entity**” should be deemed to be an entity which is not a publicly listed company or corporation but which is a privately owned or held sole-tradership, partnership, cooperative, company, corporation, trust, business association or other entity.
- iii. The particulars which should be required to be disclosed should include:
  - a) The name(s) of the beneficial owner(s) of the Private Entity;
  - b) The title(s) of the beneficial owner(s);
  - c) The current nationality(ies), address(es) and telephone number(s) of the beneficial owner(s);
  - d) The nature, share or percentage of the owner’s beneficial interest in the Private Entity;
  - e) The date(s) on which the beneficial interest in the Private Entity was acquired.

- iv. The Disclosure requirement should be a standard component and ‘Responsiveness Criterion’ for all GOJ Tender Documents, Requests for Proposals and Invitations to Tender, such that any Tender or Bid which is unsupported by the Disclosure will be rendered non-responsive and invalid and, thus, null and void.
  - v. The particulars of beneficial owners should be required to be declared and certified before a Justice of the Peace or a Notary Public, to be complete, accurate and truthful. If a false statement or declaration is made in any Disclosure Form, the maker thereof should be deemed to have committed a criminal offence.
10. Finally, it is recommended that the Ministry of Finance and the Public Service should issue a Circular to all Public Bodies, Departments and Agencies of Government, to advise that a Contractor General, pursuant to Section 4 of the Contractor General Act, has lawful jurisdiction over the award and implementation of **all** government contracts, to ensure merit, impartiality, propriety and regularity in the said award, irrespective of whether any such contracts have been exempted, by the Government, from the purview of its procurement guidelines.

## **Special Note and Recommendation**

The OCG, in the conduct of the referenced Statutory Investigation, has been faced with what is best described as a seemingly debilitating and potentially costly obstacle in the execution of its statutory mandate to “*ensure*”, *inter alia*, that Government contracts are awarded impartially and on merit, and in circumstances which do not involve impropriety or irregularity.

In the discharge of its statutory mandate, the OCG, in 2010 June, had highlighted certain inherently critical and fundamentally flawed occurrences in the formal tender process for the ‘FSRU LNG Project’ which was being undertaken by the PCJ/MEM.

The OCG’s concerns and suspicions were articulated in its Formal Letters of Enquiry which were addressed to the Accounting and Accountable Officers of the MEM and the PCJ, and which were dated 2010 June 22, regarding the ‘FSRU LNG Project’.

However, and despite the OCG’s documented concerns that the good governance tenets of public contracting, which have been imposed by Parliament upon Public Bodies and Public Officers, were being violated, a seemingly cavalier and arbitrary decision was nevertheless taken by the current GOJ Administration to proceed with the tender process for the ‘FSRU LNG Project’, without any due consideration whatsoever being given to the stated OCG concerns.

Indeed, it is instructive to note that, on 2010 July 1, an article was published on the Radio Jamaica website which was entitled “*LNG deal with Exmar stands – Golding*”. The referenced media article indicated as follows:

*“The Prime Minister has declared that the government will not stop the push for a cheaper energy alternative to oil.*

*This is despite the Contractor General's probe of the award of the contract to the Exmar Consortium to supply Liquid Natural Gas (LNG) to Jamaica.*

*“Greg Christie (Contractor General), God bless him, says he wants to scrutinize the whole transaction to see how we got to where we got to and I say yes, we welcome that.*

*But in the meanwhile, we need to get cheaper energy to the productive sector, so you go on looking at it but we’re going to continue negotiating because we want to get this in place as quickly as possible,” Mr. Golding said.”*

Further, on 2010 July 2, an article was published in the Jamaica Gleaner, which was entitled “LNG financing, supplies unsettled”. The referenced media article indicated, *inter alia*, as follows:

*“The consortium will absorb all the financial risk, with no backing from Jamaica, neither in the form of capital or loan guarantees, Energy Minister James Robertson affirmed.*

*Jamaica, however, has put \$1 billion into the LNG plan, some of it funding from multilateral sources, according to Robertson and acting managing director of the Petroleum Corporation (PCJ) of Jamaica Nigel Logan.*

*Robertson, who along with the consortium members, met Tuesday with **Gleaner** editors, said the project is unlikely to enter its mobilisation phase before January 2011, but that the supply contracts should be tied down by year end.*

*The contractor general's probe of the procurement process, including the role of former PCJ chairman Ian Moore - a director of CLNG - in the selection of the Exmar consortium, will not slow the negotiations nor the project, Robertson said.”*

For the avoidance of doubt, it must be recalled, and emphasized, that the OCG is an Independent, Quasi-Judicial Anti-Corruption Commission of the Parliament of Jamaica, which was established by law, for the purposes of ‘ensuring’, among other things, probity, competition, transparency, accountability, and value for money in the award of Government of Jamaica contracts and, to that end, is empowered to monitor and to investigate the award of Government contracts.

However, it is well known that the OCG has no powers under the law to enforce its own recommendations, or to bring to a halt a Government procurement or contracting process which it has good reason to believe is exhibiting signs of corruption, impropriety or irregularity.

The inescapable question which must be forcefully asked, therefore, is what good purpose is served by maintaining, in place, a Commission of the Contractor General, at a cost to the Jamaican taxpayer which is currently in excess of \$180 million per annum, if the considered concerns, recommendations, injunctions and/or findings of the OCG can be summarily and arbitrarily ignored by the Executive arm of the State, the very authority which the OCG was established to monitor and to investigate?

Is it that the OCG was intended by the Executive and Legislative arms of the Jamaican State to be a toothless bulldog?

Or is it that Parliament, in enacting the Contractor General Act, and by requiring a Contractor General to swear to a solemn Oath to “*ensure*” that Government contracts are awarded ‘*impartially and on merit and in circumstances that do not involve impropriety or irregularity*’, was being insincere in its injunction by virtue of the simple fact that it has refused and/or has failed to date to give to the Contractor General the very tools and powers which he obviously requires to enable him to effectively discharge and to enforce his mandate?

It is respectfully submitted that these are very serious and critical questions in respect of which the taxpayers of Jamaica must demand, and should be provided with, credible and responsible answers, not only from the incumbent Administration, but also from the State.

It is against this background, and having regard to the substantive Findings which are embodied in this Report of Investigation, as well as in light of the considered Conclusions and Recommendations that are detailed herein, that the OCG now feels compelled to once again reiterate its Recommendation that the powers with which it is imbued, under the Contractor General Act, be significantly strengthened to, among other things, empower a Contractor General to bring to a halt a Government procurement, contract award or asset divestment process

which is, in the OCG's considered view, exhibiting patent signs of impropriety, irregularity or corruption.

There is nothing which is untoward or exceptional about the OCG's recommendation that the Contractor General Act should be amended and strengthened for the purposes of giving the Commission the power to halt a Government contracting activity, pending the outcome of an Investigation, nor is the OCG's posture one which should be considered as being ill-conceived.

Indeed, a similar power, for a national procurement regulatory commission, has been proposed for consideration by the Trinidad and Tobago Legislature, in the "*Draft Legislative Proposal for an Act to be called Public Procurement and Disposal of Public Property Act, 2010*".

Section 13 (4) of the referenced Draft Bill provides that "*The Commission upon hearing the parties to a transaction may direct the suspension of the procurement process pertaining to a transaction pending the outcome of an investigation and in so doing shall provide reasons.*"

Consistent with the foregoing draft provision, it is widely known that the OCG, in Jamaica, upon or before the initiation of a major Investigation, will publicly provide detailed and cogent reasons for the recommendations which it makes to the Government to halt an irregular procurement. Such disclosures are deliberately made by the OCG, out of an abundance of caution, to ensure, among other things, that its reasons for initiating an Investigation are not only well founded, but can withstand public scrutiny, should the need arise.

This strategic OCG measure was exhibited as recently as 2011 January in respect of the GOJ's then Proposed Sale of the Sandals Whitehouse Hotel to the Gordon 'Butch' Stewart led Sandals Group.

However, and despite the OCG's 22 page documented reasons for making its Recommendations to halt the proposed divestment, and to restart the same under the direct monitoring supervision of the OCG as is required by law, the OCG's Recommendations were summarily set aside by the incumbent Administration which declared that the Sale would proceed despite the OCG's

expressed concerns, positions and Recommendations.

To further compound the matter, it was also indicated by the Administration that such Recommendations from the OCG were immature because the OCG's Investigation was not yet completed.

This raises another curious question as to whose interests are being served when an Administration is allowed to proceed with a Government contracting activity which is presumed to be irregular, improper or corrupt, by simply stating that it, the Administration, will act after the OCG's Investigation therein is completed, when it knows full well that the horse would have already bolted from the gate and that no effective remedial actions can be taken after the fact.

It is also instructive to note that, in 2010 July, the OCG was faced with a similar challenge regarding its Investigation into the divestment of a lucrative state asset, namely the divestment of the GOJ's 45% stake in JAMALCO to the Chinese firm Zhuhai Hongfan.

In the referenced case, the OCG detailed at least five (5) major considerations, which, when taken together, raised very serious questions about transparency, value for money, competition and a potential conflict of interest, amongst other concerns, in respect of the proposed asset divestment.

However, and despite the foregoing expressed concerns, it was reported in the Jamaica Observer newspaper on Wednesday 2010 June 9, as follows:

*“Responding to questions from the Opposition spokesman on energy Phillip Paulwell yesterday, Robertson said that the Government had no plan to halt the negotiations despite the (OCG's) investigation.*

*"The Government has entered into a legally binding contract and we will not be halting. We will be co-operating fully with the contractor general. We are not in a position to halt, we have entered into a contract and it is a very good contract in the interest of the*

*country," Robertson told Paulwell."*

Not surprisingly, the fact is that the Government has since reportedly abandoned its so called "*legally binding contract*" with Zhuhai Hongfan, a development which will be publicly addressed by the OCG when it formally completes and submits its Special Report of Investigation into the matter.

Be that as it may, in the instant matter of the 'FSRU LNG Project', the OCG's Findings, Conclusions and Recommendations are not only well founded in fact and in reason, but they are also buttressed by the independent Legal Opinions which were solicited by the Administration, at additional and unnecessary cost to the Jamaican taxpayer, from the private law-firm of Livingston, Alexander and Levy.

Further, and as is now known, the Livingston, Alexander and Levy Opinions have also received the support of the Government's own attorney, the Solicitor General.

The referenced Opinions are not only highly indicative of those of the OCG's expressed concerns which were communicated to the Government from as early as 2010 June 22, but they also fully support the OCG's formal recommendation, which was made to the MEM, at the MEM's request, by way of letter which was dated 2010 November 16, wherein the Government was urged by the OCG to "*summarily and immediately abort the subject process*". It is critical to note that the referenced OCG letter was copied to the Honourable Prime Minister, the Honourable Minister of Energy and Mining, the MEM Permanent Secretary and the Group Managing Director (Acg.) of the PCJ.

The Legal Opinions also lend legitimacy to the OCG's call for the Commission of the Contractor General, in the public interest, to be urgently endowed with the power to halt the award of a GOJ contract when signs of irregularity or impropriety are being exhibited.

When fully contextualized, it is now crystal clear, from the matters that are set out herein, that the circumstances which surround the development, tender and approval for the award of a contract for the 'FSRU LNG Project', are such that they cannot, whether individually or collectively, withstand public scrutiny and/or any measure for probity.

In the final analysis, it must be said that had the warnings, concerns and/or considered Recommendation of the OCG been heeded by the Administration when they were formally communicated on 2010 June 22, and again on 2010 November 16, and had the Government responded then by halting the tender process for the FSRU LNG Project, and taken the decision to immediately restart same under the supervision of the OCG, the massive losses which the Jamaican taxpayer will now have to bear in consequence, *inter alia*, of the delayed restart of the 'FSRU LNG Project', would have been entirely avoided.

## **TERMS OF REFERENCE**

The primary aim of the OCG's Investigation was to ascertain, *inter alia*, the following:

1. The propriety of the procurement process, which was undertaken by the PCJ, and which led to the recommendation to enter into negotiations with the selected '*preferred bidder*', the Exmar Consortium, for the proposed 'FSRU LNG Project'.
2. The role, involvement and/or affiliation, if any, of the former PCJ Board Chairman, Mr. Ian Moore, in the overall LNG Project, in particular, the conceptualization, planning and/or implementation of the proposed 'FSRU LNG Project', during his tenure on the Board of Directors and subsequent to his dismissal from the Board of Directors in 2008.
3. The link, if any, between the creation, incorporation and operation of the '*local*' company, Caribbean LNG (Jamaica) Limited, which is a partner of the Exmar Consortium, in which Mr. Ian Moore, former Chairman of the PCJ Board of Directors, is one of the principal Directors, and the subsequent recommendation to enter into negotiations with the selected '*preferred bidder*', the Exmar Consortium, for the proposed 'FSRU LNG Project'.

### ***Specific Objectives***

The Investigation also had the following specific objectives:

1. To identify the procurement process which was employed by the PCJ, the MEM and/or by anyone acting on their behalf, which led to the recommendation to enter into negotiations with the selected '*preferred bidder*', the Exmar Consortium, for the proposed 'FSRU LNG Project'.
2. To ascertain whether there were any breaches of the Revised GOJ Public Sector Procurement Procedures (2008 November) and/or any other applicable laws on the part

of the PCJ, the MEM and/or by anyone acting on their behalf, in the recommendation to enter into negotiations with the selected '*preferred bidder*', the Exmar Consortium, for the proposed 'FSRU LNG Project'.

3. To ascertain whether the process which led to the recommendation to enter into negotiations with the selected '*preferred bidder*', the Exmar Consortium, for the proposed 'FSRU LNG Project', was fair, impartial, transparent and devoid of irregularity or impropriety.
4. To ascertain whether there was any *prima facie* evidence that would suggest impropriety on the part of the PCJ, the MEM and/or anyone acting on their behalf, which contributed to the recommendation to enter into negotiations with the selected '*preferred bidder*', the Exmar Consortium, for the proposed 'FSRU LNG Project'.
5. To ascertain whether the awarding Public Body, any Public Officer/Official, and/or anyone acting on their behalf, was involved and/or engaged in any acts of impropriety and/or irregularity that may have influenced, *inter alia*, (a) pre-tender activities, (b) the nature, depth and conduct of any feasibility studies, and (c) any potential bidder, and, consequently, how same may have led to the recommendation to enter into negotiations with the selected '*preferred bidder*', the Exmar Consortium, for the proposed 'FSRU LNG Project'.
6. To ascertain whether any other transactions were collateral to the recommendation to enter into negotiations with the selected '*preferred bidder*', the Exmar Consortium, for the proposed 'FSRU LNG Project'.
7. To ascertain whether there was any *prima facie* evidence that would suggest that the '*preferred bidder*' benefited from any insider information, and/or whether any Public Officer/Official, and/or anyone acting on their behalf, was involved and/or engaged in any acts of (a) insider information trading, (b) bid rigging and/or (c) corruption.

8. To ascertain whether there was any *prima facie* evidence of a conflict of interest on the part of any Public Officer/Official within the PCJ, the MEM and/or any other Public Body, who was involved in the recommendation to enter into negotiations with the selected '*preferred bidder*', the Exmar Consortium, for the proposed 'FSRU LNG Project'.

## **METHODOLOGY**

The OCG, in the conduct of its Investigations, has developed standard procedures for evidence gathering. These procedures have been developed and adopted pursuant to the powers which are conferred upon a Contractor General pursuant to the Contractor-General Act (1983).

It is instructive to note that Section 17 (1) of the Contractor General Act empowers a Contractor-General “to adopt whatever procedure he considers appropriate to the circumstances of a particular case and, subject to the provisions of (the) Act, to obtain information from such person and in such manner and make such enquiries as he thinks fit.” (OCG Emphasis).

The Terms of Reference of the OCG’s Investigation into the allegations regarding the proposal for the ‘FSRU LNG Project’, in Jamaica, were primarily developed in accordance with those of the mandates of the Contractor General which are stipulated in Section 4 (1) and Section 15 (1) (a) to (d) of the Contractor General Act.

The Terms of Reference of the Investigation, and the development of the written Requisitions/Questionnaires that were utilized throughout the course of the Investigation, were guided by the OCG’s recognition of the far-reaching responsibilities and requirements that are imposed upon Board of Directors, Public Officials and Public Officers under the provisions of the Public Bodies Management and Accountability Act, the Financial Administration and Audit Act, the Contractor General Act, the Revised GOJ Public Sector Procurement Procedures (2008 November) and the Staff Orders for the Public Sector, amongst other applicable legislation.

In addition, the OCG was guided by Section 21 of the Contractor-General Act which provides that “If a Contractor-General finds, during the course of his Investigations or on the conclusion thereof that there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body, he shall refer the matter to the person or persons competent to take such disciplinary or other proceeding as may be appropriate against that officer or member and in all such cases shall lay a special report before Parliament.” (OCG Emphasis)

The OCG, on 2010 June 22, conducted an official preliminary enquiry, into the tender and contract award processes of the referenced project under the provisions which are contained in Sections 4, 15 and 18 of the Contractor General Act (1983).

The OCG took the initiative to secure, without delay or reservation, certain documents, computer electronic files and records, and associated correspondence from the MEM and the PCJ, in an effort to inform the referenced preliminary enquiry, in light of, amongst other thing, the following:

- a) The receipt of an anonymous complaint, which was received on 2010 June 16, from a seemingly knowledgeable source which alluded to impropriety and irregularity in the selection of the Exmar Consortium as the '*preferred bidder*';
- b) A complaint which alleged certain relationships between Jamaican Public Officials and one of the then potential bidders who it was further alleged that the tender document was '*tailormade*' in favour of;
- c) Certain now identifiable and pronounced concerns which were predicated, *inter alia*, upon a variety of media articles, publications and reports which appeared in the local print and electronic media; and
- d) A review of the official documents which are lodged with the Registrar of Companies in Jamaica, by Caribbean LNG (Jamaica) Limited.

By way of two (2) letters, which were dated 2010 June 22, the OCG, informed Mr. Nigel Logan, Acting Group Managing Director, PCJ, and Mrs. Hillary Alexander, MEM's Permanent Secretary, of the OCG's intent to review the complete file(s) which pertained to the tender and contract award processes for the proposed 'FSRU LNG Project', on 2010 June 22.

The referenced Accounting and Accountable Officers, were requested, pursuant to Sections 4(2) and 4(3) of the Contractor General Act to provide, *inter alia*, "...All file(s), inclusive of all

*correspondence, Tender Documents/Requests for Proposals, Addenda, Bids Received, Evaluation Assessments and Reports and any other information, so determined by the OCG Team...”*

Upon a complete review of the documentation, which was retained by the OCG in its Enquiry, Requisitions/Questionnaires were subsequently directed to certain Public Officials/Officers, in both the MEM and the PCJ, amongst others, who were formally advised of the OCG’s decision to initiate an Investigation into the tender and award processes of the ‘FSRU LNG Project’ and who were considered material to the said Investigation.

Where it was deemed necessary, ‘Follow-up’ Requisitions were directed to a number of Respondents in an effort to clarify certain issues which were identified in their initial sworn written statements and declarations. These ‘Follow-up’ Requisitions were also designed, *inter alia*, to clarify any discrepancy in the information which was provided by the Respondents.

The Requisitions/Questions which were utilised by the OCG, included specific questions that were designed to elucidate critical information from Respondents on the matters which were being investigated.

However, in an effort to not limit and/or exclude the disclosure of information which was germane to the Investigation, but which might not have been specifically requisitioned by the OCG, the OCG asked all Respondents the following question:

*“Are you aware of any additional information which you believe could prove useful to this Investigation or is there any further statement in regard to the Investigation which you are desirous of placing on record? If yes, please provide full particulars of same.”*

**Very importantly, the form of written Requisition, which was utilized by the OCG, also required each Respondent to provide, under the pain of criminal prosecution, complete, accurate and truthful written answers to a specified list of written questions and to make a formal declaration attesting to the veracity of same before a Justice of the Peace.**

The Requisitions were issued pursuant to the powers that are reserved to the Contractor General under the Contractor-General Act and, in particular, Sections 4, 15, 17, 18 and 29 thereof. The Requisitions were also issued pursuant to Sections 2 and 7 of the Voluntary Declarations Act and Section 8 of the Perjury Act.

It is instructive to note that **Section 18 (2) of the Contractor General Act** provides that, “*Subject as aforesaid, a Contractor-General may summon before him and examine on oath –*

- a) *any person who has made representations to him; or*
- b) *any officer, member or employee of a public body or any other person who, in the opinion of the, Contractor-General is able to furnish information relating to the Investigation,*

**and such examination shall be deemed to be a judicial proceeding within the meaning of section 4 of the Perjury Act.**” (OCG Emphasis).

Further, **Section 18 (3) of the Contractor General Act** provides that, “**For the purposes of an Investigation under this Act, a Contractor-General shall have the same powers as a Judge of the Supreme Court in respect of the attendance and examination of witnesses and the production of documents**”. (OCG Emphasis)

**Section 2 (1) of the Voluntary Declarations Act** provides that, “*In any case when by any statute made or to be made, any oath or affidavit might, but for the passing of this Act, be required to be taken or made by any person or persons on the doing of any act, matter, or thing, or for the purpose of verifying any book, entry, or return, or for any other purpose whatsoever, it shall be lawful to substitute a declaration in lieu thereof before any Justice; and every such Justice is hereby empowered to take and subscribe the same.*” (OCG Emphasis)

**Section 7 of the Voluntary Declarations Act** provides that, “*In all cases when a declaration in lieu of an oath or affidavit shall have been substituted by this Act, or by virtue of any power or authority hereby given, or when a declaration is directed or authorized to be made and*

*subscribed under the authority of this Act, or of any power hereby given, although the same be not substituted in lieu of an oath, heretofore legally taken, such declaration, unless otherwise directed under the powers hereby given, shall be in the form prescribed in the Schedule.”*

**Section 8 of the Perjury Act** provides, *inter alia*, that, “Every person who knowingly and willfully makes (otherwise than on oath) a statement false in a material particular and the statement is made-

(a) in a voluntary declaration; or ....

(c) in any oral declaration or oral answer which he is required to make by, under, or in pursuance of any enactment for the time being in force,

*shall be guilty of a misdemeanour, and liable on conviction on indictment thereof to imprisonment with hard labour for any term not exceeding two years, or to a fine, or to both such imprisonment and fine”.*

The material import of the foregoing, *inter alia*, is that the sworn and written evidence that is provided to a Contractor General, in response to his Statutory Requisitions, during the course of his Investigations, is (a) provided in accordance with certain specified provisions of the Statutory Laws of Jamaica, and (b) provided in such a manner that if any part thereof is materially false, the person who has provided same would have, *prima facie*, committed the offence of Perjury under Section 8 of the Perjury Act and, as will be seen, would have also, *prima facie*, committed a criminal offence under Section 29 (a) of the Contractor General Act.

The OCG considers the above-referenced evidence-gathering procedures to be necessary in order to secure, *inter alia*, the integrity and evidentiary cogency of the information which is to be elicited from Respondents. The implications of the subject requirements also serve to place significant gravity upon the responses as well as upon the supporting documents which are required to be provided by Respondents.

**It is instructive to note that the OCG, in the conduct of its Investigation, prefers to secure sworn written statements and declarations from Respondents, under the pain of criminal prosecution. This ensures, *inter alia*, that there is no question as to what has been**

**represented to the OCG. Nor will there be any doubt as to the integrity or credibility of the information which is furnished to the OCG and on which its consequential Findings, Conclusions, Referrals and Recommendations will be necessarily based.**

The OCG also went to great lengths to ensure that Respondents were adequately and clearly warned or cautioned that should they mislead, resist, obstruct or hinder a Contractor General in the execution of his functions, or fail to provide a complete, accurate and truthful response to any of the Requisitions or questions which were set out in its Requisition, they would become liable, *inter alia*, to criminal prosecution under Section 29 of the Contractor-General Act.

**Section 29 of the Contractor General Act** provides as follows:

*“Every person who -*

*(a) willfully makes any false statement to mislead or misleads or attempts to mislead a Contractor-General or any other person in the execution of his functions under this Act; or*

*(b) without lawful justification or excuse -*

*i. obstructs, hinders or resists a Contractor-General or any other person in the execution of his functions under this Act; or*

*ii. fails to comply with any lawful requirement of a Contractor General or any other person under this Act; or*

*(c) deals with documents, information or things mentioned in section 24 (1) in a manner inconsistent with his duty under that subsection, shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.”*

Further, in addition to the **sworn** written answers which the Respondents were required to provide, the OCG also requested that in respect of the assertions and/or information which were to be provided, Respondents should submit documentary evidence to substantiate the statements that were made.

Requisitions/Questionnaires were directed by the OCG to the Public Officers/Officials who are listed below and who were required to provide sworn written responses to formal Requisitions which were directed to them by the OCG:

1. The named Public Officials/Officers are as follows:
  - a. The Hon. James Robertson, Minister of Energy and Mining, MEM;
  - b. Mrs. Hillary Alexander, Permanent Secretary, MEM;
  - c. Mr. Glenford Watson, Senior Legal Counsel, MEM;
  - d. Mr. Nigel Logan, Acting Group Managing Director, PCJ;
  - e. Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ;
  - f. Ambassador Douglas Saunders, Cabinet Secretary, Office of the Prime Minister (OPM);
  - g. Ambassador Evadne Coye, Permanent Secretary, Ministry of Foreign Affairs and Foreign Trade (MoFAFT);
  - h. Mr. Noel Hylton, President/Chief Executive Officer, Port Authority of Jamaica (PAJ);
  - i. Mr. Ahmad Zia Mian, Director General, Office of Utilities Regulation (OUR).
  
2. A detailed Requisition (together with a follow-up Requisition in the case of the last listed person) was also directed to the following former Public Officials/Officers:
  - a. Mr. Anthony Hylton, former Minister, then Ministry of Mining and Energy (MME) and the MoFAFT;
  - b. Mr. Clive Mullings, former Minister of Energy, then Ministry of Energy;
  - c. Ms. Marcia Forbes, former Permanent Secretary, MEM;
  - d. Dr. Ruth Potopsingh, former Group Managing Director, PCJ;
  - e. Mr. Ian Moore, former Chairman, PCJ Board of Directors.
  
3. A detailed Requisition was also directed to the following persons:

- a. Mr. Conrad Kerr, Chief Executive Officer (CEO), Caribbean (LNG) Jamaica Limited (CLNG);
  - b. Mr. Paul East, Director and Shareholder, Caribbean LNG (Jamaica) Limited.
  
4. Follow-up Requisitions/Questionnaires, requesting clarification on certain issues, were directed by the OCG to the following Public Officials:
  - a. The Hon. James Robertson, Minister of Energy and Mining, MEM;
  - b. Mrs. Hillary Alexander, Permanent Secretary, MEM;
  - c. Mr. Nigel Logan, Acting Group Managing Director, PCJ;
  - d. Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ;
  - e. Ambassador Douglas Saunders, Cabinet Secretary, OPM.
  
5. Formal interviews were conducted with the following Public Officials:
  - a. Ms. Kathryn Phipps, former Chairman, PCJ Board of Directors (2009-2010)
  - b. Mr. Nigel Logan, Acting Group Managing Director, PCJ
  
6. Letters of Invitation (LOI) were sent to the following individuals and/or entities:
  - a. Mr. Nicolas Saverys, Director, Exmar Marine NV;
  - b. Mr. Blake Blackwell, Vice President, Business Development, Golar LNG Energy;
  - c. Mr. Sveinung Stohle, President & Chief Executive Officer, Hoegh LNG;
  - d. Mr. Krishma Orr, Coverdale Trust Services Limited, Corporate Secretary, Caribbean LNG (BVI) Limited;
  - e. Mr. Authur Ransome, Vice President and General Manager, CH-IV International (no response was received).
  
7. Follow-Up Letters of Invitation were sent to the following individuals and/or entities:
  - a. Mr. Nicolas Saverys, Director, Exmar Marine NV;

b. Mr. Sveinung Stohle, President & Chief Executive Officer, Hoegh LNG.

It is instructive to note that the response from Mr. Conrad Kerr, CEO, CLNG, to the referenced OCG's Statutory Requisition, which was dated 2011 January 30, was submitted without a certified Form of Declaration.

Consequently, the OCG, by way of a letter which was dated 2011 February 15, wrote to Mr. Conrad Kerr, and stated, *inter alia*, the following:

*"We write to acknowledge receipt of your response to the Office of the Contractor General's (OCG's) Statutory Requisition, which was dated January 30, 2011, and received at our office on February 11, 2011, in regard to the captioned matter.*

*However, the Form of Declaration which was enclosed to the referenced OCG Statutory Requisition was not signed and attached to your response, as is required.*

*Accordingly, we are returning to you, your response to be submitted to the OCG in the manner which is articulated in the OCG's Requisition, which was dated January 17, 2011, and in which the following instruction was detailed:*

*"Your responses must be declared and certified by you before a Justice of the Peace to be complete, accurate and truthful. Your declaration must be in the form which is enclosed herewith."*

*We must respectfully remind you that any person who, without lawful justification or excuse, fails to comply with a lawful requirement of a Contractor-General, or who obstructs, hinders or resists a Contractor-General in the execution of his functions, commits a criminal offence under Section 29 of the Contractor General Act.*

*In the premises, we are now requiring you to fully comply with the subject Requisition by **3:00 p.m., on Friday, February 18, 2011...**"*

Mr. Conrad Kerr, in his response to the referenced OCG Letter, which was dated 2011 February 18, and which was received on 2011 February 21, stated, *inter alia*, the following:

*“...With regard to the statement excerpted from the form below:*

- I can not sign the forms you asked me to because simply put “I do not have full knowledge of and do not understand any of the provisions of the Contractor General Act, nor (as stated previously) do I understand the instructions in the Statutory Requisition of January 17, 2011.”*

*I suppose, to understand these items it would take an extensive legal review which neither CLNG, nor myself has to [sic] capability to do. As I am not a Jamaican citizen, I have never been exposed to these items.*

#### **Form of Declaration**

**This declaration affirms that the recipient has full knowledge of and understands the responsibilities and obligations which are outlined in the provisions of the Contractor General Act and the instructions which are detailed in the OCG’s Statutory Requisition of January 17, 2011.**

*As stated before, the questions were answered out of respect for the OCG investigation, and the hopes of a timely conclusion to the investigation. It should be noted that the answers were supplied without any legal review of the OCG letter, or any legal understanding of the statements made in the letter, or legal understanding of my rights under Jamaican law...”*

Based upon the foregoing, the OCG has used the responses which were provided by Mr. Conrad Kerr, to the OCG’s Statutory Requisition, subject to and fully cognizant of the foregoing caveat.

## **FINDINGS**

### **Brief History of the LNG Project**

The OCG found that from as early as 2001, the Government of Jamaica (GOJ), via the PCJ, began investigating the possibility of introducing natural gas in Jamaica, as an alternative fuel.

In this regard, the former Minister of MME and the MoFAFT, Mr. Anthony Hylton, in his response to an OCG Statutory Requisition, which was dated 2011 February 4, stated, *inter alia*, that he “...was appointed Minister of Mining & Energy in or about April 2001...Under my direction, the Ministry commenced the formulation of an energy policy and strategy, which called for the diversification of energy sources to include LNG, coal and renewables i.e. wind, solar, thermal etc.”<sup>39</sup>

Mr. Ahmad Zia Mian, Director General, Office of Utilities Regulation (OUR), in his response to the OCG’s Statutory Requisition, which was dated 2010 October 1, stated, *inter alia*, that “In my personal capacity, I have been involved with the LNG project from 2001. As Energy Advisor to the Energy Minister (Mr. Anthony Hylton), in 2001 I recommended that Jamaica should consider the natural gas as a potential diversification fuel to generate electricity and steam for the bauxite/alumina sectors...”<sup>40</sup>

Mr. Mian further explained, *inter alia*, that:

*“...The major component of the proposed strategy would be the erection of liquefied natural gas (LNG) storage and re-gasification terminal that would facilitate the import of LNG. The re-gasification LNG was then to be transmitted to the major users in the bauxite/alumina and power sectors through a natural gas pipeline distribution network... Following the 2002 general elections, and the consequent change of minister, the focus*

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<sup>39</sup> Response from the former Minister of MME and the MoFAFT, Mr. Anthony Hylton, which was dated 2011 February 4. Response #1

<sup>40</sup> Response from Mr. Ahmad Zia Mian, Director General, OUR, dated 2010 October 1. Attached was a Concept Paper which was provided by Mr. Ahmad Zia Mian, Director General, OUR entitled: “JAMAICA: Medium to Long Term Energy Options and Strategy Concept Paper” dated 2002 January 17 and a “GasPark Concept and Business Model” which was dated 2005 January.

*shifted away from natural gas as diversification fuel. The new Minister (Mr. Phillip Paulwell) preferred coal as the fuel for power generation and bauxite alumina sectors. During this period Cabinet, upon the recommendation of the Ministry of Energy, decided [sic] and JPS was permitted to proceed with the construction of coal based power generation capacity. However, this project was not implemented.*

*The then Prime Minister, the Honourable P.J. Patterson, appointed the former Minister, Anthony Hylton as special envoy at OPM and assigned to him the responsibility for furthering the LNG project as well as identifying the supply source. A major emphasis was placed on Trinidad and Tobago (T&T) as the source of supplies. Technical cooperation and LNG supply Agreements were concluded between the two governments...My recollection is that with the increased volatility of oil prices, the bauxite industry expressed concerns about the rising energy costs and indicated its willingness to accommodate natural gas as a preferred fuel.”<sup>41</sup>*

Appended to Mr. Mian’s referenced response to the OCG’s Statutory Requisition, was a copy of the Memorandum of Understanding (MOU), which was made and entered into on 2004 November 9, between the National Gas Company of Trinidad and Tobago Limited (NGC) and the PCJ. The MOU provided, *inter alia*, that:

*“Whereas the Parties have on behalf of their respective governments that is, the Government of the Republic of Trinidad and Tobago (“GORTT”) in the case of NGC and the...GOJ...in the case of PCJ and pursuant to a Memorandum of Understanding dated 18<sup>th</sup> June 2004, performed a preliminary review of existing data and reports regarding the supply of Liquefied Natural Gas (“LNG”) from Trinidad to Jamaica (the “Preliminary Studies”).*

**Whereas the Preliminary Studies have revealed that establishing a regasification terminal in Jamaica is economically feasible under certain defined conditions.**

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<sup>41</sup> Ibid. 3.

*Whereas the GORTT and GOJ have entered into a Memorandum of Understanding dated the 9<sup>th</sup> day of November 2004 regarding **the establishment of a LNG Marine, Storage, and Regasification Facility (“LNG Import Terminal”), to be established at Port Esquivel in Old Harbour, St. Catherine, Jamaica,** and a Gas Transmission System in Jamaica, and the supply of 1,150,000 tonnes annually of LNG from Trinidad to Jamaica for power generation for public electricity supply and to GOJ’s joint venture alumina refineries commencing 2008 (“the Project”).*

*Whereas the GORTT and GOJ intend for NGC and PCJ to continue to act as their respective agents in relation to the implementation of the Project.*

*Whereas the Parties wish to enter into this MOU for the purpose of embarking upon the conduct of, such **additional technical and economic studies as are necessary (“Detailed Studies”)** with respect to the design and implementation of the Project.*

*Whereas the Parties ‘recognize that- firm commitment of LNG Off-take volumes of a sufficient quantity is required from the Jamaican customers for the Project to proceed, and that this commitment is linked to the results of the Detailed Studies as well as the Delivered Gas Price.’<sup>42</sup> (OCG’s Emphasis)*

Mr. Mian, in his response to the OCG’s Statutory Requisition, which was dated 2010 October 1, stated, *inter alia*, that **“... interest in LNG increased and Mr. Stephen Wedderburn was appointed at the Petroleum Corporation of Jamaica (PCJ) to manage the project...”**<sup>43</sup> (OCG’s Emphasis)

He further stated in his referenced response that *“... the coal versus natural gas controversy remained central to the Ministry’s energy focus. The Technical Cooperation Agreement...which was concluded with National Gas Company (NGC)...allowed PCJ to further the process. Work on a jointly financed Front End Engineering and Design (FEED) study for a land based Storage*

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<sup>42</sup> Memorandum of Understanding between the National Gas Company of Trinidad and Tobago Limited (NGC) and the PCJ, dated 2004 November 9.

<sup>43</sup> Ibid. 4.

*and re-gas plant and pipeline network was [sic] commenced. Mustang Engineering was retained by PCJ with the consent of NGC to do the FEED and consultant CHIV was selected to provide technical advice. RFPs for the Financial Advisors as well as Legal Advisors were issued...*

*During the preparation of the FEED, it became evident that the fabrication of new storage tanks would take...much longer than expected. My recollection is that this timeframe created uncertainty regarding the timing of the project completion...In order to advance the likely date for the supply of natural gas into Jamaica's energy supply mix and remove the project timing uncertainty, Alcoa suggested that Jamaica might wish to consider the use of Floating Storage and Re-gas Unit (FSRU) technology to bring natural gas into Jamaica on a fast track basis...*

*However, there were a number of alternate scenarios...which needed to be studied in order to select an economic option and strategy. In order to proceed with this technology, the LNG Project Steering Committee decided that potential FSRU providers should be pre-qualified...*

*In the meanwhile, as far as I am aware, T&T withdrew its support from the project and informed the government that it did not possess sufficient gas to supply to Jamaica. Discussions were opened with Venezuela to seek her support for obtaining natural gas for Jamaican market. While Venezuela did not expect to have its LNG project completed before 2014/15, it was amiable to assist Jamaica in obtaining interim LNG supplies from extra regional sources.*

*With the change of government in 2007, a new minister, the Honourable Clive Mullings, took over responsibility for the Ministry of Energy. I am aware that he continued to support the coal options both for the power and bauxite..."<sup>44</sup>*

In addition to the foregoing, the OCG found, by way of a Project Document that was entitled "Jamaica LNG Receiving Terminal & Natural Gas Transmission System", which was dated 2010 February, that "The partnership with Trinidad was derailed in late 2006 when Trinidad stated that they would not be in a position to supply Jamaica with LNG. Jamaica then sought alternative sources of LNG supply..."

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<sup>44</sup>Ibid.5.

Based upon the foregoing, the OCG found that up to 2007, the GOJ was uncertain about the preferred and most suitable fuel type for Jamaica. The MEM and the respective Entities were said to have conducted research on several types of fuel to determine which would be more suitable.

### ***Other Possible Alternatives to LNG***

The OCG found that between the period of 2007 and 2008, although coal was the preferred option, the MEM and the PCJ continued research on other alternative fuels, inclusive of LNG. In this regard, the OCG found that Compressed Natural Gas (CNG) was also being considered by the GOJ in 2008.

By way of an email, which was dated 2008 April 21, Mr. Stephen Wedderburn, then Group Technical Director, PCJ, informed Mr. Ian Moore, the then Chairman of the PCJ Board of Directors, as follows:

*“Please see below information from our technical advisors, CH-IV, indicating that it would cost US\$14,150 to develop a report/presentation on CNG...This probably goes beyond what you need right now for the Port Authority, but it’s going to be needed at some point if JPS pursues its application for the CNG...”*

*P.S. Noel Hylton will **meet with Exmar in Belgium this week. I have asked Bart to share Exmar’s views on CNG (which are not very positive) with him.**”* (OCG’s Emphasis)

The OCG identified another email, which was dated 2008 April 23, from a Mr. Bart Lavent, Director LNG, Exmar Marine NV, to Mr. Stephen Wedderburn, then Group Technical Director, PCJ, in which Mr. Lavent indicated, *inter alia*, the following:

*“we had today the first day of the visit of the Jamaican delegation...”*

***I had the chance to explain to Mr Hylton and Ms Bennett the LNG project and the***

**dangers of coal and CNG.** Ms Bennett came herself to the conclusion that a small country like Jamaica should not be used as a guinea pig for CNG. Her conclusion about coal is that the electricity load should first be more baseload before diversifying towards coal. We also briefly discussed carbon credits and I touched the E10 project for 1 minute. **I hoped she sensed the urgency of the matter. Any progress on that?...**<sup>45</sup>

By way of another email, which was also dated 2008 April 23, Mr. Stephen Wedderburn informed Mr. Ian Moore, *inter alia*, that “**It appears we have another supporter in Jamaica House.** Please see Bart’s report on the first meeting with Sancia Bennett Templer and Noel Hylton...”<sup>46</sup> (OCG’s Emphasis)

Based upon the foregoing emails, the OCG found the following:

- i. Evidence to suggest that Exmar Marine NV was not in favour of the use of CNG in Jamaica and used the opportunity to introduce the concept of the LNG Project to certain specified GOJ Officials;
- ii. Exmar Marine NV appears to have been instrumental in the attempts to influence the Government’s policy decision away from coal and CNG, as has been evidenced by the email from Mr. Stephen Wedderburn regarding the apparent support which was emerging in ‘Jamaica House’;
- iii. A working relationship, of some sort, existed between Exmar Marine NV, Mr. Stephen Wedderburn and Mr. Ian Moore, the then Chairman of the PCJ Board of Directors; and
- iv. There were several email correspondence in 2008 between Mr. Ian Moore, the then Chairman of the PCJ Board of Directors, Mr. Stephen Wedderburn, in his capacity as the Group Technical Director, and Mr. Bart Lavent of Exmar Marine NV.

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<sup>45</sup> Email dated 2008 April 23, from a Mr. Bart Lavent, Exmar Marine NV, to Mr. Stephen Wedderburn.

<sup>46</sup> Email dated 2008 April 23, Mr. Stephen Wedderburn to Mr. Ian Moore.

The foregoing would suggest that the three (3) named gentlemen would have, at a minimum, been in dialogue, in whatever capacity, regarding the prospects of alternative fuel types in Jamaica.

## **Front-End Engineering Design (FEED) Studies**

The OCG, in its Requisition to Mrs. Hillary Alexander, Permanent Secretary, MEM, which was dated 2010 September 16, posed the following question:

*“Please indicate whether you are/were aware of any pre-assessment(s) and/or study(ies) which was/were conducted, and/or undertaken on behalf of the MEM and/or the PCJ in regard to the proposal for the Financing, Development, Ownership and Operation of an FSRU LNG Re-gasification Terminal and Natural Gas Transmission System. If yes, please provide responses to the following:*

- a) When was/were such pre-assessment(s) and/or study(ies) conducted;*
- b) How did such pre-assessment(s) and/or study(ies) affect and/or influence the MEM and/or PCJ’s decision, if any, to undertake the referenced procurement;*
- c) Did the MEM and/or the PCJ tender competitively, and/or participate in the tender process, for such pre-assessment(s) and/or study(ies)? If yes, please provide responses to the following questions:*
  - i. Which procurement methodology(ies) was/were utilized;*
  - ii. Which company(ies) was/were awarded the contract to provide the referenced services;*
  - iii. Did the MEM and/or the PCJ and/or anyone acting on its behalf, utilize the recommendations of such pre-assessment(s) and/or study(ies) in the conceptualization and/or planning of the LNG Project and/or any component of same?*

- iv. *Please indicate whether you are aware of the possibility of any information which may have been disclosed to any prospective bidder prior to the commencement of the tender process.*<sup>47</sup>

Mrs. Hillary Alexander, in her response to the OCG's Statutory Requisition, which was dated 2010 November 12, stated, *inter alia*, the following:

*"I am aware of the MUSTANG Feed Study conducted by the PCJ and the National Gas Company of Trinidad and Tobago Limited (NGC).*

- a) *Based on discussions, I am advised that the Mustang Study was done August 3, 2006*<sup>48</sup>

The foregoing question was also posed to Mr. Nigel Logan, Acting Group Managing Director, PCJ, in his Statutory Requisition of 2010 September 15. In his response to the referenced OCG Statutory Requisition, which was dated 2010 November 9, Mr. Logan stated the following:

*"The PCJ undertook a Front End Engineering Design (FEED) that would inform the development of an LNG facility.*

- a) *This study was conducted between 2005 and 2007.*  
b) *The study did help in influencing PCJ to proceed with the project.*  
c) *The PCJ conducted a competitive tender for the procurement of the referenced FEED study.*
- i) *The open tender methodology was used to procure the study*  
ii) *Mustang Engineering was awarded the contract to do the FEED study.*  
iii) *I believe that the study did assist in guiding the PCJ in developing the LNG project.*

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<sup>47</sup> OCG's Requisition to Mrs. Hillary Alexander, Permanent Secretary, MEM, which was dated 2010 September 16. Question #33

<sup>48</sup> Response from Mrs. Hillary Alexander, Permanent Secretary, MEM, which was dated 2010 November 12. Response #33

*iv) I am not aware of any information being disclosed to any prospective bidder prior to the commencement of the tender process.”<sup>49</sup>*

The OCG, in its Statutory Requisition to Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, which was dated 2010 September 15, posed the following question:

*“Please indicate whether any pre-assessment(s) and/or study(ies) were conducted, and/or undertaken on behalf of, the MEM and/or the PCJ in regard to the proposed Financing, Development, Ownership and Operation of an FSRU LNG Re-gasification Terminal and Natural Gas Transmission System. If yes, please provide responses to the following:*

- a) What was/were your role(s) and responsibility(ies), as the LNG Project Coordinator and/or otherwise, in the conduct of the referenced pre-assessment(s) and/or study(ies);*
- b) Please provide the date(s) on which such pre-assessment(s) and/or study(ies) was/were conducted;*
- c) How did such pre-assessment(s) and/or study(ies) affect and/or influence the MEM’s and/or the PCJ’s decision to undertake the referenced procurement;*
- d) Please indicate whether the PCJ and/or the MEM competitively tendered for such pre-assessment(s) and/or study(ies)? If yes, please provide responses to the following questions:*
  - i. Which procurement methodology(ies) was/were utilized;*
  - ii. Which company(ies) and/or contractor(s) was/were awarded the contract to provide the referenced services;*

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<sup>49</sup> Response from Mr. Nigel Logan, Acting GMD, PCJ, which was dated 2010 November 9. Response #34

iii. *Did the MEM, the PCJ and/or anyone acting on its behalf, utilize the recommendations of such pre-assessment(s) and/or study(ies) in the conceptualization and/or implementation of the LNG Project and/or any component of same?*

e) *Please indicate whether any of the pre-assessment(s) and/or study(ies) which was/were conducted by any of the listed companies/contractors was/were shared with any of the potential bidders and/or anyone acting on their behalf, prior to the commencement of the tender period for the referenced project.*<sup>50</sup>

Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, in his sworn response to the referenced OCG Statutory Requisition, which was dated 2010 November 15, stated, *inter alia*, the following:

*“I am not aware of any formal pre-assessments and/or studies being conducted, and/or undertaken on behalf of, the MEM and/or the PCJ in regard to the proposed Financing, Development, Ownership and Operation of an FSRU LNG Re-gasification Terminal and Natural Gas Transmission System.”*<sup>51</sup>

The OCG, in its Statutory Requisition to Mr. Glenford Watson, Senior Legal Officer, MEM, which was dated 2010 December 21, further posed the following question:

*“Please indicate whether you are/were aware of any affiliation and/or involvement of the company ‘Mustang Engineering’ in the entire LNG Project and/or the proposed Financing, Development, Ownership and Operation of an FSRU LNG Re-gasification Terminal and Natural Gas Transmission System. If yes, please provide an Executive Summary detailing the role, the referenced company had in the entire LNG Project and/or the proposed Financing, Development, Ownership and Operation of an FSRU LNG Re-gasification Terminal and Natural Gas Transmission System. In addition, please*

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<sup>50</sup> OCG’s Requisition to Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, which was dated 2010 September 15. Question #31

<sup>51</sup> Response from Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, which was dated 2010 November 15. Response #31

*provide responses to the following:*

- a) *Please indicate whether the recommendation(s) which was/were provided by the referenced company was/were used in the tender process for the referenced project. If yes, please provide an Executive Summary outlining such recommendations; and*
  
- b) *A copy of the final report which was prepared by the referenced Consultancy firm/company.”<sup>52</sup>*

Mr. Glenford Watson, in his response to the referenced OCG Statutory Requisition, which was dated 2011 January 25, stated the following:

*“The Mustang study preceded my involvement in this project but, to my best knowledge, **Mustang had no role or responsibility in the local FSRU and pipeline project, save and except for the 2005 study and report provided in 2006.** Even then, **the study by Mustang and the associated report related to the setting up of a local LNG project using a land based facility, which was the prevailing technology at the time of said study.***

*Subsequently, with the increased usage of FSRU facilities to implement small scale to medium size natural gas project and given other technical and commercial considerations, the Government decided on a policy for a FSRU and pipeline project to make natural gas available for local use.”<sup>53</sup> (OCG’s Emphasis)*

Mr. Glenford Watson also provided the OCG with a copy of the Executive Summary on the FEED Study which was undertaken by Mustang Engineering. The referenced Executive Summary stated, *inter alia*, that “*The purpose of this Front End Engineering Design (FEED) project was to develop a lowest cost, shortest schedule, total installed cost estimate for an LNG*

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<sup>52</sup> OCG’s Requisition to Mr. Glenford Watson, Senior Legal Counsel, MEM, which was dated 2010 December 21. Question #19

<sup>53</sup> Response from Mr. Glenford Watson, Senior Legal Counsel, MEM, which was dated 2011 January 25. Response #19

*Regasification Terminal and Gas Distribution Pipeline near Port Esquivel, Jamaica...*”

Despite the foregoing Mustang Engineering FEED Study, the OCG has found, based upon the sworn evidence, that neither the MEM nor the PCJ conducted any FEED study and/or other form of a formal pre-assessment which was specific to the ‘FSRU LNG Project’.

To the contrary, and should the sworn assertions of Mr. Stephen Wedderburn and Mr. Glenford Watson be taken as truthful and accurate, the only study which was conducted by the MEM and/or the PCJ was in regard to a land-based facility for the LNG Project in 2006.

## The LNG Project

### *Alleged Benefits of the LNG Project to Jamaica*

The OCG posed the following question to certain Public Officials/Officers in the MEM and the PCJ who were involved in and/or affiliated with the LNG Project, in an effort to be provided with added information on the perceived benefits of LNG for Jamaica, as opposed to coal or CNG:

*“A synopsis of your understanding of what is/are the benefit(s) of the LNG Project to Jamaica...”*

Ms. Marcia Forbes, former Permanent Secretary, MEM, in her response to the OCG’s Statutory Requisition, which was dated 2010 November 16, provided the OCG with a document that was entitled “*CABINET NOTE: JAMAICA’S LIQUIFIED NATURAL GAS (LNG) PROJECT*”, which was dated 2009 August 10, and which she indicated “*...lays out the benefits of LNG as was perceived by the technocrats at the MEM.*” The referenced document stated, *inter alia*, the following:

*“...The objectives were to lessen the country’s near total dependence on crude oil and petroleum products and the exposure to the vagaries of the international oil markets; lower energy costs; and to utilize environmentally friendly fuel options. LNG was seen as a fuel choice capable of satisfying these options and with the potential to grow the country’s economy by improving her competitiveness in global markets because of the following advantages:*

- competitively priced energy relative to alternate fuel options;*
- relatively low capital requirements for gas-fired generation plants and versus alternate base load fuels;*
- potential to trade valuable emissions (carbon) credits through the retirement of less efficient and polluting oil-fired equipment;*

- *potential to position Jamaica as an [sic] LNG hub for the rest of the Caribbean;*
- *potential to encourage and/or attract additional LNG based industries to set up operations in Jamaica; and*
- *LNG has a higher degree of thermal efficiency than oil and, therefore, LNG fired plants are more energy efficient than oil or coal fired plants.”<sup>54</sup>*

Other responses which were received in response to the OCG’s Statutory Requisitions from, *inter alia*, the Hon. James Robertson, Minister, MEM, Mr. Nigel Logan, Group Managing Director, PCJ and Mrs. Hillary Alexander, Permanent Secretary, MEM, also echoed the foregoing alleged benefits.

### ***The Components of the LNG Project***

The OCG, in an effort to have an understanding of all of the components of the LNG Project, by way of its Statutory Requisition, which was dated 2010 September 15, requested that Mr. Stephen Wedderburn, in his capacity as the LNG Project Coordinator, PCJ, provide the following information:

*“A comprehensive listing of all the components of the LNG Project and details regarding the current status of each component...”<sup>55</sup>*

Mr. Stephen Wedderburn, in his sworn response to the OCG’s Statutory Requisition, which was dated, 2010 November 15, stated the following:

***“The LNG Project comprises four major components:***

- ***Identification of an [sic] LNG Infrastructure Provider***
- ***Identification of Gas Offtakers***
- ***Identification of an [sic] LNG Supplier***

<sup>54</sup> Document entitled “*Cabinet Note: Jamaica’s Liquefied Natural Gas*” which was dated 2009 August 10. pg.2

<sup>55</sup> OCG’s Statutory Requisition to Mr. Stephen Wedderburn, which was dated 2010 September 15. Question # 6(f)

- **Development of a Gas Regulatory Framework** (OCG's Emphasis)

*The status of each component is as follows:*

**Identification of an Infrastructure Provider**

*In order to successfully introduce LNG as fuel to the Alumina/Bauxite Sector and the power generation sector; an infrastructure provider capable of providing all the necessary infrastructure for converting LNG to natural gas and transmit same to the offtakers of the gas.*

*An RFP was issued to companies that had already participated in a pre-qualification exercise in 2007. Two bids were received in February of this year and an evaluation exercise was carried out to determine the preferred infrastructure provider. The Evaluation Team had selected and recommended the Exmar Consortium as the preferred infrastructure provider, which was endorsed by the NCC and approved by Cabinet in May 2010. Negotiations are currently ongoing and are expected to continue into early 2011.*

**Identification of Gas Offtakers**

*The Petroleum Corporation of Jamaica (PCJ) as part of its responsibility for development of the Jamaica LNG Project, on behalf of the GOJ, has held a number of stakeholder meetings with the alumina/bauxite companies within the Alumina Sector as well as the Jamaica Public Service Company with the Independent Power Providers (IPPs) to canvass interests into participating as Offtakers of Natural Gas out of the implementation of the LNG Project. Energy costs have been one of, if not the biggest issue in terms of their operations and as such the companies had expressed a strong willingness to participate in the project venture.*

*The companies with [sic] discussions have been held include:*

- *Jamalco*
- *Windalco – Ewarton & Kirkvine*

- *Alpart*
- *Jamaica Public Service Company (JPSCO)*
- *Jamaica Energy Partners*

*A Request for Proposals (RFP) was recently issued by the OUR, by Limited Tender, for companies to submit proposals for 480MW build out of new capacity. The winner of this tender is expected to be the largest gas offtaker and thus the finalization of arrangements with the gas offtakers is not expected to be completed until the power tender is completed.*

### **Identification of LNG Suppliers**

*With the renewed drive by the GOJ to diversify its energy base and announcing that LNG is the fuel of choice to reduce our dependence on imported fuel oil. Is increased LNG supply interest, due in part to the recent discoveries of large shale [sic] gas reserves in the US [sic]; LNG that was originally destined for that market is now available for new customers.*

*Some LNG Suppliers have visited Jamaica to discuss their interest and capability to provide Jamaica with LNG. These include BG, Gazprom, Shell, Stream and Cheniere Energy.*

*An Inquiry for LNG Supply, which will include and [sic] RFP, Memorandum of Understanding (MOU) and Sales and Purchase Agreement (SPA) Term Sheet is to be issued to Potential LNG Suppliers by the PCJ, on behalf of the Offtakers in November 2010. A preferred LNG Supplier would be selected in conjunction with the gas offtakers early in 2011*

### **Development of a Natural Gas Regulatory Framework**

*The introduction of LNG, and in essence natural gas, will initiate the development of an entirely new sector in Jamaica. The introduction of the fuel into the country's energy mix will call for the development of a regulatory framework that will inherently serve as the guidelines for the regulatory laws that will be established afterwards. The principles for*

*the regulatory framework will be developed out of collaboration between the Solicitor General's Office, Latham and Watkins (Legal Advisors to the Project) and the Office of Utilities Regulation (OUR) and is anticipated to be completed by February 2011.*<sup>56</sup>

Based upon the foregoing, the OCG found that there were various phases to the LNG Project from 2001 up to the commencement of the procurement process for the proposed 'FSRU LNG Project' in 2009 November.

It is important to note that the 'FSRU LNG Project' is a sub-component of the overall "LNG Project" in Jamaica and reflects the GOJ's decision to adopt the changing technologies which are associated with obtaining and distributing LNG.

### ***Planning and Conceptualization of the LNG Project***

The OCG found it necessary to acquire a more comprehensive understanding of the conceptualization and planning of the LNG Project, including, *inter alia*: (a) how the LNG Project was conceptualized; (b) the GOJ policy(ies) which was/were implemented; (c) the basis upon which LNG was selected as the preferred source of energy; and (d) the circumstances under which LNG was selected as the preferred source of energy.

Mr. Anthony Hylton, former Minister of MME and the MoFAFT, in his response to an OCG Statutory Requisition, which was dated 2011 February 4, stated, *inter alia*, the following:

*"The decision in favour of natural gas as a new source of energy for Jamaica was greatly influenced by the data indicating that the technologies involved in the liquefaction, transportation and regasification of natural gas was rapidly reducing the costs in the supply chain and the trend looked set to continue well into the future. Additionally, the availability of cryogenic energy made possible the use of super cooled LNG for multiple industrial uses, such as cold storage, greatly improved the attractiveness of LNG..."*

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<sup>56</sup> Mr. Stephen Wedderburn's response to the OCG's Statutory Requisition, dated 2010 November 15. Response #6f

*Given the initial cost indicated in the establishment and use of LNG as an alternate fuel, it was determined that due diligence should be exercised in the development, design, procurement and project implementation of this path-breaking but costly and complex project. Useful and cutting edge information was gathered from trips to Japan, South Korea, Algeria, Trinidad & Tobago, Belgium, Norway and Venezuela. In due course the Cabinet supported the work to develop the policy, project and plan to make possible the introduction of LNG into Jamaica's energy mix.*

***The initial design called for a land-based regasification terminal to be built at Port Esquivel, close to the JPS power generation plant at Old Harbour and the Jamalco Alumina Plant at Halls Hall, Clarendon, as well as lands sufficient to develop an industrial park at Port Esquivel. Later, when the cost estimates and the timeline for implementing the project was determined to be too costly and lengthy, the project design shifted to the FSRU model.***<sup>57</sup> (OCG's Emphasis)

Ambassador Evadne Coye, Permanent Secretary, MoFAFT, in her response to the OCG's Statutory Requisition, which was dated 2011 February 4, provided the OCG with a copy of a document that was entitled "*Report of Meeting: CEO EXMAR, Hilton Hotel, Brussels*", which was dated 2006 December 1.

The OCG noted that in attendance at the referenced meeting were, *inter alia*, Mr. Anthony Hylton, in his capacity as the former Minister of MoFAFT; Mr. Stephen Wedderburn, PCJ; Mr. Nicolas Saverys, CEO, Exmar Marine NV, other representatives from Exmar Marine NV, Dredging International, BESIX and the Embassy of Jamaica.

The referenced document stated, *inter alia*, the following:

*"...Dredging International expressed that being involved in the planning of the Liquefied Natural Gas (LNG) Project it occurred to him that based on the work done by EXMAR a*

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<sup>57</sup> Response from the former Minister of MME and the MoFAFT, Mr. Anthony Hylton, in his response to an OCG Statutory Requisition, which was dated 2011 February 4. Response #1

*meeting could be useful...Minister Hylton outlined that the meeting was of an exploratory nature. He proceeded to give an overview of Jamaica's present situation as it relates to reliance on fuel oil and the possibilities for a convergence of interest between Jamaica and EXMAR...*

*The time-line for implementation of the LNG Project is 2009. It is in this context that the Ship/Off-shore option that EXMAR can provide is being pursued over the original Land-based option...*

*A Floating Storage and Regasification Unit (FSRU) was stated to be more expensive to what the ships deal with and is really a medium term option... ”<sup>58</sup>*

Based upon the foregoing, the OCG found that from as early as 2006, Exmar Marine NV has had meetings with the GOJ with respect to the LNG Project.

Further, the OCG found that between the period of 2007 September to 2009 April, during the tenure of the then Minister of Energy, Mr. Clive Mullings, coal was being introduced as the preferred choice of fuel.

The OCG, by way of a Statutory Requisition which was addressed to Mr. Clive Mullings, former Minister of Energy, and which was dated 2010 November 3, posed the following question:

*“...please provide an Executive Summary detailing the following information:*

- a) What was the GOJ's policy, during your tenure, on alternative fuel?*
- b) What fuels were being considered at the time of your appointment and during your tenure?*

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<sup>58</sup> Response from Ambassador Evadne Coye, Permanent Secretary, MoFAFT, which was dated 2011 February 4, in which she provided a document that was entitled “*Report of Meeting: CEO EXMAR, Hilton Hotel, Brussels*” which was dated 2006 December 1.

- c) *How advanced were the GOJ's considerations of the alternative fuel energy at the time of your appointment and what measures, if any, were taken to implement and/or acquire alternative fuel?*
- d) *Was Liquefied Natural Gas (LNG) considered during your tenure and how advanced were such considerations?*<sup>59</sup>

Mr. Clive Mullings, in his sworn response to the OCG's Statutory Requisition, which was dated 2010 December 3, stated the following:

**"Answers to Question 1**

- a) *The GOJ's policy on alternative fuel had not yet been finalised during my tenure.*
- b) **Discussions were being held to determine whether coal or liquefied natural gas or compressed natural gas or a combination should be utilised in the Electricity Sector.**
- c) *To this end, I requested the assistance of the World Bank in 2008. I enclose a copy of the Draft Electricity Note that they compiled. There were no attempts taken to implement and/or acquire.*
- d) **Liquefied Natural Gas (LNG) was considered during my tenure but the considerations were merely investigatory and not advanced or conceptualised to project stage or suppliers.**<sup>60</sup> (OCG's Emphasis)

The OCG, in its Statutory Requisition which was addressed to Mr. Clive Mullings, and which was dated 2010 November 3, also posed the following questions:

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<sup>59</sup> OCG's Statutory Requisition which was addressed to Mr. Clive Mulling, dated 2010 November 3. Question #1

<sup>60</sup> Response from Mr. Clive Mullings, former Minister, MEM, which was dated 2010 December 3. Response #1

*“Please indicate, to the best of your knowledge, what was/were the GOJ [sic] policy(ies), during your tenure, in regard to the type(s) of fuel, and the supply(ies) of same, to Jamaica? Please provide an Executive Summary, detailing full particulars of same, inclusive of, inter alia, the following:*

- a) Which fuel type(s) was/were being used during your tenure and detail the supply(ies) of same to Jamaica;*
- b) The name(s) and title(s) of the person(s) and/or Entity(ies) which was/were involved in and/or affiliated with the procurement of such fuel type(s) and the supply(ies) of same. In addition, please account for the role(s) and responsibility(ies) of each of the named person(s) and/or Entity(ies);*
- c) Please indicate whether you are aware of any measures which were taken by the GOJ, during your tenure, to monitor the various stages of the then fuel project throughout its duration. If yes, please provide particulars of same, to the best of your knowledge;*
- d) Please indicate whether you are aware of any Contract(s), Memorandum/Memoranda of Understanding and/or any other form of agreement which was/were prepared and/or signed in regard to the then fuel type(s) and/or supply(ies) of same, to Jamaica, during your tenure;*
- e) Please indicate whether LNG was being proposed as an alternative energy source during your tenure. If yes, please provide responses to the following:*
  - i. On what basis and under what circumstances was/were such proposal(s) brought to the fore;*
  - ii. To the best of your knowledge, please indicate the date(s) on which LNG was proposed as an alternative;*

- iii. *Detail what provision(s) was/were made, if any, during your tenure, to accommodate the LNG project to Jamaica; and*
- iv. *Please indicate the name(s) and title(s) of the person(s) who spearheaded the LNG proposal as an alternative to Jamaica.*

*Please provide documentary evidence, where possible, to support your response.”<sup>61</sup>*

Mr. Clive Mullings, former Minister of Energy, in his sworn response to the OCG’s Statutory Requisition, which was dated 2010 December 3, stated the following:

*“There was no GOJ policy governing the use of fuel type during my tenure as Minister.*

- a) *Heavy Fuel Oil was being used and was supplied by Venezuela under the Petro-Caribe Agreement.*
- b) *Mr. Winston Watson, General Manager of Petrojam Limited and the supplier was PDVSA of Venezuela which is a state owned company.*
- c) ***I was not aware of any measures taken by the GOJ to monitor any LNG project.***
- d) *I cannot recall any Memorandum of Understanding or any form of agreement prepared and/or signed during my tenure.*
- e) ***Yes, LNG was being proposed during my tenure.***
  - i. *It was a part of the GOJ investigation on how the fuel oil bill could be reduced*
  - ii. *I cannot recall any specific date as the proposal for LNG had been proposed prior to the advent of the present administration*

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<sup>61</sup> OCG’s Statutory Requisition which was addressed to Mr. Clive Mulling, dated 2010 November 3. Question #5

- iii. *There were no provisions made to accommodate the LNG Project during my tenure*
- iv. **The then Chairman of the PCJ, Mr. Ian Moore, Mr. Stephen Wedderburn and Dr. Raymond Wright of the PCJ who is the Energy Consultant and Former Group Managing Director Dr. Ruth Potopsingh.**<sup>62</sup>(OCG's Emphasis)

It is instructive to note that the former Minister, Mr. Clive Mullings, stated that among the persons who spearheaded the LNG Project, during his tenure, were Mr. Ian Moore, the former Chairman of the PCJ Board of Directors and Mr. Stephen Wedderburn, then Group Technical Director, PCJ.

The OCG also found that in 2009 May, Mr. Stephen Wedderburn made a proposal to the MEM to “...*Coordinate the Liquefied Natural Gas Project*”. It must be noted that Mr. Wedderburn was not employed to the PCJ at the time when he submitted the referenced proposal to the MEM.

A copy of the referenced proposal was submitted to the OCG by Ms. Marcia Forbes, former Permanent Secretary, MEM, in her response to an OCG Statutory Requisition, which was dated 2010 November 16. Upon review of the referenced 2009 May proposal, the OCG found that Mr. Stephen Wedderburn proposed, *inter alia*, the following:

*“Diversification through the introduction of coal and/or natural gas has been identified as the main option to reduce the cost of energy in Jamaica in the short term. The country has spent several years debating the choice of coal or gas. The Government of Jamaica has recently announced that liquefied natural gas (LNG) is the preferred option for Jamaica’s energy future...*

*Previous work done in respect of LNG has shown that the quickest route to introduce LNG is through the use of **ship-based Floating Storage and Regasification Units (FSRU’s)** which potentially allow the introduction of LNG in 24 to 30 months after a*

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<sup>62</sup> Response from Mr. Clive Mullings, former Minister, MEM, which was dated 2010 December 3. Response #5

*firm investment decision is made...*

**In this regard the GOJ should carefully note that effective development of the LNG Project and rigid adherence to the procurement guidelines are likely to be mutually exclusive objectives.** *The world LNG industry is not going to march to Jamaica's tempo. LNG business opportunities often have very limited windows in which they can be taken up and if Jamaica is serious about getting LNG in place in the shortest time it has to be willing to take a very targeted and strategic approach to achieving this objective. **In short the GOJ will have to decide whether strict adherence to procurement guidelines is a more important objective than lowering the cost of energy and re-opening the alumina industry in the shortest possible [sic] time.***

### **Proposed Project Phasing**

*The LNG Project implementation process can be divided into three broad phases.*

#### **A. Project Definition Phase**

*This phase would entail the following:*

- *Identification of an FSRU Provider/Strategic Partner (including due diligence)*
- *Determination of prospective customers/local gas demand*
- *Exploration of LNG supply opportunities*
- *Design of jetty and pipeline infrastructure*
- *Procurement of EPC contractor(s)*
- *Initiate preparation of gas regulations*

*At the end of this phase MOUs would be in place with the FSRU provider, the LNG supplier(s), the natural gas end-users and the EPC contractor(s). There would therefore be a clear picture of who the parties to the deal would be and the nature of the business agreements to be finalized amongst these parties.*

#### **B. Financing Phase**

*This phase would entail:*

- Finalization of FSRU Charter, EPC, LNG Supply and gas purchase agreements.
- Identification of a Financial Arranger
- Finalization of Financing
- Finalize gas regulations
- Initiate gas pipeline right of way acquisition
- Final Investment Decision

*At the end of this phase all arrangements would be in place to allow physical implementation of the project to begin.*

### C. Implementation Phase

*This phase would entail:*

- Finalize gas pipeline right of way acquisition
- Supervise construction of jetty and gas pipelines
- Monitor conversion of end-user facilities
- Monitor construction and delivery of FSRU
- Commission Project

*The important element of this phase will be effective project management to ensure that all activities are synchronized and completed in the shortest possible time.*

### Activity Schedule – Project Definition Phase

*As illustrated in the Gantt Chart below it is estimated that the first phase of the assignment can be completed in six and a half months. Thus assuming a 15 June 2009 kick-off date it is expected that the Project Definition phase assignment could be completed by end December 2009. This is an aggressive schedule and assumes very expeditious decision-making on the part of the Government. However, it is critical that this schedule not be exceeded if the project is to be implemented within a favourable window of opportunity. **It is the consultant's experience that one of [sic] main sources of delay in divestment exercises is slow approval processes on the part of the Government.***

	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Determine Gas Demand							
Select FSRU Provider/Strategic Partner							
Feasibility Studies/Facilities Design							
Select EPC Contractor(s)							
Meet with LNG Suppliers / Outline Supply Arrangements							
Finalize MOUs							
Develop Gas Regulations							

**Project Schedule – Phases 2 and 3**

*It is estimated that Phase 2 – the Financing Phase – will take four to six months to complete (again working towards an aggressive schedule) and that Phase 3 – the Implementation Phase – will take 24 to 30 months.*

*Thus the Financing Phase should be completed in the period April to June 2010 and the overall project should be completed in the period June to December 2012.*

**Recommendation for Expediting Project**

*The Government of Jamaica faces both human and financial resource constraints, but implementation of the LNG Project will require significant amounts of both human and financial constraints. **To mitigate this problem it is recommended that the GOJ quickly identifies a strategic partner who will share the burden of the project expenses and resources with the GOJ. The Consultant recommends that one of the companies currently showing interest in providing the FSRU facilities be asked to play this role of strategic partner, i.e. in exchange for the grant of exclusivity to provide the FSRU facilities one of these companies should be asked to share in the execution of the required feasibility studies and engineering design of the jetty and pipeline facilities.***

**Two companies, Exmar and Golar, have recently shown interest in providing the FSRU for Jamaica and it so happens that these are the only two companies in the**

**world who actually have floating regasification systems in operation... It is recommended that rather than going through a formal procurement system to select an FSRU provider (which will waste time and unduly delay the execution of more important aspects of the Project such as the identification of LNG supply) that one of these two companies be selected by interview.** i.e. An interview panel established by the Ministry of Energy and Mining should conduct comprehensive interviews with these two companies, exploring their expertise in FSRU systems, their commercial proposals for Jamaica and their willingness to assist in other areas of the project. The FSRU provider would be selected based on the recommendation of the interview panel.

**This is an unorthodox method of procurement, but if the GOJ wishes to solve the country's energy problems in the shortest possible time, it has to be prepared to take such unorthodox methods...**

**If the Ministry wishes to pursue the traditional approach it should note that it will have find upfront funds for technical consultants to define the parameters in which the FSRU will operate so that a proper RFP document can be prepared.** The procurement of the technical consultant will itself take time and if this course is taken we would likely reach the end of 2009 before an [sic] FSRU provider is selected.

**The schedules incorporated in this proposal assume that the selection of the FSRU provider is done by the interview method.**<sup>63</sup> (OCG's Emphasis)

It is instructive to note that the proposal, which was submitted to the MEM by Mr. Stephen Wedderburn, recommended that the formal GOJ Public Sector Procurement Procedures could be bypassed in the selection and award of a contract to a FSRU provider for the 'FSRU LNG Project', for the sake of expedience.

In this regard, the OCG found that Mr. Stephen Wedderburn not only proposed an unorthodox

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<sup>63</sup> Proposal which was submitted to the MEM by Mr. Stephen Wedderburn which was entitled "Proposal to Ministry of Energy and Mining to Coordinate the Liquefied Natural Gas Project." 2009 May.

approach but simultaneously sought to justify same by indicating that “...rather than going through a formal procurement system to select an [sic] FSRU provider (which will waste time and unduly delay the execution of more important aspects of the Project such as the identification of LNG supply) that one of these two companies be selected by interview.”<sup>64</sup>

Nonetheless, Mr. Wedderburn, in his 2009 May proposal also recommended that if the MEM was desirous of utilizing the traditional procurement methodology, consideration would have to be given to the contracting of Technical Consultants in order to ensure that a proper RFP would be developed.

The proposal further revealed that Mr. Stephen Wedderburn had already identified two (2) companies in the industry as having an interest, namely, Exmar Marine NV and Golar LNG. In this regard, Mr. Wedderburn expressed that the referenced companies were the only ones to “...actually have floating regasification systems in operation...”<sup>65</sup>

It is instructive to note that Mr. Wedderburn, in his referenced proposal also indicated that “Two other companies, Hoegh LNG and Suez Gaz de France, will join the floating regasification club in the next year when they jointly begin to supply LNG...”<sup>66</sup>

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<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> Footnote #1 as stated in 2009 May proposal from Mr. Stephen Wedderburn. Page # 6

### ***LNG Meetings and other forms of Assemblies***

The OCG thought it prudent to enquire into the possible meeting(s) which was/were held, if any, between Mr. Stephen Wedderburn and any of the potential FSRU Providers, prior to the commencement of the procurement process in 2009 November.

The OCG, by way of a Statutory Requisition which was addressed to Mr. Stephen Wedderburn, in his capacity as the LNG Project Coordinator, PCJ, that was dated 2010 September 15, posed the following questions:

*“Please provide a comprehensive listing of all the meetings, seminars, conferences and/or any other form of an official assembly to which you have been in attendance and/or hosted, whether locally and/or internationally with any of the LNG carriers, providers, consultants, suppliers and/or any person(s) of interest in the LNG Industry, prior to the commencement of the tender period for the proposed Financing, Development, Ownership, Operation of an FSRU LNG Re-gasification Terminal and Natural Gas Transmission System in Jamaica. In addition, please provide answers to the following questions:*

- a) Please provide the date(s) on which you attended and/or hosted the listed meetings, seminars, conferences and/or any other form of an official assembly;*
- b) Please provide a list of the name(s) and title(s) of all the representatives from the referenced LNG carriers, providers, consultants, suppliers and/or any person(s) of interest in the LNG Industry, with whom you had/have had an official and/or personal relationship with in regard to the overall LNG Project;*
- c) Please detail the basis upon which each of the listed meetings, seminars, conferences and/or any other form of an official assembly, were attended and/or hosted;*

- d) *Please provide an Executive Summary detailing: (a) the approaches, if any, which were made by you, for and on behalf of the PCJ, the MEM and/or any other Entity and/or person acting on behalf of the PCJ and/or the MEM and/or for anyone involved and/or affiliated with the procurement, to the listed LNG carriers, providers, consultants and/or suppliers; (b) the date(s) on which such approaches were made; and (c) the reason(s) such approaches were made;*
- e) *Please provide a list of all the Public Officials/Officers, who attended the listed meetings, seminars, conferences and/or any other form of an official assembly, and/or such members of the PCJ, the MEM and/or any other Entity and/or person acting on behalf of the PCJ and MEM, who was given an integral role and/or function in such assemblies for the overall LNG Project; and*
- f) *Please provide a copy, if any, of all the reports which were prepared subsequent to your attendance at each of the listed meetings.*<sup>67</sup>

Mr. Stephen Wedderburn, in his sworn response to the referenced OCG Statutory Requisition, which was dated 2010 November 15, stated, *inter alia*, the following:

***“It is not possible or practical to give an accurate answer to this question. Over the several years I have been involved in the LNG Project I would have participated in thousands of meetings relating to LNG, many of which would not have been minuted or otherwise recorded. In general terms the meetings I have attended include:***

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<sup>67</sup> OCG’s Statutory Requisition which was addressed to Mr. Stephen Wedderburn, dated 2010 September 15. Questions #7

<i>Meetings with Potential FSRU Providers in Jamaica</i>	<i>Hoegh LNG (August and September 2006); Exmar (January, March, April, June and November 2007, May 2010, June 2010); Golar LNG (February 2007, June 2008, April 2010, June 2010, July 2010); MISC (March and May 2007); Samsung (May 2007); Teekay (November 2007)</i>
<i>Meetings with Potential FSRU Providers Overseas</i>	<i>See response to Question 7</i>
<i>Meetings with Potential LNG Suppliers in Jamaica</i>	<i>NGC (several meetings 2003 to 2006); Marubeni (September 2006); Merrill Lynch (several meetings August 2007 to February 2008); BG (July 2009); Gazprom (August 2009 &amp; July 2010); Shell (March 2010); Stream (March 2010)</i>
<i>Meetings with Potential LNG Suppliers Overseas</i>	<i>Trinidad (Several Meetings with NGC, 2003 – 2006, October 2006 – BG, Repsol, GDF Suez); Houston (several visits November 2006 – May 2010 – BG, BP, GDF Suez, Shell, Merrill Lynch, Macquarie, JP Morgan, CitiGroup, Gazprom, ExxonMobil, ConocoPhillips); Venezuela (several meetings with PDVSA 2007 – 2008)</i>
<i>Meetings related to FEED Study</i>	<i>Numerous Meetings April 2006 to June 2007</i>
<i>Meetings with potential contractors/providers of onshore LNG terminal facilities</i>	<i>Numerous meetings 2003 to 2008</i>
<i>Meetings with Potential Financiers</i>	<i>Numerous Meetings 2003 to 2010 with inter alia World Bank, IFC, IDB, USAID, Citibank, BNS, NCB, RBTT, First Caribbean Bank, Japan Bank for International Cooperation, European Investment Bank, French Development Agency, Nomura, Mizuho, Royal Bank of Scotland.</i>
<i>Meetings with Heads of Government, Ministers and/or Ambassadors of foreign countries</i>	<i>Trinidad, Venezuela, Brazil, Nigeria, Malaysia, Russia, Japan, Korea, France, Belgium, Norway, Dominican Republic</i>
<i>Meetings with potential gas offtakers</i>	<i>Numerous meetings with Alpart, Jamalco, Windalco, JPS, JEP, JPPC, Carib Cement, Red Stripe, Jamaica Broilers, Mincenco</i>
<i>LNG Steering Committee Meetings</i>	
<i>Cabinet Office Energy Task Force Meetings</i>	
<i>Inter-agency meetings</i>	
<i>Internal PCJ/MEM meetings</i>	

Based upon the foregoing tabular representation, Mr. Stephen Wedderburn had several meetings with, *inter alia*, (a) potential FSRU Providers, (b) potential LNG suppliers, (c) Heads of Government/Ministers/Ambassadors, and (d) potential gas off-takers, prior to the commencement of the tender process in 2009 November.

It is instructive to note that based upon the information which was provided to the OCG, nine (9) companies expressed an interest in the 'FSRU LNG Project' from the initial pre-qualification exercise which was undertaken in 2007. However, based upon the information which was provided by Mr. Wedderburn, the OCG found that meetings were held with only six (6) of the potential bidders as prospective 'FSRU Providers' for Jamaica.

The OCG was further advised by Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, in his sworn response to the OCG's Statutory Requisition, which was dated 2010 November 15, that several other meetings were held in respect to the LNG Project both locally and internationally.

It is instructive to note that the majority of the meetings which were allegedly attended by various GOJ Public Officers and/or Officials, were held prior to the commencement of the formal tender process for the 'FSRU LNG Project' and at different phases of the overall LNG Project.

The OCG, in its Statutory Requisition that was addressed to Mr. Stephen Wedderburn, which was dated 2010 September 15, also posed the following questions:

*"Please indicate whether you have travelled to and/or with any potential bidder(s) and/or with any other person(s) involved in and/or who has/have an interest in the LNG Project and/or components thereof and, in particular, the proposed Financing, Development, Ownership, Operation of an FSRU LNG Re-gasification Terminal and Natural Gas Transmission System in Jamaica. If yes, please provide the responses to the following questions:*

- a) The location(s) to which you have travelled in regard to the referenced projects;*
- b) The date(s) on which you have travelled in each instance;*
- c) The purpose and nature of your trip in regard to the referenced projects;*

- d) *The name(s) and title(s) of the person(s) who (a) accompanied you and (b) with whom you met; and*
- e) *The outcomes and/or decisions which resulted from each trip and also account for the subsequent decisions and/or meeting(s) which has/have been held in regard to the referenced projects.*

*Please indicate whether you have travelled to and/or with any GOJ Public Officer(s), Official(s), Accounting Officer(s) and/or Accountable Officers in the MEM and/or PCJ in regard to the LNG Project and/or components thereof and, in particular, the proposed Financing, Development, Ownership, Operation of an FSRU LNG Re-gasification Terminal and Natural Gas Transmission System in Jamaica. If yes, please provide the responses to the following questions:*

- a) *The location(s) to which you have travelled in regard to the referenced projects;*
- b) *The date(s) on which you have travelled in each instance;*
- c) *The purpose and nature of your trip in regard to the referenced projects;*
- d) *The name(s) and title(s) of the person(s) who (a) accompanied you and (b) with whom you met; and*
- e) *The outcomes and/or decisions which resulted from each trip and also account for the subsequent decisions and/or meeting(s) which has/have been held in regard to the referenced projects.*

*Please state whether you had any unofficial meeting(s) with any third party(ies) in regard to the LNG project whilst on your official trip(s) as was/were outlined in your responses to Questions No. 8 and 9 above. If yes, please provide a synopsis of the unofficial meeting(s) inclusive of the date(s), name(s) and title(s) of the persons with whom you met*

*and the reason for same.*"<sup>68</sup>

Mr. Stephen Wedderburn, in his response to the OCG's Statutory Requisition, which was dated 2010 November 15, stated, *inter alia*, the following:

**"Yes. *Answers to this question focus on travel specifically to/with persons/entities directly relevant to the proposed Financing, Development, Ownership and Operation of an FSRU LNG Re-gasification Terminal and Natural Gas Transmission System in Jamaica...***

***I do not recall having any unofficial meetings on these trips.*"<sup>69</sup> (OCG's Emphasis)**

Alongside the aforementioned tabular response, Mr. Stephen Wedderburn also provided the OCG with other tabular representations which detailed, *inter alia*, (a) all the places he had travelled, (b) the respective meetings which were attended, and (c) the persons with whom he travelled in each instance, in regard to the 'FSRU LNG Project'.

In this regard, the OCG assessed the information which was provided by Mr. Wedderburn and found, *inter alia*, the following:

- i. Meetings were attended by GOJ representatives between the period of 2003 to 2010 in regard to the LNG Project.
- ii. Meetings were attended by GOJ representatives with potential bidders between the period of 2005 to 2010 with specific regard to the 'FSRU LNG Project'.
- iii. Between the period of 2005 to 2010, Mr. Stephen Wedderburn indicated that he attended several meetings to, *inter alia*, promote LNG awareness, investigate potential FSRU and/or LNG suppliers and to investigate the feasibility of the FSRU technology. He also

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<sup>68</sup> OCG's Statutory Requisition which addressed to Mr. Stephen Wedderburn on 2010 September 15. Questions #8-10

<sup>69</sup> Response from Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, which was dated 2010 November 15. Response #8 &10

indicated that conferences and training courses were attended with potential LNG Providers/Suppliers, in regard to the 'FSRU LNG Project'.

- iv. Three (3) meetings were alleged to have been attended, between the period of 2006 to 2007, by representatives of the GOJ in Brussels, Belgium. Of the three (3) meetings, two (2) were with Exmar Marine NV, Besix and Dredging International and the other with Hoegh LNG.
- v. Mr. Stephen Wedderburn, in 2008 June, '*travelled on the same flight*' with Mr. Bart Lavent, Director LNG, Exmar Marine NV, from Jamaica to Havana for a '*PetroCaribe Gas Working Group Meeting*'. Mr. Wedderburn indicated that he "*attended the meeting as a Working Group Member. Mr. Lavent attended to brief the Working Group on FSRU technology.*"<sup>70</sup>
- vi. Several meetings were held with potential LNG suppliers between the period of 2006 to 2007. Of note, this was during the period which the former Minister, Mr. Anthony Hylton, MoFAFT, indicated that the GOJ was in search of sourcing supplies of LNG in regard to the agreement between Jamaica and Trinidad. The OCG found that the then Minister, was in attendance at several of these meetings.
- vii. Mr. Stephen Wedderburn, in 2009 May, '*travelled on the same flights*' with Mr. Bart Lavent of Exmar Marine NV, from Jamaica to Colombia to '*Private gas supply meetings*'. Mr. Wedderburn also stated that Mr. Bart Lavent had been in Jamaica for a meeting with the MEM. It is instructive to note that in 2009 May, Mr. Stephen Wedderburn, who was not employed to the GOJ at the time, submitted a proposal to the MEM to coordinate the LNG Project. (OCG's Emphasis)
- viii. Meetings were held in 2010 with potential LNG suppliers, among others, with respect to the LNG Project.

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<sup>70</sup> Response from Mr. Stephen Wedderburn which was dated 2010 November 15. Response to question # 8

Based upon the foregoing representations from Mr. Stephen Wedderburn, it would appear that the trips which were undertaken by GOJ representatives, from 2003, were specifically with respect to FSRU LNG Re-gasification. However, the OCG found that contrary to the foregoing assertion by Mr. Stephen Wedderburn, Mr. Anthony Hylton indicated that during his tenure as Minister of MoFAFT and MEM, the GOJ's energy policy was with respect to diversification and the use of alternative sources such as LNG, coal and renewables.

In this regard, Mr. Anthony Hylton, in his response to the OCG's Statutory Requisition, which was dated 2011 February 4, stated that *"Useful and cutting edge information was gathered from trips to Japan, South Korea, Algeria, Trinidad & Tobago, Belgium, Norway and Venezuela."*<sup>71</sup>

In point of fact, Mr. Anthony Hylton, in his referenced response, further indicated the following:

*"The initial design called for a land-based regasification terminal to be built at Port Esquivel, close to the JPS power generation plant at Old Harbour and the Jamalco Alumina Plant at Halls Hall, Clarendon, as well as lands sufficient to develop an industrial park at Port Esquivel. **Later, when the cost estimates and the timeline for implementing the project was determined to be too costly and lengthy, the project design shifted to the FSRU model.***

*It is important to note that the project as currently being implemented is different, in some respects, to that originally being contemplated during my tenure. In particular, **the business model contemplated initially, called for the equity participation of Government of Jamaica (GOJ), through PCJ, in the value chain, while leaving room for the potential participation of the private sector by a special-project vehicle to be designed. The current model as I understand it, proposes private sector ownership of both LNG sourcing and distribution.**"*<sup>72</sup> (OCG's Emphasis)

Further, the Permanent Secretary in the MOFAFT, Ambassador Evadne Coye, in her response to

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<sup>71</sup> Response from the former Minister of MME and MOFAFT, Mr. Anthony Hylton, which was dated 2011 February 4. Response to Question #1

<sup>72</sup> Response from Mr. Anthony Hylton, former Minister, MoFAFT, which was dated 2011 February 4. Response #1

the OCG's Statutory Requisition, which was dated 2011 February 7, provided the OCG with a letter which was addressed to the Embassy of Belgium, dated 2009 September 23, which stated, *inter alia*, the following:

*"The Ministry of Foreign Affairs and Foreign Trade presents its compliments to the Embassy of Belgium and has the honour to inform that the Petroleum Corporation of Jamaica...an Agency under the Ministry of Mining and Energy is seeking to diversify Jamaica's energy platform through the introduction of natural gas.*

*The Ministry has the further honour to request on behalf of the Petroleum Corporation of Jamaica, the assistance of the Embassy in obtaining, from the relevant authorities, information related to legislation, regulation and national policies for Liquefied Natural Gas (LNG) and Compressed Natural Gas (CNG). Information on the development of infrastructure for the transportation, storage and the distribution of natural gas would also be appreciated."*<sup>73</sup>

### ***Confirmation of Meetings with Potential Bidders***

The OCG, in an effort to confirm the meetings which were held between the potential bidders and representatives of the GOJ, prior to the commencement of the tender process, sent Letters of Invitation (LOI) to the three (3) bidders who had submitted a bid in response to the 2009 Request for Proposal (RFP). The referenced bidders are Golar LNG, Hoegh LNG and the Exmar Consortium.

It is instructive to note that Golar LNG did not submit a bid within the specified timeframe. Of note, is that although the bid from Golar LNG was rejected on the grounds that it did not meet the submission deadline, the OCG also deemed it prudent to get information on Golar LNG's affiliation, if any, with the GOJ in regard to the 'FSRU LNG Project'.

The information which was provided to the OCG, by Mr. Wedderburn, further revealed that

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<sup>73</sup> Response from Ambassador Evadne Coye, Permanent Secretary, MoFAFT, which was dated 2011 February 7. Attachment.

meetings were held with Golar LNG (*April 2010, June 2010 and July 2010*) after the deadline for the submission of the bids on 2010 February 15 had elapsed.

### Golar LNG

It is instructive to note that the OCG, by way of a letter which was dated 2010 October 12, wrote to Golar LNG inviting the company to provide responses to questions regarding, *inter alia*, its involvement in the ‘FSRU LNG Project’, meetings which were held with the GOJ and any concerns which the company might have had regarding the tender process.

Mr. Blake Blackwell, Senior Vice President, Golar LNG, under the cover of a letter, which was dated 2010 December 16, stated, *inter alia*, the following:

*“...we have demonstrated a long and consistent track record supporting Petroleum Corporation of Jamaica (“PCJ”) and the Government of Jamaica (“GoJ”) in this project. **We naturally were very disappointed in the structure of the tender which was surprising noting the interface we had in previous months...**” (OCG’s Emphasis)*

Golar LNG further provided a schedule that was entitled “*Timeline of Key Events*” which indicated as follows:

<i>“May 2007</i>	<i>Golar Submission for Jamaica LNG Project Expression of Interest</i>
<i>March 2008:</i>	<i>Golar CEO Meeting with Patrick Dallas, Consultant to Minister of Mining and “Jamaica – Golar Points of Discussion”...</i>
<i>June 2008:</i>	<i>Golar Delegation Visit to PCJ/GoJ/Port Visit/Downstream Customer Visits</i>
<i>January 2009</i>	<i>Powerpoint Presentation to GoJ at Request of Mr. Parris A. Lyew-Ayee on behalf of GoJ...</i>

- 20 Feb 2009: *Pricing Proposal to GoJ at Request of Mr. Parris A. Lyew-Ayee on behalf of GoJ...*
- June 2009 *Golar Visit and Presentation to GoJ and PCJ*
- 11 July 2009: *Invitation from Mr. Parris A. Lyew-Ayee for and behalf of The Ministry of Energy & Mining of Jamaica...*
- ~22 July 2009: *Presentation to GoJ and PCJ*
- 10 August 2009: *Golar Consortium Proposal as per Request of GOJ...*
- 25 November 2009: *Golar Letter to PCJ Regarding RFP...*
- 15 February 2010: *Golar Non-Conforming Bid... ”<sup>74</sup>*

### Hoegh LNG

By way of a Letter of Invitation (LOI) that was addressed to a Mr. Sveinung Stohle, President & Chief Executive Officer, which was dated 2010 October 12, the OCG invited Hoegh LNG to provide a response to the following questions:

*“Please indicate whether Hoegh LNG and/or any representative acting on its behalf attended, hosted, or was involved in and/or affiliated with any meeting(s), discussion(s), seminar(s), conference(s) and/or other form of assembly with the PCJ, the MEM and/or any other GOJ Official/Officer, in regard to the referenced project. If yes, please provide:*

- a) *A comprehensive list of such meeting(s), discussion(s), seminar(s), conference(s) and/or other form of assembly;*

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<sup>74</sup> Response from Golar LNG, which was dated 2010 December 16.

- b) *The date(s) on which such meeting(s), discussion(s), seminar(s), conference(s) and/or other form of assembly was/were held;*
- c) *Details of the nature and circumstances under which such meeting(s), discussion(s), seminar(s), conference(s) and/or other form of assembly was/were undertaken; and*
- d) *The name(s) and title(s) of the person(s) with whom you and/or any representative acting on behalf of Hoegh LNG have had such meeting(s), discussion(s), seminar(s), conference(s) and/or other form of assembly.*<sup>75</sup>

Mr. Sveinung Stohle, President & Chief Executive Officer, Hoegh LNG, in his response to the OCG's LOI, which was dated 2010 October 27, stated, *inter alia*, the following:

*"The only meeting Hoegh LNG has had with Petroleum Corporation of Jamaica was in connection with the site visit December 8 & 9, 2009, as per mail from Stephen Wedderburn, dated November 26, 2009. The meeting was held in Petroleum Corporation of Jamaica's offices in the morning of December 8, and was attended by all companies that participated in the site visit. We have no list of who participated from Petroleum Corporation of Jamaica in the meeting."*<sup>76</sup>

#### Exmar Marine NV

By way of a Letter of Invitation (LOI), which was addressed to Mr. Nicolas Saverys, Director, and which was dated 2010 October 12, the OCG invited Exmar Marine NV to provide a response to the following question:

*"Please indicate whether Exmar Marine N.V and/or any partner acting on its behalf attended, hosted, or was involved in and/or affiliated with any meeting(s), discussion(s),*

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<sup>75</sup> OCG's LOI which was sent to Hoegh LNG dated 2010 October 12. Question #4

<sup>76</sup> Response from Hoegh LNG which was dated 2010 October 27. Response #4

*seminar(s), conference(s) and/or other form of assembly with the PCJ and/or the MEM in regard to the referenced project. If yes, please provide responses to the following:*

- a) A comprehensive list of such meeting(s), discussion(s), seminar(s), conference(s) and/or other form of assembly;*
- b) The date(s) on which such meeting(s), discussion(s), seminar(s), conference(s) and/or other form of assembly was/were held; and*
- c) Details of the nature and circumstances under which such meeting(s), discussion(s), seminar(s), conference(s) and/or other form of assembly was/were undertaken.”<sup>77</sup>*

Karel Stes, Company Secretary and Chief Legal Officer, Exmar Marine NV, in a response to the OCG’s LOI, which was dated 2010 December 22, stated, *inter alia*, the following:

*“Yes...*

*Prior to the tender procedure Exmar Marine nv had several meetings with the previous Jamaican government until 2007.*

*EXMAR made unsolicited ouvertures [sic] in 2007 to the PCJ to develop LNG facilities in Jamaica during this time, and discussions were held during the ongoing debate among governmental stakeholder parties on the benefits of coal versus LNG as an energy source in Jamaica.*

*In December 2006 EXMAR had a first meeting with the Minister of Foreign Affairs and Foreign Trade, Hon. Anthony Hylton in Brussels and EXMAR was for the first time made aware of the potential interest of Jamaica in FSRU technology. That meeting generated a presentation in Kingston, Jamaica on January 9<sup>th</sup> 2007, chaired by Hon. Anthony Hylton*

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<sup>77</sup> OCG’s LOI which was sent to Exmar Marine NV dated 2010 October 12. Question #4

and attended by several members of the PCJ...

In March 2007 another presentation was given by EXMAR **and thereafter a Mandate was given to Exmar Marine nv by the Government of Jamaica...to assist the Government in purchasing LNG and/or natural gas...**

EXMAR filed a duly completed Prequalification Document on 18 May 2007 to the PCJ but afterwards the process came to a halt...

EXMAR continued unsolicited meetings in respect of sharing ideas on the feasibility of importing LNG and natural gas use in Jamaica...

Furthermore meetings were held between EXMAR and representatives of the PCJ at the Gastech Conference on March 10-13, 2008, in Bangkok...

Thereafter in June 2009 Exmar met with Minister Hon. James Robertson and Permanent Secretary Marcia Forbes (together with Promigas, EDC LNG and Merrill Lynch). The goal of the meeting was to advise the Government of the intent to conduct the pre-feasibility studies to determine the economic and technical viability of developing a private project to import LNG and supply natural gas for use by private bauxite sector entities.

In July 2009, EXMAR presented to the MEM, at the MEM's residence, the approach that would be taken by the group to demonstrate the feasibility of providing LNG to the bauxite sector. Representatives of the MEM, Jamalco (both local and foreign executives), the Office of the Prime Minister, and the Office of Utilities Regulations attended to this meeting.

During the pre-feasibility studies, meetings were held also with representatives of other relevant stakeholders...

*In November 2009 the Government of Jamaica (GOJ) was again actively pursuing the introduction of LNG into Jamaica's energy mix and sent out a Request for Proposal...*

***In June 2010 a meeting was held with potential end customers...***<sup>78</sup> (OCG's Emphasis)

Based upon the foregoing, the OCG found that the GOJ held several meetings with Golar LNG and Exmar Marine NV between the period of 2008 to 2009. In this regard, both companies were required to provide updated proposals, on separate occasions, to different Public Officials/Officers, with respect to the LNG Project.

The OCG also found that the GOJ had given Exmar Marine NV a 'Mandate' to assist the Government in purchasing LNG and/or natural gas in 2007.

Exmar Marine NV provided the OCG with a copy of the aforementioned 'Mandate' which stated, *inter alia*, the following:

***"BY THIS MANDATE given on 17 March 2007, I, the undersigned, Hon. G. Anthony Hylton, Minister of Foreign Affairs and Foreign Trade of the Government of Jamaica, acting for and on behalf of the Government of Jamaica (the "Government"), do hereby appoint EXMAR MARINE NV...and each of its Directors and Officers, including but not limited to its Chief Executive Officer, Nicolas Saverys (each of them being hereinafter referred to as the "Agent") to act as an agent for and on behalf of the Government of Jamaica to assist the Government, in purchasing liquefied natural gas ("LNG") and/or natural gas (hereinafter together "the Project"), as in particular:***

- (a) ***to invite offers from LNG suppliers for the sale and delivery of LNG and/or natural gas in relation to the Project; and***
- (b) ***to receive, examine, select and respond to such offers and/or negotiate the terms and conditions for the purchase of goods and/or services in relation to the***

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<sup>78</sup> Response from Exmar Marine NV, which was dated 2010 December 22. Response #4

## Project

Without limiting the powers described above, the Agent may, for any or all of the purposes referred to in this Mandate, contact and enter into discussions with any person, agency or company including but not limited to any foreign national or local authority or industrial or commercial enterprise.

For the avoidance of doubt, the services to be provided by the Agent under this Mandate shall not include any of the following: the provision of tax, legal, financial or accountancy services, transportation, liquefaction, re-gasification, receipt, storage of gas, transfer or licensing of intellectual property rights, disclosure of confidential information, the provision of design, engineering, construction or supervision. The provision of any excluded services by the Agent, may, if required, from the subject of a separate mutually acceptable agreement between the parties.

The Government undertakes to:

- facilitate such access to its relevant agencies and departments, for the purpose of the Project, as the Agent may reasonably require;
- provide the Agent with, and/or give access to, all information in its possession which is relevant for the purposes of the services to be provided hereunder Project...

The Government undertakes to keep the Agent fully informed of all strategies, developments and discussions relevant to the Project and agrees that no initiatives that may directly affect the services to be provided by the Agent in connection with the Project will be taken without prior consultation with the Agent...

Unless otherwise agreed in writing by the Government, the Agent shall not be entitled to any fee or remuneration for the provision of any services pursuant to this Mandate and

*the Agent shall bear its own costs for communication, travel and accommodation...*

*This Mandate shall remain valid until and including the 30<sup>th</sup> day of September 2007 but may be extended or renewed by Government for such duration as it may agree in writing...” (OCG’s Emphasis)*

The OCG, by way of a Statutory Requisition that was addressed to Mr. Anthony Hylton, former Minister, MME and the MoFAFT, which was dated 2011 January 26, posed the following questions:

*“Are you aware of the referenced ‘Mandate’? If yes, please provide an Executive Summary detailing the basis upon which and/or reason(s) why such a ‘Mandate’ was signed by you, in your former capacity as the Minister of Foreign Affairs and Foreign Trade, for and on behalf of the GOJ, and Exmar Marine NV.*

*Please indicate for which aspect/component of the LNG Project and/or for which ‘Project’ such a ‘Mandate’ was signed.*

*Please provide an Executive Summary detailing what were the circumstances, at the time, under which the referenced ‘Mandate’ was signed and what was the extent of the provisions, as outlined in the referenced ‘Mandate’.*

*Please indicate whether you are aware of the referenced Mandate being extended beyond the September 30, 2007 termination date. If yes, please provide particulars of the extension dates.*

*Please indicate whether a similar ‘Mandate’ to act as an agent for the GOJ to assist in the purchasing of liquefied natural gas was signed with any other company? If yes, please provide a comprehensive list of such companies and a copy, if possible, of such*

*'Mandate(s)'. ”<sup>79</sup>*

Mr. Anthony Hylton, the former Minister, MME and the MoFAFT, in his response to the OCG's Statutory Requisition, which was dated 2011 February 4, stated, *inter alia*, the following:

***“QUESTION 3***

*...The referenced Mandate was signed in March 2007 (other mandates were signed as mentioned in Question 7 below). The contextual background related to the signing of this Mandate was that the Trinidad Government had just reneged on its LNG supply obligations to Jamaica under a 2004 MOU and the LNG Project was believed to be in danger of failure due to lack of a supply source for LNG. The GOJ had made approaches to other potential suppliers, but without success as the LNG market at that time was very tight and it appeared that many LNG suppliers doubted the commitment and capacity of GOJ to implement a LNG Project.*

*One prospective supplier, Suez LNG, had expressed initial interest, but had then “gone silent”. Suez LNG has Belgian roots and this situation came up in discussions with the Belgian company Exmar. Exmar was asked if they could use their links to “nudge” Suez. Arising out of the discussions Exmar expressed the view that there might be even more promising prospects than Suez. Given that the GOJ had not had any success in its own approaches to LNG suppliers and based on the discussion of LNG supply prospects with Exmar, it was felt that a credible industry player such as Exmar could be well placed to help the GOJ source LNG supply and move the project forward. It was in this context that Exmar was granted a Mandate to act as a non-exclusive agent of the GOJ for a limited period of time to assist in the sourcing of LNG supply. The aim of the Mandate was to provide Exmar with a means of demonstrating to third parties that they were acting with GOJ's authorization in seeking to source LNG supplies.*

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<sup>79</sup> OCG's Statutory Requisition which was addressed to Mr. Anthony Hylton, former Minister, MoFAFT, dated 2011 January 26. Questions #3-7

**The Mandate did not place any financial obligation on GOJ and it was not expected that Exmar would receive any remuneration or reimbursements for the activities it undertook.**

The Mandate was vetted and signed off by the Attorney General's Department. It is noteworthy that the business model for the supply of LNG was different than that which is currently being proposed... The view taken at the time was that if we were not able to source LNG the project would be stillborn.

**QUESTION 4**

...as far as I recall **the Mandate was specifically in respect of sourcing supplies of LNG for the project design and business model as then prevailed.**

**QUESTION 5**

...As far as I recall **the extent of the Mandate was to be restricted to the identification of possible sources of LNG and not the purchase of LNG** as the then design of the project called upon PCJ to purchase LNG for the Project on behalf of the GOJ. Recall also that the Mandate was non-exclusive, at no cost to the government and time-bound.

**QUESTION 6**

...**I am not aware of any extension to the Mandate beyond September 2007.** A new Government Administration was in place.

**QUESTION 7**

...**I recall an identical Mandate being signed with Hoegh LNG of Norway about a month after the signing of the Mandate with Exmar.** In addition, I believe a MOU was signed by PCJ and National Gas Company of Trinidad and Tobago. I also believe that another mandate was signed with a Japanese company, Sojitz, sometime in late 2006, which spoke *inter alia* to Sojitz assisting with identifying supplies of LNG over and above that which could be supplied by Trinidad.

*The government at the time also engaged in active discussions with Ras Gas of Qatar and an Angolan and an Algerian company for the possible supply of LNG. These discussions proved futile... ”<sup>80</sup>(OCG’s Emphasis)*

Based upon the foregoing, it has been alleged that ‘Mandates’ were signed between the period of 2006 to 2007 by the GOJ and a number of possible LNG providers.

However, and despite Mr. Anthony Hylton’s assertion that ‘*an identical mandate*’ was signed with Hoegh LNG, Ambassador Evadne Coye, in her sworn response to the OCG, which was dated 2011 February 4, advised that “*There is no evidence in this Ministry that any other ‘Mandate’ was signed between the Ministry of Foreign Affairs and Foreign Trade and Exmar Marine NV and/or any other company in regard to assisting the GOJ in purchasing liquefied natural gas.*”<sup>81</sup>

The OCG has not seen any other documentary evidence to support the assertions which were made by Mr. Anthony Hylton, former Minister, MEM and MOFAFT.

Consequently, the OCG sent a Follow-Up LOI to Mr. Sveinung Stohle, President & CEO, Hoegh LNG, which was dated 2011 February 23, and posed the following questions:

*“Please indicate whether Hoegh LNG signed a ‘Mandate’ with the GOJ in 2007, and/or at any time, in regard to the purchasing of LNG. If yes, and if possible, please provide a copy of the referenced ‘Mandate’.*

*Please indicate whether the referenced ‘Mandate’ was extended. If yes, and if possible, please provide a copy of such extensions.”*

Hoegh LNG responded to the OCG’s LOI, by way of a letter which was dated 2011 March 9, and stated the following:

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<sup>80</sup> Response from Mr. Anthony Hylton, former Minister, MoFAFT, which was dated 2011 February 4. Response # 3-7

<sup>81</sup> Response from Ambassador Evadne Coye, Permanent Secretary, MOFAFT, which was dated 2011 February 4. Response to Question # 5

*“...please be informed that HLNG AS was in discussions in 2007 for appointment; however no original copy of a formal appointment letter has yet been found in our archives.*

*...no further extension was given.*

*No commercial results were gained and except arranging a meeting with BG 1 August 2007, no arrangements entered into and no further contact has been upheld as a result of the appointment.”*

Having regard to the lack of documentation and the conflicting statements which have been presented to the OCG by Ambassador Evadne Coye, Mr. Anthony Hylton and Hoegh LNG, the OCG is unable to corroborate Mr. Hylton’s assertion that “*an identical mandate*” was signed with Hoegh LNG.

### ***Timeline of Events***

The OCG, in its Statutory Requisition to the Accounting/Accountable Officers and other Public Officers, within the MEM and the PCJ requested, *inter alia*, that the following be provided:

*“A timeline of events which details occurrences, in date chronological order, from the initial planning, conceptualization and implementation phases of the LNG Project up to the projected completion of same...”*

Mr. Nigel Logan, Acting Group Managing Director, PCJ, in his response to the foregoing question, which was dated 2010 November 9, stated the following:

*“Please see below the original timeline of events in the planning, conceptualization and implementation phases of the LNG Project.*

### **Project Implementation Schedule**

<i>ACTIVITY</i>	<i>DURATION</i>	<i>DATE</i>
<u><i>FSRU Terminal &amp; Pipelines – Procurement &amp; Project Implementation</i></u>		
<i>Issuance of RFP</i>		<i>November 12, 2009</i>
<i>Submission of Provider Proposals</i>		<i>February 15, 2010</i>
<i>Complete Evaluation of Proposals</i>		<i>March 5, 2010</i>
<i>NCC Approval of Selection</i>		<i>March 17, 2010</i>
<i>Cabinet Approval of Selection</i>		<i>March 29, 2010</i>
<i>Announcement of Preferred Provider</i>		<i>March 31, 2010</i>
<i>Commence RFP Phase 2 Negotiations</i>		<i>April 12, 2010</i>
<i>Financial Close/Execute Contractual Framework</i>		<i>June 30, 2010</i>
<i>Commence Project Implementation</i>		<i>August 1, 2010</i>
<i>Commission Project</i>		<i>December 31, 2012</i>
<u><i>LNG Supply</i></u>		
<i>Initiate Focused Discussions with LNG Suppliers &amp; Visits to Key Potential Suppliers</i>		<i>Start February 15, 2010</i>
<i>Obtain Indicative Supply Proposals</i>		<i>March 31, 2010</i>
<i>Commence Negotiation of Supply Term Sheet</i>		<i>April 15, 2010</i>
<i>Execute LNG Supply Term Sheet</i>		<i>May 31, 2010</i>
<i>Execute LNG Sales &amp; Purchase Agreement</i>		<i>June 30, 2010</i>
<u><i>Off-take Agreements</i></u>		
<i>Execute Gas Off-take MOUs with End Users</i>		<i>1 March 2010</i>
<i>Execute Gas Sales and Purchase Agreements</i>		<i>30 June 2010</i>
<u><i>Regulatory Framework Development</i></u>		
<i>Begin Analysis of Regulatory Requirements</i>		<i>1 February 2010</i>
<i>Cabinet Submission on Recommended Regulatory Principles</i>		<i>31 March 2010</i>

Mrs. Hillary Alexander, Permanent Secretary, MEM, in her response to the OCG's Statutory Requisition, which was dated 2010 November 12, provided the following information in regard to the foregoing question:

<i><u>"FSRU Terminal 7 Pipelines- Procurement and Project Implementation"</u></i>	
<i>Issuance of invitation to pre-qualify</i>	<i>April 12007 [sic]</i>
<i>Receipt of pre-qualification application</i>	<i>25th May 2007</i>
<i>LNG Steering Committee Reconvened</i>	<i>May 2009</i>
<i>LNG Steering Committee presentation to HPM</i>	<i>24th September 2009</i>
<i>Cabinet Approval of the FSRU Technology</i>	<i>26th October 2009</i>
<i>NCC Approval to issue RFP on Limited Tender</i>	<i>5th November 2009</i>
<i>Cabinet Approval to issue RFP on limited tender</i>	<i>11th November 2009</i>
<i>Issue of RFP</i>	<i>12th November 2009</i>
<i>Site Visits for RFP Respondents</i>	<i>8th-9th December 2009</i>
<i>Extension of Submission Date granted (from 5th Jan to 15TH February 2010)</i>	<i>22nd December 2009</i>
<i>Submission of Provider Proposals (Bids)</i>	<i>15th February 2010</i>
<i>Presentation by bidders to bid evaluation team with Solicitor General and OCG Representative</i>	<i>16th February 2010</i>
<i>Complete Evaluation of Proposals</i>	<i>12th March 2010</i>
<i>PCJ Procurement Committee Endorsement of Bid Evaluation infrastructure procurement</i>	<i>24th April 2010</i>
<i>PCJ Board Endorsement of Evaluation Committee Recommendation</i>	<i>26th April 2010</i>
<i>MEM Procurement Committee endorsement</i>	<i>27th April 2010</i>
<i>NWA Sector Committee Endorsement of Bid</i>	<i>30th April 2010</i>
<i>NCC Approval of Selection</i>	<i>13th May 2010</i>
<i>Cabinet Approval of Selection</i>	<i>14th June 2010</i>
<i>Public Announcement of Preferred Bidder</i>	<i>18th June 2010"<sup>82</sup></i>

Mr. Stephen Wedderburn, in his response to the OCG's foregoing question, which was dated

<sup>82</sup> Response from Mrs. Hillary Alexander, Permanent Secretary, MEM which was dated 2010 November 12. Question #5(f)

2010 November 15, stated the following:

*Please see below:*

<i>TIME PERIOD</i>	<i>ACTIVITY</i>
2001 - 2002	<i>Initial investigation of LNG Feasibility by Ministry of Mining &amp; Energy and PCJ and initial LNG supply negotiations with Trinidad &amp; Tobago</i>
2003	<i>Project responsibility transferred Cabinet Office</i>
2003	<i>Private Sector Pre-Feasibility Analysis coordinated by Mirant Corporation on behalf of JPS, Jamalco and Windalco</i>
2003	<i>Restart of LNG supply negotiations with Trinidad &amp; Tobago</i>
2003	<i>Financial Advisor tender conducted by Cabinet Office</i>
2004	<i>Taylor-DeJongh selected as Financial Advisor and engaged by Cabinet Office</i>
2004	<i>MOUs signed between GOJ and Trinidad and between PCJ and National Gas Co. of Trinidad &amp; Tobago (NGC) in respect of LNG supply and collaboration in project implementation</i>
2005	<i>Project responsibility transferred to PCJ and LNG Project Committee</i>
2005	<i>Taylor-DeJongh Financial Advisory Contract transferred to PCJ and NGC</i>
2005	<i>CH-IV selected and engaged as Technical Advisor</i>
2005	<i>Mustang Engineering selected and engaged as FEED Contractor</i>
2005 - 2007	<i>FEED Study for Onshore LNG Terminal</i>
2005	<i>Project Familiarization Visit to Japan &amp; Korea</i>
2005	<i>Compressed Natural Gas (CNG) technology emerges as a possible alternative to LNG technology</i>
2006	<i>Alcoa recommends that Jamaica investigates LNG Floating Storage &amp; Regasification Unit (FSRU) technology and introduces Hoegh LNG to GOJ</i>

<i>TIME PERIOD</i>	<i>ACTIVITY</i>
2006	<i>Investigation of FSRU option. Meetings with Hoegh LNG, Exmar, Golar LNG, MISC and Suez.</i>
2006	<i>NGC informs GOJ that Trinidad will not be able to fulfill its MOU commitment to supply LNG to Jamaica.</i>
2006	<i>Investigation of alternative LNG supply options. Meetings with BG, BP, Repsol and Suez.</i>
2007	<i>MOU to investigate natural gas supply options signed between GOJ and Venezuela.</i>
2007	<i>LNG FSRU Pre-qualification exercise launched</i>
2007	<b><u>Ministry of Energy support for LNG weakens. CNG and coal being investigated as alternative options.</u></b>
2007	<b><u>Continued investigation of alternative LNG supply sources</u></b>
2007	<b><u>Merrill Lynch proposes LNG joint venture</u></b>
2008	<i>Venezuela shifts from a bilateral arrangement to a regional arrangement for investing natural gas supply. Petrocaribe Gas Working Group established.</i>
2008	<b><u>Ministry of Energy support for LNG Project ceases. Minister announces in Sectoral Budget Presentation that LNG will not be pursued any further. LNG Project appears dead.</u></b>
2009	<i>Prime Minister announces in Budget Presentation that Jamaica will pursue an LNG Project</i>
2009	<i>LNG Steering Committee activated</i>
2009	<i>FSRU RFP issued</i>
2010	<i>Receipt of LNG FSRU Tenders</i>
2010	<i>Exmar Consortium selected as Preferred Bidder</i>
2010	<i>Initiation of Negotiations with Exmar Consortium</i>

The foregoing information, especially that which was provided by the referenced LNG Project Coordinator, provides, at a minimum, a breakdown of the different stages of the LNG Project, from 2001 to present, which have been undertaken by the GOJ and its representatives who were charged with certain responsibilities for the LNG Project and the ‘FSRU LNG Project’.

It is instructive to note that the GOJ, in 2007, conducted a prequalification exercise with respect to the LNG Project. However, the referenced pre-qualification exercise was not completed. Of import, is the fact that in 2007 September, the GOJ also signed a ‘Mandate’ with Exmar Marine NV, one of the potential bidders which was involved in the referenced pre-qualification exercise, to act as an agent for and on behalf of the GOJ, to assist in purchasing LNG and/or natural gas.

The OCG also found that during the tenure of the former Minister of Energy, Mr. Clive Mullings (2007 September and 2009 April), coal was the preferred choice of energy, and the GOJ officially ceased pursuing LNG, as a source of energy for Jamaica. Hence, the LNG project was formally halted until 2009, when the GOJ began exploring the FSRU LNG technology.

It must be recalled that in 2009 May, Mr. Wedderburn submitted a proposal to the MEM. The OCG has also found that between the period of 2008 August and 2009 July, Mr. Stephen Wedderburn was not employed to the GOJ. However, and despite this fact, Mr. Wedderburn was still actively advocating for the introduction of LNG to Jamaica, by the GOJ.

The OCG also identified the following activities between the period of 2007 to 2009:

1. GOJ Officials convened meetings with Exmar Marine NV and Golar LNG in which presentations on updated LNG proposals were conducted. In this regard, the Golar LNG indicated that meetings were held on behalf of the GOJ in 2009, at the request of Mr. Parris A. Lyew-Ayee. Exmar Marine NV, on the other hand, indicated that they met with the representatives of the MEM in 2009.
2. Exmar Marine NV informed the OCG that in 2009 June, a meeting was convened, with Minister Robertson, Ms. Marcia Forbes, former Permanent Secretary in the MEM, Promigas, EDC LNG, and Merrill Lynch, to advise the GOJ of its “...*intent to conduct the pre-feasibility studies to determine the economic and technical viability of developing a private project to import LNG and supply natural gas...*”<sup>83</sup>

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<sup>83</sup> Response from Karel Stes, which was dated 2010 December 22.

3. In 2009 July, Exmar Marine NV presented the MEM with the “...*approach that would be taken by the group to demonstrate the feasibility of providing LNG to the bauxite sector.*”<sup>84</sup>
  
4. Mr. Ian Moore, in his sworn response to the OCG’s Statutory Requisition, which was dated 2010 December 3, stated, *inter alia*, that “**Upon completion of the pre-feasibility study in October 2009, I met with Prime Minister Golding, Minister Daryl Vaz and Mr. Paul East...Subsequent to my departure from the PCJ in November 2008 and prior to the commencement of the tender period on November 12, 2009, EDC LNG (now known as CLNG and with which I am affiliated) engaged an engineering firm called Bechtel Oil & Gas in July 2009 to conduct the pre-feasibility study...Note that the Exmar Consortium was not established at the time these meetings took place...**”<sup>85</sup>  
(OCG’s Emphasis)

It is instructive to note that Mr. Ian Moore was the Chairman of the PCJ Board of Directors, PCJ, during the period of 2007 December and 2008 November.

5. Subsequent to the completion of the private pre-feasibility study in 2009 October, by EDC LNG, a Request for Proposal (RFP) was issued by the PCJ in 2009 November, which is approximately one (1) month after the referenced pre-feasibility study was completed.
  
6. The OCG found that there were several email correspondence throughout 2008, between Mr. Bart Lavent, LNG Director, Exmar Marine NV and Mr. Stephen Wedderburn, which were copied to Mr. Ian Moore, with respect to LNG. Of note is the fact that Mr. Ian Moore, was the Chairman of the PCJ Board of Directors, PCJ, at the time when the referenced emails were being circulated.
  
7. The OCG has found, based upon email correspondence, that in 2008 Mr. Stephen

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<sup>84</sup> Response from Karel Stes, which was dated 2010 December 22.

<sup>85</sup> Response from Ian Moore, Director, CLNG, which was dated 2010 December 3. Question 13(a) & (g)

Wedderburn had a working relationship with Merrill Lynch and Exmar Marine NV with respect to the LNG Project.

In this regard, the OCG found that on 2008 February 6, Mr. Stephen Wedderburn sent an email to Mr. Conrad Kerr, and other representatives of Merrill Lynch, which was copied to Mr. Bart Lavent of Exmar Marine NV and Mr. Ian Moore. The referenced email indicated that it was being sent as a follow-up to a conference call which was made on the previous day, and enclosed a ‘*pipeline diagram*’, which was prepared by Mr. Wedderburn, illustrating “...*what the pipeline network would look like if all the proposed parties to the end-user MOU take gas...*”<sup>86</sup>

8. Several trips and meetings were scheduled and attended by Mr. Stephen Wedderburn and Mr. Ian Moore in 2008.

### ***Roles and Responsibility of the MEM and the PCJ in the LNG Project***

The OCG, in its Statutory Requisition to Mr. Nigel Logan, Acting Group Managing Director, PCJ, and Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, which were dated 2010 September 15, posed the following question:

*“Please provide details of the role(s) and responsibility(ies) of the PCJ and the MEM in the referenced project...”*<sup>87</sup>

Mr. Nigel Logan, in his response to the OCG’s Statutory Requisition, which was dated 2010 November 9, stated the following:

*“PCJ’s role in the LNG project is to implement the Project in all its facets. This involves the following:*

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<sup>86</sup> Email from Mr. Stephen Wedderburn to Mr. Conrad Kerr, and other representatives at Merrill Lynch, which was copied to Mr. Bart Lavent of Exmar Marine NV and Mr. Ian Moore which was dated 2008 February 6.

<sup>87</sup> OCG’s Statutory Requisition to Mr. Nigel Logan, Acting GMD, PCJ, which was dated 2010 September 15. Question #6(c)

- i) *Engaging legal, technical and financial consultants to advise the GOJ*
- ii) *Tendering to identify the preferred bidders for the FSRU, Pipeline System, Off-Takers and Suppliers*
- iii) *Negotiating contracts with preferred bidders for the FSRU, Pipeline, Off-Takers and Suppliers*
- iv) *Develop regulatory framework for LNG*
- v) *Monitor the implementation of the various aspects of the project*
- vi) *Report to the MEM and Cabinet regarding the progress of the project*
- vii) *Identify the policy issues that would impact the development of the project*

*This is in line with the GOJ's Energy Policy which indicates that LNG is the fuel of choice and that fuel diversification is being promoted. **The MEM's role is to facilitate the implementation of the LNG Project and to develop the policies, legislation, regulatory framework necessary to support the robust development and implementation of the project.***<sup>88</sup>(OCG's Emphasis)

Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, in his response to the referenced OCG Statutory Requisition, which was dated 2010 November 15, stated the following:

*"The following is an extract from a project governance document that was prepared by PCJ in collaboration with the MEM circa September 2009, which I believe provides the relevant details.*

*The Ministry of Energy & Mining*

***The Ministry of Mining and Energy acts as the umbrella body for all activities related to the execution of the project except for its actual implementation.** As it relates to the project, specifically, the Ministry will:*

- i. *Provide guidance with respect to the roll-out of policy and implementation;*

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<sup>88</sup> Response from Mr. Nigel Logan, Acting Group Managing Director, PCJ, which was dated 2010 November 9. Response #6(c)

- ii. *Monitor and evaluate policy implementation;*
- iii. *Interface with Cabinet on behalf of all the project stakeholders;*
- iv. *Develop, review and promulgate legislation in support of the project.*

*The LNG Project Committee (Steering Committee) [MEM]*

*The steering committee will guide the project development and implementation in conjunction with the Ministry and PCJ. The main responsibilities of the steering committee comprise:*

- i. *Assist with the high level development of the project concept to the point of final investment decision (FID).*
- ii. *Assist with the setting of targets and timelines for different stages of the project;*
- iii. *Assist with the formation of the legal and regulatory framework for the project;*
- iv. *Assist with the establishment of the mechanism through which to execute the project;*
- v. *The development of a mechanism to ensure that industry and international best practices are observed.*

*The Petroleum Corporation of Jamaica*

*The PCJ as an implementation arm of the Ministry has a pivotal role to play in the development and implementation of this project. Through its Board of Directors, specifically, the PCJ will:*

- i. *Execute the policies as set by the Ministry;*
- ii. *Create a NEWCO, a subsidiary of the PCJ, through which the project will be driven;*
- iii. *Provide oversight and direction for the NEWCO;*
- iv. *Develop policies and guidelines for the operation of the NEWCO and the development and execution of the project;*

- v. *Guarantee budgetary support and approvals for the NEWCO;*
- vi. *Monitor and report on the progress of the implementation of the project.*<sup>89</sup>(OCG Emphasis)

The OCG, in its Statutory Requisition to Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, which was dated 2010 September 15, also posed the following question:

*“Please indicate which Public Body has overall responsibility for the planning, conceptualization and implementation of the LNG Project and the proposed Financing, Development, Ownership, Operation of an FSRU LNG Re-gasification Terminal and Natural Gas Transmission System component of the same.”*<sup>90</sup>

Mr. Wedderburn stated, *inter alia*, the following:

*“I do not recall seeing any official documentation assigning overall responsibility of the project. **It appears to me to be a project falling under the responsibility of the Ministry of Energy & Mining (MEM) and for which MEM has delegated day-to-day implementation responsibility to the PCJ.**”*<sup>91</sup>(OCG’s Emphasis)

The OCG has noted that although the MEM is the parent Ministry for the PCJ, it is the PCJ which was charged with the responsibility for the implementation of the ‘FSRU LNG Project’.

Notwithstanding the PCJ’s responsibility for the implementation of the ‘FSRU LNG Project’, the OCG found that the MEM’s responsibility was policy oriented and that the MEM was duly responsible for the re-employment of Mr. Stephen Wedderburn, to the PCJ, in 2009.

In this regard, it is instructive to note that the former Permanent Secretary, Ms. Marcia Forbes, MEM, in her sworn response to the referenced OCG Statutory Requisition, which was dated

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<sup>89</sup> Mr. Stephen Wedderburn’s response to the OCG’s Statutory Requisition, dated 2010 November 15. Response #6b

<sup>90</sup> OCG’s Statutory Requisition to Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, which was dated 2010 September 15. Question #3.

<sup>91</sup> Response from Mr. Stephen Wedderburn, dated 2010 November 15. Responses #3

2010 November 16, stated, *inter alia*, the following:

**“...Of concern to me...was the manner in which the Minister was pushing to ensure that Stephen Wedderburn spearheaded the entire LNG project.** For several reasons...I had doubts about Wedderburn’s suitability. I was worried about the Minister’s desire to, seemingly irrespective of the guidelines, install Wedderburn in such a critical decision-making position. Please note that I had no knowledge of Mr. Wedderburn prior to meeting him at the Ministry and so my views were entirely dispassionate and driven by what I felt was in the best interest of the LNG Project and ultimately Jamaicans.

**The Minister’s initial expressed desire was for Wedderburn to take over as head of the Petroleum Corporation of Jamaica (PCJ).** This was resisted/rejected by me based on everything I had learnt and seen of Wedderburn since taking up the position of Permanent Secretary, MEM. **The Minister’s fallback position was to insist on Wedderburn to headup [sic] the LNG project and at an astronomical fee, well outside of the guidelines by Ministry of Finance.** I remember Wedderburn started by asking for about J\$15M per month... **Fortunately Glenford Watson was quite familiar with the GOJ fee guidelines and made these clear to the Minister who eventually, to my best knowledge agreed to a fee, as I did as well, within these guidelines.** Wedderburn’s contract had not been signed up to the time I demitted office because in [sic] involved a great deal of ‘haggling’ to get him to realize that **he could not be paid what both he and the Minister wanted.** Eventually, as directed by the Minister, in a letter dated August 12, 2009, I informed Dr. Potopsingh of the PCJ that “Mr. Stephen Wedderburn is to be employed by the PCJ as Project Coordinator” of the LNG Project...”<sup>92</sup>

### ***The Public Officers and Officials who had a key role in the LNG Project***

Based upon the foregoing, the OCG found evidence to suggest that there were certain key players who spearheaded the LNG Project and, in particular, the ‘FSRU LNG Project’, from inception to present.

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<sup>92</sup> Response from Ms. Marcia Forbes, former Permanent Secretary, MEM, which was dated 2010 November 16. Response # 3

In this regard, the OCG questioned certain Heads of Department in the MEM and the PCJ, to ascertain, amongst other things, a) the key players and/or the person(s) who were assigned certain role(s) and responsibility(ies); b) the extent of their involvement; c) the components of the LNG Project and (d) the stage at which such person(s) became involved and/or affiliated with the referenced projects.

In the premises, the OCG requisitioned the Hon. James Robertson, Minister, MEM, Mrs. Hillary Alexander, Permanent Secretary, MEM, Mr. Nigel Logan, Acting Group Managing Director, PCJ, Mr. Stephen Wedderburn, the then LNG Project Coordinator, PCJ, Ms. Marcia Forbes, the former Permanent Secretary, MEM and Dr. Ruth Potopsingh, the former Group Managing Director, PCJ.

The OCG, by way of a Statutory Requisition which was addressed to the Hon. James Robertson, Minister of Energy and Mining, which was dated 2010 November 3, posed the following questions:

*“Please provide an Executive Summary detailing all the activities which have been undertaken by you, as the Minister of Energy and Mining, from inception to present, in regard to the LNG Project and/or any component of same and, in particular, the proposed Financing, Development, Ownership, Operation of an FSRU LNG Re-gasification Terminal and Natural Gas Transmission System in Jamaica.”<sup>93</sup>*

The Minister, in his response to the OCG’s Statutory Requisition, which was dated 2011 January 10, stated, *inter alia*, the following:

*“As Minister with portfolio responsibility (during the period that the project full [sic] under the Ministry of Energy and Mining), I served as Chairman of a LNG Steering Committee/Project Team. The Steering Committee would meet and discuss aspects of the proposed LNG Project, implementation strategy and timetable, obtain reports from the*

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<sup>93</sup> OCG’s Statutory Requisition which was addressed to the Hon. James Robertson, Minister, MEM dated 2010 November 3. Question #3

*Project Co-ordinator and, generally, discuss all relevant issues relating to the project. I participated in these activities of the Steering Committee.*

*As Minister, I also presented relevant Cabinet Submission and Notes, seeking approval for, or advising Cabinet on specific issues relating to the Project.*

*I also offered advice, comments or brief on the LNG project, as would be necessary.”<sup>94</sup>*

The OCG, by way of a Statutory Requisition, which was dated 2010 September 15, posed the following questions to Mr. Stephen Wedderburn, the LNG Project Coordinator, PCJ:

*“Please indicate what is/are your role(s) and responsibility(ies), in the procurement of goods, works and/or services and the subsequent award and implementation of contracts at the PCJ and MEM?*

*Please provide the date(s) on which you were appointed and/or employed to the PCJ and/or the MEM. In addition, please provide answers to the following:*

- a) Who appointed and/or employed you to the PCJ and/or the MEM;*
- b) Please indicate in what capacity were you appointed and/or employed to the PCJ and/or the MEM;*
- c) Please provide a list of the post(s) which you have held since your appointment and/or employment at the PCJ;*
- d) Please provide a copy of your official contract(s) with the PCJ and/or the MEM;*  
*and*

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<sup>94</sup> Response from the Hon. James Robertson, Minister, MEM, in his response to the OCG’s Statutory Requisition, which was dated 2011 January 10. Response #3

e) Please provide the name(s) and title(s) of the person(s) to whom you report and/or reported, in each instance.

*What is/was the extent of your personal and/or official involvement in the planning, conceptualization and implementation of the entire LNG Project?*

*What is/was the extent of your personal and/or official involvement in the planning, conceptualization and implementation of the Build, Own and Operate ('procurement') component of the LNG Project for the proposed Financing, Development, Ownership, Operation of an FSRU LNG Re-gasification Terminal and Natural Gas Transmission System in Jamaica?"<sup>95</sup>*

Mr. Stephen Wedderburn, in his response to the referenced OCG Statutory Requisition, which was dated 2010 November 15, stated the following:

*"As LNG Project Coordinator I am responsible for **overseeing the day-to-day activities of the LNG Project and acting as the focal point for communications** in respect of the project. **In respect of procurement activities this includes drafting RFPs and issuing these RFPs once they have been approved, handling bidders' queries and drafting clarification responses.** **In respect of subsequent award and implementation of contracts this includes supervising or monitoring the work of consultants or other contracted parties.** I do not have any rights of selection or approval in the procurement of goods, works and/or services.*

*The Summary of my Job Description states "This position is responsible for organizing and completing planning phase, mobilizing equipment and engineering expertise, and coordinating the financial, legal and institutional resources of the Natural Gas project. The position, while reporting to the Group Managing Director, will work closely with the Task Force approved by the Ministry of Energy and Mining.*

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<sup>95</sup> OCG's Statutory Requisition which was addressed to Mr. Stephen Wedderburn, dated 2010 September 15. Questions #1-2 & 4-5

Please see below:

2	2a)	2b)	2c)	2e)
Oct 1989 – May 2006	Mrs. Jacqueline Irons – Manager, Personnel & Office Services	Energy Analyst	Energy Analyst, Manager - Energy Policy Unit, Manager – Energy Analysis & Commercial Ventures	Eli Matalon – Executive Chairman, Mrs. Andrée Nembhard – Group Managing Director,
Aug 2004 – Aug 2008	Dr. Ruth Potopsingh – Deputy Group Managing Director	Group Technical Director	Acting Deputy Group Managing Director, Group Technical Director & Project Manager - LNG	Dr. Raymond Wright – Group Managing Director, Dr. Ruth Potopsingh – Group Managing Director
Oct 2009 (retroactive to Jul 2009) – Present	Dr. Ruth Potopsingh – Group Managing Director	LNG Project Coordinator	LNG Project Coordinator	Dr. Ruth Potopsingh – Group Managing Director, Mr. Nigel Logan – Acting Group Managing Director

**I have played a coordinating role in the various phases of the LNG Project since 2003** (except for the period August 2008 to October 2009 when I was not employed in the public sector). This coordinating role has meant integral involvement in the planning and day-to-day implementation of project activities. Through participation in the various steering committees with responsibility for the project I have contributed to the conceptualization of the project, **but I have never had a decision-making role in respect of determining the final project concept or in the implementation of the project.**

From April to October 2009 I was invited to participate in several meetings convened by the MEM including meetings of the LNG Steering Committee. In October 2009 I was hired by PCJ as LNG Project Coordinator and continued to participate in meetings of the LNG Steering Committee. **The LNG Steering Committee has been the primary body involved in the planning, conceptualization of this component of the LNG Project.** As Project Coordinator I have implemented various decisions taken [sic] the Steering

*Committee and the PCJ Board.”<sup>96</sup> (OCG’s Emphasis)*

The OCG also posed the following questions to the Accounting and Accountable Officers in the MEM and the PCJ, in their respective capacities, in an effort to ascertain, *inter alia*, the time, nature and extent of their involvement and their roles and responsibilities throughout the various stages of the LNG Project:

*“Please indicate what is/are your role(s) and responsibility(ies)...for the PCJ, in the procurement of goods, works and/or services and the subsequent award and implementation of such contracts?*

*What is/was the extent of your personal and/or official involvement in the planning, conceptualization and/or implementation, if any, of the entire LNG Project?*

*What is/was the extent of your personal and/or official involvement, if any, in the planning, conceptualization and implementation of the Build, Own and Operate (‘procurement’) component of the LNG Project, for the proposed Financing, Development, Ownership, Operation of an FSRU LNG Re-gasification Terminal and Natural Gas Transmission System in Jamaica?*

*Please indicate the date(s) on which you were appointed and/or employed to the PCJ and the post(s) which you have held. In addition, please indicate at what stage of the procurement process, for the proposed Financing, Development, Ownership, Operation of an FSRU LNG Re-gasification Terminal and Natural Gas Transmission System in Jamaica and the overall LNG Project, were you appointed and/or employed to the PCJ.”<sup>97</sup>*

Mr. Nigel Logan, in his response to the referenced OCG Statutory Requisition, which was dated 2010 November 9, stated, *inter alia*, the following:

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<sup>96</sup> Response from Mr. Stephen Wedderburn, dated 2010 November 15. Responses ##1-2 & 4-5

<sup>97</sup> OCG’s Statutory Requisition which was addressed to Mr. Nigel Logan, dated 2010 September 15. Questions# 1-4

*“As the Acting Group Managing Director I am involved in the procurement of goods and services as follows:*

- a) As per the PCJ Limits of Authority I have to approve all expenditure in excess of \$100,000.00...*
- b) I am currently a member of the PCJ Procurement Committee.*
- c) The Group Managing Director signs most contracts after they are approved by the Procurement Committee.*
- d) **The GMD is not involved in the implementation of most contracts, only large contracts such as large energy projects e.g. LNG.***

*As the Group Chief Financial Officer I was involved in the planning, conceptualization and implementation of the LNG Project as follows:*

- a) As a member of the PCJ Procurement Committee, **the Request for Proposal was also sent to me for approval. Due to the short timeframe that was given for approval of the RFP I was not able to comment on the RFP and the Procurement Committee was not able to meet to discuss the document.***
- b) As GCFO I also attended a LNG Steering Committee in the earlier stages of the development of the Project.*
- c) As Acting Group Managing Director since April 22, 2010, I have been a member of the LNG Steering Committee.*
- d) I have attended various other meetings in the government regarding the Project.*
- e) There have been other meetings internal to PCJ where strategies have been developed to implement the LNG Project which as GCFO I have chaired.*
- f) As the Acting GMD I am a member of the LNG Negotiating Team which have held a number of meetings...*

**I was employed on August 18, 2008 as the Group Chief Financial Officer. At that time I was not aware of the development of an LNG Project as the policy position was not clear.** I was appointed to act as the Group Managing Director on April 15, 2010. At that

time the development of the LNG Project was already being significantly [sic] as the following activities had already taken place.

- a) The Request for Proposal for the FSRU was issued on November 12, 2009.
- b) Bids were received on February 16, 2010
- c) The Evaluation Committee had completed their evaluation on March 12, 2010.
- d) The Procurement Committee had completed their evaluation of the proposal for the LNG FSRU on April 9, 2010.
- e) The PCJ Board had also completed their consideration of the LNG FSRU at their meeting on April 15, 2010.”<sup>98</sup>(OCG’s Emphasis)

Mrs. Hillary Alexander, Permanent Secretary, MEM, in her response to the referenced OCG Statutory Requisition, which was dated 2010 November 12, stated the following:

*“As Accounting Officer of the Ministry of Energy and Mining (“MEM”), I **seek to ensure that the Ministry and related agencies procure goods, works and services in accordance with the principles and guidelines set out in the Government Handbook of Procurement.***

*I attended meetings, participated in discussions, consultations, offered advice and suggestions, as I considered necessary or sound, in my own assessment or judgement.*

*Same as set out at 2 above.*

*Date of Appointment: September 1, 2009*

*Post: Permanent Secretary*

*To the best of my knowledge, this was during the preliminary stages whilst the concept of the project was being settled. Note, however, a 2007 Expression of Interest issued by the*

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<sup>98</sup> Response from Mr. Nigel Logan, in his response to the OCG’s Statutory Requisition, which was dated 2010 November 9. Responses #1-4.

*Petroleum Corporation of Jamaica (“PCJ”) for interest entities/individuals to indicate their interest in providing a FSRU for the delivery of natural gas locally. Also, prior to my appointment, it appears that Cabinet had met, considered and/or approved a number of issues relating the [sic] use of FSRU for the natural gas project.”<sup>99</sup>*

The OCG also posed the referenced question to Ms. Marcia Forbes, the former Permanent Secretary in the MEM, on 2010 October 4, in an effort to garner her previous involvement and/or affiliation, if any, in the ‘FSRU LNG Project’.

The former Permanent Secretary, MEM, in her sworn response to the referenced OCG Statutory Requisition, which was dated 2010 November 16, also stated, *inter alia*, the following:

*“...As its Permanent Secretary I was the Accounting Officer for the Ministry and would therefore be responsible for overseeing the transparent and fair transactions in procurement of goods, works and or services. All such that were sent to the National Contracts Commission had to be first vetted by the Ministry’s contracts committee.*

*...To answer the question very directly, **I really was not involved in the conceptualization of LNG. That took place at another level—the Prime Minister’s Office it seems—and was work in progress for several years, apparently largely driven by a team out of the Office of the two previous and less so the present Prime Minister.** As to the planning, I did attend several meetings but was largely playing catch-up to conversations and business proposals [sic] started long before I became Permanent Secretary with responsibility for the Energy portfolio. Additionally, from all reports, **it was the PCJ, an agency of the Ministry and not the Ministry per se which drove the LNG Project...***

*...I participated in the planning discussions. Open and frank concerns were expressed re various components based on my admittedly limited knowledge of the technology. **A land-based versus off-shore system and the implications, the pros and cons of each***

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<sup>99</sup> Response from Ms. Hillary Alexander, Permanent Secretary, MEM, dated 2010 November 12. Responses #1-4

**concerned me in terms of long-term benefits/threats to Jamaica.** Mr. Rainford (MEM) and Dr. Green (PCJ) were aware of these concerns as together we engaged in lengthy discussions regarding these important issues. During this time I worked to understand the full implications of a final decision, recognizing that a great part of Jamaica's future hinged on this. **FSRU did seem to be the most practical and cost-effective option but there were issues to be ironed out such as a [sic] efficient and practical 'back-up system'...**

...On April 6, 2009 while participating in an International Conference hosted by UNESCO in Montego Bay, I received a call from Nationwide radio to solicit my views on being appointed Permanent Secretary to the newly created Ministry of Energy and Mining with James Robertson as its Minister. I was in shock, having had no prior knowledge of this development...<sup>100</sup>

Based upon the foregoing, the OCG found that up to the end of the former Permanent Secretary's tenure, the GOJ was still unsure as to whether the land-based facility or the off-shore ('FSRU LNG Project') was the better option for Jamaica.

Dr. Ruth Potopsingh, former Group Managing Director, PCJ, in her response to the OCG's Statutory Requisition, which was dated 2010 December 20, stated, *inter alia*, the following:

***“Question 1 .***

*I recall as Group Managing Director (GMD) for the PCJ, my role(s) and responsibility(ies) was firstly to establish a Procurement Committee in the PCJ which did not exist. Others were: The Approval of Procurement within the GOJ guidelines including expenditure thresholds: Approval of Evaluations by the PCJ Procurement Committee for submission to the Sector Committee through the Ministry of Energy and Mining (MEM); Approval of Contract variations within GOJ Guidelines; Award of Contract[sic] within GOJ guidelines; The timely dispatch of required information by the Ministry of Finance and, the NCC and the OCG: Submission of Quarterly Contract*

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<sup>100</sup> Response from Ms. Marcia Forbes, former Permanent Secretary, MEM, which was dated 2010 November 16. Responses # 1-4

*Awards (QCA) Reports. In the matter of the LNG RFP, I dispatched to the Chairman and members of the PCJ Procurement Committee the Draft RFP prepared by a team led by the LNG Project Coordinator, reviewed same RFP, communicated feedback to the LNG Coordinator and authorized publication with the Procurement Committee's Agreement.*

***Question 2***

*No personal involvement. Officially to the best of my memory as GMD I participated as a member of the LNG Steering Committee for the FSRU LNG Infrastructure; provided my technical knowledge and administrative support to the process of diversifying Jamaica's energy mix using natural gas. I ensured the RFP was done in accordance with the GOJ guidelines, procurement of Technical services and began the process for Legal services in keeping with GOJ guidelines and with the full knowledge and approval of the PCJ Board of Directors: facilitated the Evaluation Committee with the staff to collate the report for dispatch to the PCJ Procurement Committee and the PCJ Board; liaised with the Permanent Secretary, MEM, reviewed and dispatched Reports from the LNG Coordinator, attended meetings and presentations made by various companies in the gas business. Attended meeting with JPSCo as a potential gas off taker.*

***Question 3***

*I had no personal involvement. Officially to the best of my memory as GMD I participated as a member of the LNG Task Force for the FSRU LNG Infrastructure; provided my technical knowledge and administrative support to the process of diversifying Jamaica's energy mix using natural gas; ensured the RFP was done in accordance with the GOJ guidelines, worked with relevant PCJ Officers for the procurement of Technical and Legal services in keeping with GOJ guidelines and with the full knowledge and approval of the PCJ Board of Directors: facilitated the Evaluation Committee with the staff to collate the Evaluation Report for dispatch to the PCJ Procurement Committee and PCJ Board, liaised with the Permanent Secretary MEM, reviewed and dispatched Reports from the LNG Coordinator, attended presentations and meetings with various Companies in the gas business. Kept the PCJ Board informed on the activities on the project.*

**Question 4**

*January, 1988 – April 2010. Posts held: Development Planner, Manager, Energy and Environment, Deputy Group Managing Director and Group Managing Director.*

*To the best of my recollection I became involved in LNG as a fuel option in about 2001. To the best of my recollection I later became involved with a FSRU consideration sometime in about 2008”<sup>101</sup>*

The OCG also found that there were certain Public Officer(s) and Official(s) who were integral in the planning and conceptualization of the LNG Project while there were other persons, throughout various Public Entities, who, during their tenure, were assigned roles and responsibilities at various stages of the LNG Project. Further, the OCG was aware of the involvement of private individuals and/or companies who/which were acting on behalf of the GOJ during the course of the LNG Project.

Particulars of the involvement of such GOJ Officers/Officials and private individuals and/or companies were requested from, and provided by representatives of the MEM and the PCJ, as follows:

Mrs. Hillary Alexander, Permanent Secretary, MEM, in her sworn response to the referenced OCG Statutory Requisition, which was dated 2010 November 12, stated, *inter alia*, the following:

*“From my personal knowledge, however, I am aware of the involvement of the following persons as at (iii) below...*

**Minister James Robertson Minister of Energy & Mining** – *the Minister made Submissions to Cabinet on policy issues relating to the LNG Project: Served as chairman of the LNG Task Force/Steering Committee - in this capacity, the Minister convened*

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<sup>101</sup> Response from Dr. Ruth Potopsingh, former Group Managing Director, PCJ, which was dated 2010 December 20. Response to question # 1-4

*meetings of the Task Force; received updates on the various issues and activities surrounding the project; participated in discussions to arrive at solutions or way forward in respect of issues or necessary course of action.*

**Mr. Glenford Watson** - served on the LNG Task Force – offered legal and strategic advice or suggestions, where applicable: Member of the PCJ Board – I am advised that in this capacity, Mr. Watson assisted in providing the Board with updates on several aspects of the LNG Project and advised as to any policy decision or discussion of which he was aware; and, in general terms offer [sic] advice to the Board in relation to the LNG Project: Member of the Bid Evaluation Committee for the FSRU and pipeline infrastructure – I am informed that Mr. Watson advised the Committee on legal and procurement issues with of [sic] view of ensuring that the Bids were evaluated in a manner that was consistent with GOJ procurement guidelines; and evaluated the bids in accordance with the Evaluation criteria set out in the Request For Proposals.

**Mr. Oral Rainford** - member of the LNG Task Force/Steering Committee – Participated in trouble shooting, discussions and providing resolutions/suggestions and policy recommendations for issues relating to the LNG Project: Member of the Bid Evaluation Committee for FSRU and related pipeline infrastructure – I am advised that, as a member of the Committee, Mr. Rainford evaluated the bids in accordance with the criteria set out in the Request for Proposals, and GOJ procurement guidelines.

**Mr. Stephen Wedderburn** - LNG Project Manager/Coordinator – Co-ordinated the various aspects and activities under the LNG Project; liaise with all relevant parties in the receipt or dissemination of relevant information; provide technical support, advice and documentation, where necessary - including draft RFP; arranged meetings and briefing sessions and updates in relation to the Project.

**Dr. Ruth Potopsingh** – as Group Managing Director of the Petroleum Corporation of Jamaica (PCJ), with overall responsibility for the project development and implementation.

**Mr. Nigel Logan** – Acting Group Managing Director of the PCJ

**Kathryn Phipps** – Chairman of the PCJ – with general oversight of the PCJ and its BOD; and advised on major projects under the purview of the PCJ

**Dr. the Honourable Carlton Davis** – Former Cabinet Secretary and Chair, Energy Task Force

**Dr. Earl Green** - PCJ

(e) ...**I am aware, however, of the involvement of CHIV (Joe Fossella, Pat La Strappes of the firm CH IV International, Technical Consultants to the project)...**”<sup>102</sup> (OCG’s Emphasis)

Mr. Stephen Wedderburn, in his response to the OCG’s Statutory Requisition, which was dated 2010 November 15, provided a list of the GOJ Officials and private individuals and companies who/which were assigned and/or appointed certain role(s) and/or responsibility(ies) from the inception of the LNG Project to present, as follows:

Detailed below are particulars of the GOJ Officials who were involved in the LNG Project:

***“Please see below:***

<i>7c) NAME</i>	<i>7c)i STAGE</i>	<i>7c)ii BASIS</i>	<i>7c)iii ROLE</i>
<i>Anthony Hylton</i>	<i>~2001 – 2007</i>	<i>Minister of Energy &amp; Mining, Cabinet Office Envoy, Minister of Foreign Affairs &amp; Foreign Trade</i>	<i>Initiator and Project Chairman</i>
<i>Phillip Paulwell</i>	<i>~2003 – 2007</i>	<i>Minister of Investment, Technology, Energy &amp; Commerce</i>	<i>Portfolio Oversight</i>
<i>Zia Mian</i>	<i>~2001 – 2008</i>	<i>Advisor to Minister of Energy, Consultant – Cabinet Office,</i>	<i>Project Coordination</i>

<sup>102</sup> Response from the Ms. Hillary Alexander, Permanent Secretary, MEM, dated 2010 November 12. Response #5(d) – (e)

<i>7c) NAME</i>	<i>7c)i STAGE</i>	<i>7c)ii BASIS</i>	<i>7c)iii ROLE</i>
		<i>Consultant – Ministry of Foreign Affairs</i>	
<i>Vincent Lawrence</i>	<i>~ 2003 – 2005</i>	<i>Deputy Chairman PCJ</i>	<i>Project Negotiations</i>
<i>Carlton Davis</i>	<i>~2006 – 2009</i>	<i>Cabinet Secretary, Chairman – Energy Task Force, Chairman – Bauxite Industry Task Force</i>	<i>Project Oversight, Member LNG Steering Committee</i>
<i>Jean Dixon</i>	<i>~2005 – 2009</i>	<i>Permanent Secretary, Ministry of Industry</i>	<i>Project Oversight</i>
<i>Glenford Watson</i>	<i>~ 2006 – present</i>	<i>Legal Counsel, Ministry of Energy and PCJ Board Member</i>	<i>Member, LNG Steering Committee</i>
<i>Christopher Cargill</i>	<i>~2006- 2007</i>	<i>Advisor to Minister of Energy, PCJ Board Member</i>	<i>Project Negotiations</i>
<i>John Cooke</i>	<i>~2002 – 2007</i>	<i>Chairman PCJ</i>	<i>Corporate oversight.</i>
<i>Raymond Wright</i>	<i>~2002 – 2005</i>	<i>Group Managing Director PCJ</i>	<i>Corporate oversight, coordinated pre-feasibility study</i>
<i>Ruth Potopsingh</i>	<i>~2006 – 2010</i>	<i>Group Managing Director PCJ</i>	<i>Corporate oversight, Member – LNG Steering Committee</i>
<i>Nicole Lambert</i>	<i>~2003 – 2008</i>	<i>Attorney General’s Chambers</i>	<i>Legal oversight, Member - LNG Committee</i>
<i>Chenée Riley</i>	<i>~2004 – 2008</i>	<i>Attorney General’s Chambers</i>	<i>Legal oversight, Member – LNG Committee</i>
<i>Leah Bobb-Semple</i>	<i>~2004 – 2007</i>	<i>Attorney General’s Chambers</i>	<i>Legal oversight, Member – LNG Committee</i>
<i>Patrick Thelwell</i>	<i>~2005 – 2007</i>	<i>National Insurance Fund, Jamaica Mortgage Bank</i>	<i>Member – LNG Project Committee, Chairman, FSRU Pre-qualification Committee</i>
<i>Albert Gordon</i>	<i>~2005 – 2007</i>	<i>V.P. NWC, extensive knowledge of energy sector</i>	<i>Member – LNG Project Committee</i>
<i>Richard McDonald</i>	<i>~2006 – 2010</i>	<i>Deputy Group Managing Director PCJ</i>	<i>Member – LNG Steering Committee</i>
<i>Stephen Sterling</i>	<i>~2006 – 2008</i>	<i>Planning Manager PCJ</i>	<i>Member LNG Project</i>

<i>7c) NAME</i>	<i>7c)i STAGE</i>	<i>7c)ii BASIS</i>	<i>7c)iii ROLE</i>
			<i>Committee</i>
<i>Megan Deane</i>	<i>~2005 – 2006</i>	<i>Projects Director NIBJ</i>	<i>Member LNG Project Committee</i>
<i>Hillary Williams</i>	<i>~2006 – 2007</i>	<i>Ministry of Foreign Affairs</i>	<i>Member – LNG Project Committee</i>
<i>Clive Mullings</i>	<i>2007 – 2009</i>	<i>Minister of Energy &amp; Telecommunications</i>	<i>Portfolio responsibility</i>
<i>Ian Moore</i>	<i>2007 - 2008</i>	<i>Chairman</i>	<i>Corporate oversight, attempted to resuscitate LNG Project</i>
<i>James Robertson</i>	<i>2009 – Present</i>	<i>Minister of Energy &amp; Mining</i>	<i>Portfolio Responsibility, Chairman LNG Steering Committee</i>
<i>Marcia Forbes</i>	<i>2009</i>	<i>Permanent Secretary MEM</i>	<i>Administrative oversight, Member – LNG Steering Committee</i>
<i>Hillary Alexander</i>	<i>2009 – Present</i>	<i>Permanent Secretary MEM</i>	<i>Administrative oversight, Member – LNG Steering Committee</i>
<i>Parris Lyew-Ayee</i>	<i>~2008–Present</i>	<i>Exec Director JBI, Chairman PCJ</i>	<i>Member LNG Steering Committee</i>
<i>Wesley Hughes</i>	<i>2009</i>	<i>Exec Director PIOJ, Financial Secretary</i>	<i>Member – LNG Steering Committee</i>
<i>Milverton Reynolds</i>	<i>2009 – 2010</i>	<i>Managing Director, DBJ</i>	<i>Member – LNG Steering Committee</i>
<i>Christopher Zacca</i>	<i>2009</i>	<i>Advisor to Prime Minister</i>	<i>Member – LNG Steering Committee</i>
<i>Douglas Leys</i>	<i>2010</i>	<i>Solicitor General</i>	<i>Legal oversight of project, Member – LNG Steering Committee</i>
<i>Herma McRae</i>	<i>2010</i>	<i>Attorney General’s Chambers</i>	<i>Legal oversight of project, Member – LNG Steering Committee</i>
<i>Kathryn Phipps</i>	<i>~2009 – 2010</i>	<i>Chairman PCJ</i>	<i>Corporate oversight of project</i>

<i>7c) NAME</i>	<i>7c)i STAGE</i>	<i>7c)ii BASIS</i>	<i>7c)iii ROLE</i>
<i>Nigel Logan</i>	<i>2010</i>	<i>Acting Group Managing Director PCJ</i>	<i>Corporate oversight of project, Member – LNG Steering Committee</i>
<i>Audley Darmand</i>	<i>~2007 – 2010</i>	<i>Advisor to Minister of Energy, PCJ Board Member</i>	<i>Member – LNG Steering Committee, Chairman FSRU Bid Evaluation Team</i>
<i>Angus Gordon</i>	<i>2009 – Present</i>	<i>PCJ Board Member</i>	<i>Member – LNG Steering Committee</i>
<i>Winston Watson</i>	<i>2009 – Present</i>	<i>General Manager Petrojam</i>	<i>Member – LNG Steering Committee</i>
<i>Oral Rainford</i>	<i>~2009 – Present</i>	<i>Policy Director MEM</i>	<i>Member – LNG Steering Committee</i>
<i>Michael Strachan</i>	<i>2010</i>	<i>DBJ</i>	<i>Member – LNG Steering Committee</i>
<i>Ann Marie Rhoden</i>	<i>2010</i>	<i>Deputy Financial Secretary</i>	<i>Member – LNG Steering Committee</i>
<i>Sonia Mitchell</i>	<i>2010</i>	<i>OPM</i>	<i>Member – LNG Steering Committee</i>
<i>Christopher Lecke</i>	<i>2010</i>	<i>Ministry of Fiance</i>	<i>Member – Bid Evaluation Team</i>
<i>Stephen Wedderburn</i>	<i>2003 – Present</i>	<i>Divestment Director NIBJ, LNG Project Manager PCJ, LNG Project Coordinator PCJ</i>	<i>Project Coordinator, Member – LNG Steering Committee, Natural Gas Project Team</i>
<i>Wayne Grant</i>	<i>~2006 – Present</i>	<i>Technical Engineer PCJ</i>	<i>Natural Gas Project Team</i>
<i>Sonia Clarke</i>	<i>2010</i>	<i>Research Assistant PCJ</i>	<i>Natural Gas Project Team</i>

Detailed overleaf are the particulars of the private individuals and companies who/which were involved in the LNG Project:

*Please see below:*

<i>7d) NAME</i>	<i>7d)i STAGE</i>	<i>7d)ii BASIS</i>	<i>7d)iii ROLE</i>
<i>Jeff Beale</i>	<i>2005 – Present</i>	<i>Consultant, CH-IV International</i>	<i>Technical Advisor</i>
<i>Arthur Ransome</i>	<i>2005 – Present</i>	<i>Consultant, CH-IV International</i>	<i>Technical Advisor</i>
<i>David Almandoz</i>	<i>2005 – Present</i>	<i>Consultant, CH-IV International</i>	<i>Technical Advisor</i>
<i>Joe Fossella</i>	<i>2010</i>	<i>Consultant, CH-IV International</i>	<i>Technical Advisor</i>
<i>Pat LaStrapes</i>	<i>2010</i>	<i>Consultant, CH-IV International</i>	<i>Technical Advisor</i>
<i>Scott Worthington</i>	<i>2005 – 2007</i>	<i>Consultant, Mustang Engineering</i>	<i>FEED Contractor</i>
<i>Ned Baudat</i>	<i>2005 – 2007</i>	<i>Consultant, Mustang Engineering</i>	<i>FEED Contractor</i>
<i>Brad Hubbard</i>	<i>2005 – 2007</i>	<i>Consultant, Mustang Engineering</i>	<i>FEED Contractor</i>
<i>Joe Nelson</i>	<i>2005 - 2007</i>	<i>Consultant, Mustang Engineering</i>	<i>FEED Contractor</i>
<i>Katherine Lundy</i>	<i>2005 - 2007</i>	<i>Consultant, Mustang Engineering</i>	<i>FEED Contractor</i>
<i>Terry Newendorp</i>	<i>2005 - 2007</i>	<i>Consultant, Taylor-DeJongh</i>	<i>Financial Advisor</i>
<i>Ramesh Raman</i>	<i>2005 - 2007</i>	<i>Consultant, Taylor-DeJongh</i>	<i>Financial Advisor</i>
<i>Paolo Curiel</i>	<i>2007</i>	<i>Consultant, Taylor-DeJongh</i>	<i>Financial Advisor</i>
<i>Monica Ladd</i>	<i>2005 - 2007</i>	<i>Attorney, Myers Fletcher &amp; Gordon</i>	<i>Local Attorney</i>
<i>Norman Minott</i>	<i>2005 - 2007</i>	<i>Attorney, Myers Fletcher &amp; Gordon</i>	<i>Local Attorney</i>
<i>Michelle Brown</i>	<i>2005 - 2007</i>	<i>Attorney, Myers Fletcher &amp; Gordon</i>	<i>Local Attorney</i>
<i>Roald Henriques</i>	<i>2010</i>	<i>Attorney, Livingston Alexander &amp; Levy</i>	<i>Local Attorney</i>

Based upon the foregoing representations, the OCG found that since 2001, the named Public Officers, Officials, private individuals and companies contributed in different forms and manner to the progress of the LNG Project in Jamaica.

Notwithstanding the foregoing, the OCG found that there are certain key players who have been affiliated with the project from the inception to present, namely:

1. Mr. Stephen Wedderburn; and
2. CH-IV International.

Based upon the aforementioned information, the OCG found that between 2009 November to

2010 December, the following Public Officials/Officers, within the MEM and the PCJ, were primarily responsible for the tender process for the 'FSRU LNG Project':

1. The Hon. James Robertson – Minister, MEM;
2. Mrs. Hillary Alexander – Permanent Secretary, MEM;
3. Dr. Ruth Potopsingh – former PCJ Group Managing Director;
4. Mr. Nigel Logan – Acting Group Managing Director, PCJ;
5. Mr. Stephen Wedderburn – LNG Project Coordinator, PCJ; and
6. The PCJ Board of Directors (2009 to 2010).

**Established Committees, Sub-Committees, Task Forces and Other Groups for the LNG Project**

The OCG, in its Statutory Requisition that was addressed to Mr. Nigel Logan, Acting Group Managing Director, PCJ, which was dated 2010 September 15, posed the following question:

*“Please provide an Executive Summary listing all the Team(s), Committee(s), Sub-Committee(s), Task Force(s) and/or any other group to which you have been appointed, involved and/or are affiliated with for the entire LNG Project and the proposed Financing, Development, Ownership and Operation of an FSRU LNG Re-gasification Terminal and Natural Gas Transmission System in Jamaica. In addition, please provide the following information:*

- a) The Terms of Reference (TOR) for each of the listed Team(s), Committee(s), Sub-committee(s), Task Force(s) and/or any other group to which you have been appointed, involved and/or are affiliated with;*
- b) A comprehensive listing of all the Public Official(s)/Officer(s) who are/were involved in the listed Team(s), Committee(s), Sub-committee(s), Task Force(s) and/or any other group in which you have been involved;*
- c) Please state the name(s) and title(s) of the person(s) who was/were responsible for establishing the listed Team(s), Committee(s), Sub-committee(s), Task Force(s) and/or any other group in which you have been involved, and the appointment of each of the listed members;*
- d) Please provide the date(s) on which the listed Team(s), Committee(s), Sub-Committee(s), Task Force(s) and/or any other group was/were established;*
- e) Please provide the date(s) on which you became a member of such Team(s), Committee(s), Sub-committee(s), Task Force(s) and/or any other group in which*

*you were involved; and*

- f) *Please detail your role(s) and responsibility(ies) on each of the listed Team(s), Committee(s), Sub-committee(s), Task Force(s) and/or any other group in which you were involved... ”<sup>103</sup>*

Mr. Nigel Logan, in his response to the respective OCG’s Statutory Requisition, which was dated 2010 November 9, stated the following:

*“The LNG Project has the following Teams, Committees, Sub-Committees as follows:*

- *The LNG Task Force*
- *The LNG Evaluation Committee*
- *The LNG Project Unit*
- *LNG Negotiating Team*
  
- *As the Acting Group Managing Director, I am a member of the LNG Task Force and the LNG Negotiating Team.*

- a) *I am not personally aware of a separate Terms of Reference for the LNG Task Force and the Negotiating Team. However the following should be noted.*

- i) *Terms of Reference for LNG Task Force*

- (1) To oversee the successful implementation of the LNG Project in all its aspects*
- (2) To receive reports from the LNG Coordinator*
- (3) To provide guidance to the LNG Project Team*
- (4) To provide progress reports to the Cabinet*
- (5) To provide guidance to the LNG consultants*
- (6) To highlight and resolve policy issues affecting the execution of the project*

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<sup>103</sup> OCG’s Requisition to Mr. Nigel Logan, Acting Group Managing Director, PCJ, which was dated 2010 September 15. Question # 28

(7) *To approve the formation of any additional teams that would aid in the development of the project*

ii) *Terms of Reference for LNG Negotiating Team*

(1) *To negotiate agreements with the Exmar Consortium*

(2) *Identify policy issues for resolution by MEM and Cabinet*

(3) *Develop definitive agreements with the Exmar Consortium and its partners*

b) *The composition of the abovementioned teams/ committees is as follows.*

i) *LNG Task Force*

 *Hon. Min. of Energy and Mining - Chairman*

 *Financial Secretary*

 *Solicitor General*

 *Permanent Secretary, Ministry of Energy and Mining*

 *Executive Director, Jamaica Bauxite Institute*

 *Group Managing Director, PCJ*

 *Dr. Earl Green, Chief Technical Director, PCJ*

 *Mr. Stephen Wedderburn, LNG Project Coordinator*

 *CEO, DBJ*

 *Chairman, Petrojam*

 *General Manager, Petrojam*

 *Consultant, Ministry of Energy and Mining*

 *Legal Officer, Ministry of Energy and Mining*

 *Principal Director, Ministry of Energy and Mining*

 *Hon. Carlton Davies*

ii) *LNG Evaluation Team*

 *Dr. Audley Darmand, Consultant,*

*Ministry of Energy and Mining - Chairman*

 *Mr. Christopher Leckie, Ministry of Finance and the Public Service*

- ✚ *Mr. Richard McDonald, Deputy Group Managing Director*
- ✚ *Mr. Angus Gordon, Chairman, Petrojam*
- ✚ *Mr. Winston Watson, General Manager, Petrojam*
- ✚ *Mr. Glenford Watson, Legal Officer, Ministry of Energy and Mining*
- ✚ *Mr. Oral Rainford, Principal Director, Ministry of Energy and Mining*
- ✚ *Mr. Michael Strachan, Consultant, DBJ*
- ✚ *Technical Consultants, CH-IV*

iii) *LNG Project Team*

- ✚ *Mr. Stephen Wedderburn, LNG Project Coordinator*
- ✚ *Mr. Wayne Grant, LNG Technical Officer*
- ✚ *Ms. Sonia Clarke, Administrative Assistant*

iv) *LNG Negotiating Team*

- ✚ *Mr. Douglas Leys, Solicitor General - Chairman*
- ✚ *Mr. Nigel Logan, Acting Group Managing Director, PCJ*
- ✚ *Ms. Herma McRae, Senior Legal Counsel, Attorney General's Chambers*
- ✚ *Dr. Earl Green, Chief Technical Director, PCJ*
- ✚ *Mr. Stephen Wedderburn, LNG Project Coordinator*
- ✚ *Mrs. Jennifer Simpson James, Senior Legal Counsel, PCJ*
- ✚ *Mr. Michael Strachan, Consultant, DBJ*
- ✚ *Ms. Sonia Mitchell, Principal Director, OPM*
- ✚ *Mrs. Ann Marie Rhoden, Deputy Financial Secretary*
- ✚ *Mr. Glenford Watson, Senior Legal Counsel, Ministry of Energy and Mining*
- ✚ *Mr. Oral Rainford, Principal Director, Ministry of Energy and Mining*
- ✚ *Mr. Winston Watson, General Manager, Petrojam*
- ✚ *Latham and Watkins, Legal Consultants*
- ✚ *Livingston Alexander and Levy, Local Legal Consultants*

*The following persons were added to the Negotiating Team in October 2010.*

- ✚ *Mr. Parris Lyew-Ayee, Chairman PCJ*

🚧 Mr. Patrick Rousseau, Director PCJ

The following persons were named to provide technical support to the Negotiating Team.

🚧 Mr. Fritz Pinnock, Jamaica Maritime Institute

🚧 Dr. Philip Baker, Corporate Planner, JBI

🚧 CH-IV LNG Technical Consultants

🚧 Ms. Andrea Reid, Strategic Planning and Business Manager Support, Petrojam

🚧 Mr. Michael Hewitt, Logistic and Marketing Manager, Petrojam

c) Please see responses below.

i) **The LNG Task Force was appointed by the Hon. Minister of Energy and Mining**

ii) **The LNG Evaluation Team was appointed by the Permanent Secretary, Ministry of Energy and Mining**

iii) **The LNG Negotiating Team was appointed by the Permanent Secretary, Ministry of Energy and Mining** (OCG Emphasis)

d) The respective teams, Committees were established as follows:

i) LNG Task Force - June 2009

ii) LNG Evaluation Team - January 2010

iii) LNG Negotiating Team - July 2010

e) My involvement in the respective Teams commenced as follows:

i) LNG Task Force - April 22, 2010

ii) LNG Negotiating Team - July 2010

f) As Acting Group Managing Director, I have been a member of the LNG Task Force and the LNG Negotiating Team”.<sup>104</sup>

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<sup>104</sup> Response from Mr. Nigel Logan, Acting GMD, PCJ, which was dated 2010 November 9. Response #28

The OCG, in the referenced requisition, that was addressed to Mr. Nigel Logan and which was dated 2010 September 15, also posed the following questions, in respect of the LNG Technical Evaluation Committee which was established:

*“Based upon the respective names and titles provided, on what basis were such persons selected?”*

*Considering the nature of the FSRU component of the LNG Project, were each of the individuals appointed to the Evaluation Committee competent in the referenced area, and in particular, the components which constitutes the Financing, Development, Ownership and Operation of an FSRU LNG Re-gasification Terminal and Natural Gas Transmission System”<sup>105</sup>*

Mr. Nigel Logan, Acting Group Managing Director, PCJ, in his response to the OCG’s Statutory Requisition, which was dated 2010 November 9, stated, *inter alia*, the following:

*“I believe that the persons were selected based on the following:*

- a) Their involvement in the project*
  - b) Their knowledge of energy projects*
  - c) Engineering knowledge*
  - d) Their knowledge of GOJ Procurement Guidelines*
- i) The Evaluation Committee contained the following skills and competencies.*
- (1) Finance*
  - (2) Engineering*
  - (3) Legal*
  - (4) Policy”<sup>106</sup>*

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<sup>105</sup> OCG’s Statutory Requisition which was addressed to Mr. Nigel Logan, dated 2010 September 15. Question s#20(i)(i) & (ii)

<sup>106</sup> Response from Mr. Nigel Logan, Acting Group Managing Director, PCJ, which was dated 2010 November 9. Response

Mr. Nigel Logan, in his response to the OCG's Statutory Requisition, which was dated 2010 November 9, also stated, *inter alia*, that the Evaluation Committee "... was also assisted by the technical advisors to the project, CH-IV. In light of this, the Committee, while not experienced in the components which constitute the Financing, Development, Ownership and Operation of an FSRU LNG Re-gasification Terminal and Natural Gas Transmission System had a range of skills that would have assisted them in the evaluation process." <sup>107</sup>(OCG's Emphasis)

The OCG, by way of a Statutory Requisition, which was dated 2010 September 15, posed similar questions to Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, in regard to the Team(s), Committee(s), Sub-Committees and/or other groups which were established for the LNG Project.

Mr. Stephen Wedderburn, in his response to the referenced OCG Statutory Requisition, which was dated 2010 November 15, stated the following:

*"I am a member of the Natural Gas Project Team (LNG Department within PCJ) and of the LNG Steering Committee. From 2005 to 2007 I was a member of the LNG Project Committee (a precursor to the current Steering Committee).*

a) TOR for Natural Gas Project Team extracted from LNG Project Governance Document:

*Natural Gas Project Team*

*Activities related to the project will be carried out by a local project team to be anchored in a NEWCO, a subsidiary of the PCJ. Current activities are being supported by both the Steering Committee and the PCJ, but this will be later transitioned into an entity with its own Board of Directors. The core responsibilities of this project team are as follows:*

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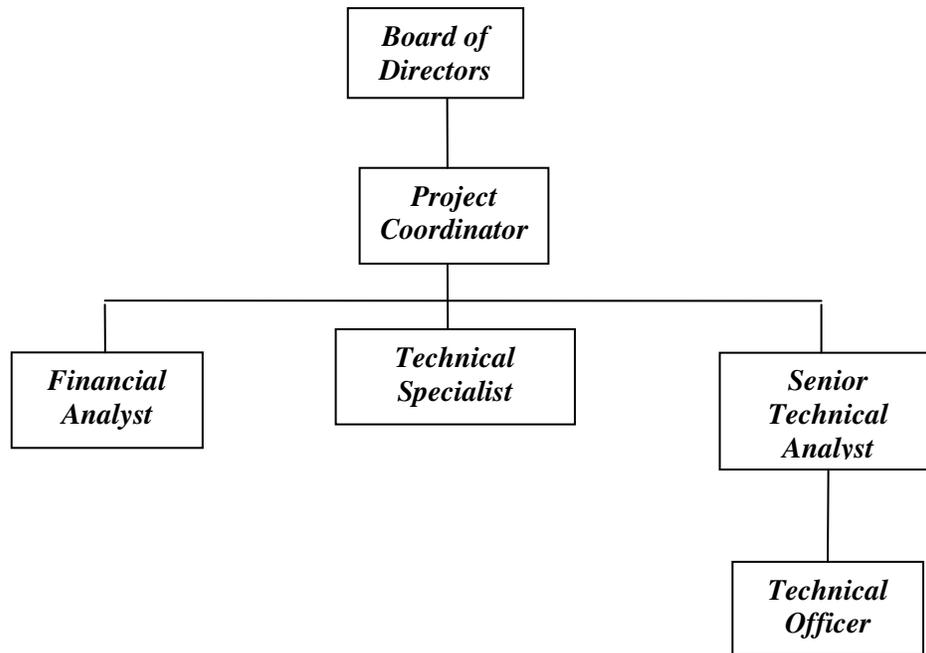
#20(i)(i) & (ii)

<sup>107</sup> Mr. Nigel Logan's, Acting Group Managing Director, PCJ, response to the OCG's Statutory Requisition, dated 2010 November 9. Response #20(i)(ii)

- i. *To execute project activities within pre-approved guidelines and budget;*
- ii. *To research for implementation, global best practices, technical codes, and standard regulations; etc;*
- iii. *To provide for the understudying of expatriate technical specialists and for the transfer of knowledge to locally based Jamaicans;*
- iv. *To assess work for compliance with pre-determined standards and specifications at all phases of the project;*
- v. *To coordinate all initiatives related to the provision of services throughout the life of the project, (e.g. legal, commercial, technical);*
- vi. *To research for competency and recommend service providers to drive the Natural Gas project;*
- vii. *To execute all aspects of the project consistent with the laws of Jamaica and in observance of all GOJ procurement procedures and environmental guidelines.*

*The following organizational structure is representative of a typical Project Team set up to carry out defined tasks as outlined above in a Government's interest.*

*Fig. 2 Organizational Chart for Local Natural Gas Project Team*



*The structure proposes five (5) persons for the core project team. Some of these individuals have been already named (see below). The team will get added support in specialized areas from members of the other committees and from specialists as the need arises. The team comprises the following:*

- |                                    |          |                               |
|------------------------------------|----------|-------------------------------|
| <i>1. Project Coordinator</i>      | <i>-</i> | <i>Mr. Stephen Wedderburn</i> |
| <i>2. Senior Technical Analyst</i> | <i>-</i> | <i>Vacant</i>                 |
| <i>3. Financial Analyst</i>        | <i>-</i> | <i>Vacant</i>                 |
| <i>4. Technical Specialist</i>     | <i>-</i> | <i>Mr. Wayne Grant</i>        |
| <i>5. Technical Officer</i>        | <i>-</i> | <i>Vacant</i>                 |

*This project team is further supported by the following Technical Specialists from within the PCJ:*

- |                                |          |                                       |
|--------------------------------|----------|---------------------------------------|
| <i>1. Mr. Richard McDonald</i> | <i>-</i> | <i>Deputy Group Managing Director</i> |
| <i>2. Dr. Earl Green</i>       | <i>-</i> | <i>Group Technical Director</i>       |
| <i>3. Dr. Gavin Gunter</i>     | <i>-</i> | <i>Senior Geologist</i>               |

4. Mrs. Constance Tyson-Young - Environmental Specialist

TOR for LNG Project Steering Committee (extracted from LNG Project Governance Document)

The LNG Project Committee (Steering Committee)

The steering committee will guide the project development and implementation in conjunction with the Ministry and PCJ. The main responsibilities of the steering committee comprise:

- i. Assist with the high level development of the project concept to the point of final investment decision (FID).
- ii. Assist with the setting of targets and timelines for different stages of the project;
- iii. Assist with the formation of the legal and regulatory framework for the project;
- iv. Assist with the establishment of the mechanism through which to execute the project;
- v. The development of a mechanism to ensure that industry and international best practices are observed.

b) Natural Gas Project Team

Stephen Wedderburn	- LNG Project Coordinator
Wayne Grant	- Technical Specialist
Sonia Clarke	- Research Assistant
Sh-Shanna Ellington	- Research Assistant (resigned December 2009)

LNG Steering Committee (current members)

<i>Hon. James Robertson</i>	- Minister MEM, Chairman
<i>Hillary Alexander</i>	- Permanent Secretary MEM
<i>Glenford Watson</i>	- Senior Legal Counsel MEM
<i>Oral Rainford</i>	- Principal Director MEM
<i>Parris Lyew-Ayee</i>	- Chairman PCJ, Exec Director JBI
<i>Nigel Logan</i>	- Acting Group Managing Director PCJ
<i>Earl Green</i>	- Group Chief Technical Director PCJ
<i>Stephen Wedderburn</i>	- LNG Project Coordinator PCJ
<i>Angus Gordon</i>	- Board Member PCJ
<i>Winston Watson</i>	- General Manager Petrojam
<i>Douglas Leys</i>	- Solicitor General
<i>Herma McRae</i>	- Attorney General's Chambers
<i>Sonia Mitchell</i>	- OPM
<i>Ann Marie Rhoden</i>	- MOFPS
<i>Michael Strachan</i>	- DBJ

LNG Steering Committee (Previous Members)

<i>Wesley Hughes</i>	- Financial Secretary
<i>Marcia Forbes</i>	- Permanent Secretary MEM
<i>Carlton Davis</i>	- Chairman, Bauxite Industry Task Force
<i>Milverton Reynolds</i>	- Managing Director, DBJ
<i>Ruth Potopsingh</i>	- Group Managing Director PCJ
<i>Christopher Zacca</i>	- Special Advisor to the Prime Minister

- c) *My understanding is that it is the Permanent Secretary MEM who has been responsible for appointments to the LNG Steering Committee and that appointment to Natural Gas Committee rests with the Group Managing Director PCJ.*

- d) *My recollection is that the LNG Steering Committee was established in May 2009. I am not sure when the Natural Gas Project Team was established.*
- e) *My recollection is that I was invited to begin attending meetings of the LNG Steering Committee in May 2009 and I was appointed as LNG Project Coordinator and a member of the Natural Gas Project Team in October 2009.*
- f) *As LNG Project Coordinator I am effectively the Secretary of the LNG Steering Committee and the head of the Natural Gas Project Team.”<sup>108</sup>*

### PCJ Procurement Committee

Upon a review of the Minutes of the PCJ Procurement Committee, the OCG found that the members who served on the PCJ Procurement Committee, between 2009 August and 2010 September, were as follows:

- |                         |                     |
|-------------------------|---------------------|
| 1. Ms. Kathryn Phipps   | Chairman            |
| 2. Mr. Andrew Warwar    | Member              |
| 3. Mr. Nigel Logan      | Member              |
| 4. Mr. Richard McDonald | Member              |
| 5. Dr. Gary Jackson     | Member              |
| 6. Dr. Gavin Gunter     | Member              |
| 7. Mr. Godfrey Perkins  | Member              |
| 8. Ms. Kerryon Levy     | Recording Secretary |

Based upon the foregoing, the OCG found that the following Committees, with the exception of the PCJ Procurement Committee and the Evaluation Committee (referred to as the LNG Technical Evaluation Committee), were established by the MEM for the ‘FSRU LNG Project’:

- i. The LNG Steering Committee/LNG Task Force;

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<sup>108</sup> Response from Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, which was dated 2010 November 9. Response #27

- ii. The LNG Negotiating Team; and
- iii. Natural Gas Project Team.

The OCG also found that the PCJ established a LNG Project Unit which was headed by Mr. Stephen Wedderburn.

***Conflicting Positions as a result of the Established Committees***

The OCG, in its Statutory Requisition to Mrs. Hillary Alexander, Permanent Secretary, MEM, which was dated 2010 September 16, posed the following question:

*“Please indicate whether any of the listed persons, who served on the Evaluation Committee, were members of any other Team(s), Committee(s), Sub-committee(s), Task Force(s) and/or any other group which was/were associated with the proposed Financing, Development, Ownership and Operation of an FSRU LNG Re-gasification Terminal and Natural Gas Transmission System. If yes, please provide responses to the following:*

- a) Is/was there a defined Terms of Reference for the Evaluation Committee? If yes, please provide the Terms of Reference (TOR) for same;*
- b) The name(s) and title(s) of such person(s) who served on the respective Team(s), Committee(s), Sub-committee(s), Task Force(s) and/or any other group and their respective role(s) and responsibility(ies);*
- c) Please account for the Team(s), Committee(s), Sub-committee(s), Task Force(s) and/or any other group on which such persons(s) who were appointed to the Evaluation Committee also served in each instance;*
- d) Was/were any of the person(s) who served on the Evaluation Committee a serving member of the Board of Directors of the PCJ?*

- e) *Were any of the person(s) who served on the Evaluation Committee a serving member of the MEM's Procurement Committee?*
- f) *Were any of the person(s) who served on the Evaluation Committee a serving member of the alleged 'LNG Task Force'?*
- g) *Were any of the person(s) who served on the Evaluation Committee and/or any other Committee and/or Sub-committee and/or anyone who contributed, in whatever way, to the said Evaluation Committee, assigned to have an official relationship, with any of the potential bidders for the referenced procurement, prior to the tender period for the referenced FSRU project? If yes, please provide a list of such person(s) and detail the circumstances and nature of the official relationship. In addition, please provide responses to the following:*
- i. *In what circumstances were such person(s) who was/were involved in any other Team (s), Committee(s), Sub-committee and/or any other group, for the referenced FSRU project, appointed to the referenced procurement;*
  - ii. *In what capacity was/were such person(s) appointed;*
  - iii. *Was/were approval(s) received for such person(s) involved and from which Authority(ies); and*
  - iv. *Please provide the justification, if any, which was given for such person(s) to be involved, at whatever level, with the referenced procurement... ”<sup>109</sup>*

Mrs. Hillary Alexander, Permanent Secretary, MEM, in her response to the OCG's Statutory

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<sup>109</sup> OCG's Statutory Requisition to the Permanent Secretary, MEM, which was dated 2010 September 16. Question # 30

Requisition, which was dated 2010 November 12, stated, *inter alia*, the following:

**“Yes. A number of individuals who served on the LNG Task Force were members of the Evaluation Committee...”**

*The following members of the Task Force also served on the Evaluation Committee.*

*Glenford Watson – Senior Legal Counsel, Ministry of Energy and Mining*

*Oral Rainford – Principal Director, Ministry of Energy and Mining*

*Development Bank of Jamaica representative, Michael Strachan*

**Yes. The following members of the Evaluation Committee were also members of the Board of Director of the PCJ.**

*Mr. Angus Gordon*

*Dr. Audley Darmand*

*Mr. Glenford Watson...*

*I am not aware of any official relationship between any member of the Evaluation Committee and/or any Committee or Task Force and any of the potential or actual bidders.*

**I am aware, however, that Mr. Stephen Wedderburn, Project Co-ordinator and employed to the PCJ, attended meetings of the Task Force for the purpose of providing updates to, and receiving advice from the Task Force. Mr. Wedderburn also provided project specific information to the Evaluation Committee. I am advised that Mr. Wedderburn declared that, at a time when he was not engaged as a public officer, in or about Dec. 2008-June 2009 he was engaged on a part-time basis in a project in Columbia with a brokerage firm; and that Exmar was a client of that firm...**

*ii. Mr. Wedderburn was employed as Project Co-ordinator to the LNG Project.*

iii. *The appointment of Mr. Wedderburn was approved by the Ministry of Finance and the Public Service; and the Board of Directors of the PCJ.*

iv. *Mr. Wedderburn was appointed based on his expert knowledge of the natural gas industry and long standing involvement in the efforts/attempts to make natural gas available for use locally. As advised, Mr. Wedderburn’s association with a natural gas project for Jamaica commenced in 2004 when he was first employed to the PCJ. Since that time he has been involved in and served in a leading capacity in all efforts or initiatives undertaken to bring natural gas to the island. In this regard, his service to the natural gas project has been provided to and accepted by all political administrations and Ministers with portfolio responsibilities for the subject matter...”<sup>110</sup> (OCG’s Emphasis)*

Mr. Nigel Logan, in his response to the OCG’s Statutory Requisition, which was dated 2009 November 9, also provided the following information:

*“Please see information below regarding persons who served on more than one Committee.”<sup>111</sup>*

<i>Name</i>	<i>LNG Task Force</i>	<i>LNG Evaluation Committee</i>	<i>LNG Project Team</i>	<i>LNG Negotiating Team</i>
<i>Dr. Audley Darmand</i>	<i>Member</i>	<i>Member</i>		
<i>Mr. Angus Gordon</i>	<i>Member</i>	<i>Member</i>		
<i>Mr. Glenford Watson</i>	<i>Member</i>	<i>Member</i>		<i>Member</i>
<i>Mr. Oral Rainford</i>	<i>Member</i>	<i>Member</i>		<i>Member</i>
<i>Mr. Winston Watson</i>	<i>Member</i>	<i>Member</i>		<i>Member</i>
<i>Mr. Michael Strachan</i>	<i>Member</i>	<i>Member</i>		<i>Member</i>

The OCG also found evidence to suggest that the established LNG Steering Committee/LNG

<sup>110</sup> Mrs. Hillary Alexander, Permanent Secretary, MEM, in her response to the OCG’s Statutory Requisition, which was dated 2010 November 12. Response # 30

<sup>111</sup> Response to the OCG’s Statutory Requisition from Mr. Nigel Logan, Acting Group Managing Director, PCJ, which was dated 2010 November 9. Response #31(c)

Task Force was a key decision-making body in the tender process for the ‘FSRU LNG Project’.

Mr. Nigel Logan, in his response to the OCG’s Statutory Requisition, which was dated 2010 November 9, also stated that “*My understanding is that the LNG Task Force is not a part of the PCJ’s Corporate Governance Framework.*”<sup>112</sup>

Mrs. Hillary Alexander, also stated in her response to the OCG’s Statutory Requisition, which was dated 2010 November 12, that “*The Task Force is not a part of the PCJ’s Corporate Governance Framework as it represents an attempt to have a grouping of the various Ministries/Agencies/Bodies of Government identify and contribute to the best course for implementation of an [sic] LNG Project. The critical nature of the project and the various activities involved required the matters to be considered and addressed by a wider grouping of individuals than under the umbrella of the PCJ.*”<sup>113</sup>

Based upon the foregoing information, which was provided by Mrs. Hillary Alexander, Permanent Secretary, MEM, and Mr. Nigel Logan, Acting Group Managing Director, PCJ, the OCG found that members of the PCJ Board of Directors and the LNG Steering Committee/LNG Task Force also served on the LNG Technical Evaluation Committee.

The Permanent Secretary indicated that three (3) of the members who served on the LNG Steering Committee/LNG Task Force, a Committee which was integral in the decision-making process for the ‘FSRU LNG Project’, also served on the Evaluation Committee.

The OCG, in its Statutory Requisition to Mr. Stephen Wedderburn, which was dated 2010 September 15, posed, *inter alia*, the following questions:

*“Please indicate whether you were an appointed member of the Evaluation Committee and/or whether you were involved in the Evaluation of the Bids and/or any aspect of the evaluation process;*

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<sup>112</sup> Response from Mr. Nigel Logan, Acting GMD, PCJ, which was dated 2010 November 9. Response #29(i)

<sup>113</sup> Response from Mrs. Hillary Alexander, Permanent Secretary, MEM, which was dated 2010 November 12. Response #28(i)

*Please indicate the role(s), task(s) and/or responsibility(ies) which was/were appointed to you, if any, with respect to the Evaluation of the Bids. If you were in fact appointed, please indicate which Public Official(s) and/or any other person(s) in Authority, at the PCJ and/or MEM, had appointed such role(s), task(s) and/or responsibility(ies);*

*Please indicate the role(s), task(s) and/or responsibility(ies) which was/were performed by you, if any, with respect to the Evaluation of the Bids;*

*Please indicate whether there were meetings of the referenced Evaluation Committee. If yes, please indicate whether you were in attendance at any of the Evaluation Committee meetings. If yes, please indicate (a) how many of the meetings you attended and (b) in what capacity and (c) the purpose for your involvement and/or affiliation in the referenced Committee meetings... ”<sup>114</sup>*

Mr. Stephen Wedderburn in his response to the OCG’s Statutory Requisition, which was dated 2010 November 15, stated, *inter alia*, the following:

**“I was not appointed to serve on the Evaluation Team. I was not involved in the Evaluation of Bids. However, prior to start of the Evaluation of Bids, I was requested by the Chairman of the Bid Evaluation Team to attend some preliminary meetings of the Bid Evaluation Team with aim of informing Team Members on: LNG and the LNG industry; Floating LNG terminals; the requirements of the RFP; and the RFP evaluation criteria.**

*I was not appointed to any role, task, or responsibility with respect to the Evaluation of Bids.*

**...I attended some preliminary meetings of the Bid Evaluation Team with objective of**

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<sup>114</sup> OCG Statutory Requisition to Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, which was dated 2010 September 15. Question #23(b) – (e)

**informing Team Members on: LNG and the LNG industry; Floating LNG terminals; the requirements of the RFP; and the RFP evaluation criteria.**

Yes, there were meetings of the Bid Evaluation Team. **Yes, I was in attendance at some meetings.** (a) **Based on my review of the records I attended 6 meetings between 25 January 2010 and 24 February 10.** No review of Bidders' Proposals was conducted in any of these meetings. (b) I attended at the invitation of the Chairman of the Bid Evaluation Team in my capacity as Project Coordinator – LNG. **The minutes of the meetings of 11 February and 15 February 2010 reflect that the OCG was consulted about my participation in the process.** (c) The purpose of my involvement in these meetings...<sup>115</sup>(OCG's Emphasis)

Mr. Wedderburn asserted that the OCG was consulted on his participation in the process. However, it should be clearly noted that the OCG was not consulted with respect to Mr. Wedderburn's participation in the LNG Technical Evaluation Committee but rather with regard to his involvement at the the Tender Opening Ceremony, which is a public assembly. Further, and pursuant to Sub-section S-2110 of the GOJ Revised Public Sector Procurement Procedures, "The bid opening exercise should be chaired by the Tender Officer and at least two (2) other representatives from the Procuring Entity..."

Further, the OCG found that the Minutes of Special Meeting of the PCJ Board of Directors, which was held on 2010 March 31, revealed, *inter alia*, the following:

**"...the Chairman stated that she recalled that at a previous Meeting she was told that Mr. Wedderburn would not have been involved in the evaluation process but it seems that he was present at several of the evaluation meetings.** Director Hadeed stated that the former Permanent Secretary (Mrs. Marcia Forbes) at the time had advised the Board of Mr. Wedderburn's involvement with Exmar. **The Chairman then stated that Mr. Wedderburn was present at nine of the eleven evaluation meetings and was present at**

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<sup>115</sup> Response from Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, which was dated 2010 November 15. Response #23(b) – (e)

the opening of the bids.

Director Charles asked who were the members of the Task Force, the Evaluation Committee and the Members or Directors who are involved on the LNG Task Force as he is seeing some conflicts.

Director Watson stated that in relation to the Bid Opening, guidance was sought from the Office of the Contractor General...He said that the Minutes of the Evaluation Committee should indicate that from the date of the Bid Opening and during all the work of the Evaluation Committee, Mr. Wedderburn was not present. He stated that Mr. Wedderburn attended the Meeting of the Bid Opening, but that he does not consider that to be a part of the Evaluation Process, which started when the bids were handed to members and they deliberated...

The Chairman questioned the nature of the Meetings prior to the opening of the bids. Director Watson stated that the matter was evaluated in accordance with the RFP. He stated that he is not sure if anything that happened before the bids were opened and evaluated could have been considered as Mr. Wedderburn being involved in the process...

The Chairman stated that having had the assurance from the Meeting mentioned, that Mr. Wedderburn would not have been involved in the evaluation process and then to read a set of Minutes from the Evaluation Committee to say that he was present at nine (9) of the Meetings, she believes that in order to protect her integrity her query of his presence at Meetings was in order...

Director Charles stated that he is somewhat concerned for the integrity of the process and he believes that Directors have to be very careful of the many roles they play and the appearance that may be conveyed to the public at large...He stated that his understanding is that there is a Task Force with certain members, an Evaluation Committee with certain Directors and a Procurement Committee of PCJ...

...He pointed out that the Chairman had outlined the process of the Evaluation Committee and that the Committee makes its recommendation to the Procurement Committee, based on the Government of Jamaica Handbook, and afterwards makes its recommendation to the Accounting Officer which would be the Permanent Secretary. **However, by convention it is the view that substantial matters should move from the Procurement Committee to the Board and then to the Accounting Officer...**

**Director Darmand stated that the meetings that Mr. Wedderburn attended, his presence was necessary as he was required to develop the instrument of measure. Mr. Wedderburn was a part of the development of the RFP in his capacity as LNG Coordinator and questions were asked of Mr. Wedderburn and he had to be invited into the meetings at times so that the Committee could have a clear understanding of the process...** (OCG's Emphasis)

Based upon the foregoing, the OCG found that Mr. Stephen Wedderburn was a member of the LNG Steering Committee and that he also played an integral role in guiding the LNG Technical Evaluation Committee, prior to the commencement of the Evaluation process.

The OCG also found that the then Board of Directors (2009-2010) were advised of Mr. Stephen Wedderburn's affiliation with one (1) of the potential bidders, Exmar Marine NV, by the former Permanent Secretary, Ms. Marcia Forbes, prior to her demitting office.

It is instructive to note that Ms. Forbes, formally stated that Mr. Wedderburn was not to be involved in any aspect of the Evaluation of the Bids. In her response to the OCG's Statutory Requisition, which was dated 2010 November 16, Ms. Forbes stated, *inter alia*, as follows:

**"...On my penultimate regular working day in office, Friday, August 28, 2009, I attended my first and only PCJ Board meeting expressly to place on record my several concerns and misgivings about the manner in which Minister James Robertson was treating the LNG project and in particular his appointment of Stephen Wedderburn. I felt this was essential since, as instructed by the Minister, in an August 12, 2009 letter, I**

*had written the PCJ about Wedderburn's appointment... **This was written with my own proviso to Wedderburn, that he made FULL written disclosure regarding his involvement with one consortium interested in bidding on the project and from which he would benefit financially if they were awarded the contract.** He agreed...*

*Not having received the requested written document from Wedderburn, I felt it prudent to alert the PCJ Board of this... <sup>116</sup>(OCG's Emphasis)*

The OCG found an email which was dated 2009 September 6, from Mr. Stephen Wedderburn to Dr. Ruth Potopsingh, former Group Managing Director, PCJ, with the subject "Employment Contract" in which he stated, *inter alia*, the following:

*"...As you are aware I have been performing work for PCJ and the Ministry since May...I have worked on LNG and natural gas issues since 2003. During that time I have had tremendous on the job training with global exposure to the gas industry in Asia, Europe, the Middle East and North and South America covering the technical, financial and commercial aspects of the industry. I also had the experience of being the sole person on the Jamaican end of supervising and coordinating the US\$2million Mustang LNG Feed Study....**I estimate that PCJ has already invested over \$10 million in my professional development in LNG..***

*In terms of a connection to Exmar, please note that on numerous occasions I have explained to officials of the Ministry of Energy and Mining, including the former Permanent Secretary, **that I have been involved in a project to develop floating LNG liquefaction in Colombia. Exmar is also involved in this project, but I do not have any commercial relationship with Exmar.** Nevertheless, **if the project is successful both Exmar and I will benefit.** My involvement in the project was on a success fee basis and even where I have ceased active involvement in the project, I will still have a financial interest. I have no other commercial connection to Exmar. **Given this background it has already been decided that I would not be involved in the evaluation of any LNG FSRU***

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<sup>116</sup> Response from Ms. Marcia Forbes, former Permanent Secretary, MEM, which was dated 2010 November 16. Responses # 3

**proposals for Jamaica.** *I therefore hope that people are not creating a red herring out of this matter. **I also note that my involvement in the Colombia project was widely known by officials of the Ministry, PCJ and JBI long before I was approached to assist with the Jamaican project...*** (OCG's Emphasis)

Based upon the foregoing, the OCG found the following:

- i. The LNG Technical Evaluation Committee, which was chaired by Dr. Audley Darmand, was, however, found to have been guided by Mr. Stephen Wedderburn, despite knowing that Mr. Wedderburn declared a prior affiliation with one of the potential bidders for the 'FSRU LNG Project'.

The OCG found that the then PCJ Board of Directors, indicated that Mr. Wedderburn "...was present at nine of the eleven evaluation meetings and was present at the opening of the bids."

- ii. The Minutes of the Special Meeting of the PCJ Board of Directors, which was held on 2010 March 31, revealed that the Evaluation Committee met prior to the opening of the bids.
- iii. The referenced Minutes of the Special Meeting of the PCJ Board of Directors, also indicated that Dr. Darmand stated, *inter alia*, that "**...the meetings that Mr. Wedderburn attended, his presence was necessary as he was required to develop the instrument of measure.**"
- iv. The referenced Minutes of the Special Meeting of the PCJ Board of Directors, also revealed that Mr. Wedderburn was involved in the development of the RFP.
- v. According to Mr. Wedderburn, he was involved in a floating LNG liquefaction project in Colombia which also involved Exmar Marine NV. Mr. Wedderburn also stated that he does "**...not have any commercial relationship with Exmar. Nevertheless, if the project**

**is successful both Exmar and I will benefit.”**

- vi. It is instructive to note that Mr. Wedderburn, in his response to the OCG’s Statutory Requisition, which was dated 2010 November 15, revealed, *inter alia*, that in 2009 May, he ‘travelled on the same flights’ with Mr. Bart Lavent of Exmar Marine NV, from Jamaica to Colombia to **‘Private gas supply meetings’**.

Of note, this was during the same period (2009 May) in which he submitted a proposal to the MEM to coordinate the LNG Project. Further, Mr. Wedderburn stated that he was employed to the PCJ, **‘retroactive to July 2009’**, however, he stated that his employment contract became official in 2009 October. It must be noted that the RFP was issued by the PCJ on 2009 November 12.

## **Identification of Land for the ‘FSRU LNG Project’**

Upon a review of the RFP, it is instructive to note that Clause 1.6, stated that *“In its previous analysis on LNG the GOJ has found the Portland Bight area to be the most appropriate area for sitting an [sic] LNG project given the location of potential end-users and the applicable zoning. The Portland Bight area remains the preferred location of GOJ. However, Providers may proposed alternative locations if they can demonstrate that these alternative locations provide tangible benefits to the Project and will comply applicable zoning and safety requirements.”*

Further, Clause 1.7 of the RFP, stated, *inter alia*, that *“PCJ previously commissioned a Front End Engineering Design (FEED) from an onshore terminal at Port Esquivel and pipeline distribution system...”*

The OCG, in an effort to ascertain whether the PCJ, the MEM and/or any other Public Body had identified, leased and/or purchased any land with respect to the sitting of the ‘FSRU LNG Project’, in its requisition to Mrs. Hillary Alexander, Permanent Secretary, MEM, which was dated 2010 September 16, posed the following question:

*“Please indicate, to the best of your knowledge, whether the PCJ and/or MEM and/or any other third party and/or Entity has/have identified, leased and/or purchased any land(s) in anticipation of creating and/or housing any facilities, equipment and/or to facilitate any component of the proposed Financing, Development, Ownership, Operation of an FSRU LNG Re-gasification Terminal and Natural Gas Transmission System in Jamaica. If yes, please provide responses to the following questions:*

- a) Please indicate the location(s) of the identified, leased and/or purchased land(s);*
- b) Please provide full particulars of the identified, leased and/or purchased lands inclusive of: (a) the person(s), entity(ies) and/or business partner in which the identification of such land(s) was/were discussed and/or negotiated and/or from who/which such land(s) was/were leased and/or purchased; (b) a copy of all*

*correspondence in relation to such land(s) in regard to the referenced project and (c) detail the basis upon which such land(s) was/were identified, leased and/or purchased;*

- c) Please provide the name(s) and title(s) of the Public Official(s) and/or Officer(s) at the PCJ and the MEM who was/were responsible for identifying, leasing and/or purchasing such land(s);*
- d) Please provide a copy of the Lease/Sale Agreement(s), if any, for the identified, leased and/or purchased land(s);*
- e) Please provide a copy of the Land Valuation Report(s), if any, for the identified, leased and/or purchased land(s);*
- f) Please provide a copy of the Duplicate Certificate of Title(s), if any, for the identified, leased and/or purchased land(s); and*
- g) Please provide a copy of the Licensing Agreement(s), if any, for the identified, leased and/or purchased land(s). ”<sup>117</sup>*

The Permanent Secretary, in her response to the OCG’s Statutory Requisition, which was dated 2010 November 12, stated, *inter alia*, the following:

*“To the best of my knowledge neither the PCJ nor the MEM has identified, leased or purchased any land in connection with the LNG Project. I have no knowledge as to whether this was done by any third party. ”<sup>118</sup>*

The OCG, further requisitioned the Hon. Noel Hylton, President and CEO, PAJ, on 2011 March 3, and posed, *inter alia*, the following questions:

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<sup>117</sup> OCG’s Requisition to Mrs. Hillary Alexander, Permanent Secretary, MEM, which was dated 2010 September 16. Question 16.

<sup>118</sup> Response from Mrs. Hillary Alexander, Permanent Secretary, MEM, which was dated 2010 September 16. Response # 16.

*“Please indicate whether the PAJ sold any land, granted any leasehold and/or any form of license to the GOJ and/or any of the potential bidders for the use or acquisition of land in regard to the LNG Project and, in particular, the proposed Financing, Development, Ownership, Operation of a FSRU LNG Re-gasification Terminal and Natural Gas Transmission System in Jamaica. If yes, please provide full particulars of same.*

*Please indicate whether any Contract(s), Memorandum/Memoranda of Understanding and/or any other form of an agreement has/have been signed by the PAJ and any other public entity in regard to the LNG Project and, in particular, the proposed Financing, Development, Ownership, Operation of a FSRU LNG Re-gasification Terminal and Natural Gas Transmission System in Jamaica. If yes, please provide a copy(ies) of same and full particulars of the circumstances under which such an agreement was signed.*

*Please indicate whether any Contract(s), Memorandum/Memoranda of Understanding and/or any other form of an agreement has/have been signed by the PAJ and any of the potential bidders in regard to the LNG Project and, in particular, the proposed Financing, Development, Ownership, Operation of a FSRU LNG Re-gasification Terminal and Natural Gas Transmission System in Jamaica. If yes, please provide a copy(ies) of same and full particulars of the circumstances under which such an agreement was signed.”<sup>119</sup>*

Mr. David Powell, Vice President & Chief Group Internal Auditor, PAJ, in his response to the OCG’s Statutory Requisition, which was dated 2011 March 21, stated the following:

**“PAJ’s RESPONSE TO QUESTION # 6**

*The Port Authority has not sold any lands, granted any leasehold or issued any form of license to the GOJ or any potential bidder for the use or acquisition of land in regard to the LNG project.*

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<sup>119</sup> OCG’s Requisition to the Hon. Noel Hylton, President and CEO, PAJ, on 2011 March 3, Questions # 6-8

**PAJ's RESPONSE TO QUESTION # 7**

*The Port Authority has not signed any Contracts, nor entered into any Memorandum/Memoranda of Understanding and/or any form of agreement with any public entity with regard to the LNG Project.*

**PAJ's RESPONSE TO QUESTION # 8**

*The Port Authority has not signed any Contract(s), Memorandum/Memoranda of Understanding and/or any other form of agreement with any potential bidders with regard to the LNG project.”<sup>120</sup>*

Based upon the foregoing, the OCG found that no form of an agreement has been signed between the PAJ and any other GOJ Entity, Public Official/Officer and/or any of the potential bidders for the ‘FSRU LNG Project’.

It is instructive to note, however, that the PAJ provided the OCG with a table which revealed that the PAJ had several meetings with EDC LNG (now CLNG), amongst others, with respect to the LNG Project.

The referenced table is as follows:

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<sup>120</sup> Response from Mr. David Powell, Vice President & Chief Group Internal Auditor, PAJ, which was dated 2011 March 21. Responses #6-8

	<b>LIST OF COMPANIES</b>	<b>NAME(S)/TITLE(S) OF PERSONS</b>	<b>DATE(S) OF MEETINGS</b>	<b>BASIS OF DISCUSSION</b>	<b>REASON FOR DISCUSSION</b>	<b>SUMMARY OF DISCUSSION</b>	<b>PUBLIC OFFICERS IN ATTENDANCE - THE PAJ</b>
1	<b>Eastern Electric</b>	Al Adams, James Chen representing Eastern Electric	26-Jun-02	Company sought better understanding of harbor layout	PAJ provided assistance in understanding harbor configuration	Exchange of information between harbor features and LNG facility	<ul style="list-style-type: none"> <li>▪ Mr. Byron Lewis - SVP Special Projects</li> <li>▪ Captain Hopeton DeLisser - Harbour Master</li> </ul>
2	<b>Mitsui MOL</b>	Names cannot be recalled except for their representative Clifton Brown, Business Development Specialist	11-Nov-02	Sought information on criteria for establishing LNG marine facility in Jamaica	PAJ is expected to provide information to the public on technical feasibility of marine projects	Company indicated their fact finding mission to better understand what approvals would be required	<ul style="list-style-type: none"> <li>▪ Captain Hopeton DeLisser - Harbour Master</li> <li>▪ Captain Gimenes Mendes - Port Captain</li> </ul>
3	<b>Exmar</b>	Emmanuel Aguirre, Paul East (Exmar)	11-Nov-09	Exmar presented information on size of vessels to be used in operation as well as estimated project start up time.	To determine the suitability of harbor facilities as against the scope of the project	Discussions centered around suitability of locations within the harbours for this type of operation	<ul style="list-style-type: none"> <li>▪ Captain Hopeton DeLisser - Harbour Master</li> <li>▪ Captain Gimenes Mendes - Port Captain</li> <li>▪ Pilots H. Kerr, R. Fuller, A. Smith</li> </ul>
4	<b>EDC LNG Ltd.</b>	Ian Moore, Paul East	16-July-10	Update PAJ on projected timeline of project and sought advise on dredging requirements; discussed safety of operation	EDC sought to clarify requirements for approvals, particularly with dredging and the environment.	Discussions concerned possible locations within the harbor and the necessary approvals which may be required for a floating, storage and re-gasification unit (fsru)	<ul style="list-style-type: none"> <li>▪ Hon. Noel Hylton – President &amp; CEO</li> <li>▪ Captain Hopeton DeLisser - Harbour Master</li> </ul>

	<b>LIST OF COMPANIES</b>	<b>NAME(S)/TITLE(S) OF PERSONS</b>	<b>DATE(S) OF MEETINGS</b>	<b>BASIS OF DISCUSSION</b>	<b>REASON FOR DISCUSSION</b>	<b>SUMMARY OF DISCUSSION</b>	<b>PUBLIC OFFICERS IN ATTENDANCE - THE PAJ</b>
5	<b>EDC LNG Ltd</b>	Ian Moore, Paul East, Conrad Kerr, Robert Francis(EDC LNG)	21-July-10	Facilitate further discussions on project development	EDC explained other components of project as well as proposed meeting with NEPA	Information regarding the overall project timing and components were presented by EDC. The Harbour Master commented on safety of shipping and passing distances etc.	<ul style="list-style-type: none"> <li>▪ Mr. Mervis Edghill - SVP Engineering &amp; Port Development</li> <li>▪ Captain Hopeton DeLisser - Harbour Master</li> <li>▪ Gimén Mendes - Port Captain</li> </ul>
6	<b>Exmar, Promigas</b>	Emmanuel Aguirre, Conrad Kerr, Hugo Gomez, Edgar Romero (Promigas)	9-Aug-10	Exmar sought assistance from PAJ in site selection for project	PAJ expressed concerns regarding having a gas facility close to the container terminal	PAJ rejected proposal to have LNG facility in close proximity to terminal	<ul style="list-style-type: none"> <li>▪ Hon. Noel Hylton – President &amp; CEO</li> <li>▪ Mr. Gary Lawrence - VP Engineering</li> <li>▪ Captain Hopeton DeLisser - Harbour Master</li> </ul>
7	<b>Exmar, Promigas, CH.IV International, Caribbean LNG, PCJ, Ministry of Mining &amp; Energy, Other Public Entities</b>	Representatives of potential bidders and relevant Public Sector Entities.	22-Sept-10	LNG briefing meeting involving all concerned parties as invited by the Minister of Mining & Energy.	LNG Entities made presentations on technical aspects of industry and provided responses to queries.	Question and answer session followed the presentations	<ul style="list-style-type: none"> <li>▪ Captain Hopeton DeLisser - Harbour Master</li> </ul>
8	<b>Exmar</b>	Emmanuel Aguirre, Conrad Douglas (Conrad Douglas & Associates)	10-Nov-10	Due diligence exercise	Representative of Exmar sought permission to conduct "bore hole" test in area targeted for siting FSRU	Local representative of Exmar sought information on licensing and permitting as well as gathering technical information such as soil investigation.	<ul style="list-style-type: none"> <li>▪ Captain Hopeton Delisser - Harbour Master</li> </ul>

Based upon the foregoing tabular representation, the OCG found the following:

- i. Exmar Marine NV had a meeting with PAJ, one (1) day before the issuance of the RFP, to “...*determine the suitability of harbor facilities as against the scope of the project*”.
- ii. The other meetings which were held with the PAJ were undertaken after the PCJ’s recommendation to enter into negotiations with the selected ‘*preferred bidder*’, the Exmar Consortium, for the ‘FSRU LNG Project’.
- iii. On 2010 September 22, the Minister, the Hon. James Robertson, invited the PAJ, amongst other relevant Public Sector Entities, to attend a ‘*LNG briefing meeting*’, in which the Exmar Consortium was present and presentations were made “...*on technical aspects of industry and provided responses to queries.*”
- iv. The basis, however, upon which several meetings were held with Exmar Marine NV and/or EDC LNG (now CLNG), was in regard to identifying and/or selecting a location for the project. Of note, the meeting of 2010 August 9 revealed that the PAJ “...*expressed concerns regarding having a gas facility close to the container terminal*” in which the PAJ rejected a proposal to have the LNG facility in close proximity to the terminal.
- v. The PAJ has not sold and/or granted any lease and/or license to any GOJ Entity and/or any of the potential bidders for any prospective property for the ‘FSRU LNG Project’.

## **The ‘FSRU LNG Project’**

### ***Pre-Qualification Exercise for the ‘FSRU LNG Project’***

The OCG found that a pre-qualification exercise was undertaken by the PCJ, in 2007, with respect to the ‘FSRU LNG Project’. Mrs. Hillary Alexander, Permanent Secretary in the MEM, and Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, in their respective responses to the OCG’s Statutory Requisitions of 2010 November 12 and 2010 November 15, stated that the Invitation to Pre-qualify was issued on 2007 April and that the prequalification applications were received on 2007 May 25.

The OCG also found that the referenced pre-qualification exercise was not completed and that the ‘FSRU LNG Project’, was not reconsidered by the GOJ until late 2009.

The Hon. James Robertson, Minister of Energy and Mining, in his sworn response to the OCG Statutory Requisition, which was dated 2010 July 2, stated, *inter alia*, the following:

*“Cabinet Decision No. 44/09 of 28 October, 2009, instructed that, consequent on the Cabinet’s endorsement of the Report of the Task Force on Energy, approval of the National Energy Policy, and approval of the use of the FSRU for the importation, production and distribution of LNG for local use as an alternative fuel source to Heavy Fuel Oil, the MEM should present the consequential steps and requirements to make LNG available for use locally, including the strategies to ensure natural gas supplies, the investment required and the proposed approached to securing this investment.*

*In keeping with Cabinet’s directives, the MEM/PCJ resumed the procurement activities for the selection of a provider for the FSRU and related infrastructure. Permission was sought and obtained (November 4, 2009), from the National Contracts Commission (NCC), for the MEM/PCJ to deem the nine consortia that responded to the 2007 pre-qualification exercise as qualified to be invited to submit proposals for the FSRU and related infrastructure.*

*Further to the approval granted by the NCC for the nine consortia to be issued Request For Proposals, in accordance with the Limited Tender Methodology, **Cabinet, by Decision No. 47/09 also gave approval for the MEM/PCJ to “employ the Limited Tender Methodology”** to select a suitable company to finance, build own and operate a FSRU and related infrastructure, including pipelines, as required to make natural gas available for use, on a sustainable basis, within the island”.*

*In accordance with the aforementioned approval granted by the NCC and Cabinet, the PCJ, on November 12, 2009, utilized the Limited Tender Methodology to issue an [sic] RFP, for the Financing, Development, Ownership and Operation of an [sic] FSRU LNG Regasification Terminal and Natural Gas Transportation System, to the nine consortia that responded to the 2007 Invitation to Pre-qualify. **The RFP advised the invitees that they could partner with any suitable entity of their choice in responding to the RFP...**<sup>121</sup> (OCG’s Emphasis)*

The Hon. James Robertson, in his referenced response to the OCG’s Statutory Requisition, also appended an “*Extract from Cabinet Decision #44/09 dated 26 October 2009*” which stated the following:

*“The Cabinet had before it Submission No. 482/MEM-42/09 in connection with the use of Floating Storage Regasification Units for the importation of Liquefied Natural Gas (LNG) for use locally as an alternative source of fuel to Heavy Fuel Oil.*

*After consideration, the Cabinet gave approval for the use of Floating Storage Regasification Units for the importation of Liquefied Natural Gas for use as a source of energy within the island”.*

The OCG found that the Permanent Secretary, in the MEM, Mrs. Hillary Alexander, by way of a letter which was dated 2009 November 4, requested the endorsement of the National Contracts Commission (NCC) to utilize the Limited Tender Procurement Methodology to procure for the

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<sup>121</sup> Response from the Hon. James Robertson, Minister, MEM, which was dated 2010 July 2. Response #14

‘FSRU LNG Project’.

In the referenced letter to the NCC, the Permanent Secretary attached a submission which was entitled “*Issuance of RFP for LNG FSRU Infrastructure*”. In the referenced submission the following, *inter alia*, was stated:

**“The 2007 pre-qualification process was not formally closed due to the need for further discussion and agreement on the preferred fuel diversification strategy for the country. Nevertheless, the proposals were scored by a five-person Evaluation Team; the process due to the issue noted above, was not completed....**

**Whilst the original intent was to select only four of the applicants as pre-qualified, the NCC should note that the Evaluation Team at the time had recommended that consideration be given to treating all nine applicants as pre-qualified applicants, meaning that all nine should be given a chance to respond to an RFP...**

### **Issues**

**The nine applicants in the 2007 process form a representative pool of the companies that have the capability to provide FSRU services and include the only two companies that already have actual experience in operating FSRUs and the two other companies that will become FSRU operators in 2010.** Therefore all the companies with proven abilities in the field were included.

Given Cabinet’s decision as to LNG and its further approval of the FSRU technology, the GoJ through the PCJ is now in a position to proceed apace with the issuing of an RFP with a view to accelerating the pace of acquiring the necessary FSRU and related infrastructure to make LNG available to the country...

### Issuance of RFP

*In view of the time imperatives...**it is extremely desirable that proposals be received from interested applicants by January 2010. This will not be likely unless the RFP is issued within the coming week (preferably by November 11, 2009)**, in order to meet the projected timelines to avail ourselves of the window of opportunity in the international market for the cost-effective provision of infrastructure and works...*

### Recommendation

*In consideration of the foregoing, the NCC is being asked to approve: the use of the limited tender process for the immediate issuance of a Request for Proposal by the Petroleum Corporation of Jamaica to the consortia listed below, to finance, develop, and operate a Floating Storage and Re-gasification Unit and related infrastructure including pipelines as required...on the basis that these consortia are the entities that possess proven FSRU capabilities.*

*The proposed consortia are:*

<i>Bergesen Worldwide Gas</i>	<i>Norway</i>
<i>Exmar</i>	<i>Belgium</i>
<i>Golar LNG</i>	<i>United Kingdom</i>
<i>Hoegh LNG</i>	<i>Norway</i>
<i>KOGAS/Samsung</i>	<i>Korea</i>
<i>MISC</i>	<i>Malaysia</i>
<i>Mitsui</i>	<i>Japan</i>
<i>Suez Gaz de France</i>	<i>France</i>
<i>Teekay</i>	<i>Canada</i> <sup>122</sup>

The NCC, by way of a letter, which was dated 2009 November 5, which was addressed to Mrs.

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<sup>122</sup> Submission from the Mrs. Hillary Alexander, Permanent Secretary, MEM, to the NCC which was dated 2009 November 4.

Hillary Alexander, Permanent Secretary in the MEM, regarding the ‘*Floating Storage Re-Gasification Unit (FSRU)*’, stated the following:

*“Please refer to your letter dated **November 04, 2009** regarding the subject captioned.*

*The National Contracts Commission considered the matter at its meeting held on **October 04, 2009** which included a presentation by Mr. Stephen Wedderburn and yourself.*

*Having considered the proposal from the Ministry of Energy and Mining, the commission endorsed the request by the Ministry to utilize Limited Tender Procurement Methodology to invite the **nine (9)** consortia who had submitted application for pre-qualification to provide the Floating Storage Re-Gasification Unit (FSRU) for Jamaica to in **May 2007**, to re-submit application for same...”<sup>123</sup>*

The OCG found that the PCJ utilized the Limited Tender Procurement Methodology in accordance with the GOJ Public Sector Procurement Procedures (2008 November) to solicit proposals for the ‘FSRU LNG Project’.

#### ***The 2009 Procurement Process for the ‘FSRU LNG Project’***

The OCG, by way of a letter, which was dated 2009 December 21, wrote to Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, and requested copies of certain pre-tender documents in an effort to commence monitoring of the project. In the referenced letter, the OCG requested the following:

- a. A copy of the Request for Proposal (RFP);
- b. Copies of the letters of invitation sent to the nine (9) companies; and
- c. A status report.

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<sup>123</sup> NCC Letter, which was dated 2010 November 5, and addressed to Mrs. Hillary Alexander, Permanent Secretary, MEM.

Mr. Wedderburn responded to the OCG's Requisition of 2009 December 21, and submitted the foregoing documents on 2009 December 29.

Upon a comprehensive review of the foregoing documents, the OCG found that Mr. Wedderburn sent emails, which were dated 2009 November 12 and 13, to the potential nine (9) bidders, in which he stated, *inter alia*, the following:

*"You will recall that you had submitted an application for pre-qualification to Petroleum Corporation of Jamaica in May 2007. **The LNG Project in Jamaica had been delayed because of an inability to identify sources of LNG supply.** However, the Government of Jamaica (GOJ) is again actively pursuing the introduction of LNG into Jamaica's energy mix. Please find attached a copy of a Request for Proposal (RFP) No: 09-01-LNGFSRU for the Financing, Development, Ownership of an [sic] LNG FSRU Regasification Terminal and Natural Gas Transmission System. This RFP is being issued on a Limited Tender basis to all nine companies/consortia..."<sup>124</sup> (OCG's Emphasis)*

The PCJ issued a formal Letter of Invitation on 2009 November 13, to the prospective bidders, in which it stated, *inter alia*, the following:

*"...PCJ seeks a Provider...with demonstrated and proven experience in all relevant aspects of the...financing, development, construction, and operation of an [sic] FSRU-based LNG regasification terminal and natural gas transmission system.*

*...A Provider will be selected based on qualifications and experience, and the procedures described in this request for proposal (RFP)."*

### The RFP

The OCG conducted a comprehensive review of the RFP and found it prudent to highlight the following Clauses:

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<sup>124</sup> Emails which were sent to the nine (9) prequalified bidders, which were dated 2009 November 12 & 13.

1. Clause 1.3 – “**Recipients**” indicated, *inter alia*, that “**Participants are allowed to include additional partners in their joint ventures or consortia in order to meet all qualification requirements of this RFP.**”
  
2. Clause 1.5 – “**Jamaica Natural Gas Market Potential**” indicated, *inter alia*, that “*The bauxite/alumina industry and power generation constitutes the major potential markets for gas in Jamaica. It is estimated that the potential gas market in Jamaica is in excess of 2 million metric tons of LNG per annum. Major potential users of gas are:*
  - a) *Alumina Partners (Alpart)*
  - b) *Jamalco*
  - c) *West Indies Alumina Co. (Windalco) refineries at Ewarton and Kirkvine*
  - d) *Jamaica Public Service Co. (JPSCo) power plants at Old Harbour, Hunts Bay, Rockfort and Bogue*
  - e) *Jamaica Energy Partners (JEP)*
  - f) *Jamaica Private Power Company (JPPC)*

*Potential significant users also exist in the cement and brewing industries.*

*PCJ envisages that the first phase of natural gas distribution, equivalent to 1.25 million metric tons of LNG per annum (mtpa), would include Alpart (~500,000 mtpa), Jamalco (~300,000 mtpa), Old Harbour power station (~300,000 mtpa) and JEP (~150,000 mtpa)..”*

3. Clause 1.6 – “**Project Location**” indicated, *inter alia*, that “*In its previous analyses on LNG, the GOJ has found the Portland Bight area to be the most appropriate area for siting an LNG project given the location of potential end users and the applicable zoning. The Portland Bight area remains the preferred location of GOJ. However, Providers may propose alternative locations if they can demonstrate that these alternative locations provide tangible benefits to the Project and will comply applicable zoning and safety requirements.*”

4. Clause 1.7 – **“Previous Studies”** indicated, *inter alia*, that **“PCJ previously commissioned a Front End Engineering Design (FEED) for an onshore terminal at Port Esquivel and pipeline distribution system. The FEED was done by Mustang Engineering and was completed in January 2007. Copies of this FEED will be made available to Providers. No specific studies have been conducted by PCJ on the FSRU terminal configuration now being pursued.”**

5. Clause 1.7 - **‘Schedule for the RFP Process’** which outlined, *inter alia*, the following:

<i>“Issuance of RFP</i>	<i>12 November 2009</i>
<i>Submission of Provider Proposals</i>	<i>5 January 2010</i>
<i>Selection of Preferred Provider</i>	<i>15 February 2010</i>
<i>Commence Phase 2: Negotiations</i>	<i>1 March 2010</i>
<i>Execute Contractual Framework Documents</i>	<i>30 March 2010”</i>

6. Clause 2.1.2 – **“Development of contractual framework and execution of one or more documents”** indicated, *inter alia*, that **“...PCJ intends...to select one Provider (the Preferred Provider) to develop a contractual framework that could lead to the execution of documents required to establish a long-term contractual relationship. During this time, PCJ will work with the Preferred Provider to establish any Conditions Precedent (CPs) appropriate to support the agreements. Following the execution of documents, PCJ will work with the Preferred Provider to satisfy any CPs in the agreements...”**

7. Clause 2.15 – **“Providers Presentations”** indicated, *inter alia*, that **“Providers will be expected to give an audiovisual presentation of their Proposal to the Evaluation Team...within 1 to 2 days after the Proposal Submission Date.”**

8. Clause 2.17.2 – **“Proposal Evaluation”** indicated, *inter alia*, that **“...PCJ will review and evaluate the Providers’ responses. This review will consider the proposed development, the Providers’ experience, the Providers’ ability to finance the Project, as well as execution plans, and schedule, and will confirm that the proposed plan and facilities will**

confirm to the requirements of the PCJ and the GOJ.

Proposed weighting for the evaluation criteria are as follows:

#	Evaluation Criteria	Weighting, %
<b>1</b>	<b>Experience</b>	<b>15</b>
a	Consortium/Partner Experience & Capabilities	15
<b>2</b>	<b>Technical</b>	<b>45</b>
a	Proven Design/Technological Reliability	10
b	Facility Design, Design Basis & Scope	20
c	Project Execution Schedule	15
<b>3</b>	<b>Commercial</b>	<b>30</b>
a	Financing Capability and Commitment	10
b	Project Cost/Pricing	15
c	Terms/Non-Recourse to GOJ	5
<b>4</b>	<b>Local Integration</b>	<b>10</b>
a	Capacity Building/Use of Local Expertise	5
b	Provisions for Gas Park Development & Use of Cryogenic Energy	5

It is instructive to note that the evaluation criteria included a weighting for Local Integration for which 5% was allocated to a potential bidder who was capable of using local expertise in its proposal for the Financing, Development, Ownership, Operation of an FSRU LNG Re-gasification Terminal and Natural Gas Transmission System.

9. Clause 2.21.2 – “Form of Questionnaire” indicated, *inter alia*, that “Marine and Shipping

1. **In view of the duration of the project, the maximum age of the FSRU vessel should be no more than ten (10) years at the start of the operation**

2. *FSRU to be of a proven design with owner-operator experience of a minimum delivered gas throughput quantity on another project of 100 million standard cubic feet per day (mmscf/d)...*<sup>125</sup> (OCG's Emphasis)

It is instructive to note that Clause 2.21.2, the "*Form of Questionnaire*" indicated the maximum age of the FSRU vessel as ten (10) years. However, based upon the review of Clause 2.17.2., the OCG has not seen any evidence which links the '*Form of Questionnaire*' to the weightings which were outlined in the Evaluation Criteria.

By way of a letter, which was dated 2010 January 18, Mr. Stephen Wedderburn informed the OCG, that the submission date for the 'FSRU LNG Project' was extended. In this regard, a copy of the Addendum, which was sent via email to each of the nine (9) potential bidders, dated 2009 December 22, was also submitted to the OCG.

The referenced email stated, *inter alia*, the following:

*"Please note that the Proposal Submission Date in RFP 01-09-LNGFSRU is now amended to Monday 15 February 2010...Please note that pursuant to this amendment those invited applicants who had previously indicated that they would [sic] not be submitting a proposal pursuant to Section 2.2 of the RFP will be given the opportunity to change their decision..."*<sup>126</sup>

### Tender Closing and Opening

The deadline for submission of the bids was 4:00 p.m. on 2010 February 15.

The OCG, through its representatives who were present at the Tender Closing and Opening, observed that two (2) bids were received by the PCJ in accordance with the provisions which were outlined in the RFP. The referenced bids were received from Hoegh LNG and the Exmar

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<sup>125</sup> Extracts from the RFP which was issued to bidders on 2009 November 12 & 13.

<sup>126</sup> Email dated 2009 December 22 from Mr. Stephen Wedderburn to the OCG.

Consortium.

Pursuant to the aforementioned Clause 2.15 of the RFP, bidders were required to conduct a presentation on their proposal on 2010 February 16. The OCG observed that the referenced presentation was undertaken by the two (2) bidders which had submitted a proposal.

By way of an email, that was copied to the OCG and which was dated 2010 February 21, Mr. Stephen Wedderburn informed Dr. Ruth Potopsingh, former Group Managing Director, PCJ, and Mrs. Hillary Alexander, Permanent Secretary, MEM, amongst others, as follows:

*“I am informing you that Golar LNG submitted by email at 7:22 p.m. Monday 15 February 2010 a “Lease Indication for an FSRU”. In this they indicate [sic] an indicative lease rate for a 30+ year old vessel to be converted to an FSRU.*

*As you will be aware Golar LNG was one of the nine companies invited to respond to the FSRU RFP. They decline to participate in the formal process citing objections to a number of the RFP conditions such as: Build Own Operate basis, Turnkey basis, Bid Bond requirement and Vessel Age limitation.*

*Golar is apparently hoping that this offer will be considered in parallel with those offers that were submitted in accordance with the RFP requirements.”<sup>127</sup>*

By way of a letter, which was dated 2010 February 24, the OCG responded to the foregoing email and stated, *inter alia*, the following:

*“In regards to the referenced information, Golar LNG submitted a proposal after the submission deadline which was scheduled for 4:00 p.m., February 15, 2010. In accordance with the provisions of the Request for Proposal (RFP), which states, “Proposals must be physically received at PCJ’s office...no later than 4:00 p.m.*

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<sup>127</sup> Email which was dated 2010 February 21 from Mr. Stephen Wedderburn to Dr. Ruth Potopsingh, former Group Managing Director, PCJ and Mrs. Hillary Alexander, Permanent Secretary, MEM.

*Electronically transmitted Proposals will not be considered a valid response to the Request for Proposal”, Golar LNG’s proposal cannot be considered.*

*Based on the foregoing, the OCG posits that the late proposal, which was electronically submitted, be rejected...”*

Subsequent to the foregoing, the OCG found that the bids, which were received from Hoegh LNG and the Exmar Consortium, proceeded to the evaluation stage.

### Issues with the RFP

The OCG found that several Public Officials and Officers expressed concerns with respect to the RFP. These concerns are as follows:

1. The circumstances surrounding the preparation of the RFP;
2. Certain requirements for qualification which were outlined in the RFP; and
3. The approval process of the RFP.

Having regard to the foregoing concerns, the OCG posed the following questions to the respective Public Officer(s) and/or Official(s) who were requisitioned during the course of its Investigation:

*“Please indicate the name(s) and title(s) of the Public Official(s), Officer(s) and/or any other person and/or company which may have been acting on behalf of the PCJ and/or the MEM, who/which was/were responsible for the preparation of the Request for Proposal (RFP) for the proposed Financing, Development, Ownership, Operation of an FSRU LNG Re-gasification Terminal and Natural Gas Transmission System in Jamaica which was issued in November 2009.”<sup>128</sup>*

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<sup>128</sup> OCG Statutory Requisition which addressed to Mrs. Hillary Alexander, Permanent Secretary, MEM, which was dated 2010 September 16. Question #17

The OCG was advised by the Permanent Secretary, Mrs. Hillary Alexander, MEM, in her response to the OCG's Statutory Requisition, which was dated 2010 November 12, that "Mr. Stephen Wedderburn, Project Coordinator, LNG Project and Dr. Earl Green, Group Chief Technical Director, PCJ"<sup>129</sup> were responsible for the preparation of the RFP.

Mr. Nigel Logan, Acting Group Managing Director, PCJ, in his response to the foregoing question, which was dated 2010 November 9, indicated that along with Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, and Dr. Earl Green, Mr. Richard McDonald, former Deputy Group Managing Director, was also responsible for the preparation of the RFP.<sup>130</sup>

Mr. Stephen Wedderburn indicated, in his response to the OCG's Statutory Requisition, which was dated 2010 November 15, that among himself and Dr. Earl Green, a Mr. Wayne Grant, Technical Engineer, PCJ, gave input in the drafting of the RFP.<sup>131</sup>

Mrs. Kathryn Phipps, the former Chairman of the PCJ Board of Directors (2009-2010), in an interview with the OCG on 2010 July 15, stated, *inter alia*, the following:

**"Ms. Phipps explained that there was a rush to get out the Request for Proposal (RFP) in November 2009. She stated that at the first LNG Evaluation Committee meeting, which she had attended, some of the members were adamant that the RFP be completed by midnight...She further stated that the RFP was prepared by members of the LNG Task Force, and was issued sometime in November 2009 for a return date of January 5, 2010. She stated that Mr. Glen Watson, Dr. Earl Green and Mr. Stephen Wedderburn were the main persons who had prepared the RFP."** (OCG's Emphasis)

It is instructive to note that the Transcript of the foregoing interview was signed before a Justice of the Peace by Ms. Phipps on 2010 July 28.

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<sup>129</sup> Response from Mrs. Hillary Alexander, Permanent Secretary, MEM, which was dated 2010 November 12. Response #17

<sup>130</sup> Response from Mr. Nigel Logan, GMD, PCJ, which was dated 2010 November 9. Response #18

<sup>131</sup> Response from Mr. Stephen Wedderburn, former LNG Coordinator, PCJ, which was dated 2010 November 15. Response #21

Based upon the foregoing, the OCG found that the Public Officers who were responsible for the preparation of the RFP, included, *inter alia*, the following:

1. Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ;
2. Dr. Earl Green, Group Chief Technical Director, PCJ;
3. Mr. Richard McDonald, the then Deputy Group Managing Director, PCJ; and
4. Mr. Wayne Grant, Technical Engineer, PCJ.

The OCG found that the then PCJ Board of Directors (2009-2010) also had discussions, in which they expressed concern with respect to the ‘guidelines’ which were used to ‘develop’ the RFP.

The Minutes of the Meeting of the PCJ Board of Directors, which was held on 2009 December 8, revealed the following:

**“The Director stated that his concern was that when the information was last presented to the Board, the specific question was asked as to what guidelines the Project Coordinator used in developing the RFP and the response was that the Task Force had provided the overall guidelines. The Chairman remarked that at that meeting the Board was being informed of “a window of opportunity” which existed and this has not been seen...”** (OCG’s Emphasis)

The Minutes of the Meeting of the PCJ Board of Directors, which was held on 2009 December 10, also revealed the following:

**“...The Chairman stated that they will be specifically be [sic] dealing with the RFP for the LNG Project and that *she is not sure if they* (Dr. Green and Mr. Wedderburn) *are aware that some concerns were raised with regard to how the RFP was drafted to invite tenders, specifically in relation to the age of the ship.* She stated that *she had spoken with persons who are also interested in the LNG Project and who were also concerned about the time they were allotted to respond...* She stated that the understanding that she is getting is that *the time allotted was insufficient for a responsible response* and that**

*she certainly needed some guidance...as she does not want it to seem as if the RFP was skewed to favour just a few persons...*

*...**He** (Mr. Wedderburn) **stated that he has a list of active LNG fleet providers and less than 10% of the fleet are less than 30 years old.** Some of the major companies are imposing restrictions on the vessels. He stated that one Company (BP) has interest in supplying LNG but they will not be supplying to an old vessel...*

***Director Warwar...asked about the absence of a feed study, to which he** (Mr. Wedderburn) **responded that the team did not really have a master plan, so it is looking for the proposals to come and then dissect from there adding that he was waiting on the proposals to guide him in terms of plans for the project...***

*...**Director Warwar stated that his concern also is that he sits on the Procurement Committee and the document he saw on the LNG Project was approved by Cabinet and the Committee could not interfere with Cabinet's decision** and approve same only to hear that it acted improperly..." (OCG's Emphasis)*

Having regard to the foregoing, the OCG found the following:

- i. Cabinet approval of the RFP preceded the approval of the PCJ Procurement Committee.
- ii. The Minutes of the Meeting of the PCJ Board of Directors which was held on 2009 December 10, revealed that Mr. Wedderburn was waiting on the proposals from the potential bidders to guide him for the plans of the project.
- iii. A FEED Study was not undertaken for the 'FSRU LNG Project'.
- iv. There appears to have been certain internal issues between the PCJ Board of Directors and the LNG Steering Committee/LNG Task Force in regard to the preparation of the RFP and the urgency in which the RFP was issued to the potential bidders.

- v. It is instructive to note that the issues which arose in regard to the drafting of the RFP were in relation to: a) the age of the ship; and b) the timeline, which was considered to be inadequate, that was given for the potential bidders to submit their proposals.

With respect to the age of the ship, the OCG found that Golar LNG wrote to the PCJ, by way of a letter which was dated 2009 November 25, and indicated, *inter alia*, the following:

*“...Golar was surprised that LNG carriers older than 10 years were specifically excluded from the Request for Proposal, especially noting that while the Issue of age was discussed In various meetings in Jamaica, no specific concerns were raised. We are unaware of any specific interdependency between the age of a vessel and an international classification society’s notation as a suitable FSRU...*

*After full and careful consideration of the Request for Proposal...the group of Golar and its partners have reluctantly agreed to decline to participate on this occasion.”*

The then PCJ Board of Directors also expressed concerns with respect to the age of the ship. In this regard, the Meeting Minutes of the PCJ Board of Directors, which was held on 2009 December 8, revealed, *inter alia*, the following:

*“...Director Creary sought clarity on the information contained in a letter from Golar regarding the age of the ship...The meeting was informed that when the matter was discussed by the Task Force, it was not communicated to them that a restriction would be placed on the age of the ship but the RFP that was developed contained that restriction. The reason for this and who introduced same in the RFP, which would have eliminated Golar, was questioned. The GMD stated that she was not in a position to respond to the question. It was pointed out however that she was part of the Task Force which developed the criteria for the bids and accordingly, she should be able to advise the Board on this and should also be in a position to explain why the RFP contained this provision.”*

The Minutes of the Meeting of the PCJ Board of Directors, which was held on 2010 January 13, indicated, *inter alia*, the following concerns:

**“...Concerning the age of the vessel and the Board’s decision that the RFP should be amended to reflect 20 years instead of 10 years, the Chairman indicated that the Board had to reconsider its position based on new technical information which was received...The Resolution to reconsider its previous decision on the age of the ship was passed unanimously by the Board.”**

With respect to the timeline for the deadline for submission of the bids, the OCG, by way of a Statutory Requisition, posed the following question to the respective Public Officials/Officers within the PCJ and the MEM, as follows:

*“Please indicate whether any of the bidders had requested an extension of the deadline for submission. If yes, please provide responses to the following:*

- i. Please indicate whether the extension(s) which was/were requested was/were granted;*
- ii. Please indicate which of the bidders had requested an extension of the submission deadline;*
- iii. The reason(s) why an extension of the submission deadline was requested;*
- iv. The time period which may have been proposed by such bidders;*
- v. Please indicate which Public Official(s) and/or Officer(s) was responsible for approving the extension; and*

- vi. *Please indicate whether the extension(s) which was/were granted was based upon the timelines which may have been proposed by all the potential bidders who had requested same.*

*If your response ... is 'No', please provide the reason(s) the request for an extension was not granted;*

*Please detail the tender period for the referenced procurement and indicate whether...you believe that the tender period, which was given, was sufficient for the potential bidders to provide comprehensive responses to the RFP. Please provide a rationale for your answer... ”<sup>132</sup>*

Mr. Nigel Logan, in his response to the OCG's Statutory Requisition, which was dated 2010 November 9, stated, *inter alia*, the following:

*“Some bidders did request extensions to the deadline.*

- i. *One extension was granted from January 5, 2010 to February 15, 2010. The second request was not granted.*
- ii. ***...Hoegh LNG also requested an extension to January 31, 2010.***
- iii. *The extension was requested in order to give the potential bidders more time to prepare their business plans and to prepare their responses to the RFP.*
- iv. ***Kogas requested an extension to April 30, 2010.***
- v. *The Group Managing Director was the public official responsible for approving the extension based on policy guidance from the MEM.*

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<sup>132</sup> OCG's Statutory Requisition to Mr. Nigel Logan, which was dated 2010 September 15. Question # 7 (j) – (l)

- vi. *The first extension that was granted was based to some extent on the timelines indicated by the bidders that would be required to prepare and submit robust bids in response to the RFP.*

*The second extension was not granted for the following reasons.*

- i. ***It was thought that the first extension granted would have provided sufficient time for serious bidders to prepare their submission.***
- ii. ***The Cabinet had approved timelines for the execution of the project and any further extension would have significantly disrupted those timelines and delayed other aspects of the project which were dependent on the bid for the FSRU and pipeline.***
- iii. ***It was believed that other potential stakeholders in the LNG Project such as suppliers and off-takers would not have taken the Project seriously if delays were granted on request without justification.*** *The project had been stalled in 2007 and it was believed that the project needed to proceed with expedition in order for Jamaica to regain credibility.*
- iv. *The second extension was not supported by the MEM due to the reasons above.*

*Please see responses below.*

- i. *According to section S-2090 of the GOJ Procurement Handbook procurement of goods and services over \$150MM should be tendered for at least 45 days and for large complex projects up to three months. As this project is in excess of US\$300MM it would be regarded as a large complex project. The tender period was 45 days in the first instance and an extension was granted for another 45 days. **The original tender period granted would have presented significant***

**challenges to potential bidders in light of the activities that would have had to be undertaken in order to prepare a bid proposal.**

- ii. *A bidder would have had to work very efficiently to make the original deadline.*
- iii. **In addition, if a bidder was deterred by the original deadline and had not commenced any activities in preparation of a bid submission, then the extension granted may not have been sufficiently useful as they would not have started preparing a proposal.**
- iv. *However, at the time it was thought that the original and extended period would have provided sufficient time for serious bidders to prepare a submission.”<sup>133</sup>  
(OCG’s Emphasis)*

Mr. Stephen Wedderburn, in his response to the OCG’s Statutory Requisition, which was dated 2010 November 15, stated the following in response to the foregoing questions:

“Yes.

- i. *An extension was granted in relation to a set of requests received in December 2009. A further extension request submitted in January 2010 was not granted...*

i. Bidder	ii. Reasons for Extension Request	iii. Extension Requested to:
<i>Hoegh LNG (submitted 11 Dec 2009)</i>	<i>The site visit was very useful to us, and has certain implications for our way forward. <b><u>From the "Request for proposal" document it was our understanding that the base case for the location of the FSRU would be at the pier in Port Esquivel.</u></b> Now, after the visit, it is obvious that</i>	<i>31 January 2010 (26 additional days)</i>

<sup>133</sup> Response from Mr. Nigel Logan, Acting Group Managing Director, PCJ which was dated 2010 November 9. Responses # 8(j) – 8(l)

<i>i. Bidder</i>	<i>ii. Reasons for Extension Request</i>	<i>iii. Extension Requested to:</i>
	<i>this is not a viable solution. The vessel is too large for the pier and has in stead [sic] to be located as far out as 5 km or more from the shore to have a sufficient waterdepth. This implies we will now have to do a specific study on what Deep Water Port solution would be the best for this case, taking into consideration i.a. metocean and seabed conditions. To do a serious study to find the best solution, we would need more time than the already very short deadline gives us.</i>	
<i>Kogas/Samsung (submitted 14 December 2009)</i>	<i>We have reviewed the RFP and found the above period to prepare the proposal might be insufficient physically, compared to the conventional bidding process, as it will [sic] additional time for offshore [sic] FEED, arrangement for the potential financing solution and so on. Furthermore there will be long-term holidays during the Christmas and New Year seasons</i>	<i>30 April 2010 (105 days additional)</i>
<i>BW Gas (submitted 17 December [sic] 2009)</i>	<i>enabling us to evaluate the project in more detail.</i>	<i>31 May 2010 (106 additional days)</i>
<i>Kogas/Samsung (submitted 28 January 2010)</i>	<i>As you know, the above project is a BOO project which requires to organize many aspects such as equity, finance, EPCI, O&amp;M, etc. Even though the current Proposal Submission Date (Feb. 15, 2010) is very tight, we are doing our utmost effort to meet it.  However, if you permit extension again for the bidders to prepare more attractive Proposal, it will be highly appreciated. In this regard, you are</i>	<i>30 April 2010 (74 additional days)</i>

i. Bidder	ii. Reasons for Extension Request	iii. Extension Requested to:
	kindly requested to consider the further extension that <u>the Proposal Submission Date will be April 30, 2010</u>	

ii. The requests for extension were referred for consideration to the Ministry through the Permanent Secretary and to the PCJ Board through the Group Managing Director. A decision, in respect of the first round of requests, to extend the submission date to 15 February 2010 was made on 22 December 2009 after a meeting of:

*Hon. Prime Minister*

*Minister Robertson*

*Permanent Secretary, MEM*

*Mr. Chris Zacca, Special Advisor to the Prime Minister*

*Ms. Kathryn Phipps, Chairman PCJ*

*Mr. Glenford Watson, Legal Counsel MEM*

*Mr. Stephen Wedderburn, Project Coordinator – LNG, PCJ*

The Prime Minister requested that consultations be made with Mr. Zia Mian and with the World Bank on the appropriateness of the timelines. **These consultations were made by the Permanent Secretary and they confirmed that a 90-day total timeline to 15 February would be appropriate.** This timeline was in excess of that requested by Hoegh LNG, but less than what was requested by Kogas/Samsung and BW Gas. **As noted above the consultations with Mr. Zia Mian and the World Bank indicated that the timelines requested by Samsung/Kogas and BW Gas would be significantly in excess of what was considered normal.**

The second request of Kogas/Samsung submitted on 28 January 2010 was not

granted. ***I do not know the actual basis on which the decision not to extend was taken. I was advised by the Group Managing Director PCJ by email on 11 February 2010 that it was an accepted position not to extend the timeline beyond 16 February 2010.***

*The original tender period of 54 days was an aggressive timeline, but I believe that it was a feasible timeline for experienced companies. A timeline of 45 days had been approved by the LNG Steering Committee and the time was extended to 54 days to account for the holiday period. While the normal period for this type of tender would be 90 – 120 days, the PCJ FSRU tender did not ask for a binding price or a firm financing proposal as would be normal in a 90 – 120 day tender. The absence of these requirements made the shorter timeline feasible. Section 3.4 of the RFP Questionnaire would have indicated to the bidders that PCJ was not requiring a completed FEED-level or detailed engineering design, another factor making the 54 day timeline feasible.”<sup>134</sup>*

It is instructive to note that Mr. Stephen Wedderburn informed the OCG that he was unaware of the circumstances which led to the decision not to extend the deadline beyond 2010 February 16, as per the request from Samsung/Kogas.

However, and quite contrary to Mr. Stephen Wedderburn’s assertion, the OCG found that Mr. Wedderburn sent an email to the Permanent Secretary, Mrs. Hillary Alexander, MEM, which was dated 2010 January 28, and which was copied, *inter alia*, to the former Chairman of the PCJ Board of Directors, Ms. Kathryn Phipps, the former Group Managing Director, Dr. Ruth Potopsingh, Mr. Glenford Watson, Senior Legal Officer, MEM, Dr. Carlton Davis and Mr. Christopher Zacca.

In the referenced email, Mr. Wedderburn indicated, *inter alia*, the following:

*“I forward for your consideration another request for extension of the LNG FSRU*

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<sup>134</sup> Response from Mr. Stephen Wedderburn, which was dated 2010 November 15. Response # 11(j) – (l)

*bidding period by the Samsung/Kogas group. They have again requested an extension to 30 April 2010.*

*I recommend against any further extension being granted for the reasons outlined below:*

*1. Current Bidding Period is Appropriate*

***The 15 February 2010 submission date means that the bidding period will be slightly in excess of 90 days.*** *This is the standard period for bid exercises of this type. You will recall that in my presentation to the Prime Minister last September I had pointed out that the normal time for such a bid was 90 days, but the LNG Committee was deliberately going for a shorter period because of the exigencies of the project. In your checks with the World Bank last month they confirmed that 90 days was typical for this type of bid.*

*2. We should not risk alienating the more experienced bidders*

*Amongst the bidders actively working on proposals, the two that have actual previous experience in developing FSRU projects have both indicated that they will be ready to submit their proposals on 15 February. This extension request coming from a group that has not previously developed an [sic] FSRU project suggests that inexperience may be the underlying cause of the request...We should not risk losing the more experienced bidders in order to facilitate the weaker bidders. We are looking for an entity that can implement a project in the shortest possible time and an entity that cannot respond in a timely fashion to prepare a bid may well be an entity that will have problems implementing the actual project in a timely fashion..*

*3. An extension now may put the entire project in jeopardy*

***I am confident that Dr. Carlton Davis will back me up when I point out that if we don't move to expedite the LNG Project we are in real danger of the entire***

**project falling apart.** Jamalco one of the lynchpin customers for gas have repeatedly asserted that they need to see a definite gas proposal sooner than later or they will switch to an alternative path. **Jamalco are at this time actively deploying resources to develop a coal project in parallel with our efforts to develop the gas project. They have made it clear that if they reach a certain point with coal and LNG is not ready they will be going with coal...If a strong credit worthy company such as Jamalco declines to use gas it could weaken the LNG project...** (OCG's Emphasis)

Having regard to the foregoing email, the OCG found that Mr. Stephen Wedderburn, in point and in fact, outlined his reasons why the deadline for submission should not be extended and made his recommendations accordingly.

The Minutes of the Meeting of the PCJ Board of Directors, which was held on 2009 December 22, stated, *inter alia*, the following:

**"The Chairman...questioned which Company did not seek an extension to which Mr. Wedderburn responded Exmar...The Chairman reiterated her concern that the only respondent that did not request an extension was the Company that Mr. Wedderburn was an agent for and that this does not look good since as far as she is concerned the Board took a decision that if an application was received for extension then the Board would consider it and as far as she knows that has not been done and yet there are letters going out indicating that a decision was taken to grant an extension after consultation with the PCJ and with the Ministry. She said she would like to be directed to that consultation and as far as she is concerned she is not supporting that position as it is going against a resolution of the Board...She questioned how can three of four respondents request more time and the only one that does not need more time is the company for which Mr. Wedderburn was an agent. She questioned when would the Board of the company which has responsibility for the Project be advised of that situation (request for extension)...**

The GMD stated that an e-mail was received from Golar addressed to the Chairman... She stated that Mr. Wedderburn sought a response from the PS and her response was that the **Minister had made it exceedingly clear that there should be no changes to the RFP at this time, as submission of Proposals and timelines having been decided by Cabinet [sic] and cannot be changed without reverting to that body which was not be [sic] possible before January...**

Director Watson stated that the letter emailed from Golar had said they wanted to get back into the process and is requesting an extension...

Director Warwar stated that what Golar is saying is that because of the timeline, that they are not able to bid but if the timeline is reconsidered then they will submit a bid...**Director Lazarus stated that the Minister was very strict on the timeline** and he thinks it is best that the matter be put back to the Minister..." (OCG's Emphasis)

The Minutes of the Meeting of the PCJ Board of Directors, which was held on 2010 February 10, revealed, *inter alia*, the following in regard to the request for extension by the potential bidders:

"...Director Charles, noting that nine (9) companies prequalified asked how many had expressed interest. **Mr. Wedderburn indicated that only four (4) companies expressed interest and that he expects two to submit bids on February 15, 2010.** Director Chares [sic] further questioned if he is satisfied with the project and whether in the circumstances this was the best result. **Mr. Wedderburn indicated that he is satisfied because initially it was expected that PCJ would have had to guarantee the financing for the FSRU, now the bidders are expected to take the project cost on their own initiative, which accounted for the reduction in interested parties...**

Asked which two companies were still going forward and whether there was any request for amendment of the RFP, Mr. Wedderburn stated that there were issues concerning the bid bonds which are being addressed adding that Samsung requested an extension and Exmar and Hoeg [sic] LNG are still interested...

**Mr. Wedderburn pointed out that the companies expected to submit bids are the only two of the nine that have developed a full project FSRU, jetty and pipelines by themselves and that it is not surprising because they have experience in the LNG business.**

*The Chairman then made reference to information sent...requesting an extension of time...*

*Director Creary stated that all the companies which prequalified have the technical capacity to meet any deadline for proposals and he believed that at this point any request for extension has to do with financial readiness as opposed to technical readiness.*

*Director Watson stated that if international best practise advises ninety (90) days for preparation and submission of bids, then at some point the Team must have a cut off date and accept whoever submitted bids, noting that the period for bid submission was 45 days and was extended..." (OCG's Emphasis)*

It is instructive to note that the Hon. James Robertson, in his sworn response to the OCG's Requisition, which was dated 2010 July 2, stated, *inter alia*, the following:

*"A timeline of forty-five (45) days was initially set for bids to be submitted. The initial timeline was, however, extended by an additional forty-five (45) days, in keeping with a request from a few of the invitees and after consultation with experts from the World Bank who advised that ninety (90) days was a reasonable timeline for a capable invitee to respond."<sup>135</sup>*

Mrs. Hillary Alexander, in her response to the OCG's Statutory Requisition, which was dated 2010 November 12, stated the following:

*"In a meeting with the Prime Minister, the Minister of Energy and Mining, The*

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<sup>135</sup> Response from the Hon. James Robertson, Minister, MEM, which was dated 2010 July 2. Response #14

*Chairman of the PCJ, the Permanent Secretary and the Legal Officer of the MEM, it was agreed that the timeline would be extended subject to consultation with the World Bank and OUR. Separate consultations were duly held and it was agreed that a 90-day period would be reasonable; therefore the bid timeline was extended to February 15, 2010.*<sup>136</sup>

It is instructive to note that GDF Suez Global LNG, by way of a letter which was dated 2010 January 11, informed Ms. Ashlyn Malcolm, Group Chief Internal Auditor, PCJ, that “*Due to the absence of site specific information (maritime and weather data) as well as the bid bond requirement on terms and conditions that are not sufficiently detailed in the RFP, we are not in a position to meet the requirements and process stipulated in the RFP. Hence we will not submit a proposal on the Proposal Submission Date in accordance with the terms of the RFP process.*”

Mr. Nigel Logan, Acting Group Managing Director, PCJ, during the conduct of an interview, which was held on 2010 December 7, stated, *inter alia*, the following in regard to the RFP:

*“...it was sent to the members of the Procurement Committee by email...for the Committee to approve, for it to be sent out that same day by midnight... **the Procurement Committee of course would not have been able to meet at such short notice and essentially did not have a chance to read over the RFP,** before it went out...it went out for forty five (45) days, now when I read the Procurement Guidelines...it says you can put it out for a project of that size which is the order of three hundred and fifty million US dollars...one could extend it for three (3) months...**which based on the size and complexity of such a project...it would involve not only the FSRU but also a pipeline and none of the companies who were invited were actually both FSRU and pipelines** which means they...would have to find a pipeline company, negotiate with them, get them to come to Jamaica...do measurements and so forth, talk to different permitting agencies and all of that and to basically conduct what could be considered...some sort of pre-feasibility study, and then go to...bankers to get support, I think that would be highly impossible in forty five (45) days, however...that’s how the RFP was set up and that’s how...persons wanted it to be...**it was eventually extended but of course, because it was***

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<sup>136</sup> Response from Mrs. Hillary Alexander, Permanent Secretary, MEM, which was dated 2010 November 12. Response #7(j)(v).

**extended, after sometime had pass it meant that those umm serious bidders or potential bidders would not have been interested** when it was forty five (45) days. So if thirty days passed they...still would not be interested because it still wouldn't have been enough time; and **even ninety (90) days would present a challenge in responding to such a bid in the kind of comprehensive way...**” (OCG’s Emphasis)

It is instructive to note that the Transcript of the foregoing interview was signed before a Justice of the Peace by Mr. Nigel Logan on 2011 February 10.

Based upon Mr. Nigel Logan’s assertion, the potential bidders would have needed adequate time to undertake a pre-feasibility study and/or assessment prior to the deadline for submission of the bids. In point of fact, at least three (3) potential bidders had requested an extension of the submission deadline. Therefore, the initial forty- five (45) day timeline which was stipulated in the RFP would have dissuaded some potential bidders and was woefully inadequate.

It is instructive to note that EDC LNG (now CLNG), Promigas and Exmar Marine NV had conducted a pre-feasibility study which was completed in 2009 October. Further, with respect to the requirements of the RFP, the OCG found that the PCJ did not conduct its own pre-feasibility study for the ‘FSRU LNG Project’ and, as such, the other potential bidders would not have been privy to any form of a pre-feasibility study and/or assessment.

Having regard to the foregoing, the OCG noted several concerns with respect to the timelines which were given for the submission of the bids. These include, amongst other things, the following:

- i. Four (4) requests for extensions to the submission deadline were received by the PCJ. Two (2) of the requests were for the deadline to be extended between 2010 April-May. However, the Permanent Secretary in the MEM, alleged that the World Bank and the OUR were consulted with respect to the extensions. In this regard, ninety (90) days was deemed an appropriate timeframe for the submission of bids.

- ii. The bidders were given approximately ninety (90) days to prepare a proposal in accordance with the RFP which was issued on 2009 November 12.

It is instructive to note that it is stated in Clause IV, Sub-Section S-2090 of the GOJ Public Sector Procurement Procedures (2008 November), for Contracts which are in excess of JA\$150 million, that a minimum of 45 days should be allotted to Bid Submission. It is further stated that *“For large complex projects might be as long as three months.”*

- iii. The only potential bidder that did not request an extension of the deadline for submission was the Exmar Consortium.
- iv. The PCJ Board of Directors was not informed by Mr. Stephen Wedderburn of the decisions, which were being made, in respect of the requests for extensions of the submission deadline. The Minutes of the Meeting of the PCJ Board of Directors, which was held on 2009 December 22, indicated that the Board was not consulted on same. However, there were *“...letters going out indicating that a decision was taken to grant an extension after consultation with the PCJ and with the Ministry.”*

### Evaluation Process

It must be noted that Dr. Audley Darmand, Chairman, LNG-FSRU Bid Evaluation Committee, PCJ, by way of a letter which was dated 2010 March 29, informed Mr. Godfrey Perkins, Secretary, PCJ Procurement Committee, *inter alia*, as follows:

*“I wish to inform you that the LNG-FSRU-RFP Infrastructure Bid Evaluation Process was conducted by the LNG-FSRU-RFP Bid Evaluation Committee on the written bids presented and delivered in accordance with the Government of Jamaica and the Petroleum Corporation of Jamaica Procurement Procedures Guidelines.*

**Please note that the actual Presentation of the submission by the bidders was not**

*considered as, was not interpreted as and did not form a part of the Bid Evaluation Process by any member of the aforementioned Committee and as such was not reflected...* (OCG's Emphasis)

### ***Evaluation Criteria***

Clause 2.17.2 of the RFP detailed the evaluation criteria and associated weightings that would be used to evaluate the proposals.

However, the OCG found that the Consultant, CH-IV International, prepared a document which was entitled "*FRAMEWORK FOR REVIEW AND EVALUATION OF PROPOSALS*", which was dated 2010 February 12, to evaluate the proposals which were received for the 'FSRU LNG Project'.

The referenced document stated, *inter alia*, that "*The purpose of this Report is to describe the framework that CH-IV proposes to use to complete its review of Proposals received in accordance with Section 2.17 of the RFP.*"<sup>137</sup>

The OCG also found that the referenced document contained an appended "*Review Matrix*" which was designed by the Consultants, CH-IV International, to review the bids which were received for the 'FSRU LNG Project'.

The referenced document also stated, *inter alia*, that "*It is understood that up to four Proposals will be received in response to the RFP. Each Proposal will be objectively reviewed against the following sub-criteria for each category using, for each bidder, the definitions described in the Review Matrix included in Appendix A*".<sup>138</sup>

The referenced Review Matrix expanded the criteria which were provided in the RFP, as

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<sup>137</sup> Bid Evaluation Matrix Report: Framework for Review and Evaluation of Proposals, dated 2010 February 12, and which was prepared by CH-IV International. Pg. 1

<sup>138</sup> Bid Evaluation Matrix Report: Framework for Review and Evaluation of Proposals, dated 2010 February 12, and which was prepared by CH-IV International. Pg. 2

follows:

***“...General Compliance to the RFP***

*The review and evaluation will consider:*

- *General compliance with the RFP. This will include an evaluation of compliance with the general terms and conditions of the RFP as well as the completeness of responses provided in consideration of the Schedule of Forms and questionnaire described in Section 2.21 of the RFP.*
- *Exceptions noted by each bidder in its Proposal.*

***Bidder Experience***

*The review and evaluation will consider the specific experience and capabilities of the bidder in relation to the assignment, including:*

- *Experience of the bidder and relevance to the assignment. This will include:*
  - *Bidders experience with FSRU concepts,*
  - *An evaluation of the bidder’s experience in the development, construction, ownership and operation of similar projects.*
- *Current commitments, including any ongoing or planned commitments that may interfere with the development of the Project.*

***Technical Proposal***

*The review and evaluation will consider:*

- *The proposed design with particular consideration of:*

- *Proposed use of an existing FSRU vessel or a new build vessel in consideration of the project schedule and cost,*
  - *Proven application and technological reliability. This will include a review of the fitness for purpose of the proposed concept and also any limitations in the design, such as LNG carrier size, LNG storage capacity, regasification (minimum sendout, baseload and peak sendout), and*
  - *Status of the proposed design, i.e. feasibility, pre-FEED or FEED.*
- *The proposed design basis for the regasification facility and the gas distribution system in consideration of:*
    - *Design for flexible supply and delivery,*
    - *Reliability, including experience with similar design concepts, natural gas sendout and interruption, redundancy of critical components,*
    - *Provisions for future expansion, and*
    - *Proposed safety and environmental standards*
  - *Project execution and construction plan, including:*
    - *Construction contracting plan, including any arrangements with contractors, shipyards and equipment suppliers,*
    - *Credibility of construction schedule, commissioning plan and commencement of services, and*
    - *Credibility of operating plan*
  - *Proposed safety standards for design, construction and operation,*
  - *Compliance with Jamaican and World Bank environmental standards.*

### ***Commercial Proposal***

*The review and evaluation will consider:*

- *Bidder capability and commitment to finance the project in accordance with the RFP requirements, including*
  - *Ability to finance and/or procure project financing,*
  - *Bona fide evidence of financial wherewithal and/or commitments from potential lenders, and*
  - *Details of the financing plan and structure and considerations regarding the Jamaican economy.*
  
- *Bidder project cost estimate and pricing, including:*
  - *Details in the bidder financial model,*
  - *Details in the breakdown of component costs,*
  - *Pricing assumptions,*
  - *Price sensitivity to throughput level in consideration of a baseline 1.2 mtpa facility.*
  
- *Bidders method and approach with respect to non-recourse financing, including details of:*
  - *Any requests for guarantees, waivers or incentives, and*
  - *Any requests for government financial commitments or contingent liabilities.*
  
- ***Local Integration***

*The review and evaluation will consider:*

- *Capacity building and use of local expertise, including*
  - *Utilization of Jamaican nationals, including training and development,*
  - *Investment in Jamaica, and*
  - *Technology transfer.*

- *Provisions for Gas Park development, use of cryogenic energy and plans to promote gas park or other industrial development.”<sup>139</sup>*

The referenced document further provided, *inter alia*, that “...for each sub-criteria in each category it is recommended that a percentage grading system be used that is based on the following table:

<b><i>Response Evaluation Categories</i></b>	<b><i>Evaluation Grade (Percentage Point)</i></b>
<i>Poor / Weak Response</i>	25%
<i>Satisfactory Response</i>	26-50%
<i>Good Response</i>	51-75%
<i>Very Good Response</i>	76% -100%

*The following defines the meaning of each Response Evaluation Category:*

- *Poor/Weak response: The bidder is not able to or can only demonstrate very limited compliance with the specific criteria.*
- *Satisfactory: The bidder has experience that is relevant to the criteria being evaluated and can demonstrate approaches and methodologies appropriate to the assignment.*
- *Good: The bidder has extensive experience that is relevant to the criteria being evaluated and demonstrates specific experience working with similar physical and institutional conditions, including similar critical issues. The bidder demonstrates experience with advanced approaches and methodologies for dealing with the specific requirements of the assignment.*
- *Very Good: The bidder demonstrates outstanding, state-of-the-art expertise in assignments similar to the one being considered. The bidder demonstrates leading expertise and experts in the field of the assignment. The bidder is considered a*

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<sup>139</sup> Bid Evaluation Matrix Report: Framework for Review and Evaluation of Proposals, dated 2010 February 12, and which was prepared by CH-IV International. Pg. 2-5

*world class specialist in the approaches and methodologies dealing with specific issues relevant to the requirements of the criteria being evaluated...*<sup>140</sup>

Of note, however, is that the Evaluation Criteria for Local Integration in regard to Capacity Building/Use of Local Expertise, based upon a document which was prepared by Mr. Stephen Wedderburn, and entitled “*LNG FSRU RFP Presentation to Evaluation Team*”, which was dated 2009 January 27, required the following from the potential bidder for qualification:

- **“Utilization of Jamaicans in senior positions**
- *Training and HR Development Plan for Jamaican staff*
- *Extent of Jamaican investment/ownership*
- *Technology Transfer Plan” (OCG’s Emphasis)*

By way of a letter, which was dated 2010 March 28, a Mr. Joseph Fossella, CH-IV International informed Dr. Audley Darmand, Chairman, FSRU LNG Bid Evaluation Committee, PCJ, *inter alia*, that “*This final weighted matrix was reviewed by the LNG team and a consensus was reached on the matrix and weighting. With the exception of a Poor / Weal [sic] Response, there was latitude for a numeric grade in the other categories. In addition, each evaluator was given latitude to use their own judgment as to the scoring. This methodology would necessarily lead to different scores by each evaluator.*”<sup>141</sup>

It is instructive to note that the OCG was not provided with and/or found any evidence to suggest that the referenced ‘Review Matrix’, which was designed by the Consultants, CH-IV International, for and on behalf of the PCJ, was issued to the potential bidders, via an Addendum or otherwise, prior to the submission deadline.

Pursuant to Sub-Section No. S-3100 of the GOJ Public Sector Procurement Procedures (2008 November), “**All adopted sub-criteria should be specified in the RFP...** *If points allocated to*

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<sup>140</sup> Bid Evaluation Matrix Report: Framework for Review and Evaluation of Proposals, dated 2010 February 12, and which was prepared by CH-IV International. Pg. 5-6. Attached is a copy of Appendix A.

<sup>141</sup> Letter from Mr. Joseph Fossella, CH-IV International informed Dr. Audley Darmand, Chairman, FSRU LNG Bid Evaluation Committee, MEM, which was dated 2010 March 28.

*these sub-criteria are not disclosed in the RFP, **the Evaluation Committee should allocate them before proposal submission, to reduce the risk of manipulations during the evaluation process...***” (OCG’s Emphasis)

The OCG found that the points which were allocated in the Evaluation Criteria, as outlined in the RFP, were similar to those which were detailed in the ‘Review Matrix’ that was prepared by CH-IV International. However, CH-IV International, in the referenced ‘Review Matrix’, detailed the evaluation criteria and the requisite sub-criteria, along with the allotted “***Evaluation Grade (Percentage Points)***”.

The OCG also found that the referenced ‘Review Matrix’ broadened the scope of the evaluation criteria.

Based upon the foregoing, and having regard to Sub-Section No. S-3100 of the GOJ Public Sector Procurement Procedures (2008 November), the OCG found that the PCJ and/or the MEM, did not provide the potential bidders with the amended evaluation criteria, as detailed in the ‘Review Matrix’, which was dated 2010 February 12. It should be noted, that the referenced ‘Review Matrix’ was dated three (3) days before the deadline for submission on 2010 February 15.

Consequently, the OCG found the foregoing to be irregular and a breach of the GOJ Public Sector Procurement Guidelines.

It is instructive to note that the OCG also found that information which was requested in Clause 2.21.2, “*Form of Questionnaire*”, which was contained in the RFP, included qualification requirements which were not reflected in the Evaluation Criteria of the RFP.

It is also instructive to note, that Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, in his response to the OCG’s Statutory Requisition, which was dated 2010 November 15, stated, *inter alia*, the following:

**“...the PCJ FSRU tender did not ask for a binding price or a firm financing proposal**

*as would be normal in a 90 – 120 day tender. The absence of these requirements made the shorter timeline feasible. **Section 3.4 of the RFP Questionnaire would have indicated to the bidders that PCJ was not requiring a completed FEED-level or detailed engineering design,** another factor making the 54 day timeline feasible.”<sup>142</sup>*

However, the ‘Review Matrix’ which CH-IV International used to evaluate the bids indicated that the bids were going to be assessed, *inter alia*, on:

1. The “*Commercial Proposal*”, which would assess, *inter alia*, the bidders capability and commitment to finance the project and would consider details of the financing plan and structure considerations along with the bidder projected cost estimate and pricing.
2. The “*Technical Proposal*”, which included, *inter alia*, the proposed design with particular consideration of the “*Status of the proposed design, i.e. feasibility, pre-FEED or FEED.*”

Further, while Mr. Wedderburn stated that the PCJ was not requesting bidders to provide “...*completed FEED-level or detailed engineering design...*”, the technical component of the evaluation criteria, as detailed in the ‘Review Matrix’ also examined the project execution and construction plan, where the credibility of the construction schedule, commissioning plan and operating plan were to be assessed.

It is also instructive to note that despite Mr. Wedderburn’s assertion that the bidders were not required to provide “...*completed FEED-level or detailed engineering design...*”, one (1) of the nine (9) invited bidders indicated, in writing, its unwillingness to participate in the referenced tender process because of, *inter alia*, “...*the absence of site specific information (maritime and weather data)...*”

Having regard to the foregoing, it should be noted that neither the MEM and/or the PCJ conducted a pre-feasibility study for the ‘FSRU LNG Project’. Interestingly, the EDC LNG (now

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<sup>142</sup> Response from Mr. Stephen Wedderburn, which was dated 2010 November 15. Response # 11(j) – (l)

CLNG) conducted its own feasibility study, one (1) month prior to the commencement of the tender period for the 'FSRU LNG Project'.

### ***Evaluation Results***

The OCG found that the final scores, which were given to the two (2) bidders, as evaluated by CH-IV International, were as follows:

#### **A. The Exmar Consortium**

<i>Jamaica LNG Receiving Terminal &amp; Natural Gas Transmission System</i>				
<i>Proposal Ranking Spread Sheet</i>				
<b><i>Evaluation Criteria</i></b>	<b><i>Weighting</i></b>	<b><i>Response Summary</i></b>	<b><i>Evaluation Grade</i></b>	<b><i>Score</i></b>
<b><i>Specific Experience and Capabilities of Bidder</i></b>	<b><i>15</i></b>			
<i>FSRU Project Development Experience</i>	<i>4</i>	<i>Very Good</i>	<i>90%</i>	<i>3.6</i>
<i>Construction Experience</i>	<i>2</i>	<i>Very Good</i>	<i>80%</i>	<i>1.6</i>
<i>Ownership Experience</i>	<i>2</i>	<i>Very Good</i>	<i>80%</i>	<i>1.6</i>
<i>Operation Experience</i>	<i>4</i>	<i>Very Good</i>	<i>90%</i>	<i>3.6</i>
<i>Current Commitments</i>	<i>3</i>	<i>Poor/Weak</i>	<i>25%</i>	<i>0.75</i>
<b><i>Technical Evaluation</i></b>	<b><i>45</i></b>			
<i>Proposed Concept</i>	<i>5</i>	<i>Good</i>	<i>65%</i>	<i>3.25</i>
<i>Proposed Design-Fitness for Purpose</i>	<i>5</i>	<i>Very Good</i>	<i>90%</i>	<i>4.5</i>
<i>Proposed Design-Limitations</i>	<i>5</i>	<i>Good</i>	<i>65%</i>	<i>3.25</i>
<i>Status of Design, Completeness of Specifications and Scope</i>	<i>3</i>	<i>Very Good</i>	<i>85%</i>	<i>2.55</i>
<i>Design Reliability</i>	<i>6</i>	<i>Good</i>	<i>60%</i>	<i>3.6</i>
<i>Proposed Safety Standards</i>	<i>3</i>	<i>Very Good</i>	<i>85%</i>	<i>2.55</i>
<i>Compliance with Jamaican and World Bank Environmental Standards</i>	<i>3</i>	<i>Satisfactory</i>	<i>45%</i>	<i>1.35</i>
<i>Project Execution and Construction Plan</i>	<i>15</i>	<i>Good</i>	<i>65%</i>	<i>9.75</i>
<b><i>Commercial Evaluation</i></b>	<b><i>30</i></b>			
<i>Bidder Capability and Commitment to Finance Project</i>	<i>10</i>	<i>Good</i>	<i>70%</i>	<i>7</i>
<i>Project Cost Estimate and Pricing</i>	<i>15</i>	<i>Good</i>	<i>65%</i>	<i>9.75</i>

<i>Evaluation Criteria</i>	<i>Weighting</i>	<i>Response Summary</i>	<i>Evaluation Grade</i>	<i>Score</i>
<i>Method and approach to Non Recourse Financing</i>	<i>5</i>	<i>Satisfactory</i>	<i>45%</i>	<i>2.25</i>
<b><i>Local Integration</i></b>	<b><i>10</i></b>			
<i>Capacity Building and Use of Local Expertise</i>	<i>5</i>	<i>Very Good</i>	<i>90%</i>	<i>4.5</i>
<i>Provision for Gas Park Development and Use of Cryogenic Energy</i>	<i>5</i>	<i>Good</i>	<i>55%</i>	<i>2.75</i>
			<i>Total Score</i>	<i>68.2</i>

B. Hoegh LNG

<i>Jamaica LNG Receiving Terminal &amp; Natural Gas Transmission System</i>				
<i>Proposal Ranking Spread Sheet -</i>				
<b><i>Evaluation Criteria</i></b>	<b><i>Weighting</i></b>	<b><i>Response Summary</i></b>	<b><i>Evaluation Grade</i></b>	<b><i>Score</i></b>
<b><i>Specific Experience and Capabilities of Bidder</i></b>	<b><i>15</i></b>			
<i>FSRU Project Development Experience</i>	<i>4</i>	<i>Satisfactory</i>	<i>35%</i>	<i>1.4</i>
<i>Construction Experience</i>	<i>2</i>	<i>Satisfactory</i>	<i>40%</i>	<i>0.8</i>
<i>Ownership Experience</i>	<i>2</i>	<i>Satisfactory</i>	<i>50%</i>	<i>1</i>
<i>Operation Experience</i>	<i>4</i>	<i>Satisfactory</i>	<i>45%</i>	<i>1.8</i>
<i>Current Commitments</i>	<i>3</i>	<i>Poor/Weak</i>	<i>25%</i>	<i>0.75</i>
<b><i>Technical Evaluation</i></b>	<b><i>45</i></b>			
<i>Proposed Concept</i>	<i>5</i>	<i>Satisfactory</i>	<i>30%</i>	<i>1.5</i>
<i>Proposed Design-Fitness for Purpose</i>	<i>5</i>	<i>Satisfactory</i>	<i>35%</i>	<i>1.75</i>
<i>Proposed Design-Limitations</i>	<i>5</i>	<i>Satisfactory</i>	<i>30%</i>	<i>1.5</i>
<i>Status of Design, Completeness of Specifications and Scope</i>	<i>3</i>	<i>Satisfactory</i>	<i>40%</i>	<i>1.2</i>
<i>Design Reliability</i>	<i>6</i>	<i>Satisfactory</i>	<i>40%</i>	<i>2.4</i>
<i>Proposed Safety Standards</i>	<i>3</i>	<i>Satisfactory</i>	<i>45%</i>	<i>1.35</i>
<i>Compliance with Jamaican and World Bank Environmental Standards</i>	<i>3</i>	<i>Satisfactory</i>	<i>35%</i>	<i>1.05</i>
<i>Project Execution and Construction Plan</i>	<i>15</i>	<i>Poor/Weak</i>	<i>25%</i>	<i>3.75</i>
<b><i>Commercial Evaluation</i></b>	<b><i>30</i></b>			
<i>Bidder Capability and Commitment to Finance Project</i>	<i>10</i>	<i>Poor/Weak</i>	<i>25%</i>	<i>2.5</i>
<i>Project Cost Estimate and Pricing</i>	<i>15</i>	<i>Satisfactory</i>	<i>40%</i>	<i>6</i>
<i>Method and approach to Non Recourse Financing</i>	<i>5</i>	<i>Poor/Weak</i>	<i>25%</i>	<i>1.25</i>
<b><i>Local Integration</i></b>	<b><i>10</i></b>			
<i>Capacity Building and Use of Local Expertise</i>	<i>5</i>	<i>Satisfactory</i>	<i>35%</i>	<i>1.75</i>
<i>Provision for Gas Park Development and Use of Cryogenic Energy</i>	<i>5</i>	<i>Poor/Weak</i>	<i>25%</i>	<i>1.25</i>
			<i>Total Score</i>	<i>33</i>

By way of a letter, which was dated 2010 March 29, and which was captioned “PCJ Procurement Committee – Preferred Supplier” Mr. Arthur Ransome, Vice President & General Manager, CH-IV International, provided Dr. Audley Darmand, Chairman, FSRU LNG Bid

Evaluation Committee, with “...a summary of the attributes of each proposal submitted and the final score that CH-IV presented to the Committee.”<sup>143</sup>

The referenced letter further provided the following summary of the scores:

**“Exmar Consortium**

- *The Exmar Consortium Proposal explicitly states financing stands solely on the strength of off take and supply agreements and the experience of bidder consortium, and not by guarantees from GOJ*
- *The Exmar Consortium has strong financials collectively*
- *Commitment from Lenders to this project is explicit in its proposal and subject, of course, to conditions precedent usual and customary in project financing*
- *Exmar Consortium demonstrated since 2005 the ability to develop offshore regasification projects*
- *Exmar demonstrates experience in the construction of LNG Regas Vessels (LNGRV), with a total number of 7 constructed and operating through Excelerate, in a range of 138,000 m3 to 151,000m3 storage capacity*
- *Exmar consortium proposed two locations, Port Esquivel and Kingston Harbor,*
- *The Exmar Consortium offered both a conversion and new build FSRU. Both options described in the proposal utilize 4 regasification trains, each with a maximum capacity of 115 mmscfd. This meets both initial and projected natural gas demand estimates required by the RFP...The schedule for each option assumes an in-service date by the end of 2012 in accordance with the RFP*
- *Promigas has addressed many issues regarding development, design, construction, maintenance and operations, of the proposed pipeline system.*
- *Bid includes a proposal (by Promigas) for the development of a natural gas regulatory framework to develop the natural gas industry in Jamaica.*

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<sup>143</sup> Letter from CH-IV International which was dated 2010 March 29 to Dr. Audley Darmand, Chairman, FSRU LNG Bid Evaluation Committee.

Total Points Score Awarded by CH-IV = 68.2

**Hoegh LNG**

- *Hoegh explicitly Looks to GOJ for guarantees*
- *No specific financing plan. No specific Lenders and Equity Participants identified and committed to venture*
- *Wide range of estimate accuracy outside of FSRU (+/- 30%). The estimate can vary as much as +/- \$60 MM on the Capex*
- *Hoegh operating experience is based mostly on operating and maintaining LNG carriers*
- *Hoegh's proposed design of FSRU and sub-sea pipeline does not provide capacity for increasing natural gas send out above approximately 200 mmscfd*
- *The Hoegh proposal includes a limited feasibility level of design effort for the FSRU*
- *Alternative "new build" proposal assumes a 3 year construction schedule, which does not meet the required 2012 in-service date described in the RFP*
- *Hoegh states that tasks associated with the onshore natural gas pipeline right of way acquisition are outside of the scope of its proposal. Construction Plan for onshore piping and subsea piping lacks detail*
- *Onshore pipeline schedule is 36 months, does not meet the required 2012 in-service date described in the RFP*
- *Although Hoegh proposes to open an office in Jamaica to recruit local seafarers and to use the Jamaican Maritime Institute (now the Caribbean Maritime Institute) for local training, its proposed staffing plan does not indicate or describe which positions will be filled with Jamaican nationals. Its proposal does not include plans for staffing or training personnel in the operation and maintenance of the natural gas pipeline distribution system.*

Total Points Score Awarded by CH-IV International = 33...<sup>144</sup>

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<sup>144</sup> Letter from CH-IV International which was dated 2010 March 29 to Dr. Audley Darmand, Chairman, FSRU LNG Bid Evaluation Committee.

It is instructive to note that on 2010 April 12, the Secretary for the PCJ Procurement Committee, Mr. Godfrey Perkins, wrote to Dr. Ruth Potopsingh, then Group Managing Director, PCJ, expressing certain concerns in regard to the Evaluation Report for the proposed 'FSRU LNG Project'.

The referenced letter stated, *inter alia*, the following:

*"The Procurement Committee met at 1:48 p.m. on Friday March 26, 2010 to review the Evaluation Report of the tenders for the Floating Storage Regasification Unit (FSRU) for Liquefied Natural Gas (LNG). **The report which was received was grossly inadequate in quite a number of particulars.** These were outlined in a letter of March 26, 2010 to the Chairman of the Tender Evaluation Committee, Dr. Audley Darmand along with a request that the missing items be submitted..."*

*...A revised version of the Tender Evaluation Report was received on Tuesday March 30, 2010 and was reviewed at a special meeting of the Procurement Committee at 3:50 p.m. on Wednesday March 31, 2010. **Some of the requested information was now included but the report was still found to be lacking in regard to the completeness of the findings of the tender evaluation exercise, especially in terms of:***

- a. **the justification for scores assigned to each bid under each evaluation criterion...***
- b. **financial analysis of the two tenders which was not included in the consultant's report***
- c. **the corporate profile of each member of the consortium proposed by one of the bidders.***

***A second letter was therefore addressed to the Chairman of the Tender Evaluation Committee on March 31, 2010 requesting:***

- a. Particulars of the principals of each of the three entities within the Exmar consortium;
- b. Corporate and financial profile of CLNG as well as the experience of this company in the business of LNG supplies;
- c. Financial analysis of the two tenders.

A response was received from the Chairman of the Tender Evaluation Committee on April 7, 2010 enclosing a letter from CH.IV International, the consultants who carried out an independent evaluation of the tenders. A meeting of the Procurement Committee was convened on April 9, 2010 to consider the matter. Instead of providing direct responses to the three requested items, the response from CH.IV International stated...

- a. both the Exmar consortium and Hoegh LNG bids were in compliance with the Request for Proposal;
- b. the concerns of the Procurement Committee were not considered by CH.IV as “Critical Commercial Matters” since significant effort was expended in the evaluation of the commercial bids and the Exmar consortium was ranked ahead of Hoegh;
- c. the Exmar consortium has strong financials collectively;
- d. particulars of the principals of the three entities within the Exmar Consortium are described in Section 1.9 of the Exmar proposal;
- e. CLNG will be a start-up entity with no revenues, no hard assets or audited financial statements.

The Procurement Committee considered the response from CH.IV International to have been unfulfilling of the request outlined in the Committee’s letter of March 31 and also considered the response to be below the standard expected of CH.IV International. More particularly, taking account of the tender evaluation consultancy of CH.IV International, the Committee expected to receive such a precise and cohesive tender evaluation report as would render it unnecessary for Committee Members to have to wade through all the pages of the tender documents submitted by

*the bidders. The Committee considered this to have been the responsibility of the Tender Evaluation Committee and its consultants. Instead, the Consultants have referred the Committee to the tender submissions...*

***The Committee still requires and deems it prudent that a financial analysis be included in the final report from CH.IV International...****A financial analysis of both tenders was not included in this final report and is still required. It should be highlighted that other proposals of far less import and size are often accompanied by a formal written financial evaluation of bidders....”<sup>145</sup>*

The OCG found that CH-IV International also wrote a letter to Dr. Audley Darmand, which was dated 2010 April 5, in regard to the concerns which were expressed by the PCJ Procurement Committee.

The referenced letter stated, *inter alia*, the following:

*“Please consider the following...regarding the following concerns of PCJ procurement Committee:*

- 1. Particulars of the principals of each of the three entities within Exmar consortium, i.e. Exmar, Formibas [sic] and Caribbean LNG (CLNG).*
- 2. Corporate and financial profile of CLNG as well as the experience of this company in the business of LNG supplies...*

*With regard to specific concerns expressed by PCJ procurement Committee stated above CH-IV International is of the opinion that both the Exmar Consortium and Hoegh LNG bids complied with the request for proposal. In particular, each responded to the intent of the RFP and the specific request. The concerns were not considered by CH-IV as “Critical*

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<sup>145</sup> Letter from Mr. Godfrey Perkins, Secretary of the PCJ Procurement Committee to Dr. Ruth Potopsingh, former GMD, PCJ, which was dated 2010 April 12.

*Commercial Matters” since significant effort was expended in the evaluation of the commercial bids and the Exmar Consortium was subsequently ranked ahead of Hoegh. The issues raised by the Procurement Committee do not change the outcome of the evaluation...*

*The RFP stated in the objectives that:*

*“the GOJ has also decided that the project is to be implemented as a private sector-led project in which a private entity will take primary responsibility for the design, financing and development of all infrastructure required to facilitate the importation, storage, and regasification of LNG and the distribution of natural gas “*

*Question 1.7 of the Form of Questionnaire included in the RFP asked:*

- Will Provider be able to finance and implement the project without GOJ guarantees? If not, please indicate the maximum extent of any GOJ guarantees required. The GOJ’s preferred position is not to offer any guarantees.*

*Question 1.8 of the Form of Questionnaire included in the RFP asked:*

- Indicate the corporate organization that will be used for this project.”*

*Question 1.9 of the Form of Questionnaire included in the RFP asked:*

- Provide the following information about the Company/Division and/or Parent Company that would submit the information and, if selected, would deliver the project services. If a Joint Venture is proposed, please complete the table for the legal entity that will execute the Contractual Framework Documents, all partners and their parents, indicating the structure of the Joint Venture, roles and stakes. **Please also provide most recent audited financial statements and annual report for each participant.***

*The response to these questions were evaluated during the review undertaken by CH-IV International. The Exmar Consortium received a Good Response rating and Hoegh LNG received a Poor/Weak Response rating.*

*The team of Exmar, Promigas and Caribbean LNG (CLNG) will be organized as a Consortium. This type of relationship brings the collective financial strength of the organizations to the venture. The Exmar Consortium has strong financials collectively. Promigas has been listed in the Columbian Stock Exchange since 1996 and has a AAA rating since 2001. Promigas has extensive experience in gas pipelines operations. Exmar is a large, successful, leverage shipping company, not usual for shipping companies, with extensive experience in LNG shipping and FSRU's. Each company within the Consortium has specific responsibilities in the venture. The two companies with the strong balance sheets will be bearing financial risks as follows:*

- EXMAR will construct, finance, own and operate the FSRU and lease or sell the full capacity in these assets to Project Co on a long-term basis.*
- PROMIGAS will construct, finance, own and operate the onshore pipeline facilities and lease or sell the capacity in this asset to ProjectCo on a long-term basis.*
- CLNG will provide local knowledge and development services, ensuring that Jamaican companies that are well qualified to support project construction, execution, support and operations are exposed to the LNG project...*

*...we do believe that the proposal contemplates that ProjectCo would likely be the entity that negotiates and enters into the Public Private Partnership (PPP) agreement with the PCJ and/or the Government of Jamaica...Since the Consortium is not looking to the government of Jamaica for guarantees, we believe that they will be amenable to an overall project structure that is in the best interest of Jamaica.*

*EXMAR and PROMIGAS Audited Financial Statements and Annual Reports are included in the appendix of the proposal. **CLNG will be a start-up entity with no revenues, hard assets or audited financial statements**, not uncommon among well qualified developer-driven entities...”<sup>146</sup>*

The OCG found that the foregoing letter attempted to explain (a) the reasons for the selection of the Exmar Consortium, and (b) the role(s) and responsibility(ies) of each partner in the Exmar Consortium.

The letter also indicated that Exmar Marine NV and Promigas had strong balance sheets while CLNG was a start up entity with no revenue, hard assets or audited financial statements.

The OCG found that the then PCJ Board of Directors, also expressed several concerns with respect to CLNG. In this regard the Minutes of a Special Meeting of the PCJ Board of Directors, which was held on 2010 March 31, indicated, *inter alia*, the following:

*“The Chairman then **informed of the concerns which she said pertained to a company called Caribbean Liquid Natural Gas Company Limited (CLNG) one in the Consortium of Exmar** as indicated in the documents. **She stated that the Committee would like to have a Corporate Profile of the company and indicative statement of its financials, its Directors** and the inclusion of a letter to say that it is able to supply the gas...”*

*Director Charles sought clarity on the Evaluation Committee’s Report as he stated that he had received a Report earlier...but has now received a new Report...The GMD advised Director Charles that the Report of March 19, 2010 has been updated with the information requested by the Procurement Committee...*

*Director Gordon questioned the position of the Procurement Committee on the matter in that is it expected that the Board adopts the Report. **The Chairman repeated that the***

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<sup>146</sup> Letter from CH-IV International to Dr. Audley Darmand, which was dated 2010 April 5.

Procurement Committee is prepared to recommend the Report of the Evaluation Committee, subject to the financials of CLNG...She also pointed out that...there is not much information on the company but the document seems to imply that at some point it will become a company which will be integral in the process, as it seems that it is the only company that is willing to supply gas...

Director Warwar...also pointed out that no due diligence was done on CLNG and no financial information was submitted on the company but the other two companies in the consortium have submitted their financials...” (OCG’s Emphasis)

The Minutes of a Special Meeting of the PCJ Board of Directors, which was held on 2010 April 14, further indicated, *inter alia*, the following:

“...the Chairman informed of the two additional requirements of the Procurement Committee regarding information on one of the participating company in the Exmar Consortium, which were still outstanding these being, financial analysis of the company (CLNG) and its corporate profile...

*Director Charles commented that the Consultants, CH-IV, in their response to the request for the financial analysis, appeared to be somewhat dismissive of the request for a financial analysis to be undertaken of the company CLNG...*

The Chairman pointed out that the Procurement Committee was concerned that there was no financial analysis of both bids by CH-IV in regards to the evaluation of the bids and pointed out that whereas CH-IV stated that CLNG was a start up Company, CLNG’s information did not so reflect. Director Gordon pointed out that Exmar’s bid indicates that CLNG is a start up company as it is only taking 1-3% of the equity in the Consortium...” (OCG’s Emphasis)

Based upon the foregoing, the OCG found that the then PCJ Board of Directors, subsequent to the evaluation of the bids, questioned the composition of the Exmar Consortium, and in

particular, CLNG and its financial viability.

### The Approval Process

It must be noted that the Chairman of the LNG Technical Evaluation Committee submitted its recommendation to the PCJ Procurement Committee, by way of a Final Report, which was dated 2010 March 29.

The Minutes of the PCJ Procurement Committee, which was dated 2010 April 30, indicated, *inter alia*, the following:

*“Mr. Logan informed the Committee that he had got [sic] the corporate profile for Exmar, Promigas and CLNG. He stated that the Board had taken the decision that a financial analysis would not be required at this time. Once the other elements were in place, the financial analysis would be done. The corporate profile was sent to the Ministry’s procurement committee. It was his understanding that it would have been considered...that afternoon. Subsequent to that meeting the evaluation report would be sent to NCC through the Sector Committee and later to the Cabinet.”*

By way of a letter, which was dated 2010 April 14, Mr. Godfrey Perkins, Secretary, PCJ Procurement Committee informed Ms. Kathryn Phipps, the then Chairman of the PCJ Board of Directors, that the PCJ Procurement Committee had approved the recommendation in accordance with the final report of the Technical Consultants, CH-IV International.

On 2010 April 14, the then PCJ Board of Directors “...approved the bid Evaluation Report being forwarded to the Accounting Officer in the Ministry of Energy and Mining subject to the corporate profile being obtained and incorporated...”<sup>147</sup> for CLNG.

It is instructive to note that Mrs. Hillary Alexander, Permanent Secretary, MEM, by way of a letter which was dated 2010 April 28, wrote to Mr. John Wright, Chairman of the NWA Sector

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<sup>147</sup> PCJ Minutes of Special Meeting of Board of Directors which was held on 2010 April 14. Pg. 9.

Committee seeking “... the approval of the NCC to select Exmar as the preferred bidder and to conduct detailed negotiations with Exmar in relation to the financing, building, owning and operation of the FSRU.”<sup>148</sup>

Of notable mention is the fact that there was a handwritten note on the NCC Transmittal Form which read as follows:

*“NOTE: It was noted that the Chairman of the Bid Evaluation Committee is also the Acting Chairman of the PCJ Board. The presenters were advised that this is a ‘conflict of interest’ and inappropriate as the Board would be presiding over its own work and therefore its decision could be subject to influence. The presenters acknowledged the Sector Committee’s concerns and advised that corrective measures would be taken to ensure no reoccurrence [sic].”*

The NCC, by way of a letter that was addressed to Mrs. Hillary Alexander, Permanent Secretary in the MEM, and which was dated 2010 May 13, stated the following:

*“The National Contracts Commission (NCC) considered the matter at its meeting held on 2010 May 05 based on a presentation by Messrs. Winston Watson, General Manager of Petrojam Limited, Glenford Watson, Legal Counsel in the Ministry of Energy & Mining and Wayne Grant of the Petroleum Corporation of Jamaica.*

*The NCC supported the request of the Petroleum Corporation of Jamaica to enter into negotiations with the preferred bidder, Exmar Marine NV Consortium, relating to the financing, building, owning and operation of the FSRU.*

*The NCC is requesting a copy of a matrix clearly setting out a comparison of the bidders’ response to evaluation criteria, points given and criteria weighting of all bidders...”*

The OCG conducted a review of Cabinet Submission 255/MEM No. 16/10, dated 2010 May 19,

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<sup>148</sup> Letter from Mrs. Hillary Alexander, Permanent Secretary, MEM which was dated 2010 April 28 and which was addressed to Mr. John Wright, Chairman of the NWA Sector Committee.

which was entitled “*PERMISSION TO NEGOTIATE WITH THE PREFERRED BIDDER FOR THE PROVISION OF A FLOATING STORAGE REGASIFICATION UNIT (FSRU) AND RELATED INFRASTRUCTURE FOR THE LIQUIFIED NATURAL GAS (LNG) PROJECT*”. The referenced Cabinet Submission stated, *inter alia*, the following:

*“...Cabinet is being asked to:*

- 1.1 Agree to the selection and announcement by the Ministry of Energy and Mining (MEM), through its agency the Petroleum Corporation of Jamaica (PCJ), of Exmar Marine (Exmar) and its consortium as the preferred bidder to finance, build, own and operate a floating storage re-gasification unit (FSRU) and related infrastructure (jetty, sub-sea and on-land pipeline infrastructure) for the delivery of supplies of natural gas to intended end-users such as the power generating companies and the bauxite and alumina producers...*
- 1.2 grant the MEM, through its agency, the PCJ, permission to enter into negotiations with Exmar as the preferred bidder to finance, build, own and operate the FSRU and related infrastructure so as to effect the LNG Project...*
- 3.7 Cabinet is being advised that the Evaluation Committee recommended Exmar as the preferred bidder for the following reasons:*
  - Exmar’s proposal does not require any Government of Jamaica guarantee and provides that the financing stands solely on the strength of the off-take and supply agreements and the experience of the bidder consortium.*
  - Exmar’s bid reflects access to significant financial resources.*
  - Project financing commitments were provided by intended lenders to the Exmar group.*
  - Exmar’s bid demonstrates off-shore re-gasification project development abilities and experience in the construction of LNG re-gasification vessels. Additionally,*

*Promigas, a member of the Exmar bid, is among the leading providers of natural gas pipelines world-wide.*

- *Exmar has put forward Port Esquivel and the Kingston Harbour as alternate locations for the operation of the FSRU, with Kingston Harbour offering the opportunity for value added businesses.*
- *Exmar's bid presents two FSRU Systems (converted and new), which highlight the following:*
  - *Four (4) re-gasification trains, with each having over 100 mmscfd<sup>1</sup> capacities.*
  - *Both initial and projected natural gas demand estimates in the RFP were met.*
  - *Provides system flexibility.*
  - *The start-up projections are in line with an end of 2012 timeline as set out in the RFP.*
  - *A proposed natural gas regulatory framework to develop the natural gas industry in Jamaica is included in Exmar's proposal...*

*3.10 Negotiations with the preferred bidder will include issues such as finalization of the project scope and technical issues; inclusive of location of the FSRU; final costs; through-put fees; equity holding...and other relevant commercial conditions.*

#### **4.0 PROJECT FUNDING**

*4.1 Cabinet is being advised that the cost projected by MEM/PCJ for the development of the FSRU and related infrastructure (pipelines, jetty, etcetera) is, approximately, US \$400M. Exmar has cited an approximate value of US \$342M for the base case development of the FSRU and related infrastructure.*

*4.2. Cabinet is also being advised that the successful bidder is to undertake the*

*financing of the FSRU and infrastructure. The expenditure is to be recouped by the charging of a through-put fee for the use of the facilities over a fixed number of years.*

4.3 *At the time of the world-wide Invitation to Pre-qualify, it was contemplated that the Government of Jamaica/PCJ would have borne substantial responsibility for the financing of the FSRU and infrastructure. It is believed that the shifting of this risk to the FSRU provider impacted on the response to the RFP.*

4.4 *Notwithstanding that the financing is to be provided by the developer of the FSRU, it will be necessary for the PCJ to undertake certain developmental works/activities in relation to the project. Among the services to be performed by the international financial and legal advisors that the PCJ is in the process of procuring for the LNG project is to advise on an appropriate financial and regulatory framework for the PCJ and the GOJ to recover any expense incurred and to earn from the project...*

4.5 *The PetroCaribe Development Fund (PCDF) has approved a grant to the PCJ of US\$5.3 million to assist in funding the development activities associated with the LNG Project. Approximately US\$3 million of the grant is to be made available in FY2010/11. The remainder will be paid over two years, FY2011 – 2013...*

It is instructive to note that the MoFPS, by way of a letter, which was dated 2010 May 20, raised a concern with respect to the project and indicated, *inter alia*, the following:

*“...it is noted that the Submission mentions that PCJ will take a stake in the project, however the nature and percentage was not stated. **Taking into account an investment of US\$5.3M [sic], the MEM should amend the Submission to state definitively whether PCJ will have an equity stake and if so what will be the proposed level of***

**participation.** *The Submission should be amended accordingly prior to presentation to Cabinet.” (OCG’s Emphasis)*

The OCG found that the Solicitor General also commented on the referenced Submission. In this regard, the Cabinet Note which was attached stated, *inter alia*, that “...*the Solicitor General’s Office notes that it found that the process to invite and to evaluate tenders “was open, and relevant approvals were obtained...” It also concluded that specifically relating to the submission, it found no matter of substance on which to comment.*”

By way of decision No. 21/10, which was dated 2010 May 31, the Cabinet deferred consideration of the referenced Cabinet Submission to allow for further consultation.

Further, by way of Cabinet Decision No. 22/10, which was dated 2010 June 7, the OCG found that the Cabinet reviewed the matter and that “*The Prime Minister advised that he had discussions with the Minister of Finance and the Public Service on the matter, but there remained issues to be resolved related to:*

- *the adequacy of the basis on which the valuation was done by the consultants;*
- *the need for confirmation that there had been consultations with the Office of Utilities Regulation;*
- *the use of Floating Storage Regasification Units vis-à-vis Land-Based Units, in the light of information that Land-Based Units were as much as 30% more efficient than Floating Units;*
- *the methodology for determining the price of LNG at various stages in the supply chain and the role of the State in the matter.*

*He said that an independent review was needed in a time frame of four weeks; and advised that the World Bank had been approached regarding technical assistance to conduct the independent assessment and had indicated a willingness to provide financing.*

*The Minister of Finance and the Public Service proposed that, in light of the urgency of the*

*matter, there be discussions on the procurement of the consultancy services with the Director General of the Office of Utilities Regulation and that the National Contracts Commission be approached regarding the use of the sole source methodology for the procurement.*

*After consideration, the Cabinet agreed that an independent comparative assessment was to be done on the use of a Floating Storage Regasification Unit, and in this regard instructed that:*

- (i) the Ministry of Energy and Mining seek to have the tender validity period extended by the recommended tenderer for a period of two months;*
- (ii) the Ministry of Energy and Mining act expeditiously to obtain the services of a consultant through the World Bank to undertake an independent assessment;*
- (iii) the Minister of Finance and the Public Service have discussions with the World Bank regarding the technical assistance and the financing; and*
- (iv) that the Office of Utilities Regulation be requested to assist with the recommendation of a suitable consultant.”*

Cabinet Decision No. 23/10, which was dated 2010 June 14, stated, *inter alia*, the following:

*“After consideration, the Cabinet:*

- (i) agreed to the selection and announcement by the Ministry of Energy and Mining, through its agency Petroleum Corporation of Jamaica, of Exmar Marine as the Preferred Bidder to finance, build, own and operate a Floating Storage Regasification Unit and related infrastructure (jetty, sub-sea and on-land pipeline infrastructure) for delivery of supplies of natural gas to intended end-users such as the power generating companies and the bauxite and alumina producers;***

- (ii) granted the Ministry of Energy and Mining, and its agency the Petroleum Corporation of Jamaica, permission to enter into negotiations with the Preferred Bidder to finance, build, own and operate the Floating Storage Regasification Unit and related infrastructure on such terms and conditions as are to be approved by the Ministry of Finance and the Public Service, the National Contracts Commission, the Solicitor General and the Cabinet;
- (iii) directed that the finalization of the negotiations was subject to the completion (and consideration by Cabinet) of a technical assessment of the Project and the procurement procedures utilized, which assessment was to be done by an independent consultant supported by the World Bank; and
- (iv) *noted that this Decision superseded the instruction by way of Decision No. 22/10 of 7 June, 2010, for the Ministry of Energy and Mining to seek to have the tender validity period extended for a period of two months.” (OCG’s Emphasis)*

Based upon the foregoing, the Cabinet approved the recommendation for the selection of the ‘preferred bidder’, the Exmar Consortium, and also for the PCJ to enter into negotiations with the said bidder, for the ‘FSRU LNG Project’ on 2010 June 14.

It is instructive to note that Cabinet Decision No. 23/10, which was dated 2010 June 14, indicated that there was a presentation on “*Jamaica LNG Receiving Terminal and Natural Gas Transmission System*” in which Mr. Glenford Watson and Dr. Audley Darmand of the MEM; Mr. Winston Watson of Petrojam; Mr. Stephen Wedderburn of the PCJ and Mr. Pat Lastrapes and Mr. Joseph Fossella of CH-IV International, were admitted to the meeting of the Cabinet.

The OCG found that in the referenced meeting, a Report of the Cabinet Task Force on Energy, the Bid Evaluation Report for the Jamaica Liquefied Natural Gas (LNG) Receiving Terminal and Natural Gas Transmission System, and comparative evaluations of the ‘FSRU LNG Project’ and Land-Based Regasification Unit (LBRU) options for LNG infrastructure were circulated to the Cabinet.

The referenced Cabinet Decision stated, *inter alia*, the following:

*“The Prime Minister noted that there were concerns regarding the choice of infrastructure for delivery of LNG supplies, namely the use of a FSRU rather than a LBRU; and he indicated that there were issues in relation to the technical suitability of the FSRU. He further noted that there had to be assurance that the procurement process utilized could stand up to public scrutiny...”*

The Cabinet Decision also stated that the Minister of Energy and Mining, along with the above named individuals, briefed the Cabinet on (a) the LNG Project, (b) the choice of the LNG infrastructure and (c) the Preferred Bidder. The Cabinet Decision also stated that the Cabinet noted the information which was presented by the referenced individuals.

The OCG found that by way of a letter, which was dated 2010 July 9, from Mr. Nigel Logan, Acting Group Managing Director, PCJ, informed Mr. Bart Lavent, Director LNG, Exmar Marine NV, as follows:

*“The review of the proposals submitted in response to this RFP has been completed, and I am please to inform you that the Exmar Consortium has been selected as the Preferred Provider. This selection has been approved by the Cabinet of Jamaica.*

*In accordance with the Terms of the RFP, you are now being invited to negotiate the Contractual Framework Documents. Please note that finalization of the negotiations and execution of said documents will be subject to the following:*

- a) The Terms and Conditions are to be approved by the Ministry of Finance and the Public Service, the National Contracts Commission, the Solicitor General and Cabinet.*
- b) In addition, while negotiations are in progress, please note that the Cabinet has asked for a technical assessment of the Project and the procurement procedures*

*utilized, which assessment will be done by an independent consultant supported by the World Bank. This exercise will run concurrently with the negotiations.*

- c) *The finalization of negotiations will be subject to the completion (and consideration by Cabinet) of this assessment. We are willing to meet with your team to discuss the process and schedule for negotiation and finalization of these Contractual Framework Documents.”*

Further, the OCG found that the Minister, the Hon. James Robertson, MEM, on 2010 July 23, submitted a recommendation by way of Cabinet Submission 382/MEM NO. 33/10 for the “*NAMING OF THE TEAM TO NEGOTIATE WITH THE PREFERRED BIDDER FOR THE PROVISION OF A FLOATING STORAGE AND REGASIFICATION UNIT (FSRU) AND RELATED INFRASTRUCTURE ASSOCIATED WITH THE LIQUEFIED NATURAL GAS (LNG) PROJECT*”.

The referenced Cabinet Submission stated that the purpose of the submission was, *inter alia*, as follows:

*“Cabinet is being asked to:*

1.1 *Agree to the selection of a team to negotiate with Exmar Marine (Exmar) and its consortium, the preferred bidder to finance, build, own and operate a Floating Storage and Regasification Unit (FSRU) and related infrastructure (jetty, sub-sea and on-land pipeline infrastructure) for the delivery of supplies of natural gas under the Liquefied Natural Gas (LNG) Project; and*

1.2 *Agree that the team will comprise representatives of the following entities:*

- i. Petroleum Corporation of Jamaica (PCJ),*
- ii. Ministry of Energy and Mining (MEM),*
- iii. Ministry of Finance and the Public Service (MOFPS),*

- iv. *Solicitor General’s Office (SG),*
- v. *Development Bank of Jamaica (DBJ); and*
- vi. *Technical advisors and the legal advisors to the LNG Project.*

1.3 *Agree that the negotiating team will be led by the PCJ, which has the mandate to implement the GOJ’s National Energy Policy 2009-2030...*

4.0 ***RESPONSIBILITIES OF THE NEGOTIATING TEAM***

4.1 *The negotiating team is the Government of Jamaica’s (GOJ) official negotiators with the preferred bidder for the LNG Project.*

4.2 *The negotiating team is charged with:*

- i. *Determining the context within which the negotiations are conducted with the preferred bidder*
- ii. *Representing and securing the interest of the GOJ in the negotiations*
- iii. *Providing accurate and timely updates to the GOJ on the status of the negotiations,*
- iv. *Meeting with suppliers in different countries, and*
- v. *Successfully concluding the negotiations to ensure the project’s delivery within the agreed completion time, budget and specifications.*

4.3 *In keeping with the project timeline presented by the preferred bidder, the negotiating team will need to ensure agreement on and delivery of a final investment decision (FID) by **November 15, 2010...**”*

Consequently, the OCG found that by way of Cabinet Decision No. 31/10, which was dated 2010 August 23, “*The Cabinet gave preliminary consideration to Submission No. 382/MEM-33/10...The Cabinet noted that a consultant had been identified to review the decision to use the FSRU infrastructure as well as the procurement process utilized, and that funding totaling approximately US\$64,000.00 would be provided through a grant from the PetroCaribe Fund...The Cabinet endorsed a proposal by the Prime Minister that the Team also include a*

*representative of the Office of the Prime Minister in the person of Ms. Sonia Mitchell. The Cabinet decided to defer the matter for the Minister of Energy and Mining to submit the names of persons proposed for membership of the Team.”*

By way of Cabinet Submission 514/MEM No. 49/10, which was dated 2010 October 21, the MEM proposed, to the Cabinet, the composition of the Negotiating Team. The referenced submission indicated, *inter alia*, as follows:

*“1.1 Grant formal approval of a Negotiating Team to conduct negotiations with Exmar Marine (Exmar) and its consortium, the preferred bidder to finance, build, own and operate a Floating Storage and Regasification Unit (FSRU) and related infrastructure (jetty, sub-sea and on-land pipeline infrastructure) for the delivery of supplies of natural gas under the Liquefied Natural Gas (LNG) Project, and*

*1.2 Agree that the team will comprise...*

<b>LNG Negotiating Team</b>	
<i>Ministry of Energy and Mining (MEM)</i>	<i>(1) Glenford Watson, Senior Legal Officer</i>
<i>Petroleum Corporation of Jamaica (PCJ)</i>	<i>(2) Pat Rousseau, Board Member (3) Parris Lyew-Ayee, Chairman (4) Group Managing Director</i>
<i>Petrojam Limited</i>	<i>(5) Winston Watson, Managing Director</i>
<i>Development Bank of Jamaica</i>	<i>(6) Michael Strachan, Consultant</i>
<i>Office of the Attorney General</i>	<i>(7) Douglas Leys, Solicitor General (8) Herma McRae, Crown Counsel</i>
<i>Ministry of Finance and the Public Service</i>	<i>(9) Ann-Marie Rhoden, Deputy Financial Secretary...</i>
<i>Office of the Prime Minister</i>	<i>(10) Sonia Mitchell, Principal Director, (Legal)</i>
<b><u>Consultants</u></b>	
<i>CH-IV International</i>	<i>(1) Technical Advisors</i>
<i>Latham &amp; Watkins</i>	<i>(2) Legal Advisors</i>
<i>Taylor-DeJongh</i>	<i>(3) Financial Consultants</i>
<i>Livingston, Alexander and Levy</i>	<i>(4) Local Counsel</i>
<b><u>Technical Support</u></b>	
<i>(1) Ministry of Energy and Mining</i>	<i>(1) Oral Rainford, Principal Director/Policy, MEM</i>
<i>(2) Petroleum Corporation of Jamaica</i>	<i>(2) Jennifer Simpson-James, Snr. Legal Counsel</i>
<i>(3) Petroleum Corporation of Jamaica</i>	<i>(3) Earl Green, Group Technical Director</i>
<i>(4) Caribbean Maritime Institute</i>	<i>(4) Fritz Pinnock, Executive Director</i>
<i>(5) Jamaica Bauxite Institute (JBI)</i>	<i>(5) Dr Phillip Baker, Director of Economics and Projects</i>
<i>(6) Petrojam Limited</i>	<i>(6) Andrea Reid, Strategic Planning &amp; Business Manager Support</i>
<i>(7) Petrojam Limited</i>	<i>(7) Michael Hewitt, Logistics and Marketing Manager</i>

The Cabinet, by way of Decision No. 39/10, approved the foregoing submission on 2010 October 25.

It is instructive to note that the PCJ, prior to the approval of the Negotiation Team by the Cabinet on 2010 October 25, had already commenced negotiation with the *preferred bidder*, the Exmar Consortium, from as early as 2010 July.

## **The Preferred Bidder - The Exmar Consortium**

The OCG, in its Statutory Requisition to the Hon. James Robertson, Minister of Energy and Mining, which was dated 2010 November 3, posed the following question:

*“Please provide an Executive Summary detailing your understanding of the role(s) and responsibility(ies) of each partner in the Exmar Marine N.V. Consortium, for the proposed Financing, Development, Ownership, Operation of a FSRU LNG Re-gasification Terminal and Natural Gas Transmission System.”<sup>149</sup>*

The Minister, in his response to the OCG’s Statutory Requisition, which was dated 2011 January 10, stated the following:

*“From The documentation submitted by the Exmar Consortium, the consortium consists of the following partners:*

- *Exmar marine NV, along with its strategic partner and customer Excelerate Energy*
  - *Promigas S.A. E.S.P.*
  - *Caribbean LNG (Jamaica) limited*
- 
- *EXMAR will construct, finance, own and operate the FSRU and lease or sell full capacity in these assets to ProjectCo on a long-term basis.*
  
  - *PROMIGAS will construct, finance, own and operate the onshore pipeline facilities and lease or sell the capacity in this asset to ProjectCo on a long-term basis.*

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<sup>149</sup> OCG’s Statutory Requisition to the Hon. James Robertson, Minister of Energy and Mining, which was dated 2010 November 3. Question #8

- *CLNG will provide local knowledge and development services, ensuring Jamaican companies that are well qualified to support Project construction, execution, support, and operations are exposed to the LNG Project.*
- *The Exmar Consortium will jointly construct, finance, own and operate the mooring facilities and lease or sell the full capacity in these assets to ProjectCo on a long-term basis.”<sup>150</sup>*

The OCG, in its Statutory Requisition that was addressed to Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, which was dated 2010 September 15, posed the following questions:

*Please indicate whether Exmar Marine N.V. Consortium is the ‘preferred bidder’ for the proposed Financing, Development, Ownership, Operation of a FSRU LNG Re-gasification Terminal and Natural Gas Transmission System in Jamaica. If yes, please provide responses to the following:*

*...Please detail, in an Executive Summary, what the referenced company is required to provide in the Financing, Development, Ownership, Operation of a FSRU LNG Re-gasification Terminal and Natural Gas Transmission System...*

*...On what basis was the referenced company considered the ‘preferred bidder’ as against the other potential bidder(s) which was/were evaluated...*

*Please provide an Executive Summary detailing your understanding of the role(s) and responsibility(ies) of each partner in the Exmar Marine N.V. Consortium, for the proposed Financing, Development, Ownership, Operation of a FSRU LNG Re-gasification Terminal and Natural Gas Transmission System. In addition, please provide responses to the following:*

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<sup>150</sup> Response from the Hon. James Robertson, Minister of Energy and Mining, which was dated 2011 January 10. Response #8.

- a) *What is the proposed role of CLNG, as a partner of Exmar Marine N.V. Consortium, for the proposed Financing, Development, Ownership, Operation of a FSRU LNG Re-gasification Terminal and Natural Gas Transmission System;*
- b) *Please indicate whether a corporate and financial profile of the referenced company was requested by the PCJ and/or the MEM. If yes, please provide responses to the following:*
- i. *Were the referenced documents a requirement for qualification and was the submission of the said documents instructed to bidders prior to the Tender Opening. If no, please provide a reason(s) for the omission of such documentation;*
  - ii. *Was the referenced documentation provided by the bidder Exmar Marine N.V. Consortium for and on behalf of the company/partner CLNG. If yes, at what stage of the procurement process were the referenced documents provided and on what basis was the documentation requested; and*
  - iii. *If your response to (b)(iii) above is ‘No’, please state who submitted the referenced documentation and provide a copy of same.”*<sup>151</sup>

Mr. Stephen Wedderburn, in his response to the OCG’s Statutory Requisition, which was dated 2010 November 15, stated, *inter alia*, the following:

“Yes.

*The Exmar Consortium is to design, finance, develop, construct, own and operate facilities that will allow the receipt, storage, and regasification of LNG and the distribution of regasified LNG. The major facility components are expected to be: (i) an*

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<sup>151</sup> OCG’s Requisition to Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, which was dated 2010 September 15. Questions #11(a)(g) & 14

*[sic] FSRU; (ii) a mooring facility; and (iii) natural gas distribution pipelines. This infrastructure is to be contracted to the major end users of natural gas, not to any GOJ entity...*

*The basis of selection is summarized in the attached extract from the Bid Evaluation Team Report...*

*My understanding is that Exmar and Promigas will be the substantial partners in the Consortium, respectively responsible for the Financing, Development, Ownership, Operation of an [sic] FSRU LNG Re-gasification Terminal and Natural Gas Transmission System. I understand CLNG's role to be essentially that of a local agent.*

- a) As stated by the Consortium itself, "Caribbean LNG (Jamaica) Limited is a Jamaican registered Company formed for the sole purpose of providing development guidance to the consortium partners for the LNG infrastructure RFP and potential implementation and execution, ensuring Jamaican companies that are well qualified to support project execution, construction, and operations, are exposed to the LNG project."*
- b) Yes, I understand that a request for a corporate profile was made by the Acting Group Managing Director acting under instructions from the PCJ Board. This profile was to include the names and profiles of the directors and the names and profiles of the three largest shareholders of each company in the Consortium.*
  - i. No, there was no request for individual information on directors or shareholders instructed to the bidders prior to the Tender Opening. The nine entities invited to bid were all large companies, with well established track records and reputations in the LNG industry. It was not expected that information on individuals would be relevant in the evaluation of these companies.*

ii. *Yes, I understand that the relevant information was provided by Exmar for and on behalf of all the Consortium partners, including CLNG. This information was apparently requested and submitted after the Bid Evaluation Team had completed its Evaluation Report. As mentioned above, I understand that the request was made by the Acting Group Managing Director acting under instructions from the PCJ Board. I do not know on what basis the Board made this request.*

iii. *N/A*<sup>152</sup>

The OCG found that the ‘*preferred bidder*’, which was recommended for the proposed ‘FSRU LNG Project’, is a Consortium, referred to as the “*Exmar Consortium*” which comprises of the following partners:

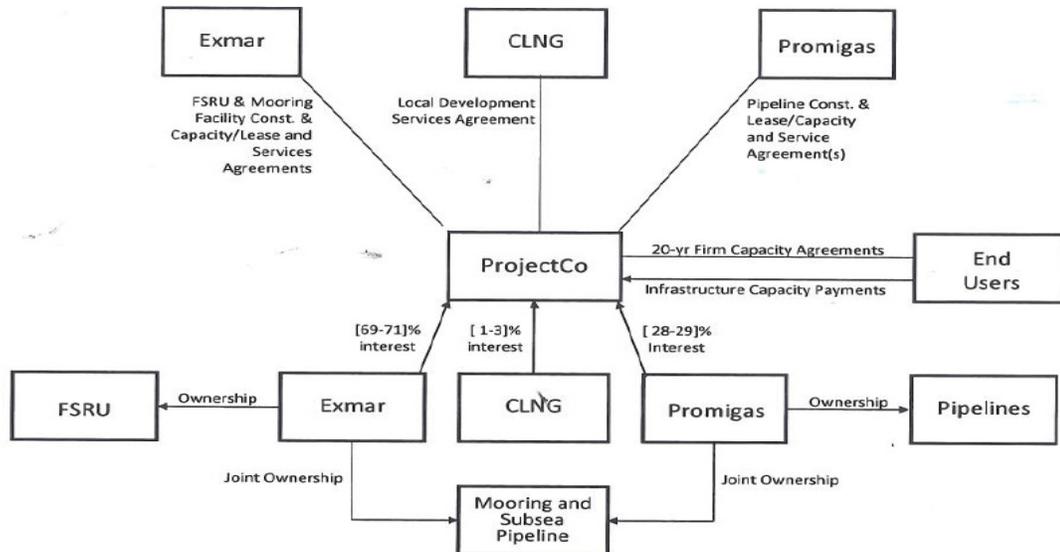
1. Exmar Marine NV;
2. Promigas S.A.; and
3. Caribbean LNG (Jamaica) Limited (CLNG).

The following is a diagram which illustrates the proposed Exmar Consortium structure, as was outlined in their response to the RFP, which was issued by the PCJ on 2009 November 12:

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<sup>152</sup> Response from Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, which was dated 2010 November 15. Responses #11(a)(g) & 14

## The EXMAR Consortium structure overview



The OCG found that a MOU was signed between Caribbean LNG (Jamaica) Limited, Promigas S.A. ESP and Exmar Marine NV on 2010 February 15, which outlined, *inter alia*, the following:

*“...Caribbean LNG (Jamaica) Ltd. (formerly known as EDC LNG Ltd.)...*

*Promigas S.A. ESP, a Colombian company...*

*Exmar Marine NV, a limited liability company organised and existing under laws of Belgium...*

### **WHEREAS:**

- A. CLNG and Promigas entered into an [sic] MOU dated 17 July 2009 (the “Promigas MOU”) and CLNG and Exmar entered into an [sic] MOU dated 22 July 2009 (the “Exmar MOU”)**

B. ....

C. CLNG expresses its intention to take part in the natural gas and LNG marketing in relation to the Project and Parties agree to cover such aspects in a separate agreement, independently from this MOU;

D. The Parties have agreed to form a consortium (the “**Consortium**”) for the purpose of jointly preparing, submitting and negotiating a technical and administration proposal (the “**Proposal**”) to the Company, and if the Consortium is selected by the Company, as the provider of the Services to the Company on the terms and conditions set out hereinafter;

E. The Parties wish to enter into this MOU to confirm their agreement on the principles of their cooperation for the provision of certain services to the Consortium if the Contract is awarded by Company to the Consortium, pending the conclusion of more detailed cooperation agreements implementing these principles (the “**Cooperation Agreements**”) and in replacement of the Promigas MOU and the Exmar MOU.

*NOW THEREFORE*, in consideration of the premises and covenants set forth herein, the Parties hereby agree on the following principles for their cooperation:

**...The Parties agree to work together for preparing a response to the tender, subject to the terms and conditions stated in this MOU and the requirements under the Tender Documents.**

**... The Parties agree and undertake to share the cost of the issuing of the Bid Bond (as requested under the Tender) on an equal basis, each Party paying one third (1/3) of such costs...**

*...The Parties intend to divide the scope of Services as follows:*

### 3.1. Exmar

*...Exmar will own and operate a permanently-moored FSRU with storage capacity currently expected to be approximately 138,000 m<sup>3</sup>, but to be finally determined...*

*...Throughput charges will be a pass-through of Exmar's actual operating costs, such as for operations personnel, insurance and fuel;*

*...Retainage equal to actual fuel losses for operations, currently expected not to exceed 2% for on an open loop design or 4% if a closed loop design is used;*

*...Exmar will seek third-party financing for the conversion, or construction of the FSRU. In this regard Parties acknowledge the need for the long-term contractual structure of the Project to satisfy the requirements of reputable lending institutions and the need to provide adequate credit support to the overall structure to support project financing within a cash flow lending approach.*

### 3.2 The Parties

*...may jointly invest, finance, design, engineer, construct and commission the mooring facility (jetty-based or port side) suitable for the Project...Subsea Pipeline, and metering station, as required*

*...The Parties agree that CLNG shall have an option at its sole discretion to undertake items in 3.2 above provided it can reasonably demonstrate the financial resources to do so within a reasonable time.*

### 3.3. Promigas

*...Promigas will design, construct, own, maintain and operate a pipeline transportation and distribution system (excluding the terminal infrastructure),*

*including all the required infrastructure such as compressor stations, steel pipelines, section valves, city gates, distribution network, polyethylene pipelines, connections to users, regulations and measurement stations and CNGV services stations (the “Pipeline Project”)...*

#### 3.4. CLNG

*...CLNG, as Jamaica Consortium project development manager shall provide guidance, strategy, and implementing tactics, process, and assist in negotiations to interact (and in some cases contract) with the various parties in Jamaica which will have bearings and impacts on the success of the project....”(OCG’s Emphasis)*

Mr. Ian Moore, former Chairman of the PCJ Board of Directors and current Director of CLNG, in his sworn response to the OCG’s Statutory Requisition, which was dated 2010 December 3, further confirmed, *inter alia*, that “...CLNG, with which I am affiliated, became a member of the Exmar Consortium on February 15, 2010...”<sup>153</sup>

It is instructive to note that the final deadline for submission of the bids and the Tender Opening for the ‘FSRU LNG Project’ was 2010 February 15.

Further, and according to Mr. Ian Moore “CLNG was formed for the sole purpose of providing developmental guidance to the Exmar Consortium for the LNG infrastructure RFP and potential implementation and execution, and to ensure the exposure of the LNG Project to Jamaican companies that may have an interest in supporting the Project.”<sup>154</sup>

It is also important to note Mr. Ian Moore’s assertion that “The decision to submit a bid was made jointly by the members of the Exmar Consortium. The invitation to bid received by Exmar Marine N.V. on November 12, 2009, required that the bidder(s) address all the elements involved in providing LNG to the proposed end-users. This required the combined expertise and

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<sup>153</sup> Response from Mr. Ian Moore, Director, CLNG, which was dated 2010 December 3. Response #12 (a)

<sup>154</sup> Response from Mr. Ian Moore, Director, CLNG, which was dated 2010 December 3. Response # 15

*capacities of Exmar Marine N.V., Promigas S.A. Esp and CLNG, and precipitated the decision to establish the Exmar Consortium.”*

### ***Caribbean LNG (Jamaica) Limited (CLNG)***

The OCG conducted a company search, on the website of the Registrar of Companies, Jamaica (ORC), for Caribbean LNG (Jamaica) Limited and found that the referenced company was incorporated on 2009 June 19, under the name “*EDC LNG Limited*”. EDC LNG Limited was renamed Caribbean LNG (Jamaica) Limited on 2009 December 8.

The ORC website further revealed the names of the Directors and Shareholders of the company, as at 2010 June 22, as follows:

#### Directors:

1. Andrew Bogle (ceased);
2. Paul East;
3. Ian Moore;
4. Al Kerr.

#### Shareholders:

1. Caribbean LNG (BVI) Limited	5,200,000 shares	(81.9%)
2. AC. Kerr LLC	800,000 shares	(12.6%)
3. Old Harbour Estates Limited	47,826 shares	(0.75%)
4. Maritime & Transport Services Limited	47,826 shares	(0.75%)
5. Andrew Bogle	197,827 shares	(3.12%)
6. Albert Donaldson	50,001 shares	(0.79%)
7. Martin Phillips	0 shares	
8. Sandra Martin	-	
9. Marco Mirst	0 shares	
10. Nicole Mirst	-	

The OCG further found that the total shares in the company amounted to 6,343,480.

Based upon the foregoing breakdown of the shareholding of CLNG, the OCG found that the company Caribbean LNG (BVI) Limited is the majority shareholder with a shareholding of 81.9%.

It is instructive to note that by way of a letter, which was dated 2010 June 23, Mr. Ian Moore wrote to the OCG and advised, *inter alia*, that “*Kindly see enclosed herewith our correspondence directed to Messrs. Coverdale Trust Services Ltd. who is the corporate secretary for Caribbean LNG (B.V.I.) Ltd. We have already given verbal instruction to Messrs. Coverdale Trust Services Ltd, for them to cooperate with your office to the fullest extent, and concurrent with this letter we are providing them with the original of the enclosed authority... For your immediate attention we inform you that the shareholders of Caribbean LNG (B.V.I.) Ltd. are:*

*Mr. Ian Moore*

*Mr. Paul East.*”<sup>155</sup>

The OCG found that Mr. Nigel Logan, Acting Group Managing Director, PCJ, wrote to Mr. Bart Lavent, Director LNG, Exmar Marine NV, by way of a letter, which was dated 2010 June 30, and stated, *inter alia*, the following:

*“...it has come to our attention that the majority shareholder of Caribbean LNG (Jamaica) Limited is a corporate entity which is listed as Caribbean LNG (BVI) Limited. The Office of the Contractor-General (OCG) has advised that the entity is registered in the British Virgin Islands and holds 80% of the shares in Caribbean LNG (Jamaica) Ltd. This does not fully accord with the information now in possession of the Petroleum Corporation of Jamaica (PCJ)...Accordingly we ask that Exmar formally indicate the following:*

*a) The actual shareholders and directors of Caribbean LNG (Jamaica) Limited and*

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<sup>155</sup> Letter from Mr. Ian Moore to the OCG which was dated 2010 June 23

*the composition of their shareholding.*

- b) *A reconciliation of the information previously presented by Exmar for CLNG and the actual shareholding registered at the Registrar of Companies as indicated by the OCG.”*

The OCG received an email from Mr. Nigel Logan, Acting Group Managing Director, PCJ, on 2010 July 6, which indicated that the PCJ, “...received this clarification today from Exmar regarding the shareholding for CLNG.”

Attached to the referenced email was a copy of a letter from Mr. Bart Lavent, Director LNG, Exmar Marine NV to Mr. Nigel Logan, which was dated 2010 July 6, in which he stated, *inter alia*, the following:

*“We refer to your letter dd. June 30, 2010 and the queries relating to the ownership structure of Caribbean LNG (Jamaica) Ltd.*

*We have been able to clarify this issue with our partners of CLNG and herewith wish to share with you the letter received from them earlier today. We trust that the letter and its contents are self explanatory...”*

Attached to the foregoing letter was a copy of a letter from Mr. Conrad Kerr, Chief Executive Officer (CEO), CLNG, to Mr. Bart Lavent, which was dated 2010 July 6, in which he stated, *inter alia*, the following:

“...The Share Register of Caribbean LNG (Jamaica) Limited reflects the following:-

<u>Share holder</u>	<u>#Ordinary Shares</u>	<u>% of total issued shares</u>
<i>Albert Donaldson</i>	<i>50,001</i>	<i>0.76</i>
<i>Philip &amp; Sandra Martin</i>	<i>81,159</i>	<i>1.24</i>
<i>Marco &amp; Nicole Miret</i>	<i>81,159</i>	<i>1.24</i>
<i>Maritime &amp; Transport</i>		
<i>Services Ltd.</i>	<i>81,159</i>	<i>1.24</i>
<i>Old Harbour Estates Limited</i>	<i>47,826</i>	<i>0.73</i>
<i>Andrew Bogle</i>	<i>197,826</i>	<i>3.03</i>
<i>Caribbean LNG (BVI) Ltd</i>	<i>5,200,000</i>	<i>79.52</i>
<i>A.C. Kerr LLc</i>	<i>800,000</i>	<i>12.23</i>

...The Share Register of Caribbean LNG (BVI) Limited reflects the following:-

<u>Share holder</u>	<u>#Ordinary Shares</u>	<u>% of total issued shares</u>
<i>Paul East</i>	<i>20,000</i>	<i>40</i>
<i>Ian Moore</i>	<i>30,000</i>	<i>60</i>

... The Share Register of A.C. Kerr LLc reflects the following:-

<u>Share holder</u>	<u>#Ordinary Shares</u>	<u>% of total issued shares</u>
<i>Conrad Kerr</i>		<i>100</i>

The Directors of Caribbean LNG (Jamaica) Limited are:

- *Ian Moore*
- *Paul East*
- *Conrad Kerr*<sup>156</sup>

It is instructive to note that the share allotment of CLNG, which was detailed above by Mr. Kerr,

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<sup>156</sup> Email dated 2010 June 6 from Mr. Nigel Logan, Acting Group Managing Director, PCJ.

differs from that which was detailed on the COJ's website as at 2010 June 22. In this regard, the total shares in CLNG was reported by Mr. Kerr as being 6,539,130, of which Caribbean LNG (BVI) Limited has a share allotment of 79.52%.

The OCG, by way of a LOI, which was dated 2010 December 16, extended an invitation to a company known as Coverdale Trust Services Limited, the Corporate Secretary of Caribbean LNG (BVI) Limited, in which the following questions were posed:

1. *Please provide a copy of the certified (Registrar of Company) Allotment of Shares which have been filed for the company, Caribbean LNG (B.V.I.) Limited.*
2. *Please provide a copy of the registered Articles of Incorporation/Association for the company, Caribbean LNG (B.V.I.) Limited.*
3. *Please provide a copy of all Audited Financials detailing the Asset Schedules of Caribbean LNG (B.V.I.) Limited.*
4. *Please provide a copy of the company profile for the company, Caribbean LNG (B.V.I.) Limited.*
5. *Please indicate the name(s) and title(s) of the beneficial principal(s), shareholder(s), director(s) and/or partner(s) in the company, Caribbean LNG (B.V.I.) Limited.*
6. *Are you aware of any additional information which you believe could prove useful to this Investigation or is there any further statement in regard to the Investigation which you are desirous of placing on record? If yes, please provide full particulars of same."*

Coverdale Trust Services Limited, the Corporate Secretary of Caribbean LNG (BVI) Limited, in its response to the OCG's LOI, which was dated 2010 December 28, stated, *inter alia*, the following:

*“...It is not required under BVI law to file a Register of Members. However, enclosed is an executed Certificate of Incumbency confirming same for your ease of reference...*

*Under BVI Law it is not required for a company to have audited financials. However, as Registered Agents Coverdale would not usually request financials for companies where no fiduciary services are provided...” (OCG’s Emphasis)*

Attached to the foregoing response were copies of the company’s Certified Memorandum and Articles of Association and Certificate of Incumbency.

Based upon the documentation which was provided by Coverdale Trust Services Limited, the OCG found the following information:

1. The Certificate of Incumbency for the company Caribbean LNG (BVI) Limited was dated 2010 December 28.
2. The company Caribbean LNG (BVI) Limited was incorporated on 2009 December 22.
3. The Directors of the company are ‘Paul East’ and ‘Ian Moore’. Of note, both Directors were appointed on the date the company was incorporated (2009 December 22).
4. The Shareholders of the company are ‘Paul East’ and ‘Ian Moore’. Of note, is the fact that the shares were issued on the date the company was incorporated and divided as follows: a) Paul East - 20,000 and b) Ian Moore - 30,000.
5. No fiduciary services were being provided by the company Caribbean LNG (BVI) Limited and, under BVI Law, there is no requirement for the company to have audited financial statements.

It is instructive to note the following:

1. That a MOU was signed between CLNG and Promigas on 2009 July 17.
2. That a MOU was signed between CLNG and Exmar Marine NV on 2009 July 22.
3. That a MOU between Exmar Marine NV, Promigas S. A., and CLNG was signed on 2010 February 15, the same date as the extended deadline for the submission of the bids for the 'FSRU LNG Project'. The referenced MOU of 2010 February 15, had replaced the previous MOU's.

## **Issues Identified with the Evaluation of the Bids**

The OCG conducted a review of the final evaluation document, which was prepared by CH-IV International for the PCJ, that was entitled “*REVIEW OF PROPOSALS*”, with respect to the ‘FSRU LNG Project’. The referenced document was dated 2010 April 8.

Attached to the referenced document were the following:

1. Appendix B – Review Matrix (Exmar Consortium)
2. Appendix C – Review Matrix (Hoegh)

The above referenced Appendices outlined the findings and associated weaknesses and strengths of each proposal in accordance with the “*Framework for Review and Evaluation of Proposals*” which was prepared by CH-IV International on 2010 February 12.

The OCG undertook a review of “*Appendix B – Review Matrix (Exmar Consortium)*” against the structure of the bid proposal which was submitted to the PCJ, by the Exmar Consortium, on 2010 February 15. In this regard, the OCG identified several flaws in the evaluation process.

Please see below an extract of the referenced Appendix B as it relates to the criterion “*Specific experience and capabilities of the bidder in relation to the assignment*”.

<i>Specific experience and capabilities of the bidder in relation to the assignment</i>			
<i>Review Criteria</i>	<i>Proposal Strengths</i>	<i>Proposal Weaknesses</i>	<i>Summary</i>
<i>FSRU project development experience</i>	<p><b><u>Exmar and partner Excelerate have demonstrated since 2005 the ability to develop offshore regasification projects</u></b></p> <p><i>For the onshore part of the proposal Promigas has demonstrated its ability to develop gas distribution projects to the point that they are the leader in Columbia with the largest independent operated gas distribution network</i></p>	<p><b><u>Proposal does not state clearly the relationship between Exmar and Excelerate, although information obtained from their websites demonstrate clearly the nature of the joint venture between Exmar and Excelerate in terms of development, construction, management and operation of the LNGRV fleet.</u></b></p>	<i>Very good response</i>
<i>Construction experience (FSRU) and Gas Distribution System)</i>	<p><i>Exmar demonstrates experience in the construction of LNG Regas Vessels (LNGRV), with a total number of 7 constructed and operating through Excelerate, in a range of 138,000m3 to 151,000m3 storage capacity.</i></p> <p><i>Exmar demonstrates its experience with world class companies e.g. BESIX and Dredging International, essential for the construction of a jetty or quayside dock.</i></p> <p><i>Promigas demonstrates construction capabilities for gas distribution systems in their Proposal with more than 1000 kilometers of transmission pipelines.</i></p>	<p><i>Promigas has not demonstrated to have experience of working outside of Columbia so far, although it can be assumed that a company with its level of experience will be successful in managing the pipeline construction in Jamaica.</i></p>	<i>Very good response</i>
<i>Ownership Experience</i>	<p><i>Exmar demonstrates experience in the ownership of FSRU's, LNG Carrier's and other Chemical Carriers since 1985.</i></p> <p><i>Promigas demonstrates ownership (BOMT) experience of natural gas pipeline distribution systems through a network of 2,280 km of pipeline with a combined capacity of 517 MMSCFD. Pipeline diameter varies from 10 to 32 inch.</i></p>	<p><b><u>Proposal does not state clearly the relationship between Exmar and Excelerate, although information obtained from their websites demonstrate clearly the nature of the joint venture between Exmar and Excelerate in terms of development and operation of the LNGRV fleet.</u></b></p>	<i>Very good response</i>

<b>Review Criteria</b>	<b>Proposal Strengths</b>	<b>Proposal Weaknesses</b>	<b>Summary</b>
<p>Operation Experience</p> <ul style="list-style-type: none"> <li>Quantify continuous regasification experience (&gt;=120 days, &lt;120 days, 0 days)</li> </ul>	<p>Proposal demonstrated proof of a combined 480.5 days of continuous regasification experience, including 133 days of continuous regasification in 2009 provided at the Bahia Blanca facility in Argentina where the LNG Regas Vessel (LNGRV) is moored quayside at a jetty connecting directly to the local grid</p> <p><u>Exmar and its partner Excelerate commissioned and continue to operate the first deepwater port Gulf Gateway project in the gulf of Mexico, USA with a send out capacity of 690 MMSCFD.</u> Since then they have added North East Gateway off Boston, USA in 2008 with a capacity of 800 MMSCFD. Quayside Jetties are operating since Feb 2007 in Teeside, UK, Bahia Blanca, Argentina since 2008 and Mina Al-Ahmadi, Kuwait since 2009. The sendout capacity for the quayside jetty references are 500-600 MMSCFD, all directly connected to the local grid.</p>	<p><u>Proposal does not state clearly the relationship between Exmar and Excelerate, although information obtained from their websites demonstrate clearly the nature of the joint venture between Exmar and Excelerate in terms of development, construction, management and operation of the LNGRV fleet.</u></p>	<p>Very good response</p>

The proposal which was submitted by the Exmar Consortium and entitled “EXMAR CONSORTIUM – JAMAICA LNG FSRU TENDER” outlined, *inter alia*, the following:

1. Page 17 - “The “EXMAR Consortium” consisting of EXMAR NV (“EXMAR”), PROMIGAS S.A. (“PROMIGAS”) and Caribbean LNG (Jamaica) Ltd. (“CLNG”) is pleased to present the EXMAR Consortium’s response to RFP No: 01-09-LNGFSRU...The Exmar Consortium has developed a detailed proposal to build, own and operate a FSRU-based LNG import terminal, mooring facilities and natural gas transmission system with a target in service date of 2012 (the “Project”)...Each partner will be responsible for distinct elements of the Project. EXMAR will provide the FSRU, PROMIGAS will provide the onshore pipeline system, the EXMAR Consortium shall jointly provide the mooring facility and (if needed) subsea pipeline. CLNG will coordinate local development aspects of all Project infrastructures. CLNG will be ready to provide any assistance the GOJ may require in procuring LNG and marketing natural gas sales for the Project.”<sup>157</sup>
2. Page 134 - “As a conclusion, to date (Feb. 2009) EXMAR with its partner Excelerate Energy completed 33 LNG Ship to Ship transfer operations, whereof 26 while the re-gasification vessel was simultaneously sending out natural gas, for a total volume of 4,147,900 m<sup>3</sup> LNG.”<sup>158</sup>
3. Page 135 - “Unloading of the FSRU will be done through a high pressure (HP) unloading arm...These unloading arms are of proven design. The first of its kind was installed by Excelerate Energy in the port of Teesside, UK...Today a total of five (5) LNGRV or FSRU terminals are in operation with seven (7) HP unloading arms installed:
  - One (1) in Teesside Gasport, UK
  - One (1) in Bahia Blanca Gasport, Argentina

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<sup>157</sup> Exmar Consortium – Jamaica LNG FSRU Tender which was submitted on 2010 February 15, in response to the RFP, which was issued by the PCJ on 2009 November 12. Page 17.

<sup>158</sup> Exmar Consortium – Jamaica LNG FSRU Tender which was submitted on 2010 February 15, in response to the RFP which was issued by the PCJ, on 2009 November 12. Page 134.

- *One (1) in Mina Al Ahmadi Gasport, Kuwait*
- *Two (2) in Pecem, Brazil*
- *Two (2) in Guanabara Bay, Brazil*

*It should be noted EXMAR works closely with Excelerate Energy in operating the LNGRV terminals in UK, Argentina and Kuwait.*”<sup>159</sup>

Having regard to the foregoing, the OCG found the following:

- i. That although the bid proposal which was submitted by the Exmar Consortium made mention of Excelerate Energy LP being a partner of Exmar Marine NV, the proposal does not include Excelerate Energy LP as a partner of the Consortium.
- ii. Appendix B, which was prepared by CH-IV International, assessed the strengths of the Exmar Consortium by including the capabilities of an Exmar Marine NV/Excelerate Energy LP partnership.

In this regard, the referenced report indicated, as a strength of the proposal, that “*Exmar and partner Excelerate have demonstrated since 2005 the ability to develop offshore regasification projects*”<sup>160</sup>. However, the proposal was assessed to be weak as it “*...does not state clearly the relationship between Exmar and Excelerate...*”<sup>161</sup>

Nonetheless, CH-IV International, after highlighting the foregoing weakness and strength, noted that the Exmar Marine NV had a “*Very good response*”.

Having regard to the foregoing, and the fact that Excelerate Energy LP is not a party to the Exmar Consortium, the OCG is unable to determine the basis upon which CH-IV

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<sup>159</sup> Exmar Consortium – Jamaica LNG FSRU Tender which was submitted on 2010 February 15 in response to the RFP, which was issued by the PCJ, on 2009 November 12. Page 135.

<sup>160</sup> The final issued “Review of Proposals” which was prepared by CH-IV International which was dated 2010 April 8. Appendix B, Proposal Review Findings – Exmar Consortium.

<sup>161</sup> The final issued “Review of Proposals” which was prepared by CH-IV International which was dated 2010 April 8. Appendix B, Proposal Review Findings – Exmar Consortium.

International arrived at its conclusion that the Exmar Consortium had a “*Very good response*” with respect to its capabilities to carry out its project, despite the noted ambiguity.

- iii. The referenced Appendix B further stated that “**Exmar demonstrates experience in the construction of LNG Regas Vessels (LNGRV), with a total number of 7 constructed and operating through Excelsate, in a range of 138,000m<sup>3</sup> to 151,000m<sup>3</sup> storage capacity.**”<sup>162</sup> (OCG’s Emphasis)
- iv. The referenced Appendix B, further stated that “*Exmar and its partner Excelsate commissioned and continued to operate the first deepwater port Gulf Gateway project in the gulf of Mexico...*”<sup>163</sup>
- v. CH-IV International utilized information which was obtained from the websites of Excelsate Energy LP and Exmar Marine NV as a part of the evaluation of the proposals. Therefore, this suggests that the Technical Consultants used information which was not submitted by the Exmar Consortium, in its proposal on 2010 February 15, to evaluate the bid.
- vi. The OCG found that CH-IV International evaluated the strength of the Exmar Consortium with respect to the partnership between Exmar Marine NV and Excelsate Energy LP.

It is instructive to note that CH-IV International, in assessing the specific experience and capabilities of the Exmar Marine NV, in relation to the assignment, did not undertake an independent assessment of same with respect to its capabilities outside of the partnership with Excelsate Energy LP. Therefore, the OCG is unable to state definitively whether Exmar Marine NV, on its own, is capable of performing the required tasks for the FSRU LNG Project, given

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<sup>162</sup> The final issued “Review of Proposals” which was prepared by CH-IV International which was dated 2010 April 8. Appendix B, Proposal Review Findings – Exmar Consortium.

<sup>163</sup> The final issued “Review of Proposals” which was prepared by CH-IV International which was dated 2010 April 8. Appendix B, Proposal Review Findings – Exmar Consortium.

that a substantial portion of its experience has been attributed to its partnership with Excelerate Energy LP.

#### The Partnership between Excelerate Energy and Exmar Marine NV

The OCG found that Mr. Shaun Davison, Director – Development, Excelerate Energy LP, upon learning of the issuance of the RFP, sent an email to Mr. Stephen Wedderburn on 2009 December 9. The referenced email was captioned “*RFP for Jamaican Floating Regasification Facility*” and indicated, *inter alia*, the following:

*“...I was made aware of a recent newspaper article...that indicates that Jamaica has issued an [sic] RFP for a Floating Regasification Terminal at Port Esquivel. The article mentions that nine companies were considered and four are expected to submit proposals...*

*At Excelerate Energy, we consider ourselves to be the world leader in Floating Regasification technology and solutions. We currently have developed five facilities world-wide; two in the United States, one in the UK, an Argentinean facility and a Kuwait facility. Excelerate also has a fleet of 7 regasification vessels currently in operation and an eighth vessel due for delivery in 2010. There is no other company that has a comparable asset base or operating experience in the floating regasification space.*

*We did not receive a Request For Proposal document, and so I am hoping to understand why that was the case, given our experience and current floating assets that are available quickly for a Jamaican Project. I would be most grateful if you could send the RFP document to me here at Excelerate, or if you would be so kind as to provide Jamaica’s reasons for not considering Excelerate as a potential facility provider so we may internally do a better job of preparing for any future opportunities.”<sup>164</sup> (OCG’s*

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<sup>164</sup> Email from Mr. Shaun Davison, Director – Development, Excelerate Energy, which was dated 2009 December 9, to Mr. Stephen Wedderburn.

Emphasis)

Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, responded to Mr. Shaun Davison's email on 2009 December 21, and indicated as follows:

*"I appreciate Excelerate's interest in the Jamaican LNG Project.*

*However, please be aware that the present FSRU RFP tender builds upon a pre-qualification process that was conducted in 2007. **By decision of the Cabinet and the Jamaican government procurement authorities the tender has been restricted to the nine companies/groups that went through the 2007 pre-qualification process.** PCJ is therefore able to issue the RFP invitation only to these companies. **It is not within PCJ's discretion to decide to issue the RFP invitation to any other company.***

*I recall that Excelerate had sought to submit a response to the previous invitation to pre-qualify, but because Excelerate's application was delivered after the submission deadline it could not be included in that process. Jamaica's tender rules are very strict about not accepting late proposals.*

**PCJ did consult with the Ministry of Energy & Mining and they have advised that no changes are to be made to the process already underway.**

*We therefore cannot accommodate Excelerate's request to be included in this RFP process."<sup>165</sup> (OCG's Emphasis)*

The OCG found that Mr. Stephen Wedderburn sent a draft of the above email to Mr. Glenford Watson, Senior Legal Officer, MEM, and copied to the Permanent Secretary, Mrs. Hillary Alexander, MEM, the then Acting Group Managing Director, Dr. Ruth Potopsingh, PCJ, amongst others, on 2009 December 11. In the referenced email, Mr. Wedderburn also stated, *inter alia*, the following:

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<sup>165</sup> Email from Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, to Mr. Shaun Davison's on 2009 December 21.

*“For contextual purposes please note that **Excelerate Energy has had a very strong relationship in the floating regas business with another company already in the process – Exmar.** Excelerate and Exmar operate a common fleet with the majority of their floating regas vessels being owned 50/50 by both companies. **Traditionally Excelerate has been the commercial partner who identifies and negotiates business opportunities and Exmar the technical partner who implements the project once Excelerate has finalized a business deal.** **Industry research suggests that to date Excelerate has not done any floating LNG project independently of Exmar and that Excelerate has no actual operating experience in the industry as all of this has been delegated to Exmar.** However, reminiscent of the Hoegh/SBM situation, **the two companies now appear to want to compete against each other.**”<sup>166</sup> (OCG’s Emphasis)*

Mr. Glenford Watson responded to the foregoing email on 2009 December 11 and stated the following:

*“Please hold response until the issue has been given a little more thought.*

*I am disappointed that we are just now being made aware of Excelerate’s abilities in the FSRU industry. **My recollection is that we were constantly told that there were no companies out of the 9 companies that had responded and were pre-qualified that had experience in the operation of FSRU. We were guided by this representation in our various submissions on the issue.** Even if the more prudent decision would have been to continue with those who had prequalified, it would have been useful if we were fully informed.”<sup>167</sup> (OCG’s Emphasis)*

The OCG found that Mrs. Hillary Alexander, Permanent Secretary, MEM, responded to the foregoing email of 2009 December 11 on the said date, and stated the following:

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<sup>166</sup> Email from Mr. Stephen Wedderburn to Mr. Glenford Watson, Senior Legal Officer, MEM, which was dated on 2009 December 11.

<sup>167</sup> Email from Mr. Glenford Watson, Senior Legal Officer, MEM, to Mr. Stephen Wedderburn, which was dated 2009 December 11.

*“Please ensure that there is due consultation on this matter before any statements go out. **It is very unfortunate that this company’s ability in this area was not put on the table by you in the earlier discussions with PCJ et al. There was no indication made by you of this entity’s experience in the area in the earlier presentations.***

*This process must be transparent, equitable and rigorous, so due care **MUST** be taken!”<sup>168</sup> (OCG’s Emphasis)*

Mr. Stephen Wedderburn further sent an email on the same date to Mrs. Hillary Alexander, Permanent Secretary, MEM, in which he stated, *inter alia*, the following:

*“Please realize that in the past Excelerate and Exmar have presented such a unified front that it was natural to consider them as one entity.*

*Please also note that the statement that they are no companies outside the nine that have FSRU operating experience is still true. Excelerate has never operated an [sic] FSRU.”<sup>169</sup>*

The Cabinet Secretary, in its response to the OCG’s Statutory Requisition, which was dated 2011 February 28, provided the OCG with a copy of an email, which was dated 2011 February 14, from Mr. Ernie Megginson, Project Coordinator, OPM, to Mr. Shaun Davison, Excelerate Energy LP, in which he posed, *inter alia*, the following questions:

*“Out of the eight regas vessels that Excelerate owns, how many does Excelerate operate directly and how many have operations that are contracted through Exmar or others? One of the confusions during the 2009 RFP was whether Excelerate had operational experience of an [sic] FSRU. Could you provide a summary of Excelerates [sic] actual operational*

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<sup>168</sup> Email from Mrs. Hillary Alexander, Permanent Secretary, MEM, to Mr. Stephen Wedderburn and Mr. Glenford Watson, which was 2009 December 11.

<sup>169</sup> Email from Mr. Stephen Wedderburn to Mrs. Hillary Alexander, Permanent Secretary, MEM, which was dated 2009 December 11.

*experience versus which ship it contracts out for the operations?”<sup>170</sup>*

Mr. Shaun Davison, Excelerate Energy LP, responded to the foregoing email on 2011 February 14 and stated, *inter alia*, the following:

*“Question 2:*

- *Excelerate either owns 100% or has co-ownership in all 8 regasification vessels.*
- *Excelerate has long term charters on all 8 vessels – we have full operational and commercial control [sic] the ships.*
- ***Excelerate designed and built all the vessels.***
- *Excelerate own all the patents and technology on the vessels.*
- *Excelerate contracts with Exmar Ship Management to physically crew & operate the vessels.*
- *Excelerate employees staff the GasPorts and Gateway terminal facilities.*
- *Excelerate acts as an EPC to build the fixed infrastructure; GasPorts & Gateways so that there is a seamless functionality and operation between all components of the terminal (the terminal is both the EBRV & GasPort/Gateway).*

***Outside of Exmar operating these vessels on our behalf, they have not designed or built any fixed infrastructure facilities or EBRV’s, do not control operationally or commercially these vessels, do not have the technology patents, and have not operated the shore side or buoy facilities.*** *They do have a co-ownership in a couple of vessels and recently sold an ownership stake to Teekay Shipping.”<sup>171</sup> (OCG’s Emphasis)*

The Cabinet Secretary further provided the OCG with a copy of a ‘Memo’ which was dated 2011 February 25, and prepared by Mr. Christopher Zacca, in regard to “*Conversation with Tom Norton, Excelerate Energy EBLV (Floating LNG Liquefaction) Program Manager 24/2/2011*”.

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<sup>170</sup> Email from Mr. Ernie Megginson, Project Coordinator, OPM, to Mr. Shaun Davison, Excelerate Energy which was dated 2011 February 14.

<sup>171</sup> Email from Mr. Shaun Davison, Excelerate Energy, to Mr. Ernie Megginson, Project Coordinator, OPM, which was dated 2011 February 14.

The referenced 'Memo' indicated the following:

*“In a telephone conversation held yesterday 24/2/2011 with Tom Norton, EBLV (Floating LNG Liquefaction) Program Manager for Excelerate Energy L.P., **Mr. Norton confirmed that Mr. Joe Fossella formerly of Black & Veatch Corporation, while still at Black & Veatch, started the LNG Liquefaction Alliance project between Black & Veatch, Excelerate Energy, and Exmar, and worked on the project for six or seven months up to his retirement.** He also mentioned **Bart Lavent of Exmar as someone involved in discussions with them.**”<sup>172</sup> (OCG's Emphasis)*

Based upon the foregoing, the OCG found the following:

- i. Mr. Stephen Wedderburn did not recommend Excelerate Energy LP as one of the potential companies in the FSRU Industry as having the experience and capability of providing the 'FSRU LNG Project'.
- ii. Upon the enquires of Mr. Shaun Davison, Excelerate Energy LP, as to the reasons why Excelerate Energy LP was not invited to tender, Mr. Stephen Wedderburn indicated that because Excelerate Energy LP's initial proposal was submitted late in 2007, the referenced company was not eligible to bid in the current process.

This reason was premised upon the basis that (a) the tender process was restricted to the nine (9) companies which had submitted a bid; (b) the Cabinet and the Jamaican Government had decided upon the nine (9) companies; and (c) that the tender rules were strict when it came on to late proposals.

- iii. It is clear from the emails that Mr. Stephen Wedderburn was the Public Official charged with the responsibility of informing the Accounting/Accountable Officers within the PCJ and the MEM of, *inter alia*, the potential bidders within the LNG Industry and the capabilities of same.

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<sup>172</sup> Memo prepared by Mr. Christopher Zacca, LNG Steering Committee, OPM, on 2011 February 25.

- iv. Mr. Stephen Wedderburn, gave, at a minimum, both the Permanent Secretary and the Senior Legal Officer in the MEM, the impression that Excelerate Energy LP and Exmar Marine NV was one (1) entity and that there were no other companies outside of the nine (9) companies which were invited to tender “... *that have FSRU operating experience*”.

Based upon the assertions of Mr. Shaun Davison of Excelerate Energy LP, the OCG found that Exmar Marine NV (a) operated the vessels on behalf of Excelerate Energy LP, by providing physical crew; (b) did not design or build any fixed infrastructure facility; (c) does not control operationally or commercially the vessels; and (d) does not have the technology patents.

## **The Consultants for the LNG Project and the ‘FSRU LNG Project’**

The OCG, in an effort to ascertain the particulars of all the Consultants whose services were required by the GOJ for the LNG Project and, in particular, for the ‘FSRU LNG Project’, posed the following question to certain Public Officials/Officers of the MEM and the PCJ, in their respective capacities:

*“Please indicate whether you are/were aware of any Consultant(s) and/or Consultancy firm(s) and/or company(ies) who/which was/were contracted for the proposed Financing, Development, Ownership and Operation of a FSRU LNG Re-gasification Terminal and Natural Gas Transmission System and/or the entire LNG Project. If yes, please provide responses to the following:*

- a) Please indicate whether, at any stage, you were responsible for, contracting any Consultant(s) and/or granting any approval(s) for any Consultant(s), for the referenced projects. If approval(s) was/were granted, please provide a copy of same;*
- b) At what stage of the procurement was/were the Consultant(s) contracted and detail the reason for contracting the said services;*
- c) Which Consultancy firm(s)/company(ies) was/were contracted for the referenced procurement and provide a list of the person(s) and title(s) of the representatives of the said Consultancy firm(s)/company(ies) who was/were directly and/or indirectly involved in the procurement process for the referenced projects;*
- d) Please indicate which Public Official(s)/Officer(s) was charged with the responsibility for directing the named Consultant(s) in regard to the scope of works and/or requirements of the PCJ and/or the MEM for the referenced projects;*

- e) *Please indicate...whether you had an official, commercial and/or personal relationship with the named Consultant(s). If yes, please detail: (a) the name(s) and title(s) of the person(s) with whom you had/have a relationship with; (b) the circumstances of the relationship; (c) the length of the relationship; and (d) how such a relationship may have affected the status of the referenced projects. In addition, please provide a copy of all correspondence, if any, between yourself and the referenced Consultancy firm/company;*
- f) *Please indicate which procurement methodology(ies) was/were utilized to contract the Consultant(s) and provide the justification for utilizing the said procurement methodology(ies);*
- g) *Please indicate whether the procurement of the service(s) of the named Consultant(s) was/were competitively tendered in accordance with the applicable GOJ Procurement Procedures. If yes, please provide a copy of all the tender documents, inclusive of, (a) the RFP; (b) the Tender Receipt/Opening Form; (c) the Evaluation Report; and (d) the Contract;*
- h) *If your response to (g) above is 'No', please state: (a) the reason(s) the procurement of the service(s) of the named Consultant(s) was/were not tendered; (b) how the said Consultant(s) was/were contracted to provide the respective service(s); (c) which Public Body was responsible for the contracting of the respective service(s) and (d) which Public Official(s) and/or Officer(s) was/were responsible for the contracting of the respective service(s);*
- i) *Please provide a breakdown of the payments which have been made to the named Consultant(s) to-date, if any, in regard to the referenced project. If payments have been made, please provide a copy of all the respective payment vouchers, invoices and/or any other payment record; and*

- j) *Please provide an Executive Summary outlining the responsibility(ies), involvement and/or contribution of the Consultant(s) in regard to the referenced procurement. The Executive Summary must also include:*
- i. *Full particulars of the capacity(ies) in which the Consultant(s) had/have served;*
  - ii. *Was/were the Consultant(s) involved in the Evaluation of the bids; and*
  - iii. *Please indicate whether preliminary project status reports and/or final reports were prepared by the Consultant(s). If yes, provide a copy of all preliminary and the final report(s) which was/were prepared by the named Consultant(s).”<sup>173</sup>*

Mrs. Hillary Alexander, Permanent Secretary, MEM, in her response to the OCG’s Statutory Requisition, which was dated 2010 November 12, stated, *inter alia*, the following:

*“I am aware of a number of consultants/ consultancy firms to the project. I was however not responsible for contracting the services of any of the said consultants for the LNG Project.*

- a) *See response ... above*
- b) **CH IV International –The LNG Specialist were contracted in February 2010 at the time of the tender and bidding process**

*Latham and Watkins LLP –Legal Advisors to the project were contracted July 2010 at the start of the negotiating process.*

*Taylor –DeJongh- Financial Advisors – permission granted by the National Contracts*

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<sup>173</sup> OCG’s Requisition to Mrs. Hillary Alexander, Permanent Secretary, MEM, which was dated 2010 September 16. Question #31

Commission in its November 1, 2010 for the use of the Sole Source Procurement Methodology to award the contract to Taylor-DeJongh. A submission made to NWA Sector Committee for permission to award this contract still pending.

- c) *CH IV International- Mr. Joseph Fossella, Technical Advisor  
Mr. Pat LaStrapes, Technical Advisor  
Latham and Watkins- Mr. John Sacs, Legal Advisor*
- d) **Mr. Wedderburn in his capacity as Project Coordinator, PCJ**
- e) *No I did not have any relationship whether official, commercial or otherwise with any of the Consultants to the Project.*
- f) **I am advised that the Limited Tender methodology was utilized to procure the services of the Technical and Legal Advisors.**
- g) **I am advised that the CH-IV was approved by NCC contracted in 2005 and Latham and Watkins selected in 2006.** *The process went into hiatus and was not concluded at that time; they were engaged in July 2010.*
- h) *Not applicable.*
- i) *Please see attached document marked (31i)*
- j) **CH IV served as Technical Consultants to the LNG Project and evaluated the bids, in accordance with the bid evaluation criterion.**
  - i. *See response at (J) above*
  - ii. *Yes they were involved in the evaluation of bids.*
  - iii. **The work of CH IV is ongoing alongside the LNG Steering Committee.**<sup>174</sup>

The Permanent Secretary, in her response to the OCG's Statutory Requisition, which was dated 2010 November 12, further stated, *inter alia*, the following:

*"I am advised that CH IV was first contracted in or about 2005 at the initial stage of the local LNG initiative. For the purposes of this specific LNG project, **CH IV was contracted in February 2010 at the time of the tender process.** CH IV did undertake the*

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<sup>174</sup> Response from Mrs. Hillary Alexander, Permanent Secretary, MEM, which was dated 2010 November 12. Response #31

evaluation of Bids received from potential LNG suppliers. See executive summary regarding why they were contracted...

I am advised that CH IV initial involvement was contracted by the Limited Tender Procurement Methodology. **For their re-engagement under the revised scope of work, permission was granted by the NCC for use of the Sole Source Procurement Methodology.**

**As indicated at (e) above permission was granted by the NCC and Cabinet for the engagement of CH IV on a Sole Source basis given their earlier involvement in the Project and familiarity with the various local factors and requirements necessary for the successful implementation of the LNG Project.**<sup>175</sup> (OCG's Emphasis)

Mr. Nigel Logan, Acting Group Managing Director, PCJ, in his response to the OCG's Statutory Requisition, which was dated 2010 November 9, stated, *inter alia*, the following:

*"Yes, consultants were contracted for the proposed Financing, Development, Ownership and Operation of an [sic] FSRU LNG Re-gasification Terminal and Natural Gas Transmission System and for the entire LNG Project.*

a) *The consultants were engaged after approvals were received from the NCC and Cabinet. **Since acting as the Group Managing Director, I was responsible for contracting the legal consultants and the financial consultants. The legal consultants were engaged without approvals from the NCC and Cabinet as these services are exempt from the GOJ Procurement Guidelines.** PCJ is in the process of engaging the financial consultants.*

b) *Please see responses below.*

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<sup>175</sup> Response from Mrs. Hillary Alexander, Permanent Secretary, MEM, which was dated 2010 November 12. Response #32 (a) (e) & (f)

- i) **The technical consultants were engaged during the tender period for the LNG FSRU.**
  - ii) *The legal consultants were engaged after the close of the tender period for the LNG FSRU.*
  - iii) *The financial consultants are still to be engaged.*
- c) *The names of the consulting firms, contact persons along with their titles are listed below.*

***Technical Consultants***

<b><i>Name of Firm</i></b>	<b><i>Contact Persons</i></b>	<b><i>Title</i></b>
<i>CH-IV International</i>	<i>Pat Lastrapes</i>	<i>Consultant</i>
	<i>Joe Fosella</i>	<i>Consultant</i>
	<i>Arthur Ransome</i>	<i>Vice President</i>
	<i>Jeff Beale</i>	<i>President</i>

***Legal Consultants***

<b><i>Name of Firm</i></b>	<b><i>Contact Persons</i></b>	<b><i>Title</i></b>
<i>Latham and Watkins</i>	<i>John Sachs</i>	<i>Legal Counsel</i>
	<i>David Penna</i>	<i>Legal Counsel</i>
	<i>Christopher Blickley</i>	<i>Legal Counsel</i>

*It should be noted that Latham and Watkins were not involved in the procurement for the referenced project. CH-IV participated in the evaluation of bids for the FSRU and Pipeline Transmission System*

- d) *The Public Officials employed or connected to the PCJ who were responsible for directing the consultants in regard to their scope of work were as follows:*
- i) **PCJ Group Managing Director**
  - ii) **Mr. Stephen Wedderburn, LNG Project Coordinator**

- iii) Dr. Audley Darmand, Chairman, LNG FSRU Evaluation Committee only in contact with CH-IV the technical consultants and only in relation to the evaluation of the bidders for the FSRU and
- e) As acting Group Managing Director I have had no official, commercial or personal relationship with the above-named consultants.
- f) The sole procurement method was utilized to re-engage the consultants as they were previously engaged prior to 2007 as a result of competitive tenders. The justifications for this route were as follows:
- i) Their familiarity with the project
  - ii) The previous contract had not been executed but they provide limited services
  - iii) The firm had been selected as the result of a previous open tender and endorsed by the NCC but was not sent to Cabinet
  - iv) The experience of the firm in developing LNG Projects was without question
- g) The sole [sic] procurement method was utilized to re-engage the consultants as they were previously engaged prior to 2007 as a result of an open tender...
- h) Please see responses.
- i) The procurement of the services of the named consultants were not tendered with the justifications as follows:
    - (1) Their familiarity with the project
    - (2) The previous contract had not been cancelled
    - (3) The firm had been selected and endorsed by the NCC and Cabinet as the result of a previous open tender
    - (4) The experience of the firm in developing LNG Projects was without question
  - ii) The sole procurement methodology was utilized after approval from the NCC and Cabinet.
  - iii) PCJ was responsible for the contracting of these services.

iv) *The Group Managing Director along with the LNG Project Coordinator worked together to procure and contract these services...*

i) *Please see list of payments to these consultants...*

j) *Please see responses below.*

i) *The responsibilities of the technical consultants CH-IV are contained in their summary Terms of Reference below.*

<b>Activity</b>
<i>Bidder Review</i>
<i>Negotiation of Contractual Agreement with Preferred Bidder</i>
<i>Negotiation of LNG Supply Agreement</i>
<i>Development of Gas Regulatory Framework</i>
<i>Negotiation of Gas Offtake Agreements</i>
<i>Monitoring of Project Implementation and Construction</i>
<i>FSRU Concept Bid Review</i>
<i>Commercial Support - Generation Planning</i>
<i>General Support</i>

ii) *Only CH-IV was involved in the evaluation of the bids...*<sup>176</sup>

Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, in his response to the OCG's Statutory Requisition, which was dated 2010 November 15, stated, *inter alia*, the following:

*"CH-IV International was contracted in 2005 and re-activated in February 2010 after a hiatus in the LNG Project. As LNG specialists their role is to provide general technical support in all aspects of the LNG Project, including the evaluation of bids related to the implementation of the project..."*

<sup>176</sup> Response from Mr. Nigel Logan, Acting Group Managing Director, PCJ, which was dated 2010 November 9. Response #32

*CH-IV are serving as technical advisors on the Project where they provided technical advisory services in relation to the conceptualization and definition of studies inclusive of feasibility studies covering regulatory approvals and environmental impact assessment. Their responsibilities also span technical supervision of the Engineering, Procurement and Construction (EPC) and Commissioning of all phases of the LNG Project...*

*CH-IV in accordance with the terms of their engagement assisted with the evaluation of bids for the FEED Contractor and the BOO FSRU & Natural Gas Transmission System provider.*

*CH-IV provided a report to the Bid Evaluation Team.”<sup>177</sup>*

As it regards the payments which were made to the Consultants, it is instructive to note that Mr. Nigel Logan, in his response to the OCG’s Statutory Requisition, which was dated 2010 November 9, provided a breakdown of the payments which were made to ‘foreign’ Consultants for the LNG Project.

Detailed overleaf are particulars of the referenced payments to four (4) such Consultants, as provided by Mr. Logan:

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<sup>177</sup> Response from Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, dated 2010 November 15. Responses #29(c)(ii) & 29(j)(i)(ii) & (iii)

<u>Date</u>	<u>Consultants</u>	<u>Description</u>	<u>Amount</u>
2/28/2006	CH-IV International	CH-IV Int US\$27783.30 LNG	1,810,915.49
3/31/2006	CH-IV International	CH-IV IntUS\$57795 – LNG	7,571,145.00
5/31/2006	CH-IV International	CH-IV Int \$57795 LNG	3,785,572.50
9/30/2007	CH-IV International	CH-IV U\$26539.09 PROF. FEE	1,853,208.73
2/29/2008	CH-IV International	CH-IV U\$14986.50LNG PROF FEE	1,070,935.29
4/30/2010	CH-IV International	CH-IV U\$84,095.86LNG PROJECT	7,527,420.43
7/31/2010	CH-IV International	CHIVU\$108848.65PROF SERV 04/10	9,401,257.90
8/31/2010	CH-IV International	CH-IVU\$46907.55 PROF SERVICE	4,014,348.12
8/31/2010	CH-IV International	CH-IV U\$5136.67 PROF. SERVICES	441,239.95
9/30/2010	CH-IV International	CHIVU\$89680.72PROF SERVICES	7,739,446.13
			<b><u>45,215,489.54</u></b>

<u>Date</u>	<u>Consultants</u>	<u>Description</u>	<u>Amount</u>
4/30/2007	Latham & Watkins	LATHAM&WATKINS LLPU\$16598.86	1,125,402.70
5/31/2008	Latham & Watkins	LATHAM U\$9100.50LEGAL SERVICES	649,320.67
9/30/2010	Latham & Watkins	LATHAMU\$65867.76PROF SERVICES	5,677,800.91
			<b><u>7,452,524.28</u></b>

<u>Date</u>	<u>Consultants</u>	<u>Description</u>	<u>Amount</u>
12/31/2005	Mustang Engineering	US\$204,000 Mustang-Fees	12,947,880.00
1/31/2006	Mustang Engineering	US\$306,000 Consult Fees-Mustag	19,945,080.00
3/31/2006	Mustang Engineering	Mustang EngUS\$408000 LNG	26,724,000.00
5/31/2006	Mustang Engineering	Mustang U\$306000 LNG	20,043,000.00
4/30/2007	Mustang Engineering	MUSTANG INT U\$204000 PYMT	13,831,200.00
9/30/2007	Mustang Engineering	MUSTANG U\$4461.53PROF.FEE LNG	3,117,291.25
			<b><u>96,608,451.25</u></b>

<u>Date</u>	<u>Consultants</u>	<u>Description</u>	<u>Amount</u>
3/31/2007	Taylor-deJongh	TAYLOR_DEJONGH U\$1155.72EXPNS	78,068.88
			<b><u>78,068.88</u></b>

The OCG found that the aggregate value of Consultancy Fees, which have been paid by the GOJ for the period of 2005 December 31 to 2010 September 30 for the LNG Project, was \$149,354,533.95.

It is instructive to note that since the re-engagement of CH-IV International, between 2010 April 30 to 2010 September 30, the Consultant has been paid **\$29,123,712.53**.

Based upon the foregoing, the OCG has found the following:

1. As at 2010 November 9, Mr. Nigel Logan, informed the OCG that “*The financial consultants are still to be engaged.*” However, Mrs. Hillary Alexander, Permanent Secretary, MEM, in her response to the OCG, which was dated 2010 November 12, indicated that the NCC approved the use of the Sole Source Procurement Methodology to award a contract to Taylor-DeJongh, as Financial Advisors, on 2010 November 1.

By way of a letter, which was dated 2010 November 1, the NCC informed Mrs. Hillary Alexander, Permanent Secretary, MEM, *inter alia*, as follows:

*“The National Contracts Commission (NCC) considered the matter at its meeting held on **2010 October 27** and offered no objection to the request from the Petroleum Corporation of Jamaica to utilize the Sole Source Procurement Methodology to engage the services of Taylor-Dejongh as a follow-on contract (or re-engagement) to carry out financial analysis and the preparation of a financial model, leading to negotiations with suppliers and distributors of Liquefied Natural Gas (LNG), in the amount of ...**(US\$200,000.00)**.*

*The NCC noted among other things the following:*

- *Taylor-Dejongh was selected as Financial Advisors by way of a competitive tender and was endorsed by the National Contracts Commission.*

- *Taylor-Dejongh is an internationally recognized independent investment banking firm with over 29 years of experience in providing high level financial advisory services to Public and Private Sector Clients.*
- *The financial advisory services are urgently needed to ensure that the Government is properly advised regarding all financial and commercial aspects of the LNG Project.*

*The approval of the NCC is subject to the rates charged being competitive (with market rates for similar services)..."*

2. Mrs. Hillary Alexander, in her response to the OCG, which was dated 2010 November 12, indicated that the Legal Advisors to the project were contracted in 2010 July, at the start of the negotiation process.

However, Mr. Nigel Logan, Acting Group Managing Director, PCJ, in his response to the OCG's Statutory Requisition, which was dated 2010 November 9, provided a copy of an Engagement Letter, which was dated 2010 June 1, and which was sent, and signed by a Mr. John Sachs, Latham & Watkins LLP.

The referenced letter stated, *inter alia*, the following:

*"You have asked us to represent you in connection with the Jamaica LNG Project being implemented by PCJ...In summary, our scope of work will include the following items:*

### ***Phase 1***

1. *Legislative and Regulatory Framework:*
  - a. *Review existing OUR and other utility legislation and implementing rules*

- b. *Consult with MEM, OUR and stakeholders and recommend the most inappropriate legislative model*
  - c. *Draft outline of new legislation*
  - d. *Consult with MEM, OUR and stakeholders*
  - e. *Review new legislation drafted by Chief Parliamentary Counsel*
- 2. *Project Agreements*
    - a. *First draft of Concession Agreement*
    - b. *First draft of Port Agreement*
    - c. *First draft of Term Sheet for Offtake Agreements*
    - d. *First draft of Term Sheet for SPA*

## ***Phase 2***

- 1. *Legislative and Regulatory Framework:*
  - a. *Consult with MEM, OUR, stakeholders and Parliamentary Advisor*
  - b. *Revise new legislation (two drafts)*
  - c. *First draft of outline of implementing rules and regulations*
- 2. *Project Agreements*
  - a. *Negotiate Concession Agreement*
  - b. *Negotiate Port Agreement*
  - c. *Negotiate Term Sheet for Offtake Agreements*
  - d. *Negotiate Term Sheet for SPA*
  - e. *Review other Project Agreements*

## ***Phase 3***

- 1. *Financing*
  - a. *Negotiate changes to Project Agreements*
  - b. *Negotiate Consent to Assignment*
  - c. *Draft and negotiate legal opinion, certificates, etc.*

The OCG found that the foregoing Letter of Engagement was a follow-up letter from a previous letter from Latham & Watkins LLP, which was addressed to Mr. Stephen Wedderburn, and dated 2010 March 18, with respect to the engagement of the Legal Consultant.

Of note, the OCG found that the PCJ confirmed its desire to engage Latham & Watkins to provide legal services for the LNG Project by way of a letter which was dated 2010 March 22. It should be noted that the letters of 2010 March 18 and June 1 from Latham & Watkins, outlined the terms of their engagement along with the fee structure. However, the copy of the letter of 2010 June 1, which was provided to the OCG, was not signed by the PCJ.

3. According to Mr. Nigel Logan, Acting Group Managing Director, PCJ, the Legal Consultants, Latham and Watkins, and the Technical Consultants, CH-IV International, were engaged prior to 2007 via competitive tenders. However, both entities were re-engaged via the Sole Source Procurement Methodology, specifically for the current FSRU Project.

The basis upon which both entities were selected was (a) familiarity with the project; (b) the fact that the previous contracts had not been executed and/or cancelled and the Consultants provided “...*limited services*”; (c) the entities were selected based upon a previous open tender and endorsed by the NCC; and (d) the experience of the firm in developing LNG projects.

4. It is instructive to note that ‘non-routine’ Legal Services were exempted from the then applicable GOJ Public Sector Procurement Procedures (2008 November). Sub-Section S-1000, Clause III, of the referenced procurement procedures, states, *inter alia*, that “*The following procurements are not subject to the procedures contained in this manual...Legal Services for non-routine assignments and litigation. This provision is applicable to all procuring entities except for Central Government entities which are*

*provided with legal services by the Attorney General's Department...<sup>178</sup>*

5. The recommendation for the award of the services contract for the Technical Consultants was first endorsed by the NCC on 2005 August 12. In this regard, the NCC by way of a letter, informed the then Permanent Secretary, Dr. Jean Dixon, of, *inter alia*, the following:

*“At its meeting held on 2005 August 10, the NCC reviewed the submission and offers no objection to the award of a contract to **CH-IV International** in the sum of...(US\$2,405,755.00)...to provide technical advisory services...”*

The OCG found that the then Minister of Commerce, Science and Technology, Mr. Phillip Paulwell, submitted Cabinet Submission 346/MCST 42/05, which was dated 2005 August 26, to the Cabinet for its consideration.

The referenced Cabinet Submission indicated, *inter alia*, the following:

*“In 2004 the Government of Jamaica and the Government of the Republic of Trinidad and Tobago signed a Memorandum of Understanding in which the Government of Trinidad and Tobago agreed to supply annually 1.15 million tonnes of liquid natural gas (LNG) to Jamaica over a twenty year period commencing in 2008. The Petroleum Corporation of Jamaica (PCJ) and the National Gas Company (NGC) of Trinidad and Tobago, acting as joint venture partners, were identified as the respective state agencies to collaborate in the development and ownership of a LNG import Terminal, Regasification and Gas Distribution Project*

*By way of Decision 25/05 dated August 8, 2005 Cabinet gave approval for an Interim Governance Arrangement for the LNG Project. This included Jamaica's interest in the Jamaica LNG Project being held by the Petroleum Corporation of*

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<sup>178</sup> GOJ Public Sector Procurement Procedures (2008 November). Sub-Section S-1000, Clause III. No.4

*Jamaica.*

*A Technical Advisor would be required to assist by giving advice to the NGC and the PCJ to inter alia:*

1. *further conceptualise and define the necessary studies including regulatory approvals*
2. *give advice to financial advisors*
3. *monitor and supervise the Front End Engineering Design (FEED) Consultants and EPC Contractor*
4. *provide technical supervision of the FEED, EPC and Commissioning phases of the project and acceptance of an [sic] LNG receiving terminal, storage facilities, regasification plant and distribution system.*” (OCG’s Emphasis)

By way of Cabinet Decision No. 27/05, which was dated 2005 September 12, the following, *inter alia*, was stated:

*“After consideration...the Cabinet approved the award of the contract to CH-IV International in the sum of US\$2,405,755.00.”*

Based upon the foregoing, the OCG found that the requisite approvals were received from the NCC and the Cabinet in 2005 for the award of a contract to CH-IV International for the provision of Technical Services in accordance with the GOJ Public Sector Procurement Procedures (2001 May).

Notwithstanding the foregoing approval for the 2005 contract with CH-IV International, the OCG has not been provided with any evidence to suggest that approval was sought from the NCC and the Cabinet for the re-engagement of the Technical Advisors in 2010 April. In point of fact, upon a review of the Minutes of the Meeting of the PCJ Board of Directors, the OCG found that concerns were expressed in regard to the re-engagement of

CH-IV International, as follows:

The Minutes of the Meeting of the PCJ Board of Directors, which was held on 2009 December 22, stated, *inter alia*, the following concerns:

*“Director Gordon queried whether PCJ was using the existing Contract as the vehicle to start back with CH-IV suggested that was not [sic] way to proceed in his opinion. He also said that even if the existing Contract is used, the scope will be different. Director Watson explained that the present Contract is the only one with CH-IV and that it was acted on until 2008 and was now a dormant Contract...*

*Director Watson pointed out that there is a clause in the Contract which states that the TA would not start the different phases until it was advised to do so by the Client...Director Watson stated that to the extent that some of what the TA would have to do i.e. based on the scope of work, to the extent that another party could be used to do anything under that scope, the TA could say that PCJ is in breach unless the Contract was terminated. He stated that the TA would have to present a revision of the scope of work in keeping with the new direction and that is not a difficulty because the Contract allows for amendment but NCC is more concerned with the contracting process and the price. PCJ is at liberty under any Contract to amend any provision and to revise the scope and that is not the NCC’s jurisdiction...Director Watson stated that he did not see a closing period in the Contract...*

*Director Lazarus stated that he read the Contract he concluded that from 2005-2008 the TA had offered the service or gave service. At which point Director Watson clarified that the TA performed activities up until January 2008 but the Contract itself does not set out any duration it just has the project in three phases and the Client will determine when the TA will start a phase...*

**The Corporate Secretary stated that in relation to the engagement of CH-IV, in any event there has to be an amendment of the Contract in terms of the pricing for the work to be undertaken, the scope and the deliverables which is in effect a variation of the Contract terms.**

*In response to Director Gordon's question if another Contract could be entered into with another party, he was advised that NCC's approval would then be required and also retendering and that process could not be completed before the 5<sup>th</sup> January, 2010 the date for submission of bids. It was also pointed out, that this is a subsisting Contract which NCC approved...*

**Mr. Wedderburn pointed out in that when the Contract was originally executed it was expected that phase II would have continued immediately after what was called Phase I and a lot of the analysis and data to support Phase II would have come from Phase I work which was the feed study. He stated that they do not have that equivalent for the FSRU because no feed study was done for the FSRU so there is no equivalent data to feed into the current work...**

*Director Watson stated that he does not believe that the discussion contemplates a second bid but rather clarification so permission from the NCC is not an issue..."*  
(OCG's Emphasis)

The OCG found that the PCJ took the decision to re-engage CH-IV International, by using its previous contract to prevent the process of re-tendering. In this regard, the Board of Directors indicated that if the contract was re-tendered then the process would not have been completed before 2010 January 5. Of note, is the fact that this was the original deadline for submission of the bids for the 'FSRU LNG Project'.

Further, and based upon the information which was provided by Mr. Nigel Logan, Acting Group Managing Director, PCJ, in his response to the OCG's Statutory Requisition, which was dated 2010 November 9, CH-IV International was paid a total of

\$16,091,777.01 (US\$184,898.89) between the period 2006 February 28 to 2008 February 29.

It is also instructive to note that the NCC and the Cabinet approved, in 2005, a contract sum of US\$2,405,755.00, for the Technical Consultants.

The OCG found, based upon the foregoing, that the difference between the contract sum and the amount which was paid for the period of 2006 February to 2008 February is US\$2,220,856.11.

It is instructive to note that the Permanent Secretary in the MEM and the Acting Group Managing Director of the PCJ, have both alleged, in their sworn statements to the OCG, which were dated 2010 November 9 and 2010 November 12, respectively, that the re-engagement of the Technical Consultants, CH-IV International, was endorsed by the NCC and approved by the Cabinet.

Further, the OCG found that a contract was not signed, by the PCJ, until 2010 April 8, after services were performed by the Technical Consultant for the 'FSRU LNG Project'. In this regard, it should be noted that CH-IV International had already begun to evaluate the bids which were received on 2010 February 15.

It is instructive to note that Mr. Authur Ransome, Vice President and General Manager, CH-IV International, sent an email to Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, which was dated 2010 April 5, in which he confirmed that the PCJ had increased the scope of the services, which were to be provided by CH-IV International, under the referenced contract which was signed on 2010 April 8.

The referenced email stated, *inter alia*, the following:

*"Since the GOJ is moving forward with its decision re the FSRU project I think it is important to mention a couple of things related to bidder review work that we*

have performed under the proposed contract and also bidder review work that we have been asked to perform that is not presently included in the proposed contract and which you had suggested (and which we subsequently to agreed [sic] almost two weeks ago) that we negotiate once the contract has been signed.

Firstly, I must remind you that **the Review of Proposals report...that we issued on March 12, 2010 is a draft report.** Until a final report has been issued CH-IV advises that this report should not be used in any part for any decision by the Evaluation Team or the PCJ Procurement Commission in its selection of a Preferred Bidder.

Secondly, with respect to the additional bidder review work that has been requested, mainly by the Evaluation Team, you may also be aware that the CH-IV team has been asked to (i) rank each bidder, (ii) document its recommendation and basis for a preferred bidder – our letter to Dr. Darmand...dated March 29, 2010, and (iii) provide clarification on our March 29, 2010 letter which respect to the commercial arrangement of the Exmar Consortium – our letter to Dr. Darmand...dated April 2, 2010 and which Dr. Darmand has recently requested additional clarification. **Since neither of the original work nor any of the additional work (including that described here) has been contracted for CH-IV advises that these particular letters should not be used in any part for any decision by the Evaluation Team or the PCJ Procurement Commission in its selection of a Preferred Bidder until such time that all work that CH-IV has been asked to perform is detailed within a contract for services, which includes the cost for such services.**

**Therefore we strongly advise that the contract that we have been negotiating for the original scope of work be signed immediately and that in the course of the next few days the additional scope of work requested by the Evaluation Team (including that described above) related to the bid review and the associated costs be fully negotiated in a revision to the contract.**

*In addition to the above, and as previously discussed on many occasions, there are several other requests for services that are in addition to those detailed in the Description of Services of the contract (currently being negotiated) that although unrelated to the bid evaluation also need to be described, with appropriate costs in a revision to the contract. To prevent any delay in the provision of these services and any delay in the process I would highly recommend that these additional scopes of work also be negotiated on an expeditious basis such that a fully executed revision can be in place within the next week.* <sup>179</sup> (OCG's Emphasis)

It is instructive to note the following Clauses, which were outlined in the General Conditions of the referenced Contract, which were of significant interest:

***“...Effectiveness of Contract***

*This contract shall come into effect on a date following execution of the Contract by both Parties and approval of the Contract by the relevant authorities within the Government of Jamaica and/or by the Client, which date shall be named by the Client in a written notice to the Advisors.”*

***...Commencement of Services***

*It is acknowledged that the Advisors has begun to carry out the Services prior to the Effective Date.*

***...Work Performed Prior to the Effective Date***

*It is acknowledged that the Advisors has performed some of the Services and the Client will make payments for such Services*

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<sup>179</sup> Email dated 2010 April 5 from Mr. Authur Ransome, Vice President and General Manager, CH-IV International, to Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ.

*provided prior to the Effective Date. The Parties agree that Services performed by the Advisors prior to the Effective Date form part of the Services to be rendered under this Contract, and that payments made by the Client prior to the Effective Date form part of the Contract Price under this Contract...”*

The OCG conducted a comprehensive review of the Minutes of the Meetings of the NCC, between the period of 2009 November and 2010 May, and has found no evidence to suggest and/or to confirm that the NCC endorsed the re-engagement of the Technical Consultants, CH-IV International.

By way of a Follow-Up Requisition, which was dated 2011 January 21, the OCG requisitioned Mr. Nigel Logan, Acting Group Managing Director, PCJ, in an effort to clarify (a) the process which was used to re-engage CH-IV International and (b) the increased scope of works which was being performed by the said Consultants, prior to the signing of a contract.

The OCG, in its referenced Statutory Requisition, posed the following questions:

*“In your response to Question No. 33, you indicated, inter alia, that “CH-IV was contracted during the tender period for the LNG FSRU... The firm was engaged on January, 2010... The sole procurement methodology was utilized in contracting CH-IV.” In this regard, please provide a copy of the approval(s) which was/were received for the extension and/or re-engagement of CH-IV International via the Sole Source Procurement Methodology.*

*In your response to Question No. 33, you provided a copy of a Contract which was signed between the PCJ and CH-IV International which was dated April 8,*

*2010. In the said Contract, the OCG has identified that a Review Matrix was appended to same, which increased the scope of works from the initial contract which was signed between the PCJ and CH-IV International in 2005. In this regard, please provide a copy of the approval(s) which was/were received, for the referenced variation to the initial contract of 2005.”<sup>180</sup>*

Mr. Nigel Logan, in his response to the referenced OCG Requisition, which was dated 2011 February 15, stated the following:

*“A further review of the files at the PCJ has revealed the following:*

- a. The services of CH IV were not procured using the sole procurement methodology. The firm was engaged on the basis that the NCC and Cabinet had in 2005 approved a contract for CH IV in the sum of US\$2,405,755.00. Please see attached letter dated October 4, 2005 from the Permanent Secretary advising of the Cabinet Decision...*
- b. The first contract dated 2005 was between PCJ, NGCTT and CH IV and was for US\$2,405,755.00 of which US\$286,513.34 was paid.*
- c. The second contract dated April 2010 was between PCJ and CH IV and is for US\$387,000 of which US\$425,923.02 has been paid. Please see breakdown of all payments to date to CH IV under the second contract ...*

*...No approvals were sought from either the NCC or Cabinet regarding the second contract with CH IV. It appears that the second contract was on the basis of the earlier Cabinet Decision of 2005. In light of this, there are no copies of approvals that could be provided.”<sup>181</sup>*

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<sup>180</sup> OCG’s Statutory Requisition to Mr. Nigel Logan, Acting Group Managing Director, PCJ, which was dated 2011 January 21. Questions #2 & 3

<sup>181</sup> Response from Mr. Nigel Logan to the OCG’s Statutory Requisition, which was dated 2011 February 15. Responses # 2 & 3

6. Based upon the foregoing, the OCG found that the re-engagement of the Technical Consultants, CH-IV International, was irregular. The OCG's Finding is also premised upon the following:

A. The 2005 contract between CH-IV International, the PCJ and the National Gas Company (NGC) of Trinidad and Tobago, was in regard to an Interim Governance Arrangement for the LNG Project.

B. CH-IV International was re-engaged in 2010 April based upon the pre-existing approvals which were obtained for the 2005 contract. The PCJ's justification for same, was that the scope of the initial contract included provisions for CH-IV International to provide technical supervision of the FEED, EPC and Commissioning phases of the project and acceptance of a LNG receiving terminal, storage facilities, re-gasification plant and distribution system.

C. The Consultants were said to have been re-engaged in 2010 January and have been operating within the terms and conditions of the contract which was signed between the PCJ and CH-IV International since 2005 and that they were not paid the full amount which was approved by the Cabinet in 2005.

However, it is instructive to note that the NGC was no longer a party to the contract and the scope of works that was required of CH-IV International was modified for the 2010 contract.

D. The OCG found that a new contract was signed between CH-IV International and the PCJ on 2010 April 8. Attached to the contract was a Review Matrix which increased the scope of works of the Consultant.

E. The OCG found that the PCJ did not issue an Addendum to the contract and/or seek the approval of the NCC and/or the Cabinet for the variation to the contract, especially in light of the fact that the parties to the contract had been altered.

F. Further, according to Mr. Nigel Logan, as at 2011 February 15, the PCJ paid CH-IV International, a total of US\$425,923.02, pursuant to the contract which was awarded on 2010 April 8. However, based upon the thresholds as outlined under Sub-Section S-2040, Clause VII and VIII of the GOJ Public Sector Procurement Procedures (2008 November), such a variation to the contract of 2005 would have required the approval of the NCC and the Cabinet.

In this regard, the PCJ would have been in contravention of the referenced Sub-Section of the GOJ Procurement Guidelines.

### ***Role of Merrill Lynch in the LNG Project***

The OCG, in its Statutory Requisition to Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, which was dated 2010 September 15, posed the following question:

*“Please indicate whether you are/were aware of any affiliation and/or involvement of the company ‘Merrill Lynch’ in the entire LNG Project and/or the proposed Financing, Development, Ownership and Operation of a FSRU LNG Re-gasification Terminal and Natural Gas Transmission System. If yes, please provide an Executive Summary detailing the role which the referenced company had in the entire LNG Project and/or the proposed Financing, Development, Ownership and Operation of an FSRU LNG Re-gasification Terminal and Natural Gas Transmission System. In addition, please provide responses to the following:*

- a) When was the referenced company contracted by the PCJ and/or the MEM for the referenced projects?*
- b) In what capacity was the referenced company contracted by the PCJ and/or the MEM for the referenced projects?*

- c) *Please provide a description of the goods, works and/or service which the referenced company was contracted to provide and/or undertake;*
- d) *Please provide the name(s) and title(s) of the representative(s) from the referenced company with whom the PCJ and/or MEM liaised with for the referenced projects;*
- e) *Please indicate, as the LNG Project Coordinator, whether you had an official and/or personal relationship with any of the named representative(s) from the referenced company. If yes, please detail in what capacity and at what stage of the referenced projects;*
- f) *Please indicate whether the contracting of the referenced company, was competitively tendered in accordance with the applicable GOJ Procurement Procedures. If yes, please provide a copy of the following documentation: (a) the RFP; (b) Addenda; (c) the Tender Reveal/Opening Form; (c) the Evaluation Report; and (d) the signed Contract; and*
- g) *Please provide a breakdown of the payments to-date, if any, to the referenced company for services rendered. In addition, please provide a copy of all the respective payment vouchers, invoices and/or any other payment record, for the referenced projects.”<sup>182</sup>*

Mr. Stephen Wedderburn, in his response to the OCG’s Statutory Requisition, which was dated 2010 November 15, stated the following:

***“In 2007, at a time when the LNG Project in Jamaica was in a state of limbo, Merrill Lynch proposed to the GOJ that they were willing to be a joint venture partner in developing the project. Merrill Lynch undertook a number of project analyses in its efforts to convince the GOJ that such a joint venture would be workable. The Merrill***

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<sup>182</sup> OCG’s Requisition to Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, which was dated 2010 September 15. Question #32

Lynch proposal was not accepted nor pursued by the Ministry of Energy. I had widely disclosed at the time, including to the Prime Minister, that Andrew Gray, Chief Operating Officer – Latin America & the Caribbean, Merrill Lynch had been a personal friend of mine since high school days and had been the best man at my wedding. Since it may be a matter of interest I note that Conrad Kerr, who is now one of the principals of CLNG, was at the time Global Head of LNG at Merrill Lynch and I interacted with him in that capacity. The sub-questions below are based on an assumption that Merrill Lynch had been contracted by the PCJ and/or the MEM, but Merrill Lynch did not enter into any contract with the GOJ in respect of the LNG Project. The sub-questions are therefore not applicable.<sup>183</sup> (OCG’s Emphasis)

Mr. Nigel Logan, Acting Group Managing Director, PCJ, in his response to the OCG Statutory Requisition, which was dated 2010 November 9, stated, *inter alia*, the following:

“I understand that Merrill Lynch was involved in the LNG project but was not involved in the proposed Financing, Development, Ownership and Operation of an FSRU LNG Regasification Terminal and Natural Gas Transmission System which was tendered in November 2009...

*Merrill Lynch was not contracted by PCJ to provide any services and they were no [sic] contracted in relation to the LNG Project. The company approached the PCJ in order to develop the entire LNG Project on behalf of the PCJ/ Government of Jamaica.*

*The names and titles of the representatives of Merril [sic] Lynch were as follows:*

- i) Conrad Kerr – Managing Director, Merril [sic] Lynch Commodities*
- ii) George Nemeth – Director, Merreil [sic] Lynch Commodities*
- iii) Keith Barnett – Director Strategic Analysis*
- iv) Noam Berk – Director Latin America and Caribbean*
- v) Adrian Gregorek - Vice President Strategic Analysis, North America*

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<sup>183</sup> Response from Mr. Stephen Wedderburn, LNG Project Coordinator, which was dated 2010 November 15. Response #32

*As the Acting Group Managing Director I have had no contact with Merrill Lynch.*

*From the records that are available, Merrill Lynch was not contracted by PCJ to provide services in relation to the LNG Project.*

*No payments were made to Merrill Lynch for any services and certainly no payments were made in relation to the LNG Project.”<sup>184</sup>*

Based upon the foregoing, the OCG found that Mr. Conrad Kerr, CEO of CLNG, previously worked with Merrill Lynch as the Global Head of LNG and was part of a team which courted the GOJ with respect to the LNG Project to Jamaica.

It is instructive to note that Mr. Ian Moore, in his response to the OCG’s Statutory Requisition, which was dated 2010 December 3, stated, *inter alia*, the following:

**“In June 2009 the EDC LNG, Merrill Lynch, Exmar and Promigas met with Minister James Robertson and Permanent Secretary Marcia Forbes. The purpose of the meeting was to advise the participants of EDC LNG’s intent to conduct the pre-feasibility studies to determine the economic and technical viability of developing a private project to import LNG and supply Natural Gas for use by private bauxite sector entities. Neither Minister nor PS had any objections to the groups stated intent.**

**In July 2009, while still undertaking feasibility assessments, the group of companies – EDC LNG, Promigas S.A. and the Exmar Marine N.V. – presented to the MEM, on the MEM’s premises, the approach that would be taken by the group to demonstrate the feasibility of providing LNG to the bauxite sector...**

**Upon completion of the pre-feasibility study in October 2009, I met with Prime Minister Golding, Minister Daryl Vaz and Mr. Paul East...**<sup>185</sup> (OCG’s Emphasis)

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<sup>184</sup> Response from Mr. Nigel Logan, Acting Group Managing Director, PCJ, which was dated 2010 November 9. Response #35.

<sup>185</sup> Response from Mr. Ian Moore, Director, CLNG, which was dated 2010 December 3. Response #13 (a)

Mr. Ian Moore, also stated that he became a beneficial partner in EDC LNG on 2009 June 19 and that “...As a beneficial partner in EDC LNG (now known as CLNG), I automatically became a beneficial partner in CLNG consequent on the change on name of the company from EDC LNG to CLNG on December 8, 2009.”<sup>186</sup>

Mr. Ian Moore, in his response to the OCG’s Statutory Requisition, further provided the OCG with a document which was entitled, “**Major points from the September meeting with the PM**” which was dated 2009 September. The referenced document stated, *inter alia*, the following:

“...EDC LNG, requested a meeting with the HPM where I updated him on meetings with Alpart, Jamalco, JEP, and JPPC, and informed him of their responses to us as well as their concerns...

**After briefly perusing our feasibility study document and hearing of our progress the HPM also said what we had achieved was impressive but, he immediately stated that the government could not support this initiative and that the government would have to put this out for tender.**

*I asked why a bid would be required as:*

- a) Our clients are private sector and*
- b) We needed no government funding.*

*HPM explained that electricity would eventually be derived from this LNG source, and the rate payers are his constituents. So, although the government was not buying anything specifically, nor was the government putting up any money, the constituents would have to be protected. Initially we disagreed with HPM and said this is a private sector initiative that would see electricity pricing going down by more than 30% **HPM then countered by saying what if another company said they could lower the cost by 40% that could cause a problem so he said he saw no way but to go to bid.***

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<sup>186</sup> Response from Mr. Ian Moore, Director, CLNG, which was dated 2010 December 3. Response #10 (a)

*In making an observation of the situation, **the HPM used the words to the effect of “you are half way down the track all you need is a race”...***

*After reiterating the bauxite companies’ concerns about going past December without a decision, **HPM said a bid would be put out that would have the minimum allowable time by the laws of Jamaica.***” (OCG’s Emphasis)

Based upon the foregoing, the OCG found that the Prime Minister, the Hon. Bruce Golding, explained to the representatives of CLNG, that the project would have to be put out to tender.

However, it is instructive to note that the above referenced document indicated that the Prime Minister, the Hon. Bruce Golding, stated that the minimum allowable time by the laws of Jamaica would have been set for the tender period.

The OCG, in its Statutory Requisition to Mr. Conrad Kerr, CEO, CLNG, which was dated 2011 January 17, posed the following questions:

*“Please indicate whether you are/were aware of the company ‘Merrill Lynch’ and whether you were employed to the said company. If yes, please provide responses to the following:*

- a) Please provide an Executive Summary of the role(s) and responsibility(ies) which were assigned to you during your tenure at the referenced company;*
- b) The date on which you were employed to the referenced company;*
- c) Please indicate what was/were Merrill Lynch’s interest(s) in the LNG Project and/or any component of same, and in particular the proposed Financing, Development, Ownership, Operation of a FSRU LNG Re-gasification Terminal and Natural Gas Transmission System in Jamaica, during your tenure. Please provide documentary evidence, if possible, to support your response;*

- d) *Please provide a detailed breakdown of the activities which were undertaken by you and/or any other representative(s), for and on behalf of the PCJ and/or the MEM, who was/were employed to the company Merrill Lynch, who played an integral role and/or was/were given responsibility(ies) for the LNG Project and/or any component of same, and in particular the proposed Financing, Development, Ownership, Operation of a FSRU LNG Re-gasification Terminal and Natural Gas Transmission System in Jamaica, during your tenure;*
- e) *What was the extent of your personal and/or official involvement and/or affiliation, if any, in the planning, conceptualization and/or implementation of the LNG Project and/or any component of same, and in particular the proposed Financing, Development, Ownership, Operation of a FSRU LNG Re-gasification Terminal and Natural Gas Transmission System in Jamaica, during your tenure at Merrill Lynch?*
- f) *Please provide a comprehensive listing of the name(s) and title(s) of the Public Official(s)/Officer(s) at the MEM and/or the PCJ, with whom you liaised, during your tenure at Merrill Lynch, in regard to the LNG Project and/or any component of same, and in particular the proposed Financing, Development, Ownership, Operation of a FSRU LNG Re-gasification Terminal and Natural Gas Transmission System in Jamaica.*
- g) *Please indicate, to the best of your knowledge, whether the services of the referenced company was contracted by the PCJ and/or the MEM;*
- h) *Please indicate what was the status of the LNG Project in Jamaica and/or your proposal to the MEM and/or the PCJ, at the end of your tenure;*
- i) *Please provide an Executive Summary detailing the circumstances under which and/or the capacity in which the referenced company was affiliated with and/or involved in the referenced projects;*

- j) Please indicate, to the best of your knowledge, the date(s) on which the referenced company became affiliated with the PCJ and/or the MEM in regard to the referenced projects;
- k) Please provide the name(s) and title(s) of the representative(s) from Merrill Lynch who was assigned to the PCJ and/or MEM for liaison purposes, in regard to the referenced projects;
- l) Please indicate whether you had/have had a personal and/or commercial relationship with any of the Officials/Officers of the PCJ, the MEM and/or any other Entity, during your tenure at Merrill Lynch. If yes, please detail: (a) the name(s) and title(s) of the person(s) with whom you had such a relationship; (b) the nature of the relationship; (c) the length of the relationship; (d) the circumstances in which such a relationship had developed; and (e) whether the relationship is/was affiliated and/or influenced by the referenced projects;
- m) Please state whether you believe that your prior association with the company Merrill Lynch, may have influenced the recommendation of the PCJ's Evaluation Committee to award a contract to Exmar Marine NV Consortium for the proposed Financing, Development, Ownership, Operation of a FSRU LNG Re-gasification Terminal and Natural Gas Transmission System. Please provide a rationale for your response; and
- n) Please provide a copy [sic] any proposals and/or final report(s), if any, which was/were prepared by Merrill Lynch to the MEM and/or the PCJ in regard to the LNG Project and/or any component thereof."<sup>187</sup>

Mr. Conrad Kerr, in his response to the OCG's Statutory Requisition, which was dated 2011 January 30, stated, *inter alia*, that "**I was employed to Merrill Lynch as a Managing Director from 2007-2009.** The Merrill Lynch banking group asked me to consult with them on the potential of financing an [sic] LNG project in Jamaica and we made several diligence trips to

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<sup>187</sup> OCG's Statutory Requisition to Mr. Conrad Kerr, CEO, CLNG, which was dated 2011 January 17. Question # 5

Kingston. *We had high-level public, official discussions over a short period of time with various Govt. officials to determine if the project was feasible.* It was determined that it was not and Merrill ceased to investigate to [sic] potential of an LNG project. Therefore *Merrill was not involved in any FSRU project...*<sup>188</sup> (OCG's Emphasis)

Based upon the assertion of Mr. Conrad Kerr, the OCG has found that Merrill Lynch was not involved in the 'FSRU LNG Project'. However, based upon the assertions of Mr. Ian Moore, the OCG found that representatives of Merrill Lynch, along with EDC LNG (now CLNG), Exmar and Promigas, met with Minister James Robertson and the then Permanent Secretary, Ms. Marcia Forbes, to inform them of the intent of the aforementioned companies to conduct a pre-feasibility study to determine the economic and technical viability of developing a private project to import LNG and supply natural gas for use by the bauxite sector. Of note, is the fact that the referenced pre-feasibility study was completed approximately one (1) month prior to the commencement of the tender period for the 'FSRU LNG Project'.

The OCG also found a letter, which was signed by Mr. Conrad Kerr as CEO of EDC LNG, which was dated 2009 July 24, that was addressed to the former Group Managing Director of the PCJ, Dr. Ruth Potopsingh, regarding a "***Draft Heads of Agreement for the EDC LNG PPP***". The referenced letter stated, *inter alia*, the following:

*"We are please to enclose the draft Heads of Agreement ("HOA") that EDC LNG wishes to have executed to move the project forward. We view this landmark project as furthering the commercial opportunity that is keeping with the Government's national energy policy in diversifying the energy and fuel supply in Jamaica. **Our Consortium now formally includes world class engineering, regasification terminal and pipeline entities in Bechtel, Exmar and Promigas.***

*The overall investment is currently estimated to be in excess of One billion United States dollars (USD\$1,000,000,000.00). **It is important to note that this investment does not require any Government financial support such as Government guarantees.** It is*

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<sup>188</sup> Response from Mr. Conrad Kerr, CEO, CLNG, which was dated 2011 January 30. Response #5.

*critical to have the Government's support as we prepare to negotiate with LNG suppliers, Jamaican Industrial end-users, and Investment partners. **They are very encouraged by the fact that the Government would use the PPP as a framework to facilitate this type and scale of investment...***” (OCG's Emphasis)

The OCG, in its Statutory Requisition to Dr. Ruth Potopsingh, former Group Managing Director, PCJ, which was dated 2010 November 3, posed the following question:

*“Please indicate whether you are/were aware of any affiliation and/or involvement of the company ‘EDC LNG’ in the entire LNG Project and/or the proposed Financing, Development, Ownership and Operation of a FSRU LNG Re-gasification Terminal and Natural Gas Transmission System. If yes, please provide an Executive Summary detailing the role which the referenced company had in the LNG Project and/or the proposed Financing, Development, Ownership and Operation of a FSRU LNG Re-gasification Terminal and Natural Gas Transmission System. In addition, please provide responses to the following:*

- a) At what stage of the referenced project(s) did the company EDC LNG become involved and/or affiliated with the referenced project;*
- b) Please provide the date(s) on which the company EDC LNG became involved in and/or affiliated with the referenced projects;*
- c) Did you, as the former Group Managing Director, have a personal and/or official relationship with any of the representatives from the referenced company? If yes, please detail the circumstances of the relationship and provide a copy of all correspondence between yourself and the referenced company in regard to the referenced projects;*
- d) Please indicate whether there was/were any discussion(s), meeting(s) and/or any other form of assembly between you, the MEM and/or the PCJ and the referenced company. If yes, please indicate the basis upon which such discussion(s), meeting(s)*

*and/or any other form of an assembly was/were undertaken and provide detailed particulars of the decision(s), if any, which were taken as a result of same; and*

*e) Please indicate whether there was/were any contract(s)/agreement(s) and/or Memorandum/Memoranda of Understanding which was/were drafted and/or signed between you, the PCJ and/or the MEM and the referenced company.”<sup>189</sup>*

Dr. Ruth Potopsingh, in her response to the OCG’s Statutory Requisition, stated, *inter alia*, the following:

*“I am aware of EDC LNG. I recall the Company was interested in undertaking an LNG Project at Port Esquivel. They were advised of GOJ’s competitive tender policy.*

*a)-b) I do not recall*

*c) I have no relationship with EDC LNG*

*d) I do not recall the details*

*e) I do not recall.”<sup>190</sup>*

It is instructive to note that Mr. Stephen Hanan, Merrill Lynch, sent an email, which was dated 2008 May 12, to Mr. Stephen Wedderburn in which he attached a document which was entitled “*Merrill Lynch’s Thoughts on Jamaica LNG*”. Of note, Mr. Wedderburn forwarded the referenced email to Mr. Ian Moore, the then PCJ Chairman of the Board of Directors, Dr. Ruth Potopsingh and Dr. Carlton Davis on 2008 May 13.

The referenced document stated the following:

*“General market observations over the past six months;*

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<sup>189</sup> OCG Statutory Requisition to Dr. Ruth Potopsingh, former Group Managing Director, PCJ, which was dated 2010 November 3. Question #35

<sup>190</sup> Response from Dr. Ruth Potopsingh, former Group Managing Director, PCJ, which was dated 2010 December 20. Reponse #35

1. *The global LNG supply and demand balance has become much more of a seller's market with emerging markets pulling incremental supplies,*
2. *LNG prices have risen dramatically as traditional markets in Asia have been offering record prices to attract incremental cargos, and*
3. *In response to the tight supply environment, LNG suppliers have become even more intent of preserving diversion flexibility.*

*Merrill Lynch's opinion on Jamaica LNG going forward;*

1. *The ever tightening global supply situation reinforces Merrill's assertion that before Jamaica approaches potential suppliers it needs to have a well defined project including end-user commitments, terminal solution, credit and financing structure,*
2. *It is still unclear what price Jamaica would have to pay for long-term LNG supply without engaging potential suppliers in serious negotiations. However, given the current market dynamics and the fact that Jamaica would require baseload supply (i.e. the LNG supplier would have to forfeit diversion rights associated with this supply stream), Merrill believes it will be more difficult to attract LNG prices based upon U.S. parity less transportation savings.*
3. *Jamaica needs a sole entity that is endorsed by all the Jamaican stakeholders that can coordinate all the aspects of the proposed LNG project, and*
4. *Carving out certain aspects of the project from this sole entity would be inefficient and confusing to the rest of the LNG industry.*
5. *There are a lot of stakeholders that need to be involved in the process of converting Jamaica's primary energy source to LNG and it is unrealistic to think this will happen quickly.*

*Merrill is still very interested in serving as Jamaica's turn-key LNG provider but would require the following before investing additional resources in the opportunity;*

1. *Government commitment to converting the country's primary energy source to natural gas,*
2. *Government endorsement of Merrill Lynch's roles through the execution of the front-end MOU,*
3. *End-user commitment to LNG through execution of the end-user MOU's,*
4. *Inclusion of Merrill Lynch in all supply stream negotiations including Trinidad and Venezuela,*
5. *Inclusion in the project of technical provider(s) that can provide expertise in areas such as generation conversion, terminal construction/operations, etc.,*
6. *Adoption of a prudent project timeline that takes into account industry proven practices and recognized approaches, and*
7. *Merrill Lynch is willing to continue to assist in developing the proposed project but is limited in the amount of third party costs it is willing to incur prior to the above items being met...<sup>191</sup>*

The OCG also identified an email, which was dated 2008 January 23, from Mr. Conrad Kerr to Mr. Stephen Wedderburn, which stated, *inter alia*, the following:

*"I am aware of the Exmar discussion and I wanted to make sure we are clear on the positions of ML and PCJ on the subject...**Our understanding on the call with you and Ian after the Ministry's offsite was that the PM supported LNG and the ML sole source solution. Also, we heard that you [sic] Ian were keen to have Exmar included as regas option for the project to consider instead of just on [sic] onshore solution...***

*It is our position that the best way to ensure the project has the ability to move forward quickly is to stay with as much standard and proven design...*

***As we have mentioned in the past one of the benefits to sole sourcing the project together is that we can control the contracting risk and place it in the appropriate places...With the above said I want to emphasize that we are happy to work with***

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<sup>191</sup> Attachment to an email from Mr. Stephen Hanan, Merrill Lynch, to Mr. Stephen Wedderburn, which was dated 2008 May 12.

**Exmar as an option and give them every chance to be the ML/PCJ choice of regas solution.** However, we find it [sic] difficult to not have offshore regas as an option also.

If you recall **about 6 months ago we proposed to enter into a technical feasibility phase that would provide us a clear answer to the best solution for this project.**

**We suggest that this is still needed if we are going to properly evaluate the several Exmar Solutions vs Industry standard onshore regas. As we suggested before this study could be done in parallel to the negotiation of the definitive agreement between ML and PCJ**” (OCG’s Emphasis)

Based upon the foregoing and several other email correspondence, the OCG found that representatives from Merrill Lynch, albeit that their proposal had been rejected by the MEM, had multiple discussions and/or meetings with the Exmar Marine NV of which Mr. Stephen Wedderburn and Mr. Ian Moore were fully informed.

It is instructive to note that the OCG, in its requisition to Mr. Ian Moore, which was dated 2010 October 4, posed, *inter alia*, the following question:

*“Please indicate whether you are/were aware of the company ‘Merrill Lynch’ and its involvement and/or affiliation in the LNG Project and/or the proposed Financing, Development, Ownership and Operation of a FSRU LNG Re-gasification Terminal and Natural Gas Transmission System in Jamaica. If yes, please provide responses to the following:*

- a) Please indicate, to the best of your knowledge, whether the services of the referenced company was contracted by the PCJ and/or the MEM;*
- b) Please indicate, to the best of your knowledge, at what stage was the referenced company affiliated with and/or involved in the referenced projects;*

- c) *Please provide an Executive Summary detailing the circumstances under which and/or the capacity in which the referenced company was affiliated with and/or involved in the referenced projects;*
- d) *Please indicate whether the service(s), which was/were provided by the referenced company, was/were competitively tendered in accordance with the applicable GOJ Procurement Procedures;*
- e) *Please indicate, to the best of your knowledge, the date(s) on which the referenced company was affiliated with and/or involved in the PCJ and/or the MEM for the referenced projects;*
- f) *Please provide the name(s) and title(s) of the representative(s) from the referenced company with whom the PCJ and/or MEM liaised with, in regard to the referenced projects;*
- g) *Please indicate, as the former Chairman of the PCJ Board of Directors, whether you had an official relationship with any representative(s) from the referenced company. If yes, please detail: (a) in what capacity did such a relationship exist; (b) the name(s) and title(s) of the person(s) who you had such a relationship; and (c) the length of the relationship; and*
- h) *Please indicate whether you had/have a personal and/or commercial relationship with any of the representatives and/or former representatives of the referenced company. If yes, please detail: (a) the name(s) and title(s) of the person(s) with whom you had such a relationship; (b) the nature of the relationship; (c) the length of the relationship; (d) the circumstances in which such a relationship had developed; and (e) whether the relationship is/was affiliated and/or influenced by the referenced projects.”*<sup>192</sup>

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<sup>192</sup> OCG's Requisition to Mr. Ian Moore, Director, CLNG, which was dated 2010 October 4. Question #29

Mr. Ian Moore, in his response to the OCG's Statutory Requisition, which was dated 2010 December 3, stated the following:

*"Yes, I am aware of the company Merrill Lynch. During my tenure on the PCJ Board of Directors, Merrill Lynch made an unsolicited overture to the PCJ in respect of establishing an [sic] LNG facility in Jamaica, which was rejected by the MEM. I am not aware of any affiliation and/or involvement which may have developed subsequent to my departure from the PCJ.*

- a) *Merrill Lynch was not contracted by the PCJ and/or the MEM during my tenure at the PCJ.*
- b) *I am not aware of whether Merrill Lynch is affiliated with and/or involved in the referenced projects.*
- c) *See response at (b) above.*
- d) *Merrill Lynch did not provide any services to the PCJ during my tenure on the PCJ Board of Directors. I am not aware of what may have transpired subsequent my departure from the PCJ.*
- e) *See response at (d) above.*
- f) *There was no approved and/or active LNG Project during my tenure on the PCJ Board of Directors. **The only interaction that I had with Merrill Lynch occurred around the middle of 2008 when the Company made an unsolicited overture to the PCJ in respect of establishing an LNG import facility in Jamaica, which was rejected by the MEM. Merrill Lynch was represented by Mr. Andrew Grey [sic]. I am not aware of whether the PCJ and/or MEM had any other interaction(s) with Merrill Lynch.***

g) No.

h) Yes. (a) Mr. Conrad Kerr, Chief Executive Officer, CLNG; (b) commercial (c) since July 2009; (d) **I approached Mr. Kerr in May 2009 and invited him to contribute his expertise to a private venture to study the viability of Developing a Refinery project and associated gas Park as well as the potential for a natural gas facility;** (e) No.” (OCG’s Emphasis)

The OCG, in its Statutory Requisition to Mr. Conrad Kerr, CEO, CLNG, which was dated 2011 January 17, posed, *inter alia*, the following questions:

*“Please indicate what is/was your relationship, if any, whether personal, official and/or business, with Mr. Ian Moore. In addition, please provide responses to the following questions:*

- a) *Please provide the date(s) on which you met Mr. Ian Moore;*
- b) *Please provide full particulars of the relationship between yourself and Mr. Ian Moore, inclusive of, inter alia: (a) the nature of the relationship; (b) the length of the relationship; (c) the circumstances under which you and Mr. Ian Moore became affiliated;*
- c) *Please provide the initial date on which you had discussions, if any, with Mr. Ian Moore in regard to the establishment of the company, CLNG and the partnership with Exmar Marine NV;*
- d) *Please indicate, to the best of your knowledge, the date Mr. Ian Moore became affiliated with and/or involved in the proposed Financing, Development, Ownership and Operation of a FSRU LNG Re-gasification Terminal and Natural Gas Transmission System; and*

e) *Please provide full particulars of Mr. Ian Moore's specialization and/or technical expertise in Liquefied Natural Gas and/or with the FSRU LNG Re-gasification Terminal and Natural Gas Transmission System.*<sup>193</sup>

Mr. Conrad Kerr, in his response to the OCG's Statutory Requisition, which was dated 2011 January 30, stated, *inter alia*, the following:

*"I originally met Mr. Moore during diligence activities when I was with Merrill. I became associated in business with him when I joined CLNG..."*<sup>194</sup>

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<sup>193</sup> OCG's Statutory Requisition to Mr. Conrad Kerr, CEO, CLNG, which was dated 2011 January 17. Question #17

<sup>194</sup> Response from Mr. Conrad Kerr, CEO, CLNG, which was dated 2011 January 30. Response #17

## **Financing of the LNG Project and the 'FSRU LNG Project'**

The Minutes of the Meeting of the PCJ Board of Directors, which was held on 2010 March 10, indicated, *inter alia*, the following:

*"...Director Warwar stated that at the last Board Meeting there was the need for clarity, in that the Finance Committee was advised that PCJ was applying for a grant from PetroCaribe for all the financing required for the LNG Project, therefore the need for PCJ to commit J\$50,000 [sic] per year for three years was not deemed necessary and as such the Finance Committee did not approve the J\$50,000,000.00...*

*The GMD stated that she had received a letter from the Permanent Secretary (PS) indicating that PetrCaribe [sic] Fund was mindful of considering a grant for the U.S.\$5.3M...*

*The motion was passed that the amount of J\$50M will be approved for this year from PCJ for the LNG Project however the remaining two years would not be approved until proper documentation is submitted to the Finance Committee."*

The OCG, in its Statutory Requisition to Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, which was dated 2010 September 15, requested responses to the following questions:

*"The PCJ's expenditure to-date for all the components and activities, if any, inclusive of any supporting payment vouchers and invoices in regard to the LNG Project...*

*Please provide a breakdown of the total cost of the entire LNG Project, from commencement to present, which is projected to be paid by the GOJ. In addition, please provide responses to the following:*

- a) Please indicate whether the MEM, the PCJ and/or any other Entity is/are responsible for the financing of the LNG Project and/or any component thereof,*

*and state the source from which such funds were received, donated, borrowed and/or granted;*

- b) Please provide a breakdown of the projected expenditure, if any, which will be paid by the GOJ for the proposed Financing, Development, Ownership and Operation of an FSRU LNG Re-gasification Terminal and Natural Gas Transmission System component of the LNG Project; and*
- c) Please indicate whether the LNG Project is contingent on any kind of funding from a third party institution. If yes, please detail which third party institution and on what basis, if any, may such funds be granted.”<sup>195</sup>*

Mr. Stephen Wedderburn, in his sworn response to the OCG’s Statutory Requisition, which was dated 2010 November 15, stated the following:

*“My recollection is that the total PCJ expenditure up to the suspension of the project in 2008 was in the region of \$200 million. Information provided by the PCJ Accounts Department shows that the spending on the project for this financial year up to September was \$31,822,360....*

*The LNG Project is being funded by contributions from PCJ, a grant from the PetroCaribe Development Fund and expected proceeds from a World Bank loan...*

*Please see below the LNG Project Implementation Budget developed in February 2010:*

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<sup>195</sup> OCG Requisition to Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, which was dated 2010 September 15. Question #6(g) & 26

<b>LNG PROJECT IMPLEMENTATION BUDGET</b>				
	<b>FY 2010 – 11</b>	<b>FY 2011 – 12</b>	<b>FY 2012 – 13</b>	<b>TOTAL</b>
	<b>(US\$)</b>	<b>(US\$)</b>	<b>(US\$)</b>	<b>(US\$)</b>
Project Coordination	437,000	387,000	387,000	1,211,000
Legal Advisors	1,200,000	300,000	300,000	1,800,000
Regulatory Consultants	300,000	50,000	50,000	400,000
Technical/Commercial Advisors	1,000,000	250,000	250,000	1,500,000
Financial Advisors	800,000	100,000	100,000	1,000,000
Negotiations/Travel	250,000	90,000	60,000	400,000
Training	130,000	125,000	125,000	380,000
Public Education	100,000	200,000	300,000	600,000
Contingencies	420,000	150,000	150,000	720,000
<b>TOTAL EXPENDITURE</b>	<b>4,637,000</b>	<b>1,652,000</b>	<b>1,722,000</b>	<b>8,011,000</b>
PCJ Contribution	555,000	555,000	555,000	1,665,000
MEM/World Bank	1,000,000			1,000,000
<b>TOTAL INCOME PRIOR TO PETROCARIBE</b>	<b>1,555,000</b>	<b>555,000</b>	<b>555,000</b>	<b>2,665,000</b>
<b>FUNDING REQUESTED FROM PETROCARIBE</b>	<b>3,082,000</b>	<b>1,097,000</b>	<b>1,167,000</b>	<b>5,346,000</b>

*The Project Budget anticipates contributions from the PetroCaribe Development Fund and the World Bank. The PetroCaribe Development Fund has already approved a grant of approximately US\$5.3 million to the LNG Project on the basis that the LNG Project offers significant development benefits to the country. The GOJ is currently negotiating an Energy Sector loan with the World Bank and it is anticipated some proceeds of this loan will be allocated to the LNG Project.”<sup>196</sup>*

Mr. Stephen Wedderburn, in the referenced response to the OCG’s Statutory Requisition, also provided the OCG with a spreadsheet entitled “*Petroleum Corporation of Jamaica Document History – Detail*” which represented expenditure for the LNG Project for the period of 2002 May 30 to 2010 October 27.

The referenced document indicated that the total expenditure for the referenced period was \$20,645,864.81.

Based upon the foregoing, the OCG found that there was inconsistency with respect to the figure which was provided by Mr. Stephen Wedderburn based upon the fact that “... *the PCJ Accounts Department shows that the spending on the project for this financial year up to September was \$31,822,360...*” and the total expenditure of \$20,645,864.81, in accordance with the referenced “...*Document History – Detail*”.

In an effort to clarify the information which was provided, the OCG, in its Follow-Up Requisition to Mr. Stephen Wedderburn, which was dated 2010 December 7, posed the following question:

*“In your response to Question No. 26(a) of the OCG’s Statutory Requisition, dated September 15, 2010, you indicated, inter alia, that “The LNG Project is being funded by contributions from PCJ, a grant from PetroCaribe Development Fund...” You further appended a “LNG Project Expenditures to Date” which revealed that a total of \$31,822,360.10 has been expended, by the PCJ, for the entire LNG project to-date and a*

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<sup>196</sup> Response from Mr. Stephen Wedderburn, LNG Project Coordinator, which was dated 2010 November 15. Response #6(g) & 26

*'Document History' from May 30, 2002 to October 27, 2010 indicated that a 'company total' of \$20,645,864.81 has been expended. In this regard, please provide answers to the following questions:*

- a) A reconciliation of the total sums expended for the LNG Project based upon the differences in the total sums which were provided in the referenced appended documents;*
- b) Account for the period over which the "LNG Project Expenditures to Date" was calculated; and*
- c) State explicitly the actual funds which were granted and/or contributed from the PetroCaribe Fund and the PCJ for the LNG Project, based upon the sums provided in the referenced appended documents."<sup>197</sup>*

Mr. Stephen Wedderburn, in his sworn response to the OCG's Statutory Requisition, which was received in our office on 2010 December 21, stated, *inter alia*, the following:

- a) "Information received from the PCJ Accounts Department was passed on as received. I am unable to locate a copy of the "Document History" referenced above and I am therefore unable to provide the requested reconciliation..."*
- b) I am advised that the "LNG Project Expenditures to Date" to have been calculated over the period April 2009 to September 2010.*
- c) I am not aware of the actual funds received from the PetroCaribe Fund. Given that I am no longer responsible for the LNG Project I recommend that the OCG seek to [sic] this information directly from PCJ's Accounting Department through the Acting*

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<sup>197</sup> OCG's Follow-Up Requisition to Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, which was dated 2010 December 7. Question 9

*Group Managing Director.”<sup>198</sup>(OCG’s Emphasis)*

Mr. Stephen Wedderburn also indicated, in his sworn response to the OCG’s Statutory Requisition, which was dated 2010 December 21, that “...*The \$31,822,360.10 would also refer specifically to the proposed Financing, Development, Ownership, Operation of an [sic] FSRU LNG Re-gasification Terminal and Natural Gas Transmission System in Jamaica. As indicated in my response to the 15 September 2010 requisition I was unable to obtain comprehensive information from the PCJ Accounts Department. In light of any possible discrepancies and given that I am no longer responsible for the LNG Project I recommend that the OCG obtain verification of the project financial information directly from the PCJ Accounts Department through the Acting Group Managing Director.*”<sup>199</sup>

Additionally, Mr. Wedderburn provided a copy of a document which was entitled “*LNG Project Expenditures to Date*”, which indicated as follows:

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<sup>198</sup> Response from Mr. Stephen Wedderburn, LNG Project Coordinator, which was dated 2010 December 21. Response #9

<sup>199</sup> Response from Mr. Stephen Wedderburn, LNG Project Coordinator, which was dated 2010 December 21. Response #10

<i>Description</i>	<i>Amount</i>
<i>SALARIES &amp; WAGES</i>	4,443,726.00
<i>PENSION</i>	37,028.78
<i>NIS</i>	16,666.40
<i>N.H.T.</i>	145,886.29
<i>EDUCATION TAX</i>	144,987.11
<i>HEALTH INSURANCE</i>	64,606.40
<i>CONTRIBUTION TO HEART FUND</i>	73,771.57
<i>LUNCH SUBSIDY</i>	92,279.00
<i>DEVELOPMENT &amp; TRAINING – STAFF</i>	169,233.00
<i>MEETINGS &amp; SEMINARS BY PCJ</i>	903,959.45
<i>SHIPPING &amp; FREIGHT CHARGES</i>	48,322.91
<i>SUNDRY &amp; MISCELLANEOUS EXPENSE</i>	15,000.00
<i>TRANSPORTATION (LOCAL)</i>	63,920.00
<i>TRAVEL &amp; SUBSISTENCE (FOREIGN)</i>	2,489,621.38
<i>TRAVEL &amp; SUBSISTENCE (LOCAL)</i>	5,940.00
<i>MOTOR VEHICLE UPKEEP</i>	1,012,885.79
<i>CONSULTING SERVICES (LOCAL)</i>	150,250.00
<i>CONSULTING SERVICES (FOREIGN)</i>	21,512,114.91
<i>ACCOMMODATION (LOCAL)</i>	109,592.56
<i>PUBLIC RELATIONS INCL. GIFTS</i>	322,568.55
	<b>\$ 31,822,360.10</b>

Based upon Mr. Wedderburn’s assertion, it would appear that the foregoing total value of \$31,822,360.10, which was represented on the “LNG Project Expenditures to date” spreadsheet, was the total amount which was expended by the PCJ for the period of 2009 April to 2010 September for the ‘FSRU LNG Project’ only.

It is instructive to note that the OCG, by way of a Statutory Requisition, that was addressed to Mr. Nigel Logan, Acting Group Managing Director, PCJ, which was dated 2010 September 15, posed the following questions:

*“...please provide responses to the following...*

*The expenditure to-date which has been incurred and/or paid for by the PCJ, if any, inclusive of payment vouchers and invoices...for all components of the LNG Project...*

*Please provide a breakdown of the total cost of the entire LNG Project, from commencement to present, which is projected to be paid for by the GOJ. In addition, please provide responses to the following:*

- a) Please indicate whether the MEM, the PCJ and/or any other Entity is/are responsible for the financing of the LNG Project and/or any component thereof, and state the source from which such funds were received, donated, borrowed and/or granted;*
- b) Please provide a breakdown of the projected expenditure, if any, which will be paid by the GOJ for the proposed Financing, Development, Ownership and Operation of a FSRU LNG Re-gasification Terminal and Natural Gas Transmission System component of the LNG Project; and*
- c) Please indicate whether the LNG Project is contingent on any kind of funding from a third party institution. If yes, please detail which third party institution and on what basis, if any, may such funds be granted.”<sup>200</sup>*

Mr. Nigel Logan, in his sworn response to the OCG’s Statutory Requisition, which was dated 2010 November 9, stated the following:

*“Please see attached the expenditure of the LNG Project from inception to the present...*

- a) The pre-development costs of the LNG Project are to be financed as follows:*

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<sup>200</sup> OCG’s Requisition to Mr. Nigel Logan, Acting Group Managing Director, PCJ, which was dated 2010 September 15. Question #6(h) & 23

<i>Details</i>	<i>Amount</i>
	<i>US\$</i>
<i>Petrocaribe Development Fund</i>	<i>5,346,000.00</i>
<i>PCJ</i>	<i>1,650,000.00</i>
	<hr/> <i>\$ 6,996,000.00</i> <hr/>

b) *The Budget for the Project is attached...*

c) *The financing of the Pre-development expenses for the LNG Project are dependent on funding from the Petrocaribe Development Fund in the amount of US\$5.346MM. The funds are being provided in the form of a grant.*<sup>201</sup>

Mr. Nigel Logan, in his response to the OCG's Statutory Requisition, which was dated 2010 November 9, further provided a spreadsheet entitled "*PETROLEUM CORPORATION OF JAMAICA - LNG EXPENDITURE: FROM 2003 TO PRESENT*", as follows:

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<sup>201</sup> Response from Mr. Nigel Logan, Acting Group Managing Director, PCJ, which was dated 2010 November 9. Response #6(g) & 23

**PETROLEUM CORPORATION OF JAMAICA**  
**LNG EXPENDITURE**  
**FROM 2003 TO PRESENT**

DESCRIPTION	2003	2004	2005	2006	2007	2008	2009	2010	Grand Total
ACCOMMODATION (LOCAL)			17,608.80		10,970.06	742,713.31		109,592.56	880,884.73
ADVANCE - WIGTON WINDFARM LTD	(4,832,916.00)			14,250.00				53,772.07	(4,764,893.93)
AUDIOVISUALS & FILM PROCESSING				5,000.00		389.65			5,389.65
CLEANING & MAINTENANCE					2,040.00				2,040.00
CONSULTING SERVICES (FOREIGN)			73,447,996.92	82,978,227.83	20,998,037.97		127,848.51	34,801,513.44	212,353,624.67
CONSULTING SERVICES (LOCAL)		2,440,228.00	6,192,019.18	718,001.20	-		150,250.00		9,500,498.38
CONTRIBUTION TO HEART FUND							61,777.47	143,812.91	205,590.38
CUSTOMS DUTY				6,315.97	15,804.71				22,120.68
DATA PROCESSING SUPPL & SERV.S.			1,250.00						1,250.00
DEVELOPMENT & TRAINING - STAFF				449,356.16				169,233.00	618,589.16
EDUCATION TAX							60,754.03	141,379.85	202,133.88
HEALTH INSURANCE							15,550.80	83,212.40	98,763.20
LUNCH SUBSIDY		880.00	177,496.63	28,838.78		92,927.73	33,789.00	59,034.00	392,966.14
MEETINGS & SEMINARS BY PCJ		42,035.00	170,705.09	2,059,736.49	585,349.66	28,800.00	305,889.64	649,619.81	3,842,135.69
MEMBERSHIP FEES								130,162.00	130,162.00
MOTOR VEHICLE UPKEEP							410,468.28	941,254.04	1,351,722.32
N. H. T.							61,777.47	143,812.91	205,590.38
N. I. S.							6,249.90	24,999.78	31,249.68
NEWSPAPER ADVERTISEMENTS					390,274.65				390,274.65
OTHER MISCELLANEOUS INCOME							(140,024.85)		(140,024.85)
PENSION							55,729.43	112,203.90	167,933.33
PRINTING		18,288.36	11,347.12	24,321.00					53,956.48
PUBLIC RELATIONS INCL. GIFTS		10,799.80	127,523.50	868,294.06	139,027.02	105,514.01	306,103.48	58,800.00	1,616,061.87
SALARIES & WAGES							2,059,248.63	4,793,763.55	6,853,012.18
SECURITY SERVICES							83,135.57	(83,135.57)	-
SHIPPING & FREIGHT CHARGES			1,210.00	605.00			38,929.36	15,402.99	56,147.35
SUNDRY & MISCELLANEOUS EXPENSE	317,699.50	18,324.72	316,346.00	11,321.40	65,053.20	(8,932.53)	527.66	1,668.50	722,008.45
TELEPHONE		120.00							120.00
TEMPORARY LABOUR		1,000.00							1,000.00
TRANSPORTATION (LOCAL)			84,012.00	58,634.80			63,920.00	540.00	207,106.80
TRAVEL & SUBSISTENCE (FOREIGN)	244,458.50	1,113,165.35	3,783,250.64	5,465,378.94	2,223,788.55	867,786.25	1,556,091.64	1,100,757.74	16,354,677.61
TRAVEL & SUBSISTENCE (LOCAL)								5,940.00	5,940.00
UNIFORM ALLOWANCE								40,250.00	40,250.00
<b>Grand Total</b>	<b>(4,270,758.00)</b>	<b>3,644,841.23</b>	<b>84,330,765.88</b>	<b>92,688,281.63</b>	<b>24,430,345.82</b>	<b>1,829,198.42</b>	<b>5,258,016.02</b>	<b>43,497,589.88</b>	<b>251,408,280.88</b>

Based upon the foregoing tabular representation which was provided by Mr. Nigel Logan, Acting Group Managing Director, PCJ, in his referenced response to the OCG's Statutory Requisition, a total of \$251,408,280.88 has been expended by the GOJ, from 2003 to 2010, on the LNG Project.

It is instructive to note that the payments for '*Consulting Services (Foreign)*' has an aggregated value of \$212,353,624.67 and represents the majority of payments which have been expended since 2003 to 2010. Further, expenditure for '*Travel & Subsistence (Foreign)*' has an aggregated value of \$16,345,677.61.

In an effort to ascertain information on third party funding, if any, the OCG in its requisition to Mrs. Hillary Alexander, Permanent Secretary, MEM, which was dated 2010 September 16, posed the following question:

*"Please indicate whether the LNG Project is contingent on any kind of funding from a third party institution. If yes, please detail which third party institution and on what basis, if any, may such funds be granted."*<sup>202</sup>

Mrs. Hillary Alexander, in her response to the OCG's Statutory Requisition, which was dated 2010 November 12, stated, *inter alia*, the following:

*"The Consortium has indicated that it will be responsible for the financing of the project and to the best of my knowledge has not put forward any third party institution, which would be responsible for the financing of same."*<sup>203</sup>

Mrs. Hillary Alexander, in her response to the OCG's Statutory Requisition, which was dated 2010 November 12, also stated, *inter alia*, the following:

*"...I have also consulted with officials from the World Bank and the International*

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<sup>202</sup> OCG's Requisition to Mrs. Hillary Alexander, Permanent Secretary, MEM, which was dated 2010 September 16. Question #22(c)

<sup>203</sup> Response from Mrs. Hillary Alexander, Permanent Secretary, MEM, which was dated 2010 November 12. Response #22(c)

*Finance Corporation (IFC) on different elements of the LNG Project and with a view of obtaining their guidance and assistance with the implementation of the Project.”<sup>204</sup>*

The Minutes of a Special Meeting of the PCJ Board of Directors, which was held on 2010 May 12, revealed that the referenced Board expressed certain concerns in regard to the financing of the project, and indicated as follows:

**“The Chairman sought clarification as to whether or not the LNG Project would necessarily be disqualified from the World Bank for funding as her impression is that the World Bank will look at the Project in full and if it is that the Project has gone through several stages without engaging a Financial Advisor and also, if according to the World Bank’s standards, certain conditions that ought to have been met at this stage have not been met, then it could probably disqualify PCJ from receiving funding from the World Bank for the LNG Project. The Acting GMD stated that in a recent Meeting with the World Bank they indicated that there is an amount of US\$2.5M which the Government of Jamaica is negotiating with them to fund the LNG Project, but to be able to claim same as eligible expenditure for the Financial advisory services for instance, it has to go through the procurement process. It was stated also that the funds from the World Bank would have to be requested twelve (12) months prior to the start of the project, but if some aspects of the process have been completed, the Corporation would still be able to submit a claim for funding.**

**Another issue he stated, concerned the supply for the gas in that if a tender has to be done for a supplier and it is considered or believed that other persons are already being approached in this regard, the World Bank would no longer be interested and one could not be sure whether the process of tendering would be classified as other interests.**

*Director Gordon stated that the issues as to who will purchase the gas can be a big problem in that JPS had indicated their interest in purchasing and as far as he knows this*

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<sup>204</sup> Response from Mrs. Hillary Alexander, Permanent Secretary, MEM, which was dated 2010 November 12. Response #5(a)

*can only be done if the company has the credit as the Government of Jamaica does not have the credit and therefore cannot purchase the fuel on its own. The Chairman stated that Management should provide the Board with a breakdown of exactly what needs to be done and what can be accessed at this point as it relates to obtaining grant funding from the World Bank.”<sup>205</sup> (OCG’s Emphasis)*

Based upon the foregoing, the OCG also found that discussions had already been pursued with potential suppliers of gas, prior to the commencement of any form of a tender process.

The OCG in its Follow-Up Requisition to Mrs. Hillary Alexander, Permanent Secretary, MEM, which was dated 2010 December 7, posed the following questions:

*“...In your response to Question No. 5 of the OCG’s Statutory Requisition, dated September 16, 2010, you indicated, inter alia, that “I have consulted with officials from the World Bank and the International Finance Corporation (IFC) on different elements of the LNG Project...” In this regard, please provide responses to the following questions:*

- a) Please provide an Executive Summary outlining the ‘different elements’ of the LNG Project for which you had consultation with the World Bank and the IFC;*
- b) Please indicate whether the MEM and/or the PCJ has/have received any feedback to-date from the World Bank and/or the IFC regarding funding for the proposed Financing, Development, Ownership, Operation of a FSRU LNG Re-gasification Terminal and Natural Gas Transmission System in Jamaica;*
- c) If your response to Question No. 1(b) above is ‘Yes’, please provide full particulars of the decision(s), if any, which was/were made by any of the external funding institution, referenced above, in regard to the referenced*

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<sup>205</sup> Minutes of a Special Meeting of the PCJ Board of Directors which was held on 2010 May 12.

*project. Was a report provided by the World Bank and/or the IFC? If yes, please provide a copy of same;*

- d) The date(s) upon which the PCJ and/or the MEM received the World Bank's and/or the IFC's decision/recommendation;*
- e) Please indicate whether any Agreement has been signed between the GOJ and the World Bank and/or the IFC. If yes, please provide a copy of same; and*
- f) Please provide a copy of all correspondence between yourself, the MEM and the World Bank and/or the IFC, based upon your assertion above, in regard to the referenced project.*

*In the regard to the feedback mentioned in Question No. 1(b) above from the World Bank, please indicate whether the World Bank has denied and/or agreed to funding the proposed Financing, Development, Ownership, Operation of a FSRU LNG Regasification Terminal and Natural Gas Transmission System in Jamaica. If yes, please provide the terms and conditions of same. If no, please indicate under what circumstances was the funding rejected and how the decision(s) which has/have been made by the World Bank will impact and/or has/have impacted the progress of the referenced project? In addition, please indicate whether there is an alternate source of funding and provide full particulars of same.*

*In your response to Question No. 5(k) of the OCG's Statutory Requisition, dated September 16, 2010, you indicated, inter alia, that "The GOJ intends to make available technical assistance via the World Bank and other resources, to develop the legal and regulatory framework for the provision of natural gas to the island." In this regard, please provide responses to the following:*

- a) What is the current status of the foregoing?*

- b) *Please provide an Executive Summary outlining the technical assistance that is to be made and/or have been made available; and*
- c) *Please indicate what other resources were intended to be used to acquire the referenced technical assistance.*<sup>206</sup>

Mrs. Hillary Alexander, in her response to the OCG's Statutory Requisition, which was dated 2010 December 21, stated, *inter alia*, the following:

*“Executive Summary:*

- a) *General discussions were held among the Planning Institute of Jamaica (PIOJ), Ministry of Finance and the Public Service (MFPS), World Bank (WB), International Finance Corporation (IFC) and the Ministry of Energy and Mining (MEM)/Petroleum Corporation of Jamaica (PCJ). These discussions were on issues relating to the Energy Policy and the LNG Project. I am advised that the PCJ provided several documents and status report on the LNG Project to the IFC. IFC was asked to provide technical assistance/support in relation to the implementation of the project.*
- b) *Yes feedback was received from the IFC. The IFC was broadly in favour of the Project. However, both timelines for IFC approval and the fact that there had been substantial work done including (a) the pre-qualification exercise in May 2007, (b) the issuance of the Request for Proposal (RFP) in November 2009, and (c) the prior contracting by the PCJ of technical assistance, placed the project outside the usual operational parameters of the IFC.*

*The World Bank , however, wished to support the implementation of the Energy Policy and in several discussions between October 2009 to December 2010 have*

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<sup>206</sup> OCG's Requisition to Mrs. Hillary Alexander, Permanent Secretary, MEM, which was dated 2010 December 7. Responses #1-3

defined, with the PIOJ and MEM with approval of the MFPS, an integrated program to support this activity. **The WB, via a proposed USD\$15 million loan to the Government of Jamaica will in part, support the LNG Project by providing technical assistance for the development of the legislative and regulatory framework for LNG by the Office of the Utilities Regulation (OUR).** Further to this the Bank will decide on the proposal in March 2011...

- c) Please see b above. **Additionally, the World Bank presented the Aide Memoire of the Project Preparation Mission in support of the Energy Policy specifically Energy Security and Efficiency Enhancement Project.** There has been no 'report' supplied by the IFC to my knowledge.
- d) I am unable to give specific dates of the World Bank and/or the IFC decision and/or recommendation but from documentation seen, communication with the World Bank/IFC/MEM was held on diverse dates between the periods October 2009 to October 2010. It is to be noted also that much of the discussion/communication were by way of teleconference/ verbal presentation.
- e) **No agreement relating to the LNG Project has been signed between the GOJ and the World Bank other than an Aide Memoire dated March 1-5 2010.**
- f) Please see documents attached

The IFC/ World Bank advised that they were unable to fund/ finance aspects of the project that were already being implemented or entrained prior to the involvement of IFC/World Bank. Consequently, since the technical elements of the LNG Project (example, the issuing of RFP for provision of the Floating Storage Regasification Unit) were already embarked upon, prior to the assistance of the IFC/World Bank being sought, they could not fund such elements of the project. **In relation to the regulatory and legal framework for the LNG Project, the World Bank has agreed to provide some grant funding for the implementation of the said framework.** Again, please note that the LNG Project is being considered on a

*Finance, Build, Own and Operate basis (BOO) which does not require any guarantee from the Government of Jamaica.*

*a) Please see Aide Memoire and answer to 1c above*

*b) In preparation of the proposed World Bank Energy Security and Enhancement Project, the World Bank Mission main objectives were; a) review and update as necessary the components and activities to be supported by the proposed IBRD loan of US\$15 Million; b) initiate the development of the Project Procurement Plan and of the Operational Manual; and c) review the implementation arrangements.*

***A major component and allocation of the IBRD loan is that of the strengthening of the Energy Sector Regulatory Framework and Institutions. The World Bank funding will also, provide technical support for the development of the LNG Project and related LNG gas sector workshops for informing and consulting stakeholders and potential LNG users.***

***c) PetroCaribe Development Fund (PCDF) grant to the PCJ of US\$ 5.3 million to support implementation of the LNG Project ...***<sup>207</sup> (OCG's Emphasis)

Further, the Permanent Secretary, in her response to the OCG's Statutory Requisition, which was dated 2010 December 21, attached the following correspondence which was written by her and addressed to Dr. Ruth Potopsingh, which was dated 2010 February 16. In the referenced correspondence, the Permanent Secretary indicated, *inter alia*, as follows:

*“Further to the approval by Cabinet, the laying in parliament of the Energy Policy 2009 and our several discussions on the matter of the support for the LNG Project, I have continued the discussions we had commenced with the PetroCaribe Development Fund's Board, with a view to securing funding to assist the PCJ with project implementation.*

*You will recall that the Ministry of Energy and Mining (Minister Robertson and I) met*

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<sup>207</sup> Response from Mrs. Hillary Alexander, Permanent Secretary, MEM, which was dated 2010 December 21. Response #1-3

*with the Finance Sub-Committee of the PCJ Board on January 11, 2010 to discuss the PCJ/LNG proposal prepared by the LNG Project Manager; the projected budget was for USD5.3M, required to support the acquisition of legal, financial, technical and other critical services. At that time, the committee had expressed concerns as to the ability of the PCJ to finance the project...*

*The Audit Sub-Committee has now supported the recommendation for a **grant** of USD5.3M over two years and the inclusion in the PDF's budget... ”<sup>208</sup>*

Based upon the foregoing information, the OCG found that the expenditure and financing of the LNG Project, on the part of the GOJ, to be as follows:

- i. It has been asserted that the GOJ's expenditure to-date included payments for the planning, conceptualisation and implementation of the project.
- ii. A total of \$251,408,280.88 was expended from 2003 to 2010.
- iii. A total of \$43,497,589.88 was expended in 2010.
- iv. The PetroCaribe Development Fund, by way of a grant, is to finance a total of US\$5.3M for 'pre-development expenses' and implementation of the LNG Project over a two (2) year period.
- v. The PCJ will be providing US\$1.65M from its budget to finance the 'pre-development expenses' for the LNG Project.
- vi. The Permanent Secretary, Mrs. Hillary Alexander, MEM, asserted that the World Bank, via a proposed US\$15M loan to the GOJ, will, in part, provide funding for the LNG Project with respect to technical assistance for the development of the legislative and regulatory framework for LNG by the Office of the Utilities Regulation (OUR).

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<sup>208</sup> Letter from Mrs. Hillary Alexander, Permanent Secretary, MEM, to Dr. Ruth Potopsingh which was dated 2010 February 16.

- vii. The Permanent Secretary further indicated that the Exmar Consortium will be responsible for financing the ‘FSRU LNG Project’.

It is instructive to note that by way a letter, which was dated 2010 December 16, Dr. Wesley Hughes, Financial Secretary, Ministry of Finance and the Public Service (MOFPS) informed Mrs. Sharon Webster, Manager, PetroCaribe Development Fund, as follows:

*“The Cabinet Secretary, in a letter dated December 15, 2010, and copied to you, requested the transfer of responsibility for management of the grant funding approved by the PetroCaribe Development Fund for the project from the Petroleum Corporation of Jamaica (PCJ) to the Office of the Cabinet.*

*I support this request, and ask that you make the necessary arrangements to have the transfer effected by **December 24, 2010.***

*The transfer has become necessary, consequent on the decision of Cabinet to adopt new arrangements for the management and coordination of the project.”<sup>209</sup>*

Based upon the foregoing, the OCG found that the Office of the Cabinet, and not the PCJ and/or the MEM, assumed responsibility for the management of the grant of US\$5.3M from the PetroCaribe Development Fund.

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<sup>209</sup> Letter from Dr. Wesley Hughes, Financial Secretary, Ministry of Finance and the Public Service (MOFPS) to a Mrs. Sharon Webster, Manager, PetroCaribe Development Fund, which was dated 2010 December 16.

## Negotiations

The Hon. James Robertson, Minister of Energy and Mining, by way of a Statement to Parliament on 2010 June 15, informed the nation that negotiations had commenced with the Exmar Consortium for the 'FSRU LNG Project'.

The referenced Statement to Parliament indicated, *inter alia*, the following:

*"...Cabinet yesterday gave approval for negotiations to commence with EXMAR Consortium for the establishment of a Floating Storage and Regasification Unit. This is the centre-piece of our planned energy diversification into the use of Liquid Natural Gas..."*

*EXMAR is a worldwide company based in Belgium with more than 20 years experience in handling LNG. It was chosen through a competitive bidding process following a formal Request for Proposals issued in November 2009 and a comprehensive evaluation of the proposals submitted.*

***The process has been guided by a firm of international consultants – CH-IV – contracted to the Petroleum Corporation of Jamaica, PCJ. CH-IV is an [sic] LNG-specialist firm with substantial experience in the development and implementation of LNG projects worldwide. The firm emerged as the successful bidder from a 2005 tender process and was engaged to provide technical assistance to the PCJ in its effort to modernize and diversify Jamaica's energy mix.***

*The proposal provides for the establishment and operation of a Floating LNG Regasification [sic] Terminal to be financed by the developer. It will be entirely a private sector project with no investment or guarantee required of the Government of Jamaica...*

*Mr Speaker, the negotiations are expected to be concluded before the end of this calendar year. On successful completion of the facilities, the re-gasification [sic] vessels*

*will be used for the importation and re-gassification [sic] of Liquefied Natural Gas for delivery through associated pipelines to off-takers.*

*These will be the power generators and bauxite and alumina companies. The government's principal role will be to provide the appropriate regulatory framework through the OUR and work has already commenced in this regard.*

*Assuming that the negotiations and build-out precede according to schedule it is expected that Jamaica will start using cheaper and cleaner LNG by 2013.*

*The Government will be aggressively pursuing this schedule with the assistance of the World Bank and our technical consultants; CH-IV..."*

The OCG found that the Cabinet approved the negotiations with the 'preferred bidder', the Exmar Consortium, for the proposed 'FSRU LNG Project' on 2010 June 14. However, finalization of the negotiation was subject to the completion of a technical assessment of the project and the procurement procedures utilized. The assessment was to be undertaken by an 'independent consultant' supported by the World Bank.

However, it should be noted that the Negotiating Team was not approved by the Cabinet until 2010 October 25.

The Notes from the LNG Steering Committee Meeting, which was held on 2010 June 30, and which was chaired by Mr. Stephen Wedderburn, revealed that presentations were made by representatives from the Exmar Consortium and CH-IV International 'on the way forward'.

The referenced Notes of the Steering Committee stated, *inter alia*, the following:

*"Mr. Lavent's presentation focused on the company's experience, technical capacity, commercial involvement and administrative activities for the industry..."*

*Mr. Conrad Kerr, CEO of CLNG...gave a brief overview of the his [sic] company's commitment to the project...CLNG is a Jamaican registered Company formed for the sole purpose of providing development guidance to the consortium partners for the LNG infrastructure RFP and to support project execution, construction and operations for the LNG Project...*

*Mr. Kerr was asked to expand on the developmental guidelines that CLNG would provide. In response he said that the specifics would depend on the Project Chain. For example; Site Selection, Regulatory Framework Development and End User Negotiations.*

*Mr. Lavent ended his presentation by responding to the question; What is EXMAR's expectation from the Project? In response, Mr. Lavent indicated that he would like:*

- 1. A stable regulatory and legal framework from the Government for a period not less than 20 years. And*
- 2. The Government and the Consortium must agree on the rules.*
- 3. To have a local partner to bring local knowledge; right of ways.*
- 4. A sub-contractor for the mooring contract*
- 5. To engage sub-contractor for dredging, etc..."*

The 'Notes on the LNG Negotiating Team Tele Conference with Latham & Watkins...and CH-IV...' from the LNG Steering Committee Meeting, which was held on 2010 August 12, and which was chaired by Mr. Stephen Wedderburn indicated, *inter alia*, the following:

**"The purpose of the LNG Negotiating Team was to Negotiate the Agreements with Exmar. Mr. Wedderburn informed the meeting that the relevant documents (Heads of Agreement and Major Issues for Consideration by the LNG Committee), were circulated yesterday..."** (OCG's Emphasis)

Based upon the foregoing, the OCG found that negotiations with the Exmar Consortium

commenced from 2010 June 30 via the LNG Steering Committee and prior to the Cabinet's approval of the 'Negotiation Team' on 2010 October 25.

In this regard, Mr. Nigel Logan, Acting Group Managing Director, in an interview with the OCG, which was held on 2010 December 7, stated, *inter alia*, that "...also the concern that...we were asked to negotiate with the EXMAR Consortium and then hearing that the negotiation team had not been approved by Cabinet... I came to understand from a telephone conversation that Cabinet had not approved the negotiation team, even though all the emails about the timing of the negotiations and so, and the venue and everything was...copied to the Permanent Secretary, but who has never indicated that the team had not been approved... And the Minister indicated that it had not been approved by the Cabinet. However I was asked to continue negotiations."

### ***Implementation Agreement***

The OCG, in its Statutory Requisition, which was addressed to Mr. Glenford Watson, Senior Legal Counsel, MEM, and which was dated 2010 December 21, posed the following question:

*"The OCG has been advised by the Permanent Secretary in the MEM, Ms. Hillary Alexander, in her sworn response to the OCG's Statutory Requisition, which was dated November 12, 2010, that "Negotiations are currently being undertaken with the preferred bidder to finalize the Implementation Agreement between the GOJ and Exmar Consortium". Please indicate, as the Senior Legal Officer, MEM, whether you are aware of same..."*<sup>210</sup>

Mr. Glenford Watson, in his response to the OCG's Statutory Requisition, which was dated 2011 January 26, stated, *inter alia*, the following:

*"I am aware that on November 12, 2010, negotiations were being undertaken between the GOJ and the preferred bidder Exmar Consortium, as to, the terms and condition of*

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<sup>210</sup> OCG's Statutory Requisition to Mr. Glenford Watson, Senior Legal Counsel, MEM, which was dated 2010 December 21. Question #6

*an Implementation Agreement that would explicitly set out the detailed roles and responsibilities of the Exmar Consortium and the GOJ in the implementation of the project... ”<sup>211</sup>*

The Minutes of the Meeting of the NCC, which was held on 2010 November 10, stated that the “...Commission considered a letter dated 2010 November 5 from the Permanent Secretary in the Ministry of Energy and Mining requesting the endorsement of the Commission that negotiations be held with Exmar Consortium to settle on appropriate terms and conditions for the provision of the FSRU facility. It was imperative that the Agreement be finalized and executed by November 15, 2010, and as such it was anticipated that the matter would be considered by Cabinet on November 8, 2010...The Commission noted that the proposal was outside the remit of the NCC.”

The OCG received a letter from Mr. Glenford Watson, Senior Legal Officer, MEM, which was dated 2010 November 11, in which he stated, *inter alia*, the following:

*“Without prejudice to any on going investigation by your office, **I am obliged to request your kind opinion as to whether, as a general principle, it would be permissible for the Government to enter into an Implementation/Direct Agreement with the Project Company and the members of the Project Company (Consortium) as co-signees?** This Agreement would contain the normal boiler plate provisions expected in a project of this nature.*

*The intent would be to also hold Exmar and Promigas, developers of the FSRU and pipelines, respectively, directly liable for their respective operations. This would allow the Government to look to both the Project Company and the individual members of the Consortium for any redress...” (OCG’s Emphasis)*

The OCG responded to the referenced letter from Mr. Glenford Watson on 2010 November 16 and stated, *inter alia*, the following:

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<sup>211</sup> Response from Mr. Glenford Watson, Senior Legal Counsel, MEM, which was dated 2011 January 26. Response #6.

**“Having regard, among other things, to (a) the matters which are outlined in the OCG’s Notice of Enquiry which was dated June 22, 2010, and which was formally conveyed to your Ministry and to the PCJ, and (b) the fact that a major and extensive OCG Investigation is currently under way, it would be highly inappropriate for the OCG to render any advice to you other than for you to summarily and immediately abort the subject process.”** (OCG’s Emphasis)

It is critical to note that the referenced letter was copied to the Honourable Prime Minister, the Honourable Minister of Energy and Mining, the MEM Permanent Secretary and the Group Managing Director (Acg.) of the PCJ.

The OCG, in its Statutory Requisition to Mr. Glenford Watson, which was dated 2010 December 21, posed the following questions:

*“The OCG was advised, by way of the Minutes of the National Contracts Commission (NCC), dated November 10, 2010, that the NCC considered a letter which was dated November 5, 2010 from the Permanent Secretary in the MEM requesting the endorsement of the Commission that negotiations be held with Exmar Consortium to settle on appropriate terms and conditions for the provision of the FSRU facility.*

*By way of a letter which was dated November 11, 2010, you, in your capacity as the Senior Legal Officer, MEM, wrote to the OCG requesting an opinion as to whether “...it would be permissible for the Government to enter into an Implementation/Direct Agreement with the Project Company and the members of the Project Company (Consortium) as co-signees...” The OCG on November 16, 2010 responded to the referenced letter by stating, inter alia, that “...it would be highly inappropriate for the OCG to render any advice to you other than for you to summarily and immediately abort the subject process.” Based upon the foregoing, please provide answers to the following questions:*

a) *Please explicitly state, as the Senior Legal Officer, the reason why the MEM, on*

*behalf of the GOJ, was then requesting to enter into an Implementation/Direct Agreement with the Exmar Consortium, as referenced above;*

- b) Please provide an Executive Summary and/or the respective documentary evidence outlining the referenced “appropriate terms and conditions” which are/were to be settled with the Exmar Consortium for the provision of the referenced FSRU facility;*
- c) Please indicate whether such terms and conditions have been settled and provide full particulars of the decisions, if any, which have been taken as a result of same; and*
- d) What is the current status of the project since the referenced recommendation of the OCG to abort the process was received by you, for and on behalf of the MEM?”<sup>212</sup>*

Mr. Glenford Watson, in his response to the OCG’s Statutory Requisition, which was dated 2011 January 26, stated, *inter alia*, the following:

*“Pursuant to Cabinet Decision dated June 14, 2010, approving the selection of the Consortium as the preferred bidder and authorizing negotiations of the details for the implementation of the FSRU.*

*By way of clarification, the letter was not to solicit the approval of the OCG to enter into the Implementation/Direct Agreement with the Consortium. Rather, the letter was intended to obtain the opinion of the OCG as to whether, in addition to the Consortium, each individual member could properly execute an Implementation/Direct Agreement in its own capacity.*

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<sup>212</sup> OCG’s Statutory Requisition to Mr. Glenford Watson, Senior Legal Counsel, MEM, which was dated 2010 December 21. Question #23

(b) See copy of draft Agreement, as at November 25, 2010. From the document and associated emails (also attached) it will be obvious that certain terms of the draft Agreement were still not settled.

(c) I am not aware of this as the LNG Project is now being facilitated under the direction of the OPM.

(d) Please see (c) above. Additionally, please note copy of opinion from the Chambers of the Attorney General" ...<sup>213</sup>

The OCG conducted a review of the opinion from the Chambers of the Attorney General, which was dated 2010 December 7, and which was entitled "**Letter of November 16, 2010 from the Office of the Contractor General in connection with the LNG Project**". The referenced opinion from the Chambers of the Attorney General indicated that the OCG "...acted ultra vires to the CG Act in which the advice rendered in the instant case is of no legal effect and is void."

The OCG also found that a Cabinet meeting was held on 2010 November 8, in which public officials such as Mr. Glenford Watson, Senior Legal Officer, MEM, Mr. Douglas Leys, Solicitor General, Ms. Sonia Mitchell of the Office of the Prime Minister and Mr. Parris Lyew-Ayee, Chairman of the Petroleum Corporation of Jamaica, were in attendance.

The referenced meeting was in regard to "*Permission to Negotiate an Implementation Agreement With the Preferred Bidder for the Liquefied Natural Gas (LNG) Project*". The OCG found that the following, *inter alia*, was discussed:

*"The Cabinet had before it a Submission No. 531/MEM-52/10...The Submission outlined the proposal for an Implementation Agreement to be entered into with EXMAR Consortium (Jamaica) Limited for the implementation of the LNG Project to design, build, finance, own and maintain a Floating Storage Regasification Unit (FSRU) and pipeline infrastructure for operation in Jamaica..."*

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<sup>213</sup> Response from Mr. Glenford Watson, Senior Legal Counsel, MEM, which was dated 2011 January 26. Response #23.

*The Minister of Energy and Mining explained the Submission, with support from the Solicitor General and other members of the LNG Negotiating Team. They advised, inter alia, that what was required of the Cabinet was approval of the principal terms of the Implementation Agreement...in order to meet a 15 November 2010 deadline.*

*The following issues were among those discussed by the Cabinet:*

- *the recommendation to proceed with the Implementation Agreement was being made when the final report of the independent consultants was not yet available and would not be ready for another two weeks; and **their preliminary report indicated concerns regarding market assessments, the choice, location and operation of the FSRU, and deficiencies in the Request for Proposals, among other issues;***
- *the comments of the Ministry of Finance and the Public Service were not provided;*
- *there was an approaching deadline of 15 November 2010 under the LNG Project which, if not met, would affect the ability to implement the Project and its overall success;*
- *the Implementation Agreement as presented was not complete and there were major areas to be settled;*
- ***the implications of the development that it had originally been one party, EXMAR, and this had now been expanded to reflect three additional parties;***
- *the long-term policy and legal considerations;*
- *the need for an assurance that the terms of the Project were the best that could be negotiated for Jamaica; and*
- ***the need for further consultations with the Contractor General,** among others.*

*After further discussion, the Cabinet noted information provided that further discussions were scheduled with the Preferred Bidder on Wednesday of that week (10 November 2010); and decided to defer the matter, pending receipt of the report of the independent consultants in two weeks' time and instructed that the Minister of Energy and Mining advise the Prime Minister of the outcome of the discussions with EXMAR, if these were held.” (OCG’s Emphasis)*

Based upon the foregoing, the OCG found that the Cabinet instructed the PCJ and the MEM to consult with the OCG in regard to the Implementation Agreement.

However, the above referenced letter which was sent to the OCG, by Mr. Glenford Watson, did not: a) explicitly state Cabinet’s recommendation; b) enclose a copy of the Draft Implementation Agreement; and/or c) inform the OCG of the reasons for the Implementation Agreement. To the contrary, the OCG was being asked to provide answers and/or its opinion to the MEM, solely based upon the representations which were made in Mr. Glenford Watson’s letter, in regard to a purported ‘development’ in the ‘FSRU LNG Project’ and without the benefit of the particularized instructions which were given by the Cabinet of Jamaica.

Further, the ‘Notes on the LNG Negotiating Team Tele Conference with Latham & Watkins...and CH-IV...’, which was held on 2010 September 7, indicated that “...*The Exmar Consortium by way of letter to the LNG Project Coordinator has indicated that they would not be able to hold the price after the November 15 deadline...**Exmar had secured a shipyard for the FSRU until November 15 and would have to re-negotiate the price with the managers of the shipyard and this may incur additional cost...***” (OCG’s Emphasis)

Based upon the foregoing, the OCG found that the deadline which was set for the signing of the Implementation Agreement was in accordance with the timeline which was given by the Exmar Consortium.

By way of the ‘Notes on the LNG Negotiating Team Tele Conference with Latham & Watkins...and CH-IV...’ from the LNG Negotiation Team Meeting which was held on 2010

October 6, the OCG found that the LNG Negotiation Team was integral in the drafting of the Implementation Agreement. As at the referenced date, however, the OCG found that the Negotiation Team was uncertain of the composite structure, amongst other critical information, with respect to the Exmar Consortium. The ‘Notes’ stated, *inter alia*, as follows:

*“...Parties subject to determination of whether each of Exmar, Promigas and CLNG will execute this Agreement separately, or whether they will form a single group and execute it through that group...”*

*....Note to GOJ: To discuss Exmar’s current training programs and Developer’s obligation with respect to training.”*

By way of Cabinet Decision No. 45/10, which was dated 2010 December 6, in regard to Submission No. 531/MEM-52/10 regarding “*Permission to Negotiate an Implementation Agreement with the Preferred Bidder for the Liquefied Natural Gas (LNG) Project*”, the OCG was informed that “**The Cabinet agreed that the Submission would be withdrawn from the Agenda;** and noted that the draft Implementation Agreement had been finalized and would be referred to the Project Committee established to oversee the direction of the LNG Project, along with the report from the Independent Consultants and the response thereto...” (OCG’s Emphasis)

**Procurement for the 480MW of Base-load Generating Capacity on a Build, Own and Operate (BOO) Basis**

On 2010 September 8, the Jamaica Gleaner published an article that was entitled “*Exmar deal hits new snag*” in which it was reported, that “*The requirement for the Jamaican government to invite public tenders for new generating capacity is likely to mean a delay in its December 2012 deadline for the commissioning of an LNG storage and regasification facility and even undermine the ability of Exmar Corporation, the government's controversial preferred bidder on the project, to bring it to fruition.*”

The referenced article further indicated, *inter alia*, the following:

*“According to Wednesday Business sources, with Exmar not yet knowing who will be customers for natural gas it hopes to supply on the Jamaican market — or even if there will be takers — it has been unable to enter serious negotiations with bankers for the financing of the more than US\$600 million project...*

*But under the rules of the electricity production and distribution sector, they say, any addition of more than 15 megawatts of power intended for the national grid has to be the subject of public bidding to ensure that it is delivered at the best price...*

*"The OUR (Office of Utilities Regulation) is obligated to give at least 90 days for a response (to a request for proposal)..."*

In light of the foregoing, the OCG requisitioned Mr. Ahmad Zia Mian, Director General, OUR, on 2010 September 10, in an effort ascertain a comprehensive understanding of the OUR's involvement, *inter alia*, in the ‘FSRU LNG Project’.

The referenced OCG Statutory Requisition posed, *inter alia*, the following question:

*“Please provide an Executive Summary indicating the role(s) and responsibility(ies) of*

*the Office of Utilities Regulation (OUR), if any, in regard to the captioned project. The Executive Summary should also include the extent of your, and/or any Public Official(s)/Officer(s) who may be acting on behalf of the OUR, involvement in and/or affiliation, if any, with the overall LNG Project and, in particular, the captioned matter.”<sup>214</sup>*

Mr. Zia Mian, in his response to the OCG’s Statutory Requisition, which was dated 2010 October 1, stated the following:

*“The Office has no direct role or responsibility with regard to the captioned project or with the overall LNG project for that matter. Such direct responsibility lies squarely with Petroleum Corporation of Jamaica (PCJ).”<sup>215</sup>*

Mr. Zia Mian, in his response to the OCG’s Statutory Requisition, which was dated 2010 October 1, further stated, *inter alia*, the following:

*“There is no legislative and regulatory framework to govern the usage of Gas. It is understood that the facilitation of LNG as an available and cost effective fuel option would enable power utility service providers, off takers as well as the grid operator to deliver services in a more efficient and cost effective manner that would redound to the benefit of end user customer. The fact is that such customers pay for fuel costs, which are a direct pass through from the grid operator Jamaica Public Service Company Limited (JPS). These cost considerations as they affect the public interest, as well as the power industry as a whole, are key considerations for the OUR given its statutory remit to:*

- (a) Ensure that prescribed utility service operates efficiently and in a manner designed to afford to its consumers economical and reliable service.*
- (b) Protect the interests of consumers in relation to the supply of a prescribed utility service*

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<sup>214</sup> The OCG’s Statutory Requisition to Mr. Ahmad Zia Mian, Director General, OUR, which was dated 2010 September 10. Question #1

<sup>215</sup> Response from Mr. Ahmad Zia Mian, Director General, OUR, which was dated 2010 October 1. Response #1

*(c) Promote and encourage the development of modern and efficient utility services*

*In light of the above, the OUR has drafted a Request for Proposals (RFP) for the solicitation of 480MW of generation capacity which would accommodate generators using Gas. This draft RFP has been sent to officials at the World Bank for its approval... ”<sup>216</sup>*

By way of a Media Release, which was dated 2010 October 7, and which was entitled “**OUR invites bids for 480 megawatts of additional generating capacity**” the OUR indicated, *inter alia*, the following:

**“The Office of Utilities Regulation (OUR) has invited bids from twenty-eight local and international companies, including the Jamaica Public Service Company Limited (JPS), to supply 480 megawatts of new generating capacity.**

*This is the largest block of generating capacity ever sought by the OUR and it’s intended to: allow for the displacement of old and inefficient generating plants; provide for growth in demand and improve the efficiency of the overall electricity generation system.*

**The installation of the new generating capacity is scheduled to be carried out in two phases. The first 360 megawatts is scheduled to be installed by 2014 while the remaining 120 megawatts is to be installed by 2016.**

*The Request for Proposals (RFPs) seeks to achieve the goals of ensuring that Jamaica improves its energy efficiency in generation, contribute to fuel diversification which will impact energy security and most importantly, positively impact the affordability of electricity. The request coincides with the initiative taken by the Government to introduce natural gas as the fuel of choice for electricity generation and for the mining sector as outlined in the 2009 – 2030 National Energy Policy.*

*The RFP was issued on September 30, 2010 and bids are to be submitted no later than*

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<sup>216</sup> Response from Mr. Ahmad Zia Mian, Director General, OUR, which was dated 2010 October 1. Response #1

January 7, 2011 in keeping with the schedule outlined in the bid document.”(OCG’s Emphasis)

Mr. Zia Mian, in his response to the OCG’s Statutory Requisition, which was dated 2010 October 1, further stated, *inter alia*, the following:

“...On February 12, 2010 at a meeting with the HPM, **the Ministry of Energy and Mining suggested that the construction of new generation capacity be allocated without competition.** Presumably this would allow Exmar to meet its financial closure deadline. The OUR informed the HPM that unless it receives a directive from the Cabinet or there is a stated change in the government policy, the OUR cannot acquire new capacity without competition. The HPM directed that there should be competition. **However, I understand, he wished that a way should be found to allow the Exmar to meet its November 15, 2010 deadline.** Consequently, the Ministry sought the approval of the National Contracts Commission (“NCC”) to proceed on limited bidding asset...”<sup>217</sup>  
(OCG’s Emphasis)

The MEM, by way of a letter which was dated 2010 September 17, wrote to the Chairman of the NCC, Mr. Raymond McIntyre, requesting the NCC’s urgent consideration and approval for the use of the Limited Tender Procurement Methodology for the procurement of 480 MW of Generating Capacity, pursuant to a 2010 Generation Expansion Plan.

The referenced letter stated, *inter alia*, the following:

“...The planned capacity is estimated at a cost of approximately US\$632 million...The 2010 Generation Expansion Plan...calls for the displacement of the Old Harbour units 2, 3 and 4 and Hunts Bay B6 (292 MW) and construction of LNG-fired generating plants to deliver 360 MW of electricity by 2014, with an additional 120MW by 2016.

*The existing legislative and regulatory framework for the generation and supply of*

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<sup>217</sup> Response from Mr. Ahmad Zia Mian, Director General, OUR, which was dated 2010 October 1. Response #1

*electricity (to members of the public) is largely set out in the Electric Lighting Act and the Jamaica Public Service Company Limited All-Island Electricity Licence 2001...*

*The MEM has submitted to the OUR, that there are extenuating circumstances to be considered under the Natural Gas Base Plan for the addition of the 480MW of electricity from LNG onto the National Grid. These include the following factors:*

- *The use of the LNG required special consideration to allow for a business process/framework that can create an appropriate LNG infrastructure in an expeditiously [sic] and timely manner;*
- *the productive base of the country and the revival of the bauxite and mining alumina sector, as well as the tourism sector, all require the most expeditious implementation of an alternate energy source to HFO. LNG represents such an alternate energy source;*
- *a Request for Proposal (RFP) to finance, build, own and operate a Floating Storage Re-gasification Unit (FSRU) and pipeline infrastructure was issued in September 2009 [sic]. **The RFP resulted in the identification of a Preferred Bidder but it is now necessary to identify the potential off-takers who will be using the LNG for the generation of electricity. This is needed to facilitate certain commitments associated with the LNG project, including a Final Investment Decision in relation to the FSRU, on or before November 15, 2010.** As advised, **the failure to finalize by said date is likely to result in delays and increased capital cost for the FSRU.** Consequently, the selection of the potential gas-offtakers/generators of electricity is most urgent and an open tender for the identification of the potential generators of the required capacity is not likely to meet this timeline:*
- **undue delay may result in the local LNG project losing its slot for the construction of the required FSRU** and the project may become delayed

*indefinitely or aborted due to lack of interest from potential LNG off-takers/generators of electricity;*

- *there is an urgent need to synchronize the schedule for implementation of the LNG Project with the plans for implementation of the power generation and cogeneration projects that will be the initial users of the natural gas to be produced from the Project. This will require an assurance that projects are completed around the same time to enable the full utilization of the LNG facilities and that off-takers are identified at an early to [sic] facilitate any necessary agreements or guarantees required as pre-conditions to the installation of the LNG facilities and the selection of LNG suppliers.*

*Taking into account these extenuating circumstances, the MEM and the OUR discussed the most suitable procurement methodology...and have concluded that the Limited Tender Procurement methodology is the best way forward...”*

The NCC, by way of a letter which was dated 2010 September 17, responded to the foregoing letter from the Permanent Secretary, MEM, and stated, *inter alia*, the following:

*“The National Contracts Commission (NCC) considered on the matter **2010 September 17** via Round Robin method and taking into consideration the circumstances...offered no objection to the Ministry of Energy and Mining (MEM) proceeding with the use of the Limited Tender Methodology to procure a 480 MW of Generating Capacity pursuant to a 2010 Generation Expansion Plan.*

*The MEM should proceed in accordance with the GoJ Procurement Handbook of Public Sector Procurement Procedures of November 2008, Sub-Section No. S-2040 pertaining to the use of Limited Tender Procurement Methodology, for the procurement of General Services and Goods.*

*The NCC is requesting that the Ministry provide a record of the firms that will be selected to submit quotations for the required Generating Capacity.”*

The Hon. James Robertson, Minister of Energy and Mining, by way of Cabinet Submission 469/MEM-47/2010, which was dated 2010 September 16, requested that the Cabinet approve the foregoing based upon, *inter alia*, the following schedule:

<i>NO</i>	<i>Decisions</i>	<i>Timelines</i>
1	Develop criteria for short-listing of Power Providers. Criteria to satisfy GOJ's procurement guidelines. (Limited Tender Methodology) Use criteria to develop a shortlist of power providers from local and international generators of electricity (to be done within five days)	By close of business September 23, 2010
2	Issue Request for Proposal (RFP) accompanied by Term Sheet; Draft Terminal Use Agreement; Document outlining steps being taken to introduce natural gas to Jamaica and the proposed relationships between entities involved in the importation and delivery of natural gas to Jamaica and the proposed relationships between entities involved in the importation and delivery of natural gas and the expansion of the electricity capacity; Draft Power Purchase Agreement and Draft License	September 30, 2010
3	Return of The Term Sheet indicating declaration of an intent to bid (To facilitate FSRU closing by November 15, 2010. Necessary to secure price for FSRU; missed date will then result in substantial increase to the FSRU cost)	November 1, 2010
4	Notify preferred FSRU provider of the responses under the Term Sheet	November 5, 2010
5	Notify all Bidders issued with RFP (see 2 above) of prices under the Terminal Use Agreement (TUA)	November 19, 2010
<i>NO</i>	<i>Decisions</i>	<i>Timelines</i>
6	Deadline – return of Bids and other documentation/Bid Opening	January 3, 2011
7	Identification of preferred Bidder(s) for generating capacity	February 2, 2011
8	Signing of TUA	February 7, 2011
9	Negotiations and path for start of construction Negotiation and Execution of PPA Environmental Impact Assessment Permits Financing Activities	120 days June 11, 2011
10	24 months for targeted construction	
11	Threshold criteria: <ul style="list-style-type: none"> <li>• Off-taker to sign TUA whether or not a supply of gas is available</li> <li>• Off-taker's willingness to provide a letter of credit</li> <li>• The credit rating of the off-taker</li> <li>• A willingness to sign for 20 years take or pay supply contract</li> <li>• Provide comfort level</li> <li>• Experience – having built, owned and operated a generating plant of no less than 60 MW units</li> </ul>	

The Cabinet gave approval by way of Decision No. 35/10, which was dated 2010 September 20, for the OUR to use the Limited Tender Procurement Methodology to procure 480 MW of generating capacity from Liquefied Natural Gas for addition to the National Grid in accordance with the Generation Expansion Plan.

On 2010 December 15, the OUR issued a Media Release, which was entitled “***O.U.R moves to open tender for additional 480MW of power***” in which it stated, *inter alia*, the following:

*“The Office of Utilities Regulation (OUR) has amended its mode of procurement for the 480 MW of generating capacity from that of Limited Tender to Open Tender.*

*The Office conducted a review of the previous RFP process and concluded that it would be better served by using an open tender process.*

*The RFP issued on September 30, 2010 has therefore been withdrawn and the Office now invites proposals for the supply of the 480MW of generating capacity on an Open Tender basis.*

*Prospective bidders for the supply of the generating capacity have until March 31, 2011 to submit their documents.*

*Entities may provide one or more plants of varying configurations up to 480 MW with connections to the network of no greater than 120MW.*

*This new generating capacity being sought shall be base-load and is intended for the displacement of approximately 292 MW of aged plants with the remainder to provide for load growth...”*

Due to the fact that the increased generation capacity is associated the ‘FSRU LNG Project, the OCG will continue to monitor this component of the LNG Project in accordance with the provisions of the Government of Jamaica (GOJ) Handbook of Public Sector Procurement

Procedures (Revised 2010 October which was made effective 2011 January).

## **Evidence of Insider Information**

The OCG found that the former Chairman of the PCJ Board of Directors, Mr. Ian Moore, who was appointed on 2007 December 7, is presently a Director and Shareholder, of the company, CLNG, a partner of the Exmar Consortium, the '*preferred bidder*' for the 'FSRU LNG Project'.

It is also instructive to note that Mr. Conrad Kerr, former representative of the company, Merrill Lynch, is also a Director of the company, CLNG.

Of note, is the fact that the OCG found several pieces of correspondence which were circulated between Mr. Conrad Kerr, Mr. Ian Moore and Mr. Stephen Wedderburn, with respect to the LNG Project.

Based upon the foregoing, the OCG found it prudent to requisition Mr. Ian Moore and Mr. Conrad Kerr, in an effort to ascertain the nature of their relationship, the extent of their involvement and/or affiliation, if any, in the LNG Project and any other component of same, and, in particular, the 'FSRU LNG Project', during his tenure.

The OCG, in its requisition of 2010 October 4, which was addressed to Mr. Ian Moore, as Director of Caribbean LNG (Jamaica) Limited, posed, *inter alia*, the following questions:

*“What was the extent of your personal and/or official involvement and/or affiliation, if any, in the planning, conceptualization and/or implementation of the overall LNG Project, during your tenure on the Board of Directors at the PCJ?”*

*What was the extent of your personal and/or official involvement and/or affiliation, if any, in the planning, conceptualization and/or implementation of the Build, Own and Operate ('procurement') component of the LNG Project, for the proposed Financing, Development, Ownership, Operation of a FSRU LNG Re-gasification Terminal and Natural Gas Transmission System in Jamaica, during your tenure on the Board of Directors at the*

PCJ?”<sup>218</sup>

Mr. Ian Moore, in his response to the OCG’s Statutory Requisition, which was dated 2010 December 3, stated the following:

**“None. There was no approved and/or active LNG Project during my tenure at the PCJ. A number of companies made unsolicited overtures to the PCJ to develop LNG facilities in Jamaica during this time, and discussions were held with these companies in furtherance of the ongoing debate among governmental stakeholder parties on the merits of coal versus Liquefied Natural Gas (LNG) as an energy source in Jamaica...”**<sup>219</sup>  
(OCG’s Emphasis)

The OCG, in its requisition of 2010 October 4, which was addressed to Mr. Ian Moore, as a Director of Caribbean LNG (Jamaica) Limited, further posed, *inter alia*, the following question:

*“Please indicate at what stage of the LNG Project, and/or any component of same, in particular, the proposed Financing, Development, Ownership, Operation of a FSRU LNG Re-gasification Terminal and Natural Gas Transmission System, were you dismissed from the PCJ Board of Directors. In addition, please provide documentary evidence, if possible, to substantiate your response(s) and/or assertion(s).”*<sup>220</sup>

Mr. Ian Moore in his response to the OCG’s Statutory Requisition, which was dated 2010 December 3, stated the following:

*“There was no approved and/or active LNG Project during my tenure at the PCJ. The entire period of my tenure was consumed by an ongoing debate between the merits of coal and LNG as an energy source. The Minister of Mining & Energy essentially terminated any possible project start-up by announcing, in the 2008 Sectoral Budget Presentation, that LNG will not be pursued and that the Government had decided in*

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<sup>218</sup> OCG’s Requisition to Mr. Ian Moore, Director, CLNG, which was dated 2010 October 4. Question #3 & 4

<sup>219</sup> Response from Mr. Ian Moore, Director, CLNG, which was dated 2010 December 3. Response #3 & 4

<sup>220</sup> OCG’s Requisition to Mr. Ian Moore, Director, CLNG, which was dated 2010 October 4. Question #6

*favour of coal energy...*<sup>221</sup>

The OCG conducted a review of the Minutes of the Meetings of the PCJ Board of Directors, for the period in which Mr. Ian Moore was appointed the Chairman. The referenced minutes revealed that the LNG Project and/or any other component of same were deliberated upon in two (2) distinct meetings. These are as follows:

- i. The Minutes of the Regular Meeting of the PCJ Board of Directors, which was held on 2008 May 27, stated, *inter alia*, the following:

*“The Chairman read a letter from the Belgian government to the Prime Minister indicating that the Belgian Government was willing to buy the carbon credits from the LNG project for 100M Euros and was willing to upfront 50% of the sum assuming there are only three (3) off-takers namely JEP, Jamalcoa and a gasified power station at Old Harbour. Further the amount could be increased to 150M Euros if all the possible off-takers came on board. The Chairman noted that if the FSRU route was taken then 50% of the project would be paid for by proceeds from the carbon credits and 100% if all the bauxite companies came on board.”*<sup>222</sup>

- ii. The Minutes of the Regular Meeting of the PCJ Board of Directors, which was held on 2008 June 30, stated, *inter alia*, the following:

*“Enquiries were made as to whether the LNG project was being delayed because of a lack of support from the PCJ Board or the Government. The Chairman noted that the Project has the support of the Board but would also need the support of the Ministry of Energy and the Office of the Prime Minister.”*<sup>223</sup>

Based upon the foregoing, the OCG found that the LNG Project was halted during Mr. Moore’s

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<sup>221</sup> Response from Mr. Ian Moore, Director, CLNG, which was dated 2010 December 3. Response #6

<sup>222</sup> Minutes of the Regular Meeting of the PCJ Board of Directors which was held on 2008 May 27. Pg. 8

<sup>223</sup> Minutes of the Regular Meeting of the PCJ Board of Directors, which was held on 2008 June 30. Pg. 10

tenure, as the Chairman of the PCJ Board of Directors. There was no evidence found in the Minutes of the PCJ Board of Directors, during Mr. Moore's tenure, that any form of discussion was held in respect to the LNG Project, as an alternative source of energy. As such, the OCG found no evidence to suggest that approvals and/or recommendations were made, by the then PCJ Board of Directors, in regard to the LNG Project.

However, the OCG found evidence in the form of several email correspondence from Mr. Stephen Wedderburn to Mr. Ian Moore, Mr. Conrad Kerr, amongst others, which indicated that preparations were being made and information on the LNG Project were being shared on the project during Mr. Moore's tenure. These are as detailed overleaf:

Date	Sender/Receiver of Correspondence	Subject of Correspondence	Information Disclosed
2007 December 14	Email from Mr. Stephen Wedderburn to a Gabriel Henn (Winalco) and copied to Mr. Ian Moore and other representatives at Winalco	Acquisition of land for LNG Terminal	<p><i>“Please see attached letter reaffirming our interest in the acquisition of land at Port Esquivel for the LNG terminal.</i></p> <p><i>In respect of the recent discussion on the possibility of supplying LNG, we are working with a threshold of 750,000 tonnes of LNG per annum as the minimum volume to facilitate implementation of the LNG project. I make the observation that...(Winalco and sister company Alpart) are capable of taking that volume. <b><u>You therefore are in a unique position to guarantee implementation of the LNG project...</u></b>”</i></p>
2007 December 21	Email from Mr. Stephen Wedderburn to Mr. Ian Moore	LNG Project Timetable	<p><i>“Please see attached the Project Schedule chart submitted by Merrill Lynch. <b><u>I know you won’t be satisfied with it as it doesn’t project having LNG being distributed before late 2012.</u></b></i></p> <p><i>Merrill want [sic] to have a conference call with you on Monday morning to discuss this and the other documents...”</i></p>
2008 January 9	Email from Mr. Stephen Wedderburn to Mr. Ian Moore, Mr. Conrad Kerr, Mr. Stephen Hanan (MLCI), Mr. Andrew Gray (MLCI), et al.	New Exmar Concept	<p><i>“<b><u>Please see attached a copy of a presentation on an adjusted proposal from Exmar.</u></b> To minimize the logistical problems and delays that would be caused by a vessel having to dock in Port Esquivel for a partial cargo discharge, <b><u>Exmar are proposing a system based on ship-to-ship transfer of LNG...If Merrill is interested, I could arrange a conference call with the Exmar group while they are here, or if you have any issues you would [sic] me to raise with Exmar please let me know.</u></b>”</i></p>
2008 January 23	Email from Mr. Conrad Kerr to Mr. Stephen Wedderburn and copied to Mr. Ian Moore et al.	Exmar	<p><i>“From reading your note it seems that we are in agreement that regas “feasibility”... needs to be done before we make a final regas selection. <b><u>I would suggest that the feasibility should include both the Exmar solution and standard land based regas. If we can agree on this point I do not think we have a problem reflecting Exmar as the “base case”, as that is just a designation until we are both technically comfortable with it and it is proven to be a better solution (cost and time) than onshore.</u></b>”</i></p>

Date	Sender/Receiver of Correspondence	Subject of Correspondence	Information Disclosed
2008 January 23	Email response from Mr. Stephen Wedderburn to Mr. Conrad Kerr copied to Mr. Ian Moore et al.	Exmar	<p>“...The ‘coal lobby’ is in retreat, but I don’t think they have given up completely and you are going to have persons constantly seeking reasons to criticize the LNG project. <u>We need to get the regas feasibility analysis out of the way as quickly as possible and to facilitate this we need to concentrate on getting the MOU signed as quickly as possible.</u>”</p>
2008 January 23	Email from Mr. Stephen Wedderburn to Mr. Stephen Hanan and copied to Mr. Conrad Kerr, Mr. Andrew Gray (GMI-Latin America COO), Mr. Ian Moore, et al.	Role of Exmar	<p><u>“To clarify the role of Exmar, PCJ wants the Exmar proposal to be treated as the base case for the implementation of the LNG Project in Jamaica and the proposal being developed for the Prime Minister should reflect this.</u></p> <p>Therefore Exmar becomes more than just one of a number of alternatives, but their selection as infrastructure provider would still be subject to due diligence. If the due diligence reveals that there are any fundamental flaws to the Exmar proposal or that it is not the most cost-effective proposal then we would be prepared to look at other alternatives.</p> <p><u>We would want to have due diligence on Exmar’s proposal commencing immediately so that by the time we are prepared to sign definitive agreements, we would know whether we are sticking with Exmar or not.</u></p> <p>We are aware that in the floating terminal case, because the capital outlay is relatively small a standard return on capital approach will not give PCJ and ML the type of compensation we want. However, we believe that we need to look more at earning a margin on each btu of gas as the main means of compensation. In fact please note that some people in Jamaica have been suggesting that ML is pushing a high capital cost approach merely to get a high return, so we want to avoid as much as possible leaving ourselves open to such criticisms.”</p>

Date	Sender/Receiver of Correspondence	Subject of Correspondence	Information Disclosed
2008 January 23	Email from Mr. Conrad Kerr to Mr. Stephen Wedderburn, et al.	Exmar	<p><i>"I am aware of the Exmar discussion and I wanted to make sure we are clear on the positions of ML and PCJ on the subject...<b><u>Our understanding on the call with you and Ian after the Ministry offsite was that the PM supported LNG and the ML sole source solution.</u></b> Also, <b><u>we heard that you and Ian were keen to have Exmar included as regas option for the project to consider instead of just onshore [sic] solution.</u></b>..It is our position that the best way to ensure the project has the ability to move forward quickly is to stay with as much standard and proven design as possible...As we have mentioned in the past one of the benefits to sole sourcing the project together is that we can control the contracting risk and place it in the appropriate places...With the above said <b><u>I want to emphasize that we are happy to work with Exmar as an option and give them every chance to be the ML/PCJ choice of regas solution...</u></b> If you recall about 6 months ago we proposed to enter into a technical feasibility phase... <b><u>We suggest that this is still needed if we are going to properly evaluate the several Exmar Solutions vs Industry standard onshore regas...</u></b>"</i></p>
2008 January 28	Email from a Jacques Nyssen, Commerzbank to Mr. Stephen Wedderburn	EXMAR Belgium	<p><i>"I send you herewith our proposal for the financing of the dredging works and the construction of the jettee by the Belgian companies Dredging International and BESIX related to the LNG regas facility at Port Esquivel. This is indicative proposal for a Belgian financing is supported by the Belgian Government as part of the aim of further developping [sic] the good relationship between our both countries."</i></p>

Date	Sender/Receiver of Correspondence	Subject of Correspondence	Information Disclosed
2008 February 6	Email from Mr. Stephen Wedderburn to Mr. Conrad Kerr (MLCI), Mr. Stephen Hanan (MLCI), et al. and copied to Mr. Bart Lavent (Exmar) and Mr. Ian Moore	Jamaica LNG Pipeline Schematic and an attachment of same.	<p><i>“In a conference call yesterday I was asked to prepare a pipeline diagram. <b><u>Please see attached a rough schematic of what the pipeline network would look like if all the proposed parties to the end-user MOU take gas...</u></b></i></p> <p><i>The node near Montego Bay is the JPS Bogue Power Station which currently has a 120 MW combined cycle plant and 100 MW of simple cycle combustion turbines. If gas is available the plan is to add at least one more combined cycle plant.</i></p> <p><i>The node near Port Kaiser is the Alpart Alumina Refinery. Alpart’s current fuel oil usage is equivalent to 600,000 tonnes of LNG per annum.</i></p> <p><i>The node near Mandeville is Windalco Kirkvine. Kirkvine’s current fuel oil usage is equivalent to about 150,000 tonnes of LNG per annum.</i></p> <p><i>The node near May Pen is the Jamalco Alumina Refinery. Jamalco’s current fuel oil usage is equivalent to about 300,000 tonnes of LNG per annum. With proposed expansion, Jamalco’s energy usage would increase to the equivalent of about 600,000 tonnes of LNG per year.</i></p> <p><i>The node near Portmore is the JPS Old Harbour Power Station and the Jamaica Energy Partners power barges. JPS has about 240 MW of steam turbine units at Old Harbour and JEP has 125 MW of medium speed diesel units.</i></p> <p><i>The node near Linstead is the Windalco Ewarton Alumina Refinery. Ewarton’s current fuel oil usage is equivalent to 150,000 tonnes of LNG per annum, but there are plans to expand and to export 60 to 90 MW to the national grid. Windalco has claimed their fuel usage would go up to the equivalent of 700,000 tonnes of LNG, but this calculation has not been verified.</i></p> <p><i>The Mustang FEED included pipeline estimates for</i></p>

Port Esquivel to JAMALCO and Port Esquivel to Old Harbour and Kingston. We are no longer planning to go into Kingston, but as a rough approximation the cost that would have been incurred in taking the pipeline to Kingston is equivalent to the cost of taking it to Windalco Ewarton. Therefore the cost information in the model essentially covers the three easternmost nodes (Ewarton, Old Harbour and Jamalco)

**The Jamalco to Kirkvine leg had been estimated at about \$20 million by KBR in 2003. There has not been any more recent estimate.** There have never been estimates for pipelines to Bogue and to Alpart, but **Exmar is looking at providing some estimates this week.**”

Date	Sender/Receiver of Correspondence	Subject of Correspondence	Information Disclosed
2008 February 12	Email from Mr. Bart Lavent to Mr. Stephen Wedderburn and Mr. Ian Moore	Presentations Consortium – attached Exmar Jamaica LNG Project_latest	<p>“...as discussed yesterday evening, please find an overall presentation of the Belgian consortium solutions.</p> <p>We also added the CDM efforts proposed by the Belgian Government. As you both know, the LNG project has been filed for the Belgian CDM tender. It has passed the first round and is eligible for round 2. <b><u>We are talking here about 20 Mio €/year for the next 10 years to be shared between the different stakeholders.</u></b>”</p>
2008 February 12	Email from Mr. Stephen Wedderburn to Mr. Stephen Hanan (MLCI) and copied to Mr. Conrad Kerr (MLCI), Mr. Ian Moore, Mr. Bart Lavent (Exmar), et al.	Jamaica LNG Demand – attached Jamaica – Potential LNG Distribution Network; LNG Demand	<p>“As discussed on the call yesterday, please find attached some information on the existing and potential future LNG demand at the various prospective end-users in Jamaica.”</p>
2008 February 27	Email from Mr. Stephen Wedderburn to Mr. Ian Moore which was copied to Dr. Ruth Potopsingh (PCJ), Stephen Hanan (MLCI), Mr. Conrad Kerr (MLCI); Mr. Andrew Gray (GMI – Latin America COO), et al.	Jamaica LNG Terminal – Hoegh FSRU – attached document entitled “Portland Bight”	<p>“Please see indicative proposal from Hoegh LNG. As I have mentioned before, it was Alcoa that first introduced the FSRU concept and recommended Hoegh to us..As you can see the Hoegh proposal now is that we could have two LNG carriers, one an FSRU and the other only a storage unit. Thus the Hoegh proposal would have significantly more storage than the Exmar proposal -- on the order of 250,000 cubic metres. They indicate a project delivery time of 2 years.</p> <p><b><u>It is of interest that Hoegh has chosen the same site for locating the FSRU as Exmar, even though they do not have knowledge of the Exmar proposal.</u></b></p> <p><b><u>Hoegh’s proposal is for the floating equipment only and would not include the jetty and pipelines...</u></b>”</p>

Date	Sender/Receiver of Correspondence	Subject of Correspondence	Information Disclosed
2008 February 13	Email from Mr. Stephen Wedderburn to a Graeme McDonald	Jamaica LNG Project	<p>“...I have become aware recently that there are some people trying to introduce Golar to the Government. I have clarified to the Minister involved that we have been in touch with you for some time. Please note that there was some confusion on this side as the impression was given that your group was interested in supplying LNG as opposed to the infrastructure. <u>As you can imagine there is great interest in talking to anyone who can supply LNG...We have been talking with a potential partner who would take responsibility for the supply arrangements and also become an equity partner in the project.</u> PCJ is recommending to the Government that it formally enters into an alliance with this partner. <u>Since the impression had been given that your group could supply LNG it was felt by your contacts here that taking PCJ’s recommended path would lock Golar out of the project.</u> Assuming that the Government approves this proposed alliance we would probably scrap the exercise that was started last year and do a fresh procurement under the aegis of our joint venture partner. You will have picked up in the press that in all of this we are re-evaluating the choice [sic] between onshore and offshore...In order to accelerate the project, <u>if we go the FSRU route we are likely to take a more strategic route to identifying the FSRU provider rather than the typical government procurement route i.e. we may identify a couple of the most likely candidates and enter into some form of direct negotiation. In this regard, please note that one of your competitors has done a lot of background work on its own initiative and has effectively prepared its proposal already, even in the absence of an invitation for proposals. This competitor therefore has a headstart on the other companies...</u></p> <p><u>I assume that you will be at Gastech in March. The new PCJ Chairman and I will be there...He is very interested in the combined FSRU/Power Generation concept.</u>”</p>

Date	Sender/Receiver of Correspondence	Subject of Correspondence	Information Disclosed
2008 February 14	Email from Mr. Stephen Wedderburn to a Graeme McDonald	Jamaica LNG Project	<p>“As I mentioned to you my Chairman was very interested in your Floating Energy Solution concept. He has asked me to get some outline indicative information on this:</p> <ul style="list-style-type: none"> <li>- How soon could an [sic] FES be delivered?</li> <li>- What would it cost, both in terms of the upfront capital outlay and the likely range of daily charges for chartering the FES?”</li> </ul>
2008 May 13	Email from Mr. Stephen Wedderburn to Mr. Ian Moore and copied to Dr. Ruth Potopsingh and Mr. Carlton Davis	ML Thoughts on Jamaica LNG – attached document entitled ‘Thoughts’	<p>“Please see attached a note from Merrill Lynch outlining their current thoughts on the Jamaican Project and their involvement in it...</p> <p><b><u>...Please let me know what time tomorrow will be good for you to have a conference call with Merrill Lynch.</u></b> Arising out of the last Energy Committee Meeting I had invited Merrill Lynch to be in Jamaica next week, to be available to meet with the Energy Committee...To highlight and elaborate some of the key points being made by Merrill Lynch:</p> <ol style="list-style-type: none"> <li>1. They want the GOJ to clearly and definitively state that LNG is going to be the primary energy diversification strategy.</li> <li>2. They believe that PCJ has been overly optimistic on possible implementation timeframes and want us to accept what they see as a realistic timeframe, essentially 36 months plus whatever time it takes to get to Final Investment Decision.</li> <li>3. Merrill wants us to commit to an onshore terminal which they see as the most tested and reliable solution. <b><u>They consider the Exmar proposal to be experimental and are not at all keen on pursuing it.</u></b></li> <li>4. Merrill now wants to remove all carveouts and to be fully involved in all LNG supply discussions, including with Venezuela, i.e to have no carveouts at all. Whilst it would be excellent if we could have coordination between Merrill and PDVSA, such a combination won’t be an automatic fit...”</li> </ol>

Date	Sender/Receiver of Correspondence	Subject of Correspondence	Information Disclosed
2008 May 16	Email from Mr. Stephen Wedderburn to Mr. Patrick Dallas (Golar) and copied to Mr. Ian Moore and Mr. Dwight Lewis	Jamaica Trip	<p>“...I certainly think Golar is one of the credible FSRU providers and they are one of the companies I have been courting...I admit though that the current discussions are achieving what I did not, which is to get the Ministry interested in and excited about LNG and the FSRU concept.</p> <p><u>However, I want to stress that Golar and what they are offering are not unique. There are four companies that I consider the toprunners for providing an FSRU in Jamaica – Golar, Exmar of Belgium, Hoegh of Norway and MISC of Malaysia.</u> [There is a fifth capable company who has expressed interest in providing the FSRU for Jamaica -- Suez -- but I would not consider Suez, unless they also included LNG supply, which they have, in the deal.]... <u>All of these companies would finance the FSRU and I have indicated to them that anyone who can bring LNG to the table will be virtually guaranteed the front runner position.</u></p> <p><u>My personal ranking would be Exmar 1<sup>st</sup>, Hoegh 2<sup>nd</sup>, and Golar and MISC tied for 3<sup>rd</sup>.</u> Exmar have dived into this project with great enthusiasm. <u>Exmar have visited Jamaica about 8 times as opposed to once or twice for each of the other firms... Without waiting for MOUs or any documentation they have invest [sic] a lot of engineering [sic] resources in designing a solution for the Jamaica project and they have proposed a turnkey approach which includes not just the provision of the FSRU, but the construction of [sic] rest of the infrastructure as well. I am aware that Exmar and Hoegh have been actively making approaches to LNG suppliers on Jamaica’s behalf in the last year, but without success so far...”</u></p>

Date	Sender/Receiver of Correspondence	Subject of Correspondence	Information Disclosed
2008 June 2	Email from Mr. Bart Lavent to Mr. Stephen Wedderburn	Exmar Update	<p>“...I just wanted to give you an update on different topics:</p> <p>1. <i>Our LNG Floating Liquefaction is progressing well. We hope in the next month to sign an agreement...I will send you this week a presentation tailor made for Venezuela and the Caribbean region.</i></p> <p>2. <b><u>Hon Min Mike Henry, Minister of Transport &amp; Works – Jamaica is coming to Germany next week Friday 13<sup>th</sup>. I will meet with him to discuss our Jamaican cadet program (together with CMI) and the LNG project...</u></b></p> <p>3. <i>Ambassador Portocarero is in Belgium this week...He already updated me regarding the CO2 consultant process.</i></p> <p><b><u>I would appreciate your views and insights on this matter.</u></b>”</p>
2008 June 2	Email from Mr. Stephen Wedderburn to Mr. Ian Moore and copied to Mr. Dwight Lewis	Exmar Update	<p>“Please see update from Bart. <b><u>The recruitment of Jamaican cadets is another positive for Exmar -- I know that they have put a lot of effort in establishing linkages with CMI.</u></b></p> <p><i>It was only recently that Bart told me that Exmar was pursuing floating liquefaction, but he is now suggesting that they may sign a floating liquefaction contract as soon as next month.</i>”</p>
2008 June 2	Email from Mr. Stephen Wedderburn to Ms. Sancia Templer and copied to Mr. Ian Moore	Belgium LNG Consortium -- Commerzbank financing offer	<p>“Please see attached the financing offer that was submitted by Commerzbank earlier this year. The indicative interest rate at the time was 5.09 percent.</p> <p><i>Commerzbank had suggested that they would investigate the possibility of grants and subsidies from the ONDD, but there was no definitive commitments in that regard.</i>”</p>

Date	Sender/Receiver of Correspondence	Subject of Correspondence	Information Disclosed
2008 June 3	Email from Mr. Bart Lavent to Mr. Ian Moore and Mr. Stephen Wedderburn	CO2 credits: latest information received	<p>“...I refer to phone call of yesterday.</p> <p><i>In the meantime I was able to contact the responsible person within the Belgian administration.</i></p> <p><b><u>A. Belgian administration</u></b></p> <p><i>Unfortunately the answers were not very positive:</i></p> <p><u>Extension of the deadline:</u>  <i>10<sup>th</sup> of September is really the deadline. No exceptions will be granted.</i></p> <p><u>New tender:</u>  <i>This is the last tender that the Belgian government will launch...</i></p> <p><b><i>Based on this information I would recommend to include the LNG project into September 10<sup>th</sup> deadline...</i></b></p> <p><b><u>C. Recommendations</u></b></p> <p><i>To summarize I would recommend the following:</i></p> <ol style="list-style-type: none"> <li><i>1. Nominate a consultant as soon as possible for both projects. The consultant can then start working on the Project Design Document (PDD).</i></li> <li><i>2. There will be a need to feed the consultant with facts and figures; this will involve PCJ and the contractors.</i></li> <li><i>3. Prepare the Letter of Approval (already done for the Wigton wind farm field)</i></li> <li><i>4. Nominate the DOE...as they will be responsible for verifying the PDD and making the validation report...”</i> </li></ol>

Date	Sender/Receiver of Correspondence	Subject of Correspondence	Information Disclosed
2008 June 3	Email from Mr. Stephen Wedderburn to Mr. Ian Moore and Ms. Sancia Templer	FW: CO2 credits: latest information received	<p><i>“Please see note from Bart following up on our discussions yesterday. He is essentially saying that we need to move full speed ahead to meet the September deadline on the LNG carbon credit application.”</i></p>
2008 June 5	Email from Mr. Bart Lavent to Mr. Ian Moore and Mr. Stephen Wedderburn	Floating liquefaction: way forward for Jamaica	<p><i>“...I can only (re)stress that time is essential for the CO2 issues. It would be a shame to loose [sic] that money which can finance the LNG project.</i></p> <p><i>However the purpose of this email is different.</i></p> <p><b><u><i>As you might know, Exmar is working hard to build the first floating liquefaction terminal in the world...</i></u></b></p> <p><b><u><i>We believe that this floating liquefaction is the key to solve the Jamaican issue of LNG supply...we can unlock smaller fields and prepare the LNG supply to Jamaica. In that way we control the full value chain (liquefaction, shipping, regas, CO2 and sales) and we will no longer have the difficult discussions with the possible LNG suppliers stating “not interested in partial offload, no ship to ship, Force Majeure issues, Henry HUB+pricing,...” It is a relative fast track solution as the LNG will be produced end 2012. If Jamaica wants, it can already start buying some LNG earlier (2011) on a spot basis before the floating liquefaction kicks in...</i></u></b></p>

Date	Sender/Receiver of Correspondence	Subject of Correspondence	Information Disclosed
2008 June 5	Email from Evelien Van Haecke to Mr. Ian Moore and copied to Mr. Bart Lavent, Jacques Nyssen, et al.	Message from Ambassador Portocarero	<p><i>“re Port Esquivel LNG terminal</i></p> <p><i>I was glad to have a quick word with you in between our resp. meetings with the Prime Minister last week. <b><u>I know you have been in touch with Exmar in the meantime.</u></b> I have had extensive contacts with all parties on the Belgian side over the last two days here in Brussels.</i></p> <p><i>The situation now speaks for itself. The Embassy has been lobbying all it could. <b><u>The ball is in your camp. If the consultant is not hired in time for the (non negotiable) deadline of Sept. 10 for the CDM submission, I cannot devote any more time and attention to the project.</u></b></i></p> <p><i>I would deeply regret the loss of opportunity for Jamaica and of credibility for all involved, <b><u>including us in Belgium who have been very proactive and have stuck our necks out at some risk to our connections and careers.</u></b> I am sure you are aware of this and sympathize with it. I understand the political decision making process is not an easy one and does not come at an easy moment in Jamaica, but the world doesn’t always wait for us and circumstances will never be one hundred percent ideal...”</i></p>
2008 August 6	Email from Mr. Stephen Wedderburn to Mr. Ian Moore and Dr. Ruth Potopsingh	Hoegh LNG – Visit to Jamaica	<p><i>“<b><u>Although Hoegh was the first company to introduce the floating LNG concept to Jamaica they have fallen behind Exmar and Golar.</u></b> However, they have links with Alcoa and I had advised them that they work through Alcoa to set up a visit to Jamaica and get themselves back in the picture. The advantage is that they are much more likely to get an audience with the Minister if its Alcoa that makes the request rather than PCJ and the very fact of Alcoa requesting a meeting on LNG will negate the Minister’s oft stated claim that the bauxite companies are not interested in LNG.”</i></p>

\*MLCI – Merrill Lynch

Based upon the foregoing emails, the OCG found that during Mr. Moore’s tenure as the

Chairman of the PCJ Board of Directors, he [Mr. Moore] and Mr. Stephen Wedderburn were actively engaged in lobbying for the introduction of LNG to Jamaica. In this regard, there were several meetings and correspondence, with various LNG stakeholders including Merrill Lynch, Hoegh LNG, Golar LNG and Exmar Marine NV.

The OCG has found that in one instance, Mr. Stephen Wedderburn went as far as to rank the LNG players, based upon his perception of their capabilities to carry out the LNG project. Of note, is the fact that Mr. Wedderburn indicated a clear preference for Exmar Marine NV.

It is also instructive to note that one of the then Merrill Lynch representatives which was involved in discussions with Mr. Moore and Mr. Wedderburn was Mr. Conrad Kerr, a current Director and Shareholder of CLNG and business partner of Mr. Ian Moore.

Further, the emails have revealed that there was significantly more communication between Mr. Ian Moore and Mr. Stephen Wedderburn, with respect to Exmar Marine NV and its potential offerings than all of the other companies with which discussions were being held.

It is instructive to note that Mr. Wedderburn indicated that Exmar Marine NV invested significant resources in developing a proposal for Jamaica, and that the PCJ wanted to use the Exmar Marine NV proposal as a 'base case' for the implementation of the LNG project in Jamaica.

Based upon the emails, the OCG also found the following:

- i. There is also evidence to suggest that Mr. Bart Lavent of Exmar Marine NV, was informing Mr. Stephen Wedderburn of certain strategic steps which should be taken for the LNG project to materialise.
- ii. It is also instructive to note that Mr. Ian Moore, during his tenure as Chairman of the PCJ Board of Directors, was copied on the majority of the emails from Mr. Stephen Wedderburn, in regard to the LNG Project. Hence, the OCG found that during Mr.

Moore's tenure, Mr. Stephen Wedderburn informed Mr. Moore, at every step of the way, of the progress of the LNG Project, in which his input was required in most instances.

- iii. Of note, is the fact that both Mr. Ian Moore and Mr. Stephen Wedderburn, appeared to have been aggressively working to bring LNG to Jamaica during the time in which Mr. Wedderburn asserted that LNG was 'halted' because the then Minister, Mr. Clive Mullings, was promoting coal.
- iv. Based upon the email of 2008 February 6, the OCG found that Mr. Stephen Wedderburn was instructed to prepare a diagram of the pipeline network throughout the island. The referenced email was copied to Exmar Marine NV, representatives from Merrill Lynch, inclusive of Mr. Conrad Kerr, and Mr. Ian Moore, as the representative from the PCJ. The OCG has seen no evidence to suggest that, unlike Exmar Marine NV, the other potential bidders were made privy to this information.
- v. The OCG also found that Mr. Wedderburn informed Golar LNG of his personal ranking of four (4) of the entities which were involved in the pre-qualification exercise which was undertaken in 2007 by the PCJ and which were subsequently invited to tender in 2009 November. Of note, is the fact that Mr. Wedderburn ranked Exmar Marine NV as the number one (1) company and used Exmar Marine NV and its invested interest to compare the other entities.
- vi. Mr. Bart Lavent of Exmar Marine NV, hosted several meetings with Jamaican Public Officials/Officers, in which discussions were held with respect to Exmar Marine NV's progress and the LNG prospects for Jamaica.

The OCG also found that (a) Mr. Stephen Wedderburn sent several emails to Mr. Ian Moore, during his tenure at the PCJ, informing him of meetings and other forms of communications and that (b) Mr. Ian Moore convened other meetings in regard to the LNG Project. In this regard, the OCG found the following:

Date	Sender/Receiver of Correspondence	Subject of Correspondence	Information Disclosed
2007 December 10	Email from a Noam Berk to Mr. Stephen Wedderburn and Mr. Ian Moore and copied to Mr. Conrad Kerr, et al.	Fuel Oil Equivalent Numbers – attached document entitled “Summary LNG Pricing”	<p><i>“Was good to see you last week, we thought that the meetings with the end-users were productive and a good step forward in this process.</i></p> <p><i>As requested, we have added the fuel oil equivalent prices for the delivered LNG. The attached Excel spreadsheet has these numbers. As you can see, the fixed prices range from approx. \$53.00 to \$63.50 per barrel...</i></p> <p><i>Finally, we took a stab at calculating the additional cost, on a \$/kwh basis, of re-powering the existing boiler-fired fuel oil units (Old Harbour and the bauxite company units) to gas-fired combined cycle power plants. Assuming a capital cost of \$800 per kw of capacity, VOM of \$2.50/mwh and FOM of \$0.87/MWH, 95% capacity utilization, a required return of 12-13% on this capital investment, and no terminal value after 20 years, one would need to charge an additional 1.9 to 2.0 cents per kwh to support this investment...”</i></p>

Date	Sender/Receiver of Correspondence	Subject of Correspondence	Information Disclosed
2008 January 2	Email from Mr. Stephen Wedderburn to Mr. Ian Moore	LNG Meetings	<p><i>“Andrew Gray of Merrill Lynch will be here next week and would like to meet with us...<b><u>Also Exmar and their construction partners, Besix and Dredging International, have requested a meeting</u></b> the following week and I am tentatively scheduling that for Tuesday 15 January at 10:00 a.m. Please confirm that the time is okay for you.”</i></p>
2008 January 23	Email from Mr. Conrad Kerr to Mr. Stephen Wedderburn and Mr. Stephen Hanan copied to Mr. Ian Moore, et al.	Role of Exmar	<p><i>“Steve Hanan just phoned me to say he has been involved in a car accident. He is OK <b><u>but requests the Exmar call be delayed until 10:30 Houston time</u></b> to allow him to make it into the office.”</i></p>
2008 February 20	Email from Pooya Alia, Energy Utilities & Infrastructure, Market & Value Advisory, PricewaterhouseCoopers LLP, to Mr. Ian Moore	Meeting in London on Friday 22 February	<p><i>“Dear Ian,</i></p> <p><i>Thank you very much for your time yesterday. Further to our discussion, Michael Hurley, who heads the LNG team in London and is also the PwC global LNG leader, is very keen to meet you on Friday as well. Can we arrange a time after 3 pm? We could come directly to your hotel if that is more convenient for you.”</i></p>
2008 February 29	Email from Pooya Alia, Energy Utilities & Infrastructure, Market & Value Advisory, PricewaterhouseCoopers LLP, to Mr. Ian Moore	Meeting in London on Friday 25 February	<p><i>“...It was a pleasure to meet with you in London on Monday. As promised, please find attached our proposal which we hope to be able to discuss with you on your next visit through London. I also attached our LNG credentials in electronic format.”</i></p>

Date	Sender/Receiver of Correspondence	Subject of Correspondence	Information Disclosed
2008 March 3	Email from Mr. Ian Moore to from Pooya Alia, Energy Utilities & Infrastructure, Market & Value Advisory, PricewaterhouseCoopers LLP	Meeting in London on Friday 25 February	<i>“Thanks, I will be looking at this and sending a response by the week’s end.”</i>
2008 March 8	Email from Mr. Stephen Wedderburn to a Graeme McDonald (Golar)	Jamaica LNG Project	<i>“I hear Golar met recently with Patrick Dallas, advisor to Minister Mullings. Patrick will not join Ian Moore and me in Bangkok. Let me know when would be a convenient time to meet in Bangkok...”</i>
2008 May 5	Email from Mr. Ian Moore to Patrick Dallas (Golar)	Jamaica Site Visit	<i>“Patrick, I am in support of this visit and, I am available today from 3:30pm for this and the LNG position paper after which we will have a meeting with Amerossi at 5pm.”</i>
2008 July 23	Email from Mr. Stephen Wedderburn to Mr. Ian Moore	Saturday Meeting	<i>“My assistant mentioned that the PM will have a meeting Saturday, but I didn’t get any details. Can you tell me what it is about?...”</i>
2008 July 23	Email from Mr. Ian Moore to Mr. Stephen Wedderburn	Saturday Meeting	<i>“Try to come [sic] back early this is the decision making meeting for lng vs coal”</i>
2008 July 23	Email from Mr. Stephen Wedderburn to Mr. Ian Moore copied to Dr. Ruth Potopsingh	Saturday Meeting	<i>“I have began checking possible arrangements...likely to cost...US\$500 to be able to get back home in time for the meeting. Please confirm that PCJ would reimburse me...”</i>
2008 July 23	Email from Mr. Ian Moore to Mr. Stephen Wedderburn	Saturday Meeting	<i>“Ok did you get an invite? If so yes. <b><u>I did not want you to copy ruth on this.”</u></b></i>

Date	Sender/Receiver of Correspondence	Subject of Correspondence	Information Disclosed
2008 July 23	Email from Mr. Stephen Wedderburn to Mr. Ian Moore	Saturday Meeting	<p><i>“Yes, I was invited. So I will proceed to make the arrangements.</i></p> <p><i>Sorry about copying Ruth. <b><u>However, please note that she often complains about not being informed of things and I was just trying to cover that base.</u></b>”</i></p>

Based upon the email of 2008 July 23, the information which has been presented to the OCG suggests that there was an obvious intent, for whatever reason, on the part of Mr. Ian Moore, to withhold information from Dr. Ruth Potopsingh, the former Group Managing Director, PCJ.

## **Possible Conflict of Interest**

### **Mr. Stephen Wedderburn, LNG Project Coordinator**

Mr. Zia Mian, Director General, OUR, in his response to the OCG's Statutory Requisition of 2010 September 10, which was dated 2010 October 1, stated that after Mr. Wedderburn demitted office in 2008, "*I understand that he proceeded to start working closely with Exmar, a company that had remained actively interested in Jamaica for the supply of FSRU unit. In March 2009, Mr. Wedderburn sent an email to me...*"<sup>224</sup>

The referenced email, which was dated 2009 March 26, stated, *inter alia*, the following:

*"If you are able to talk with the Prime Minister, **please encourage him not to go down the coal path.***

*I can state categorically that LNG is available and companies that would have arrogantly dismissed any approach by Jamaica last year, would now be more than willing to talk to Jamaica. **I have contacts who can initiate serious LNG supply meetings with existing suppliers, but they have to be sure that the Government is willing to move forward and will not just waste their time as has happened in the past.***

***I had mentioned to you that I am in Colombia. The reason I am here is that I am providing assistance to a project to liquefy gas here. We expect to have an agreement signed next week to proceed with the FEED...***

*Again, if you get the chance please stress to the Prime Minister that there are real options for gas. However, if he were to depend on Minister Mullings to procure gas for Jamaica it will never happen. As I said to Bruce, we can get the gas from established suppliers, but the PM has to become personally involved."*<sup>225</sup> (OCG's Emphasis)

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<sup>224</sup> Response from Mr. Zia Mian, which was dated 2010 October 1. Response to Question #1.

<sup>225</sup> Email from from Mr. Stephen Wedderburn to Mr. Zia Mian, which was dated 2009 March 26.

Mr. Zia Mian, in his response to the OCG's Statutory Requisition of 2010 September 10, which was dated 2010 October 1, also stated that "...I forwarded his email to Dr. Carlton Davis the then Cabinet Secretary who also had an interest in LNG matters. With the change of Minister at the MEM to the Honourable Minister James Robertson, LNG found a new supporter. The new Minister wished to bring the LNG to Jamaica before the next general elections in 2012..."<sup>226</sup>

Based upon the foregoing, the OCG found that even after Mr. Stephen Wedderburn demitted office at the PCJ, he was still promoting LNG as the preferred energy choice for Jamaica.

It is instructive to note that during the time Mr. Wedderburn was not employed to the PCJ, he was involved in a LNG liquefaction project in Colombia in which Exmar Marine NV was also a party.

In this regard, upon being re-engaged by the MEM in 2009 August, Mr. Stephen Wedderburn, by way of an email to Dr. Ruth Potopsingh, the then Group Managing Director, PCJ, which was dated 2009 September 6, disclosed that "...I have been involved in a project to develop floating LNG liquefaction in Colombia. **Exmar is also involved in this project,** but I do not have any commercial relationship with Exmar. **Nevertheless, if the project is successful both Exmar and I will benefit.** My involvement in the project was on a success fee basis and even where I have ceased active involvement in the project, I will still have a financial interest..."

Further, Mr. Zia Mian, in his response to the OCG's Statutory Requisition of 2010 September 10, which was dated 2010 October 1, stated that "...Mr. Wedderburn was brought on board to spearhead the project. **At a meeting at Jamaica House, the Minister, and Messrs. Wedderburn and Moore strongly recommended that a negotiated deal with Exmar could deliver the LNG to Jamaica on a fast track basis...**"<sup>227</sup>(OCG's Emphasis)

The OCG found that Mr. Stephen Wedderburn was integrally involved in the drafting of the RFP and was the primary point of contact with the potential bidders during the tender process for the

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<sup>226</sup> Response from Mr. Zia Mian, which was dated 2010 October 1. Response to Question #1.

<sup>227</sup> Response from Mr. Zia Mian, which was dated 2010 October 1. Response to Question #1.

‘FSRU LNG Project’, in 2009 November.

### The LNG Technical Advisors

By way of an email, which was dated 2009 September 16, and which was entitled “*LNG Technical Advisors*”, Mr. Stephen Wedderburn informed the Hon. James Robertson, Mrs. Hillary Alexander, Dr. Ruth Potopsingh, Dr. Carlton Davis, Dr. Wesley Hughes, Mr. Oral Rainford, Ms. Kathryn Phipps, amongst others, of the following:

*“With the announcement that the issuance of an [sic] RFP for implementation of the Jamaican LNG Project is imminent, the appointment of a technical advisor becomes critical. Ideally a technical advisor should be involved in the preparation of the RFP and be involved in the evaluation process once proposals are received.*

***If we seek to select a technical advisor through a formal tendering process, the exercise is likely to take at least 2 to 3 months meaning that either we delay the issuance of the major RFP or proceed with the major RFP without the important input of technical advisors.***

*I am recommending that we have to be strategic about the choice of technical advisor and seek special dispensation from the Prime Minister to appoint a technical advisor.*

*The suggestion was made at the last meeting that we need to be looking at the very large firms, but I disagree with this view. Large firms excel at project implementation, but generally do not do so well in reviewing the work of others, which is what we need. They are also notorious for moving slowly and of course are high-cost. The other consideration is...large firms have virtually no experience in floating LNG regas systems, because up to very recently this has been a niche industry largely ignored by the established players...*

***Some possible candidates that would be more suitable for the owners’ engineer role***

**that we need would be Black & Veatch, Worley Parsons, CH-IV, Intec and Zeus. Of these I believe [sic] only Black & Veatch and Zeus will have any significant experience with floating LNG systems.** [N.B. Black & Veatch is a large firm, but unlike those names previously they do not undertake construction].

As I have mentioned previously, Zeus in combination with Clean Skies have been knocking very vigorously on our door. Please see attached presentations from Zeus/Clean Skies. These presentations indicate that they understand our requirements extremely well. I am aware that Zeus was one of the earliest engineering firms to embrace floating LNG, publishing a major industry study on floating LNG in 2007. It is not often that you find engineers with good commercial sense, but this is very evident in Zeus/Clean Skies. **I continue to recommend that we meet with Zeus/Clean Skies...I believe that they could very well be a candidate to consider for sole source appointment.**<sup>228</sup> (OCG's Emphasis)

The OCG further identified an email which was sent from Mr. Authur Ransome, Vice President and General Manager, CH-IV International to a Mr. Ernie Megginson which was entitled, "Re: Discussion Today", dated 2011 January 17.

(It is instructive to note, that Mr. Megginson was contracted by the Office of the Prime Minister in the capacity of a Project Manager for the 'FSRU LNG Project').

The referenced email stated, *inter alia*, the following:

**"Jeff Beale, President CH-IV International and I were both involved in discussions with Stephen and Joe/Pat in November, 2009. It was clear from those discussions that Clean Skies LLC (Joe/Pat) had already been discussing the FSRU project with PCJ (Stephen). However, I do not know exactly what involvement Pat and Joe had with the project up until that point. PCJ mentioned to us that although it wanted to use the**

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<sup>228</sup> Email from Mr. Stephen Wedderburn which was dated 2009 September 16 and which was copied to Dr. Ruth Potopsingh, Dr. Carlton Davis, etc.

services of Clean Skies to provide commercial services its procurement guidelines prevented it from directly hiring them. However, since CH-IV had an existing contract with PCJ to provide Technical Advisory Services (related to the earlier, 2005 LNG project) and since it was expected that the new services would require non-core CH-IV services including LNG supply negotiation, offtaker discussions and establishment of a regulatory framework it was suggested that we consider hiring Clean Skies on a subcontract basis thereby allowing CH-IV to become involved once again in this new venture.

The earliest email that we can find is dated November 15, 2009 from Stephen Wedderburn in which he informed us that he was formally back at PCJ and asked us to contact him to discuss the possibilities for CH-IV becoming involved in the Jamaican project again. That and a subsequent discussion took place on November 16 and 17 and it was during those discussions that Stephen suggested we talk to Clean Skies. Due to other commitments it wasn't until November 24 that we got to talk with Joe Fossella and we sent an email to Stephen Wedderburn later that same day updating him on the conversation and also notifying Stephen that CH-IV would place Clean Skies under subcontract to provide various commercial services. We formally placed Clean Skies under contract on December 2, 2009. CH-IV was formally placed under contract by PCJ on April 8, 2010.

*Although clearly the suggestion from discussions that we had with Stephen on November 16 / 17 neither Jeff nor I can find an email from PCJ in which it is clearly suggested or stated that we hire Clean Skies.” (OCG’s Emphasis)*

The OCG found that based upon the assertion of Mr. Authur Ransome, Vice President and General Manager, CH-IV International, the PCJ wanted to use Clean Skies LLC to provide commercial services for the LNG Project. However, due to poor planning on the part of the PCJ, there was limited time to allow for the proper use of the procurement guidelines in the contracting of Clean Skies LLC and, as such, the OCG has found that it was asserted that Mr. Stephen Wedderburn recommended that Clean Skies LLC, which is owned by Mr. Joseph

Fossella, enter into a sub-contract with CH-IV International, given that there was a pre-existing contract between CH-IV International and the PCJ from 2005.

The OCG found that Clean Skies LLC was actually sub-contracted by CH-IV International. By way of an email, which was dated 2009 November 24, Mr. Jeff Beale, President, CH-IV International, informed Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, of, *inter alia*, the following:

*“Arthur Ransome and I just completed a long and productive discussion with Joe Fossella. One action arising from the discussion is to proactively place Joe’s company under subcontract to CH-IV. We look forward to discussing further how CH-IV may now support Jamaica’s LNG efforts.”*

The OCG also found that Mr. Stephen Wedderburn, responded to the foregoing email on 2009 November 24, in which he stated, *inter alia*, the following:

*“I believe the Evaluation Team for the RFP responses...will meet next week...**It would be useful if you could provide by then any initial thoughts on how you would be able to help out with that process.**”* (OCG’s Emphasis)

The OCG found that there were several other email correspondence between Mr. Stephen Wedderburn and CH-IV International, in regard to the re-engagement of that company. These are as follows:

Date	Sender/Receiver of Correspondence	Subject of Correspondence	Information Disclosed
2009 November 30	Email from Mr. Stephen Wedderburn to Mr. Arthur Ransome	Jamaica FSRU Project: CHIV Proposal for Evaluation Support	<p><i>“Thanks. While the proposal review is certainly most [sic] urgent task at the moment and the easiest one to specify, I think it is important not to omit the other components that we will want CH-IV to work on:</i></p> <ul style="list-style-type: none"> <li><i>• Technical and Commercial Support in negotiation of contractual arrangements with the selected bidder</i></li> <li><i>• Technical and Commercial Support in the negotiation of an LNG Supply Agreement</i></li> <li><i>• Technical and Commercial Support in the negotiation of gas offtake arrangements with the gas users</i></li> <li><i>• Technical and Commercial Support in the development of a gas regulatory framework</i></li> <li><i>• Monitoring of Project Implementation/Construction”</i></li> </ul>
2009 December 4	Email from Mr. Stephen Wedderburn to Mr. Arthur Ransome	Jamaica FSRU Project: CHIV Proposal for Evaluation Support	<p><i>“...In the meantime, please remember that I also need updated info on capability and credentials. The question has been raised as to Ch-IV’s ability to deal with floating as opposed to onshore LNG regas and I want to put those questions to rest. It would be extremely helpful if I could get this information by Monday.”</i></p>

Date	Sender/Receiver of Correspondence	Subject of Correspondence	Information Disclosed
2009 December 7	Email from Mr. Arthur Ransome to Mr. Stephen Wedderburn	-	<i>“Please find attached a copy of CH-IV International’s Corporate Profile document, which provides details of specific offshore and floating technology projects including liquefaction and regasification. CH-IV’s experience is technically focused and its clients include leaders in the FSRU sector of the LNG industry...”</i>
2009 December 7	Email from Mr. Stephen Wedderburn to Mr. Arthur Ransome and copied to Joseph Fossella, et al.	Jamaica FSRU Project: CHIV Proposal for Evaluation Support	<i>“I have not got any comments back on the scope of work, and I would suggest that you go ahead and finalize a proposal based on that scope of work.”</i>
2009 December 20	Email from Mr. Stephen Wedderburn to Mr. Arthur Ransome.	-	<p><i>“I just wanted to let you know that things are progressing in terms of moving to finalize the re-engagement of CH-IV.</i></p> <p><i>PCJ Board Director Angus Gordon has been mandated to negotiate with you with a view to finalizing an arrangement [sic] by Christmas.</i></p> <p><i>There is some concern that some elements of your quotation are too high and the main issue now is to establish that your quotation represents value for money. There is also some concern in the PCJ Board to relate the current quotation back to the quotations you made in 2005 to ensure that the current quotations are reasonable...”</i></p>

Date	Sender/Receiver of Correspondence	Subject of Correspondence	Information Disclosed
2009 December 20	Email from Mr. Arthur Ransome to Mr. Stephen Wedderburn and copied to Joseph Fossella, et al.	Jamaica FSRU Project: CHIV Proposal for Evaluation Support	“Thanks for email Stephen. Since tour [sic] last email, Joe and I have started to look closer at our proposal for the bid review...”
2009 December 20	Email from Mr. Joseph Fossella to Mr. Arthur Ransome, Mr. Stephen Wedderburn and copied to Mr. Jeff Beale, et al.	Jamaica FSRU Project: CHIV Proposal for Evaluation Support	“Arthur, with the latest email from Stephen, we are reviewing all the man hours and costs we provided. We will have a revised proposal to you in the morning. I think they are looking for an all around reduction. Since the bulk of the hours are with CS, we will be revising our hours...”

Based upon the foregoing, the OCG found that Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, was in contact with representatives of CH-IV International and Clean Skies LLC. It is instructive to note that the emails suggest that Mr. Stephen Wedderburn passed on information, which was discussed by the PCJ Board of Directors, with respect to CH-IV International’s proposal to provide Technical Advisor services for the ‘FSRU LNG Project’.

Of note, is that several of the emails occurred subsequent to the issuance of the RFP and prior to the signing of a contract with CH-IV International in 2010 April. It is also instructive to note that the PCJ Board of Directors held discussions with respect to the re-engagement of CH-IV on 2009 December 22 and the foregoing emails from Mr. Stephen Wedderburn, preceded that date.

In this regard, the Minutes of the Meeting of the PCJ Board of Directors, which was held on 2009 December 22, stated, *inter alia*, the following concerns:

*“Director Gordon queried whether PCJ was using the existing Contract as the vehicle to start back with CH-IV suggested that was not [sic] way to proceed in his opinion. He also said that even if the existing Contract is used, the scope will be different. Director Watson explained that the present Contract is the only one with CH-IV and that it was*

**acted on until 2008 and was now a dormant Contract...**

...Director Watson stated that to the extent that some of what the TA would have to do i.e. based on the scope of work, to the extent that another party could be used to do anything under that scope, the TA could say that PCJ is in breach unless the Contract was terminated. He stated that the TA would have to present a revision of the scope of work in keeping with the new direction and that is not a difficulty because the Contract allows for amendment but NCC is more concerned with the contracting process and the price. **PCJ is at liberty under any Contract to amend any provision and to revise the scope and that is not the NCC's jurisdiction...** Director Watson stated that he did not see a closing period in the Contract...

**The Corporate Secretary stated that in relation to the engagement of CH-IV, in any event there has to be an amendment of the Contract in terms of the pricing for the work to be undertaken, the scope and the deliverables which is in effect a variation of the Contract terms.**

In response to Director Gordon's question if another Contract could be entered into with another party, he was advised that NCC's approval would then be required and also retendering and that process could not be completed before the 5<sup>th</sup> January, 2010 the date for submission of bids. It was also pointed out, that this is a subsisting Contract which NCC approved...

**Mr. Wedderburn pointed out in that when the Contract was originally executed it was expected that phase II would have continued immediately after what was called Phase I and a lot of the analysis and data to support Phase II would have come from Phase I work which was the feed study. He stated that they do not have that equivalent for the FSRU because no feed study was done for the FSRU so there is no equivalent data to feed into the current work...**

Director Watson stated that he does not believe that the discussion contemplates a

*second bid but rather clarification so permission from the NCC is not an issue...”*  
(OCG’s Emphasis)

It is instructive to note that the contract between the PCJ and CH-IV International, which was dated 2010 April 8, included an Appendix B that provided a list of the key personnel and sub-advisors for undertaking the Technical Advisor Services. These are as follows:

<i>Name</i>	<i>Company</i>	<i>Key Responsibilities</i>
<i>Authur Ransome</i>	<i>CH-IV International</i>	<i>Project Manager</i>
<i>David Almandoz</i>	<i>CH-IV International</i>	<i>Project Engineer</i>
<i>Joseph Fossella</i>	<i>Clean Skies LLC</i>	<i>Project development, tender process and commercial strategy advisory services and nrgotiating [sic] support</i>
<i>Patrick LaStrapes</i>	<i>Clean Skies LLC</i>	

The OCG conducted an internet search for Clean Skies LLC on 2011 January 25, and found that Mr. Joseph Fossella is the President of the said company.

The website provided a summary of ‘*Joseph Fossella’s Experience*’ which stated, *inter alia*, the following:

**“Captain**  
***Exmar Shipmanagement NV***  
*(Oil & Energy industry)*  
*2006-2010 (4 years)”*<sup>229</sup>

It is instructive to note, that the OCG conducted a second search of the referenced website on 2011 February 3, and found that the foregoing information was removed from the referenced ‘*Joseph Fossella’s Experience*’.

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<sup>229</sup> Website - <http://www.linkedin.com/in/rover63>

By way of a publication, which was dated 2008 November 5, and which was entitled “*EXMAR forms Alliance to Create Floating Liquefaction, Storage and Offloading Solution*” Exmar Marine NV indicated, *inter alia*, that “*EXMAR has specifically formalised a relationship with its long-time LNG partner, Excelerate, and with Black & Veatch, a proven provider of natural gas processing and liquefaction technology...This partnership forms a solid basis for the successful development of the first floating liquefaction, storage and offloading solution in the world...*”

The OCG also found, by way of the referenced information on the internet, that Mr. Joseph Fossella was the then Vice President, Business Development, at Black & Veatch, from January 2002 to November 2008.

The OCG in an effort to clarify the information which was identified on the referenced website, sent a Follow-Up Letter of Invitation (LOI) to Exmar Marine NV, which was dated 2011 February 11, and posed the following questions:

*“Please indicate whether you are aware of a Mr. Joseph Fossella. If yes, please indicate the circumstances under which you met Mr. Joseph Fossella and the nature of the Exmar Marine NV’s association and/or affiliation with Mr. Joseph Fossella.*

*Please indicate whether Mr. Joseph Fossella is/was: (a) employed to, (b) consulted by and/or (c) a business partner with, the Exmar Marine NV and/or the Exmar Shipmanagement NV. If yes, please provide responses to the following:*

- i. A list of all the positions which are/were held by Mr. Joseph Fossella and an Executive Summary detailing the job description of each post identified by you;*
- ii. The date(s) on which such positions were held by Mr. Joseph Fossella; and*
- iii. A list of the projects Mr. Joseph Fossella was consulted on and/or partnered with Exmar Marine NV.*

*If your answer to Question No. 2 is 'No', please state whether Mr. Joseph Fossella has acted on behalf of and/or represented Exmar Marine NV and/or Exmar Shipmanagement NV. If yes, please provide full particulars of: (a) the capacity in which he acted; (b) the date(s) of same; and (c) the circumstances relating to same.*

*Please provide an Executive Summary detailing the business relationship, if any, between the Exmar Marine NV and the company Black & Veatch and/or Clean Skies LLC.*

*Please indicate whether you were aware that Mr. Joseph Fossella was a representative of the Technical Consultant, CH-IV International, which has been contracted by the PCJ in Jamaica to provide services for the referenced project to which your company, Exmar Marine NV has submitted a bid.”<sup>230</sup>*

Exmar Marine NV, in its response to the OCG’s LOI, which was dated 2011 February 28, stated, *inter alia*, the following:

*“Yes we are aware of a Mr. Joseph (Joe) Fossella.*

***Some members of our staff met with Mr. Joseph Fossella prior to November 2008 when discussing the terms of the alliance involving Black & Veatch, Excelerate Energy and our company as referred to in the press release attached to your letter...***

*Mr. Joseph (Joe) Fossella was just one member among others of the Black & Veatch negotiation team. **He announced his retirement from Black & Veatch in October 2008, i.e. prior to conclusion of the negotiations.** The person in charge of this file for Black & Veatch was Kerry Errington, Senior Vice President...not **Mr. Joseph Fossella who was Vice President Business Development for Black & Veatch.***

***Some members of our staff met again with Mr. Joseph Fossella in 2010 in Kingston, Jamaica, on the occasion of the presentation of our bid in February, the confirmation***

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<sup>230</sup> OCG’s Follow-Up LOI to Exmar Marine NV, which was dated 2011 February 11. Questions 1-5

*of our selection as preferred bidder in June and the negotiation of the terms of Implementation Agreement between the Government of Jamaica and the Exmar Consortium members from September through December.* Mr. Joseph Fossella was a member of the CH-IV technical advisers to the Petroleum Company of Jamaica acting as agent for the Government of Jamaica.

*Other than the foregoing contacts there is no association or affiliation between Mr. Joseph Fossella and our company.*

*No, Mr. Joseph Fossella is not, nor was, employed or consulted by or a business partner with Exmar Marine NV or Exmar Shipmanagement NV.*

*No, Mr. Joseph Fossella has not acted on behalf of and/or represented Exmar Marine NV or Exmar Shipmanagement NV.*

*The press release attached to your letter...contains a good summary of the business relationship between Exmar Marine NV and Black & Veatch. Exmar Marine NV has no business relationship with Clean Skies LLC.*

*We were not aware that Mr. Joseph Fossella was a representative of the technical consultant CH-IV International until the date of presentation of our bid for the captioned project in February 2010.”<sup>231</sup>*

Based upon the foregoing, the OCG found that Mr. Joseph Fossella was not employed to the Exmar Marine NV and/or Exmar Shipmanagement NV. However, the information confirmed that Mr. Joseph Fossella was a representative of Black & Veatch and was involved in the negotiation between Exmar Marine NV and the referenced company, to which there is an alliance between both companies.

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<sup>231</sup> Response from Karel Stes, Company Secretary, Chief Legal Officer, Exmar Marine NV, to the OCG’s LOI, which was dated 2011 February 28.

Of note, is that Black & Veatch was a company which was identified by Mr. Stephen Wedderburn on 2009 September 16, as a possible candidate with respect to the LNG project.

It is instructive to recall that by way of an email, which was dated 2008 November 5, Mr. Stephen Wedderburn informed Mr. Ian Moore of the following:

**“For information please see press release from Exmar indicating that they are pursuing a floating liquefaction deal in partnership with Excelerate and Black & Veatch.** As you know Exmar is a company that does not let the grass grow under their feet, so having made this announcement you can be sure that the unit is just a couple years away.

*The idea of...getting direct access to a small gas field in either Colombia or Trinidad would still be of great value for Jamaica and if you are able to follow up any leads from your end it would be very useful.*

**I am pleased to have played a role in introducing Exmar and Black & Veatch to each other.**” (OCG’s Emphasis)

The OCG found that the current LNG Steering Committee is also aware of the possible irregularity and impropriety in the LNG project, between Mr. Stephen Wedderburn and Mr. Joseph Fossella. By way of Minutes of the Meeting of the LNG Steering Committee which was held on 2011 February 9, the following, *inter alia*, was indicated:

*“The Chairman updated members on recent developments in the matter. Members of the current LNG Team were being accused of hacking into Joseph Fossella’s LinkedIn profile by Stephen Wedderburn, Project Coordinator-LNG at PCJ. **Mr Fossella was the primary consultant working with CH-IV during the bid evaluations in 2010. He is also a partner in Clean Skies LLC and his company was contracted by CH-IV to work on the previous LNG project.** Mr Megginson informed members that in his discussions with CH-IV he asked them about the company’s relationship with Fossella. **He was advised***

**that there was a previous relationship between Wedderburn and Fossella prior to the RFP for the FSRU and gas pipeline. It was Wedderburn who had recommended to CH-IV in November 2009 that they grant Clean Skies a sub-contract in relation to the previous LNG project. Mr Logan added that he had discussions with CH-IV and they confirmed that Wedderburn and Clean Skies were contracted at the request of PCJ. It was also pointed out that Mr. Fossella's previous employers, Black & Veatch, had an alliance with Exmar which started in 2008...**

*The Chairman asked about the impact of the FSRU going back to tender. Mr Megginson advised that the result would likely be a six (6) month delay..."*

Based upon the foregoing, the OCG has found the following:

- i. That Mr. Stephen Wedderburn had discussions with both Mr. Joseph Fossella and Mr. Patrick LaStrapes of Clean Skies LLC in 2009 November, around the time of the commencement of the tender period for the 'FSRU LNG Project', to provide commercial services on the said project.
- ii. Mr. Joseph Fossella was a part of the LNG Technical Evaluation Team which had the core responsibility to assist with the Evaluation of the Bids.
- iii. Mr. Stephen Wedderburn explicitly stated that he played a role in introducing Exmar Marine NV and Black & Veatch to each other.
- iv. Mr. Stephen Wedderburn recommended that CH-IV International sub-contract Mr. Joseph Fossella's company, Clean Skies LLC, to work on the 'FSRU LNG Project'.

It is instructive to note that Sub-Section S-1040 of the Revised GOJ Public Sector Procurement Procedures (2008 November), provided, *inter alia*, the following:

## **“CONFLICT OF INTEREST**

*All personnel involved in handling a procurement process are expected to observe the GOJ Code of Conduct for Civil Servants outlined in the Staff Orders and to be free of interests or relationships that are actually or potentially detrimental to the best interests of GOJ **and shall not engage or participate in any transaction involving a company, its affiliates, divisions or subsidiaries in which they have even minor interests.***

*Any GOJ personnel involved in a procurement process that has assumed, or is about to assume, a financial or other outside business relationship that might involve a conflict of interest, must immediately inform their supervisors in writing of the circumstances involved. This information is to be reviewed at an appropriate level for a decision whether a conflict of interest is present, and if so, what course of action will be taken.*

*A conflict of interest exists when a GOJ personnel involved in a procurement process:*

- 1. Has an outside interest that materially encroaches on time or attention that should be devoted to the affairs of GOJ;*
- 2. **Has a direct or indirect interest in or relationship with an outsider that is inherently unethical or that might be implied or construed to be, or make possible personal gain due to the personnel’s ability to influence dealings, render the personnel partial toward the outsider for personal reasons or otherwise inhibit the impartiality of the personnel’s judgment;***
- 3. **It is the duty of all staff and any other public employee directly or indirectly involved with the procurement process, especially in the***

**preparation of bidding documents, evaluation, contract negotiations, contract management and payments to declare any potential conflicts of interest.** A conflict of interest will arise when the individual has a direct or indirect relationship with a bidder, consultant, contractor or supplier;

4. Takes personal advantage of an opportunity that properly belongs to GOJ;
5. Uses GOJ property without approval;
6. Discloses GOJ trade secrets or any other proprietary information to unauthorized persons.

All personnel involved in GOJ procurement process, found to be in violation of this policy will be subject to sanctions in accordance with the Laws of Jamaica.

Furthermore, bidders and consultants with potential conflicts of interest will also be considered ineligible to bid or submit a proposal. A conflict of interest will exist when a firm has been previously hired to provide services for the project design, preparation and implementation. This firm and all of its affiliates will not be eligible to provide goods, works or services for any contract that relate in whole or in part to earlier services provided by it.

#### **IV. UNETHICAL CONDUCT**

All involved in GOJ procurement process must comply with the GOJ Code of Conduct for Civil Servants outlined in the Staff Orders.

No individual shall use his authority or office for personal gain. Personal gain includes accepting or requesting anything of material value from bidders, prospective bidders or suppliers for the individual, his or her spouse, parents,

children or other close relatives, or for other persons from whom the individual might gain direct or indirect benefit of the gift.

An individual shall seek to maintain and enhance the reputation of the GOJ by:

- *Maintaining the highest standards of honesty and integrity in all relationships both inside and outside the Procuring Entity in which he works...*
- **Conflict of interest - An individual shall declare any personal interest that may affect or might reasonably be deemed by others to affect impartiality in any matter relevant to their duties;**
- **Disclosure of personal relationships – an individual shall declare any relationship with a bidder, supplier, contractor or consultant and shall take no part in either the decision making process or the implementation of any contract where such a relationship exists.** A personal relationship is defined as consanguinity or affinity. **Disclosure may be made in writing or, in the context of a meeting, verbally. However, having made the disclosure the individual shall not sit in the meeting while deliberations on the subject matter are being conducted.**
- *Confidentiality and accuracy of information - **An individual shall respect the confidentiality of information gained in the course of duty and shall not use such information for personal gain or for the unfair benefit of any bidder, supplier, contractor or consultant;***
- *Information given by an individual in the course of their duty shall be true, fair and not designed to mislead;*
- **Competition - All bidders, suppliers, contractors and consultants shall be treated with fairness and impartiality, and avoid any business arrangement that might prevent the effective operation of fair competition...**
- *Hospitality - An individual shall avoid any business hospitality that would be viewed by others as having an influence in making a government business decision as a result of accepting that hospitality;*
- *Reporting - All individuals have a moral and ethical responsibility to report*

any unethical conduct by a colleague, a bidder or a supplier to their superiors, oversight agencies, CG or to the auditors.

- *Examples of Unethical Conduct - The following are examples of the type of conduct prohibited by this Code of Ethics:*
  - **Revealing confidential or “inside information” either directly or indirectly to any bidder or prospective bidder;**
  - **Discussing a procurement with any bidder or prospective bidder outside the official rules and procedures for conducting procurements;**
  - *Favouring or discriminating against any bidder, prospective bidder or consultant in the preparing of technical specifications, terms of reference or standards or the evaluation of bids and proposals;*
  - *Destroying, damaging, hiding, removing, or improperly changing any formal procurement document;*
  - *Accepting or requesting money, travel, meals, entertainment, gifts, favours, discounts or anything of material value from bidders or prospective bidders, suppliers, contractors or consultants;*
  - *Discussing or accepting future employment with a bidder or prospective bidder, suppliers, contractors or consultants;*
  - *Requesting any other person to violate the public procurement rules or procedures;*
  - *Ignoring evidence that the Code of Ethics has been violated;*
  - *Ignoring illegal or unethical activity by bidders or prospective bidders, suppliers, contractors or consultants including any offer of personal inducements or rewards.”*

Having regard to the foregoing, it is instructive to note that Mr. Stephen Wedderburn disclosed his interest in a project to which Exmar Marine NV was a party. However, the OCG has found no evidence to suggest that Mr. Wedderburn disclosed his relationship with Mr. Joseph Fossella, a sub-contractor of CH-IV International, who was actively involved in the Evaluation of the Bids for the ‘FSRU LNG Project’.

It must be noted that Mr. Joseph Fossella is also the former employee of Black & Veatch, a company with which Exmar Marine NV has an alliance and who was a member of the ‘negotiation team’ for Black & Veatch, prior to his retirement in 2008.

Of note, is the fact that Mr. Stephen Wedderburn asserted that he was responsible for the introduction of Exmar Marine NV, the current ‘*preferred bidder*’, to Black & Veatch.

Further, the OCG found that Mr. Stephen Wedderburn participated in the meeting of the PCJ Board of Directors, which was held on 2009 December 22, in which he spoke to the particulars of the contract with CH-IV International, at the time when the PCJ Board of Directors was deliberating on the re-engagement of the Technical Consultant, CH-IV International. However, it is instructive to note that a review of the referenced meeting did not indicate that Mr. Wedderburn disclosed to the then PCJ Board of Directors his prior communications with CH-IV International and Clean Skies LLC with respect to the services which were required of the Technical Consultant.

In addition, the OCG found that Mr. Stephen Wedderburn recommended and guided the Technical Consultants, CH-IV International and Clean Skies LLC, with regard to the pricing of their quotation whilst informing the Consultants of the deliberations of the PCJ Board of Directors. As such, Mr. Wedderburn, by way of an email, which was dated 2009 December 20, advised Mr. Arthur Ransome, *inter alia*, as follows:

*“I just wanted to let you know that things are progressing in terms of moving to finalize the re-engagement of CH-IV...”*

*...There is some concern that some elements of your quotation are too high and the main issue now is to establish that your quotation represents value for money. There is also some concern in the PCJ Board to relate the current quotation back to the quotations you made in 2005 to ensure that the current quotations are reasonable...”*

It is instructive to note that the sub-contracting of Clean Skies LLC was done pursuant to a

recommendation which was made by Mr. Stephen Wedderburn. The referenced recommendation was made with the intention to circumvent the procurement procedures. In this regard, Mr. Arthur Ransome, CH-IV International, in an email which was dated 2011 January 17, indicated, *inter alia*, that “PCJ mentioned to us that although it wanted to use the services of Clean Skies to provide commercial services its procurement guidelines prevented it from directly hiring them. However, since CH-IV had an existing contract with PCJ...it was suggested that we consider hiring Clean Skies on a subcontract basis.”

## **Evidence of Impropriety and Irregularity**

Questions of impropriety and irregularity arose with respect to certain activities which were undertaken by certain key persons with regard to the 'FSRU LNG Project'.

Based upon the information which has been provided to the OCG, the OCG found that there were significant collaborative efforts between Mr. Stephen Wedderburn and Mr. Ian Moore during his tenure as Chairman of the PCJ Board of Directors. In this regard, the OCG found several pieces of correspondence from which it can be inferred that both Mr. Wedderburn and Mr. Ian Moore were actively pursuing LNG as an energy option and, in so doing, attempted to divert from the GOJ policy agenda of the then Minister.

Further, the OCG found that prior to the bidding process in 2009 November, Mr. Stephen Wedderburn and Mr. Ian Moore, in their attempts to divert from the policy agenda towards LNG shared more information with Exmar Marine NV, than any of the other nine (9) potential bidders.

In point of fact, in one correspondence the OCG found that Exmar Marine NV was identified by Mr. Stephen Wedderburn as his first choice based upon his assessment prior to the commencement of the tender process in 2009 November.

In an email which was dated 2008 January 23, Mr. Stephen Wedderburn informed Mr. Stephen Hanan, Mr. Conrad Kerr and Mr. Ian Moore, *inter alia*, as follows:

***“...To clarify the role of Exmar, PCJ wants the Exmar proposal to be treated as the base case for the implementation of the LNG Project in Jamaica and the proposal being developed for the Prime Minister should reflect this.*”**

***Therefore Exmar becomes more than just one of a number of alternatives, but their selection as infrastructure provider would still be subject to due diligence. If the due diligence reveals that there are any fundamental flaws to the Exmar proposal or that it***

is not the most cost-effective proposal then we would be prepared to look at other alternatives.

We would want to have due diligence on Exmar's proposal commencing immediately so that by the time we are prepared to sign definitive agreements, we would know whether we are sticking with Exmar or not...<sup>232</sup> (OCG's Emphasis)

In another email, which was dated 2008 February 1, Mr. Stephen Wedderburn informed Mr. Ian Moore, *inter alia*, as follows:

"I copied you on a note I sent to Minister Broderick regarding the Norwegian contact he said he had...the company would not be a provider of LNG, but rather would be a competitor to Exmar to supply the floating regas facilities.

However, this raises a point I have wanted to discuss with you, which is how do we treat with the other companies who are interested in providing floating regas solutions?

I do believe that Exmar stands out by way of the significant development work it has done in coming up with customized solutions for Jamaica and by the initiatives it has undertaken to present a turnkey solution that takes into account all the infrastructure. Exmar and the other Belgian companies also bring with them the support of their Government. There are therefore solid reasons why Exmar is a clear frontrunner.

However, because other companies have expressed interest, if we make an announcement that we have selected Exmar there are likely to be complaints by these other companies that they were not given a fair chance to compete with Exmar on an equal footing...

*Please note that...PCJ had launched a pre-qualification process...Nine companies*

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<sup>232</sup> Ibid.63.

indicated interest...

**Because of the uncertainties and dithering over the project I had not carried this pre-qualification process to completion. However, it is safe to say that Exmar would have been ranked number one...**

*It is clear that there are several well-qualified companies that are interested in providing the...FSRU facilities, but **none has showed the level of interest that Exmar has in going the extra mile to help bring the Jamaican project to fruition. Also only Exmar has shown any interest in going beyond the provision of the floating facilities to look at the entire project infrastructure.***

*You will see all these companies when you go to Bangkok and they will all be interested in hearing what is our position to go forward.*

**Should I invite these companies to put proposals forward with respect to their technical solution, cost and time of implementation within the next month, or should we just let sleeping dogs lie?**<sup>233</sup> (OCG's Emphasis)

The OCG found that the Exmar Marine NV proposal was allegedly being requested by the PCJ to be used as a "...base case for the implementation of the LNG Project in Jamaica"<sup>234</sup>. In this regard, by way of an email, which was dated 2008 January 23, Mr. Stephen Wedderburn provided the foregoing position to representatives of Merrill Lynch, in the persons of Mr. Stephen Hanan and Mr. Conrad Kerr, Mr. Ian Moore, amongst others.

It is also instructive to note that Exmar Marine NV worked behind the scenes developing their technical and commercial proposals prior to the RFP being issued in 2009 November.

The referenced email of 2008 February 1, further revealed that Mr. Stephen Wedderburn, had

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<sup>233</sup> Email from Mr. Stephen Wedderburn which was dated 2008 February 1, to Mr. Ian Moore.

<sup>234</sup> Email dated 2008 January 23 from Mr. Stephen Wedderburn.

already identified Exmar Marine NV as the entity which would have been ranked number one had the 2007 pre-qualification exercise been completed.

Mr. Stephen Wedderburn, by way of an email to Mr. Bart Lavent, Director, Exmar Marine NV, which was dated 2008 February 20, and which was copied to Mr. Ian Moore, stated, *inter alia*, the following:

*“Bart,*

*Good news.*

*Unfortunately in our Government setting, people are reluctant to take definitive decisions. The PCJ Board did approve the selection of CO2 Consult, but with a condition. The Board has asked that we explain the selection procedure to the Office of the Contractor General and get their OK. Unfortunately this is a process with a significant risk of delay.*

*The concern of the Board is about how the four firms were identified. **I have explained to them that we needed to have a firm familiar with the Belgian carbon credit process and thus we relied on the judgment of Exmar.** It would be helpful if you could **provide some additional information on the basis of the selection of these firms and it would be even better if you could provide some attestation to the capability of these firms from a Belgium Government source and to the need to act quickly, perhaps from someone like Amb. Portocarero** for example.”*

Based upon the foregoing the OCG found the following:

1. The OCG found that the LNG project was officially inactive during Mr. Ian Moore’s tenure as Chairman of the PCJ Board of Director as the then Minister was pursuing another agenda. However, while the official policy agenda was coal, Mr. Stephen Wedderburn and Mr. Ian Moore were actively pursuing LNG opportunities behind the

scenes.

2. Further, in several pieces of correspondence, the OCG has found where Mr. Stephen Wedderburn has explicitly provided his personal assessment of the LNG providers, and, in doing so, has consistently ranked Exmar Marine NV as his number one and preferred choice.

## **Alleged Associations between Minister James Robertson and Mr. Ian Moore**

The OCG received an anonymous allegation, by way of an email, which was dated 2010 December 11, which stated the following:

*“if you really want to find the link between moore and robertson, go back fifteen years and investigate a call bypass business – precision enterprises – that they were involved and check out an account held by moore at wachovia that is used for political funding.”<sup>235</sup>*

Consequently, the OCG requisitioned both named parties, that is, Mr. Ian Moore, former Chairman of the PCJ Board of Directors, and the Hon. James Robertson, Minister of Energy and Mining.

The OCG, by way of its Statutory Requisition, which was dated 2010 December 16, and which was addressed to the Hon. James Robertson, Minister of Energy and Mining, posed the following questions:

1. *“Please indicate whether you are aware of the company, ‘Precision Enterprises’. If yes, please provide responses to the following questions:*
  - a) *Are/were you affiliated with the referenced company?*
  - b) *Full particulars of your involvement and/or affiliation, if any, with the referenced company;*
  - c) *Full particulars of the role(s) and responsibility(ies), if any, which was/were held by you;*

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<sup>235</sup> An anonymous allegation, which was received by way of an email, and which was dated 2010 December 11.

- d) *The date(s) on which you became involved in and/or affiliated with the referenced company;*
- e) *The name(s) and title(s) of the beneficial directors, beneficial owners, directors, shareholders and/or partners in the referenced company;*
- f) *The current status of your involvement and/or affiliation with the referenced company; and*
- g) *Please provide full particulars of your relationship, if any, with Mr. Ian Moore, regarding the referenced company.*

*Please provide documentary evidence, where possible, to support your response.*

2. *Please indicate whether you are aware of Mr. Ian Moore contributing to and/or being used as a source of funding for any political campaigning and/or any form of political activity to the political party with which you are affiliated. If yes, please provide responses to the following questions:*

- a) *The total monetary value, if any, which was contributed;*
- b) *The date(s) on which such monetary value was contributed;*
- c) *Details of the full particulars of the purpose and circumstances under which such a contribution was made;*
- d) *Please indicate whether you had made the approach to and/or engaged Mr. Ian Moore to provide funding. If yes, please provide the date(s) on which such an approach and/engagement was made and the full particulars of the approach and/or engagement which was undertaken;*

- e) *Please indicate whether Mr. Ian Moore had approached you in regard to providing funding for any political campaigning and/or activity. If yes, please provide the date(s) on which such an approach and/engagement was made and the full particulars of the approach;*
- f) *Were any agreements signed regarding the referenced contribution? If yes, please provide documentary evidence to support your response;*
- g) *Has Mr. Ian Moore contributed funds directly to you for any form of political activity? If yes, please provide full particulars of same; and*
- h) *Please indicate whether the funding of the respective political activity was used in any way as an incentive for the LNG Project to Jamaica. If yes, please provide full particulars of the agreement, discussions and decisions which were taken and/or made as a result of same;*
3. *Please indicate whether anyone assisted you and/or you had required any assistance in responding to this Requisition. If yes, please provide the name(s) and title(s) of such person(s).*
4. *Are you aware of any additional information which you believe could prove useful to this Investigation or is there any further statement in regard to the Investigation which you are desirous of placing on record? If yes, please provide full particulars of same.*<sup>236</sup>

The Minister of Energy and Mining, in his response to the OCG's Statutory Requisition, which was dated 2011 January 31, stated the following:

1.

(a) **"Yes. I started the company with Mrs. Charlene Robertson.**

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<sup>236</sup> OCG's Statutory Requisition to the Hon. James Robertson, Minister of Energy, which was dated 2010 December 16. Questions #1-4

**(b) I was Managing Director until my appointment to the GOJ September 7, 2007, when I ceased being an officer of the company.**

(c) As Managing Director, I was responsible for the day to day operation of the company.

(d) September 17, 1991.

(e) Charlene Robertson

James Robertson.

As advised, I no longer hold any title or position in the company.

(f) Please note the response that I ceased being an officer in 2007 and currently has no formal involvement in the company currently.

**(g) Mr. Ian Moore has no relationship with Precision Enterprises Limited.**

2. I have no personal knowledge of this.

(a) I have no personal knowledge of this.

(b) I have no personal knowledge of this.

(c) I have no personal knowledge of this.

(d) No.

(e) No.

(f) No.

**(g) I do not recall. Several persons or entities would have contributed to fund raising and community activities and I have no records relating to fund raising efforts or events during the election period of 2001/2002 and 2006/2007.**

(h) Absolutely not.

3. My attorney Tom Tavares – Finson

4. **I was not involved in the bid evaluation or selection process relating to the Exmar Consortium being identified as the preferred bidder for the Floating Storage and Re-gasification Unit and Pipeline Infrastructure.**<sup>237</sup> (OCG's Emphasis)

The OCG, by way of its Statutory Requisition, which was dated 2010 December 16, and which was addressed to Mr. Ian Moore, Director, CLNG, posed the following questions:

1. *Please indicate whether you are aware of the company, 'Precision Enterprises'. If yes, please provide responses to the following questions:*

a) *Are/were you affiliated with the referenced company? If yes, please provide responses to the following questions:*

- i. *Full particulars of your involvement and/or affiliation, if any, with the referenced company;*
- ii. *Full particulars of the role(s) and responsibility(ies), if any, which were held by you;*
- iii. *The date(s) on which you became involved in and/or affiliated with the referenced company;*
- iv. *The name(s) and title(s) of the beneficial directors, beneficial owners, directors, shareholders and/or partners in the referenced company;*
- v. *The current status of your involvement and/or affiliation with the referenced company;*

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<sup>237</sup> Response from the Hon. James Robertson, Minister of Energy, which was dated 2011 January 31. Responses # 1-4

- b) *Are/were you aware of whether the Hon. James Robertson has any interest in the referenced company? If yes, please provide full particulars, inclusive of the date and circumstances by which you became aware of same; and*
- c) *Full particulars of your relationship, if any, with the Hon. James Robertson, regarding the referenced company.*

*Please provide documentary evidence, where possible, to support your response.*

2. *Please indicate whether you and/or any Entity with which you are affiliated has/have a 'Wachovia Account'. If yes, please provide responses to the following questions:*

- a) *Has the referenced account ever been used to fund political campaigning and/or used as a source of funds for any other form of political activity in Jamaica? If yes, please provide full particulars of the political activity(ies) which the account was/were used to fund and the amount which was used to fund same;*
- b) *Please provide the date(s) on which the referenced account was used to fund the respective political activity;*
- c) *Please indicate whether the funding of the respective political activity(ies) was/were used in any way as an incentive for the LNG Project to Jamaica. If yes, please provide full particulars of the agreement, discussions and decisions which were taken and/or made as a result of same;*
- d) *Please provide a copy of all Contract(s), Memorandum/Memoranda of Understanding and/or any other form of agreement in regard to the referenced matter; and*
- e) *Please provide the inflows and outflows from the referenced account from 2001 and/or the date of the opening of the account whichever is latest.*

3. *Please indicate whether you have had an official and/or personal relationship with the Hon. James Robertson. If yes, please provide responses to the following questions:*
- a) *The date(s) on which such a relationship(s) was/were established;*
  - b) *Detail the basis/bases upon which a such [sic] relationship(s) was/were established;*
  - c) *The circumstances under which such a relationship(s) was/were established;*
  - d) *The length of time of the relationship(s); and*
  - e) *Full particulars of the reason(s) why such a relationship(s) was/were established.*

*Please provide documentary evidence, where possible, to support your response.*

4. *Please provide an Executive Summary detailing the role(s) and responsibility(ies) of The [sic] Hon. James Robertson, Minister of Energy and Mining, as known by you, in regard to the LNG Project and the components of same, and in particular, the proposed Financing, Development, Ownership and Operation of an FSRU LNG Re-gasification Terminal and Natural Gas Transmission System in Jamaica, during your capacity as Director of the Caribbean LNG (Jamaica) Limited. The Executive Summary should, inter alia, include:*
- a) *A comprehensive list of all the discussion(s), negotiation(s), meeting(s), conference(s), seminar(s) and/or any other form of assembly, if any, held by the referenced Minister, in which you may have been in attendance, in regard to the referenced projects;*
  - b) *Full particulars of the circumstances under which you have met with the Hon. James Robertson, if any, in regard to the referenced projects;*

- c) *The date(s) on which you have met with the Hon. James Robertson, in regard to the referenced projects;*
  - d) *Full particulars of the discussions and/or decisions, if any, which had/have been made between yourself and the Hon. James Robertson, in regard to the referenced projects; and*
  - e) *A copy of any Contract(s), Memorandum/Memoranda of Understanding (MOU) and/or any other form of agreement(s), which have been signed between yourself, on behalf of CLNG and/or the Exmar Consortium, in regard to the referenced projects.*
5. *Please provide a list of all the private companies, except CLNG, in which you have had and/or have a pecuniary interest and provide the following information for each:*
- a) *A copy of any Contract(s), Memorandum/Memoranda of Understanding (MOU) and/or any other form of agreement(s) between yourself and the listed company;*
  - b) *The name(s) and title(s) of the person(s) with whom you have had some form of a business relationship, for each of the listed companies;*
  - c) *The name(s) and title(s) of the beneficial directors, beneficial owners, directors, shareholders and/or partners for each of the listed companies;*
  - d) *The date(s) on which you became involved and/or affiliated with the listed companies; and*
  - e) *Full particulars of the role(s) and responsibility(ies) which were held by you in each of the listed companies.*

6. *Please indicate whether anyone assisted you in responding to the OCG's Statutory Requisition of October 4, 2010 and/or this Requisition. If yes, please provide the name(s) and title(s) of such person(s).*
  
7. *Are you aware of any additional information which you believe could prove useful to this Investigation or is there any further statement in regard to the Investigation which you are desirous of placing on record? If yes, please provide full particulars of same.*"<sup>238</sup>

Mr. Ian Moore, in his response to the OCG's Statutory Requisition, which was dated 2011 January 10, stated the following:

- 1) *"No*
  
- 2) *Yes*
  - a. *No*
  - b. *Not Applicable...*
  - c. *Not Applicable...*
  - d. *Not Applicable...*
  - e. *Information will be provided under separate cover on or before February 28, 2011*
  
- 3) ***I am acquainted with Minister James Robertson. However I would categorize my knowing him neither as an Official relationship as none of us influences the decisions of the other, nor as a personal relationship since we do not generally socialize as friends.***
  
- 4) *I do not occupy an official position in government and am therefore uncertain of the exact roles and responsibilities of the Hon. James Robertson. **I assume that the Honorable James Robertson holds/held responsibility for overall policy direction that broadly encompasses(ed) the LNG project.***

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<sup>238</sup> OCG's Statutory Requisition to Mr. Ian Moore, Director, CLNG, which was dated 2010 December 16. Questions #1-7

a.

(i) Discussions & Meetings. There have been several meetings and discussions since 2009, both formal and informal. It is impossible for me to recall every one. Nevertheless I have noted below all that I am able to recall.

- June 2010 press conference to announce the preferred bidder.

I can also recall additional meetings as listed below. Note that these meetings were not held by the referenced Minister and took place prior to the start of the referenced project in November 2009. However, the referenced Minister was in attendance.

- June 2009 meeting to inform the ministry of the intent of EDC LNG to conduct the pre-feasibility study referred to at 13(a) in my response to your October 4, 2010 Requisition);

(ii) Negotiations (none).

(iii) Conferences (none).

(iv) Seminars (none)

b. See response at 4a.

c. See response to 4a.

d. No decisions were made between me and the Honorable James Robertson in regard to the referenced project. See responses at 4a for particulars of discussions.

e. In the context of Question 4, I have not signed on behalf of myself and/or CLNG and/or the Exmar Consortium any contract(s) memorandum of

*understanding and/or any other form of agreement with regard to the referenced project. I do not hold signatory authority on behalf of the Exmar Consortium. Further, I have not on behalf of CLNG, or any other firm, company, partnership or individual, signed any form of agreement with regard to the referenced project. (OCG Emphasis)*

*5) Adjoined Business Solutions (ABSL), IREE Solar, JaJabber Ltd, NC River Farms and Gold's Wrecker Service. Liomoore Farms Ltd. Abuc Ltd,*

- a. Shareholder agreement for Adjoined Business Solutions...*
- b. It is impossible to state all the persons and entities that I have had some form of business with in my capacity as a representative of the listed companies. However I can categorically state that I had not done business in any form with Minister James Robertson.*
- c.*
  - (i) Director/Shareholder listing Adjoined Business Solutions...*
  - (ii) Director/Shareholder listing IREE Solar...*
  - (iii) Director/Shareholder listing Jajabber Ltd...*
  - (iv) Director/Shareholder listing NC River Farms...*
  - (v) Director/Shareholder listing Golds Wrecker Service...*
  - (vi) Director/Shareholder listing Liomoore Farms Ltd...*
  - (vii) Director/Shareholder listing ABUC Ltd...*
- d. My affiliation with the respective companies is noted below.*
  - (i) Gold's Wrecker Service (1995)*
  - (ii) Jajabber Ltd. (2003)*
  - (iii) Adjoined Business Solutions (2008)*
  - (iv) IREE Solar (2008)*
  - (v) NC River Farms (2008)*
  - (vi) Liomoore Farms Ltd 1990*
  - (vii) ABUC Ltd. 1997*

e. *My roles and responsibilities in the respective companies are noted below.*

(i) *Gold's Wrecker Service (Shareholder/Director – no operational responsibilities)*

(ii) **Caribbean Net Talk (Shareholder/Director – no operational responsibilities)**

(iii) *Adjoined Business Solutions (Sales Director – responsible for sales)*

(iv) *IREE Solar (Shareholder/Director – no operational responsibilities)*

(v) *NC River Farms (Shareholder/Director – no operational responsibilities)*

(vi) *Liomoore Farms Ltd. (shareholder – part time farmer)*

(vii) *ABUC Ltd. (Shareholder/Director – no operational responsibilities)*

6) *No one assisted me in preparing the factual responses to your October 4<sup>th</sup> Requisition or to your Requisition of December 16<sup>th</sup> 2010 to which this Response is made. However, legal counsel, Christopher Bovell Esq. and David Wong Ken, Esq., reviewed the final Responses to both Requisitions prior to its submission to you.*

7) **...In regards to Precision Enterprises I repeat that I had no knowledge of that company until it was raised by your Requisition and I repeat again that I did not become acquainted with Minister Robertson until about 2006.** *I am not a personal friend of Minister Robertson or of any politician on either side. I am courteous and sociable to politicians on both sides, and if I have an idea I believe to be positive for the country, I do not hesitate to share it with them, or anyone else.*

*I have been made aware that numerous packages have been sent to the Gleaner as well as to the Observer that contain internal PCJ emails pieced together with instructions to the editors as to the questions that each publication should ask in an attempt to smear me. Most recently, an anonymous fax was sent to the Observer with instructions to investigate my “life style”.*

*Everything that I have done in regard to the LNG project has been open and above board. I declared to the MEM that private interest were going to embark on a feasibility study, openly declaring the intended approach to the PCJ and the OPM and reporting to the MEM on the results of the feasibility study.*

*You may have noticed the recent rise of the coal lobby through numerous articles in the Gleaner as well as the birth of the nuclear lobby. All have expressed strong opposition to the LNG project.*

*I am left to wonder whether the opposing interests are against me personally or against LNG or simply proponents of coal... ”<sup>239</sup> (OCG’s Emphasis)*

Based upon the foregoing, the OCG found the following:

- i. That the Hon. James Robertson was the Managing Director of the company, Precision Enterprises Limited, in which he was involved from 1991 September 17. He further indicated that he ceased being involved with the company when he was appointed as Minister on 2007 September 7.
- ii. The Hon. James Robertson also indicated that Mr. Ian Moore was not involved in the company Precision Enterprises Limited.
- iii. Mr. Ian Moore in his referenced response to the OCG’s Statutory Requisition of 2010 December 16, further indicated that he had no knowledge of the company, Precision Enterprises Limited. The OCG has found no other documentary evidence to suggest otherwise.
- iv. The Hon. James Robertson indicated that he was “...not involved in the bid evaluation or selection process relating to the Exmar Consortium being identified as the preferred bidder for the Floating Storage and Re-gasification

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<sup>239</sup> Response from Mr. Ian Moore, Director, CLNG, which was dated 2011 January 10. Responses #1-7

*Unit and Pipeline Infrastructure”*

- v. Mr. Ian Moore further noted that he had no discussions with the Hon. James Robertson with respect to the LNG Project and, in particular, the ‘FSRU LNG Project’.

Mr. Moore, however, indicated in his sworn response to the OCG’s Statutory Requisition that, *inter alia*, “...*There have been several meetings and discussions since 2009, both formal and informal...June 2010 press conference to announce the preferred bidder...Note that these meetings were not **held by** the referenced Minister and took place prior to the start of the referenced project in November 2009. However the referenced Minister was in attendance.*” He further indicated that he had a meeting with the Ministry to advise same of EDC LNG’s intent to conduct a pre-feasibility study for the ‘FSRU LNG Project’.

It is instructive to note that Mr. Ian Moore provided the OCG with the required Bank Statements under the cover of letters which were dated 2011 February 24 and 2011 April 27. In the first instance, Mr. Moore provided Bank Statements for the period of 1999 November to 2003 December. Subsequently, Mr. Moore provided the OCG with the remaining Bank Statements for the period of 2004 January to 2010 December.

The OCG conducted a review of the respective Bank Statements and did not find any evidence to substantiate the allegations which were made against Mr. Moore nor was there any suggestive evidence of transactions which were directed at political campaigning or business activities involving Minister James Robertson.

## **LNG Final Assessment Report by the Independent Consultants**

The OCG, was provided with a copy of a Draft LNG Assessment Report, which was dated 2010 November 3, on 2010 November 5, by way of a private meeting which was held between the Contractor General, Greg Christie, and the Hon. Bruce Golding, Prime Minister of Jamaica. The referenced meeting was initiated by the Prime Minister.

Subsequently, the Final LNG Assessment Report, which was also dated 2010 November 3, was submitted to the OCG by Ambassador Douglas Saunders, Cabinet Secretary, under the cover of a letter, which was dated 2010 December 7. The referenced report was prepared by a Mr. Donald Hertzmark and a Mr. Haydn Furlonge.

The referenced report stated, *inter alia*, in its Executive Summary that “*Two consultants were engaged to assist the Office of Cabinet in its assessments of the proposed Project, its technology, risks, timelines and financing...The Consultants were engaged by the Office of Cabinet at the beginning of October 2010 to review the progress on the proposed LNG regasification facility, the downstream pipeline and storage Projects and impacts of gas supply on the country’s electricity and industrial sectors. The scope of work was given briefly as follows...:*

1. *Assessment of the choices made so far regarding the key aspects of the Project...*
2. *Assessment of Project economics, finance and of key issues related to security packages for financing;*
3. *Review of the consistencies and timelines regarding the other decisions and actions required...;*
4. *FSRU facility...*
5. *Assessment of the FSRU RFP; and*
6. *Summary and prioritization of recommendations moving forward.”<sup>240</sup>*

The following represent, *inter alia*, the summary of Findings and Recommendations of the referenced Report:

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<sup>240</sup> Independent LNG Assessment Final Report which was dated 2010 November 3.

## Findings

1. *“...there is little technical risk in the FSRU approach to gas supply.*
2. *...ultimately, the decision to go with the FSRU approach seems sound from both logistical and technical angles.*
3. *...key uncertainties still plague the proposed FSRU Project. They concern sizing, design and cost estimates and future growth in gas demand. The Project cannot come to a financial closure without resolving these issues. Resolution of these uncertainties would involve closing the data gaps with completion [sic] of improved studies of demand, sizing and location before proceeding to the EPC phase. This is very likely to lead to Project delays and may increase or decrease total Project cost. Keeping the current bidding process on track would imply a binding commitment to the current preferred bidder, with a subsequently [sic] higher degree of uncertainty on the Project deliverables and costs.*
4. *...other nations have navigated the regulatory requirements for FSRU-based gas imports successfully. Jamaica will not need to develop its regulations for the gas industry or for the FSRU component de novo.*
5. *...the consultants’ experiences with regulation-by-contract incline them to support a legal framework for gas use in Jamaica that removes most regulatory aspects from the contract and into the regulator.*
6. *...key elements of regulation of a gas industry at all stages – landing of the gas, construction, pipelines, tariffs, permits – are not yet in place and can delay construction and financing of the FSRU and pipeline system. However, there exists the potential to adopt working regulatory approaches (and text) from other countries, including several in the Western Hemisphere.*

7. *...critical parts of the critical path are still undefined for the FSRU Project, and imperil timely completion of key Project agreements and financing. Given that some elements of the design basis are not yet specified and that the regulatory framework need to be in place, it [sic] likely that Project start-up would be delayed and that deferring the current process until the key design, cost and regulatory elements are in place may have the same end time as making the necessary corrections on the current path. Further, the likely date of completion of the power generation plants, the major gas customers, provides a time window to put critical pieces of the gas supply hard (FSRU, jetty, pipeline) and soft (regulation, finance) infrastructure into place with appropriate regulations governing cost allocation, access to the facilities and other agreements.*
  
8. *...a signed Implementation Agreement with Exmar is an essential first step in moving the Project toward a kickoff of the key activities. Financing for the Project will only be made available if there is a responsible party to take the financial liabilities for gas purchase and for the FSRU fees and costs. The types of financing structures outlined above are commonly used on energy Projects and the FSRU sponsors and operators should be familiar with such conditions in the financing. However, the strict conditions for gas supply and purchase will require regulatory oversight and this process must get under way soon.*

*In addition, the absence of any written intent to purchase gas from the SPV or to participate financially in same by Jamalco creates the potential for financial exposure for the Government of Jamaica, through PCJ.”*

## **Recommendations**

*“The FSRU Project has many moving parts and requires significant coordination at all times. The timeline is ambitious and can be upset easily with a few delays in approvals, design and financing.*

1. *At the present time there is no one entity that can oversee the entire process of proposals, design financing, construction, gas contracting, and regulation. Correspondingly, the consultants recommend that the Government of Jamaica appoint advisors and managers for the Project reporting to the GoJ who will be tasked with overall Project coordination, including constructing and enforcing the Project timeline. These advisors should be independent of existing advisory relationships.*
  
2. *A second issue concerns the absence of regulation for the entire Project, but especially for construction and economic aspects. The consultants recommend that the GoJ task its regulator with presenting a proposed framework to the Government by early-mid-2011...*
  
3. *Uncertainty about final design parameters and gas demand prevent a detailed engineering design for the Project. The consultants recommend that a focused economic and financial feasibility study be completed quickly leading to a final design specification for the FSRU and pipeline system.*
  - *This study should ultimately lead to a more accurate cost estimate, which would feed into a more detailed and useful economic evaluation of the Project.*
  - *Further, the consultants recommend that the technical advisors be tasked with a due diligence regarding the costs of comparable physical facilities as long as the construction and equipment supply bids are based on the current limited competition.*
  
4. *There is considerable uncertainty regarding the prices at which LNG can be acquired. This uncertainty influences the potential for investments downstream in energy...At the same time the kinds of commercial conditions underlying the facility's gas purchase strategy are not known, nor is the risk to the country for failure in a gas acquisition strategy. **Purchase of LNG should be done by an experienced, qualified***

*company, one that is independent of the SPV. The consultants recommend that the Government require a gas acquisition strategy report from the presumptive gas importer...*

5. *At present the Government of Jamaica, through PCJ, is in the process of acquiring some degree of financial responsibility for future gas purchases as the stand-in for the SPV in the Implementation Agreement (IA). This situation has arisen on account of the lack of a letter of intent to purchase gas from Jamalco and the inability to obtain a purchase commitment on the power generation side until a winning bidder is selected. The presence of the PCJ in the IA process is also the result of not having identified a gas supplier or even a procedure to choose a gas supplier. The consultants recommend that the IA be deferred until there are signed letters of intent to purchase gas from both Jamalco and the winning bidder of the Power generation solicitation, as well as an outline of an approved regulatory framework. The GoJ should not have any financial exposure through the IA process.*
  
6. *Timing issues remain problematic. The consultant believe that the Project is likely to encounter delays in its current form, due in large measure to the uncertainties created by the absence of a legal structure for the gas industry in Jamaica and by continuing uncertainties over participation by Jamalco...Consequently, there is less financial risk if the power plants are completed earlier than the gas plant than there is from the obverse. Realistically, the new power plants are not likely to be ready to receive gas until at least mid-2014, more than 40 months from now. This is sufficient time to remedy the defects in the current process noted in this report and the consultants recommend that this extra time be employed to effect the remedies suggested for the procurement, design and regulatory sides of the Project.*
  
7. *Finally, the SPV remains something of a mystery in the overall Project setting. Is it a cost centre? A profit centre? Who bears the consequences for bad sizing or operation decisions? Is it an active market participant or simply a conduit or*

*common carrier? Who can join the club? Does the SPV have the right to limit use of its facilities, and under what conditions and for how long? **The consultants recommend that a specific set of options, operating parameters and regulatory guidelines for the SPV be developed by mid-2011 capable of addressing each of these questions:***

- *The evolution of the SPV and pipeline to some form of “reasonably” open access structure should be assured within its development framework, regardless of the initial conditions for its startup.*
- *The regulatory and financing aspects of the options must be specified in all cases.*

8. *The current active proposal for the SPV creates serious conflict-of-interest issues and could well retard the spread of gas use to other companies in the country and create negative perceptions of the degree of transparency surrounding this transaction. At the same time the consultants believe that launching an entirely new round of bidding would create negative perceptions and delays that could potentially doom the Project. Therefore, it will indeed be necessary to have the support of Jamalco and “Power Co” as launch customers. However the current process with regard to the Implementation Agreement and establishment of the SPV is deeply flawed on grounds of transparency, risks to the GOJ, sizing, technical specifications and absence of an appropriate legal structure. Correspondingly, the consultants recommend that the SPV be subject to the following specific remedies:*

- *OUR should create regulations that become part of the setup parameters of the SPV...*
- *The studies of demand, sizing, location, cost must be improved significantly between now and mid-2011*
- *The Implementation Agreement should be executed only when there is a letter of intent to purchase gas from one or both of the launch customers*

*and a regulatory framework for the legal basis of the gas industry in Jamaica.*

- *The SPV sponsors must be willing to provide Letters of Intent to Purchase Gas that relieve the GOJ of its exposure to gas purchase contracts and to abide by the type of regulation contained in the OUR Framework (early mid-2011). If this is not the case then the Consultants recommend that the current process be scrapped and that a new round of bidding be instituted with a separate owner-operator for the FSRU who will also undertake responsibility to purchase gas. This company would operate as a regulated monopolist and would be subject to open access requirements, as would the companion, independently owned and operated pipeline company.*<sup>241</sup>  
(OCG's Emphasis)

By way of a letter, which was dated 2010 December 7, Ambassador Douglas Saunders provided the OCG with a copy of a document which was entitled “LNG Assessment Report: Assessment Report Comments”, which was prepared by CH-IV International for the Jamaica LNG Task Force. Of note, the referenced report was not dated.

The referenced report stated, *inter alia*, the following:

*“The LNG Team has critically reviewed the DMP Report, and its recommendations and is of the opinion that the Report is not sufficiently informed nor captures the vast information developed by the LNG Team. Should this have been possible, it would have facilitated a better understanding of the decision making process, of the rich history of studies and Front-End Engineering work done to date and the importance of adhering to the process and schedule currently underway...”*

*The Advisory team therefore recommends that the government of Jamaica proceed with the current strategy and plan to acquire a long term, competitive supply of LNG to reduce the excessively high energy costs of energy in Jamaica, provide fair and equitable*

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<sup>241</sup> Independent LNG Assessment Final Report which was dated 2010 November 3. A copy is appended.

*costs of natural gas to the utilities and industrial users and enable the power generation sector of Jamaica to timely access a reliable source of clean burning natural gas to install highly efficient generation capacity that will significantly lower electricity costs...*

*The Team...has developed a “**Resolutions Action**” Plan...*

*Additionally, there are some key consequences [sic] DMP Report that must be considered carefully... ”<sup>242</sup> (OCG’s Emphasis)*

CH-IV International, in its referenced document also stated, *inter alia*, as follows:

**“REGULATION**

*...the consultants recommend that the GOJ task its Regulator, the OUR, with presenting a proposed framework to the Government by early-to-mid 2011, before proceeding further with the project...*

*Regasified LNG (i.e. natural gas), as a commodity, however, **should not be regulated**, as the LNG will be priced (indexed) on the basis of a transparent North American benchmark.*

- *The Terminal Use Agreement (“TUA”) with the Exmar Consortium is being negotiated on behalf of the offtakers by the LNG Negotiating team charged with the responsibility of assuring that the public need is served and that the TUA is consistent with the best interests of Jamaica.*
- *The **pipeline infrastructure will be fully under the purview of the OUR.***
- *Exmar and Promigas have identified the respective permits required for construction of the FSRU and the Pipeline and have provided a baseline schedule for the completion of the required tasks...*

**While the development of a regulatory framework is clearly essential, we strongly**

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<sup>242</sup> LNG Final Assessment Report Comments which were prepared by CH-IV International.

**believe that such a framework and the implementation of final rules must be accomplished in parallel with the ongoing efforts to identify the offtakers, develop the commercial framework and, most importantly, land LNG.**

- *To our knowledge there is no statute requiring that a gas regulatory framework be fully promulgated prior to the development of the commercial structures to land LNG and re-power industry, nor is there any statutory basis for prohibiting Jamaica from proceeding with the LNG project...*

**Resolution:** *The LNG Team recommends that the GOJ develop, in parallel with the LNG initiative, a well-conceived, functional natural gas regulatory framework. In the interim, the GOJ is guided by precedent where contracts stipulate the obligations and responsibilities of the parties that would, otherwise, be determined by regulation...*

#### **GAS DEMAND:**

*DMP highlight the issue of ambiguities/uncertainties around:*

- *the demand for natural gas*
- *location of the floating storage and regasification unit and*
- *vaporization technology, sizing, design and cost estimates*

*DMP indicated that these issues would prevent financial closure.*

- *These assumptions are not in keeping with the current plan. **The work done to date (perhaps subsequent to the brief assessment by DMP)** on the IA has eliminated many of the ambiguities, and the Implementation Agreement (IA) is close to signature.*
- *The IA enables the Exmar Consortium to reserve the FSRU slot with submarket pricing and proceed with acquisition of the vessel.*

#### **PROJECT MANAGEMENT AND COORDINATION:**

*DMP recommend that the ...GOJ...appoint Project Advisors and Managers, independent*

of the existing Legal, Technical and Financial advisory relationships, and to coordinate the overall Project, and the construction and enforcement of project timelines.

...As FID approaches and the offtakers are identified, the management of the LNG side of the project will shift to **the offtakers who will be:**

- the owners of the LNG and ultimately have the responsibility for execution...

The OUR is already soliciting help in support of their efforts to evaluate the IPP bids...

...GOJ will have no financial responsibility for gas purchases as a stand in for the SPV in the IA. **The committed bidders for the IPP have agreed to sign a TUA and a 20-year commitment to purchase LNG.** While there is optimism that Jamalco will participate in Phase 1, the threshold volume without Jamalco is sufficient to support the venture.

**Resolution: Proceed with timely signing of the IA during the week of November 28 to enable Exmar to reserve the FSRU slot and proceed with the purchase of the vessel.**

Working with the Attorney General's Department, the OUR, CH-IV and Latham & Watkins, in parallel with the LNG initiative, develop a well-conceived, functional natural gas regulatory framework. In the interim, contracts will stipulate the obligations and responsibilities of the parties that would, otherwise, be determined by regulations.

#### **RELIABILITY OF TIMELINES FOR POWER PLANT READINESS:**

DMP is of the opinion that a realistic timeframe the new power plants to be ready to receive gas is mid-2014, more than 40 months from now. In their view, this is sufficient time to remedy the defects in the current process noted in their report and recommend that this extra time be employed to effect the remedies suggested for the procurement, design and regulatory sides of the project.

- The LNG team and OUR have collaborated to synchronize the LNG and generation components of the combined undertakings. At a recent Cabinet

meeting, the OUR was advised that mid-2014 for the new generation was unacceptable.

- *The LNG Team and OUR were directed to work together recognizing the goal of liberalizing the generation sector while, at the same time, compressing the timeline as much as reasonably possible...*

**Resolution:** *The LNG team and the OUR must continue to work in concert to meet the established target commercial operation dates in 2013 and synchronize activities.*

**SPECIAL PURPOSE VEHICLE:**

- *DMP recommend that a specific set of options, operating parameters and regulatory guidelines for the SPV be developed by mid-2011 capable of addressing each of these questions.*
  - *The SPV is not an unusual modality in the overall project setting...The recommendation to clarify the SPV character is valid, and work will commence to answer the questions in the report...*

**Resolution:** *Clarify the SPV charter guidelines.*

- *DMP regarded the current process with respect to the Implementation Agreement and establishment of the SPV as flawed on grounds of transparency, risks to the GOJ, sizing, technical specifications and absence of an appropriate legal structure. Correspondingly, the consultants recommend that the SPV be subject to the following specific remedies.*
  - **Transparency has been the cornerstone of the project to date.** *The statement above again conveys misunderstandings of the SPV and the risks to GOJ.*

- *OUR should create regulations that become part of the setup parameters of the SPV; such regulations should cover cost, access, pricing, risk allocation and return on investment for the three main Project components – gas purchasing, the FSRU and the onshore gas pipeline; and the regulations need to be completed in outline form by mid 2011 and in “black letter” (executable) form by late 2011.*

**Resolution:**

- *The SPV is unregulated and not subject to the imposition of rules by the OUR; and*
- *The SPV is unregulated and not subject to the rules that would be imposed by OUR.*
- *The studies of demand, sizing, location, cost must be improved significantly between now and mid-2011.*
  - *A thorough understanding of demand, sizing, location and cost is well developed.*
- *The Implementation Agreement should be executed only when there is a letter of intent to purchase gas from one or both of the launch customers and a regulatory framework for the legal basis of the **gas industry in Jamaica**.*
  - *The implication here is that the LOI is necessary to proceed with the FSRU. Upon signing of the IA, Exmar is committed to making financial commitments to acquire the FSRU.*
  - *The committed bidders for the IPP tender have agreed to sign the TUA and a 20 year commitment for the purchase of LNG.*
- *The SPV sponsors must be willing to provide Letters of Intent to Purchase Gas that relieves the GOJ of its exposure to gas purchase contracts and to abide by*

*the type or regulation contained in the OUR Framework (early-mid 2011). If not, the consultants recommend that the current process be scrapped and that a new round of bidding be instituted with a separate owner-operator for the FSRU who will also undertake responsibility to purchase gas. This company would operate as a regulated monopoly and would be subject to open access requirements, as would the companion, independently-owned-and-operated pipeline company.*

- *This recommendation **contradicts the Prime Minister’s stated objective of liberalizing the energy sector.***
- ***Entrenching a “monopolist” would be a step back to the traditional regulatory compact...***
- ***To stop the process until a regulatory framework be established by OUR does not improve the project economics, schedule or benefits to Jamaica.***
- ***The SPV will operate as a non-profit entity with no incentive to mark up the fuel costs. The SPV’s primary purpose is to provide the nexus to secure a long term supply of LNG supply.***
- ***The SPV is not intended to be a gas trading profit center. The offtakers/sponsors will comprise the SPV and will place their balance sheets behind the SPV’s contractual commitments.***

***Resolution of this catch-all recommendation is key to advancing the project and maintaining the momentum gained to date...Working with the technical, financial and legal advisors, the project coordinator would not only coordinate achievement of milestones but would also assure at all times that project integrity is being maintained and that an effective, functional early warning regimen is in place.***

#### **PROJECT TIMELINES & IMPACT:**

*To date, much has been accomplished, and a comprehensive project schedule has been developed:*

- *Financing requirements are well understood, and a viable commercial structure has been developed...*
- ***The Exmar Consortium has proposed a 5% contingency, and has already spent sufficient time on the ground...and, based on its wealth of experience and its industry relations, is willing to take that risk...In short, the infrastructure effort is well underway with a proven design and a site that is agreed upon between all stakeholders...***
- *Project delays arising from GOJ decision making have had an impact on the project schedule...*
- ***Aborting the current process and issuing a new infrastructure tender in 2011 would have disastrous consequences as far as the re-fueling of Jamaica is concerned...***

*FEED STUDY:*

- *Cost uncertainties might be somewhat mitigated with a FEED for both the FSRU, pipeline and generation facilities. This option would likely cost some \$5-\$10 million, and tendering would delay the project by perhaps 18 months, with the risk of gas and infrastructure suppliers no longer interested in the Jamaican market.*
- *Opportunity costs to Jamaica would likely to be astronomical. After 10 years of trying, the healthy skepticism of suppliers and other participants, the project is likely to collapse...*
- *Actions are being taken to protect Jamaica through the contracts being put in place and the current activities underway that are aimed at establishing a functional regulatory framework...*

*Currently, the LNG project is on a very fast timeline, with FID for the terminal scheduled for February or March 2011.*

- *The delay caused by opting for a new tender and restart will be very costly to the project, at best, and, in worse case, jeopardize the entire venture, as the terminal infrastructure provider will be unable to commit to a slot and vessel.*
- *The offtakers are now developing a cooperation agreement on (1) LNG demand and (2) negotiating a Terminal Use Agreement and a natural gas transportation agreement (NGTA). Gas is currently scheduled for delivery in mid-2013. In addition, the infrastructure provider has committed to a set of financial metrics by February or March 2011. **Should the project be delayed under the restart scenario, the FID will be delayed, and, not only will the competitive position of Jamaica with the infrastructure provider be lost, but, also, the window of opportunity in the current buyers market for LNG.***
- ***The infrastructure provider has stated that the consortium must commit to the FSRU vessel by the end of the current year.** If this window is lost, then the current commitments will be voided, and the costs of the infrastructure will significantly increase. Moreover, the infrastructure provider may abandon the project, given the delays and uncertainty.*
- *On the supply side, there has been healthy skepticism from the suppliers as to whether the Jamaica LNG project is real. **A further delay and the uncertainty will most likely cause the suppliers to lose interest, in which case, supplies will find other markets, and the project will likely collapse.***

*While a project restart, competitive tendering and FEED work might appear on the surface to promise less cost to Jamaica, when all the factors of the venture are taken into account, if the country proceeds down the path of a project restart, the impacts to Jamaica will, most likely, be significantly higher costs as a result of (1) the schedule difference, (2) the loss of competitive infrastructure, and (3) high LNG prices. In the worse case, failure of the project and, consequently, no natural gas in the country's fuel mix, will deliver a most significant blow to Jamaica's economic future.*

***Resolution: Continue with the current plan of implementation, allowing DMP to provide informed, timely input.***

*The Team requests, therefore, that the Cabinet...undertake the following actions:*

- *Sign off on the Implementation Agreement (“IA”) during the week of November 28*
- *Proceed immediately with the LNG supply acquisition plan.”<sup>243</sup> (OCG’s Emphasis)*

Contrary to the assertions of CH-IV International, that the Independent Consultant Report was not sufficiently informed, the OCG found that the Independent Consultants in their referenced report outlined that they conducted “...*preliminary meetings with various officials involved in the LNG Project and in the country’s energy sector.*”<sup>244</sup> These were as detailed overleaf:

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<sup>243</sup> Ibid.

<sup>244</sup> Independent LNG Assessment Final Report which was dated 2010 November 3

<i>Date (October)</i>	<i>Persons Met</i>	<i>Notes</i>
4	<i>Majorie Johnson, Office of the Prime Minister Christopher Zacca, OPM</i>	<i>Discussions of general contract and project issues, coordination, reporting, meetings</i>
4	<i>Hillary Alexander, PS Ministry of Energy Fitzroy Vidal Oral Rainford</i>	<i>Discussion of role of LNG in overall energy sector activities; summary of other planning &amp; investment initiatives in sector</i>
4	<i>Nigel Logan, CFO Petroleum Corporation of Jamaica Stephen Wedderburn</i>	<i>View on LNG project structure &amp; gas purchasing</i>
5	<i>PCJ – Stephen Wedderburn</i>	<i>Discussion on SPV, gas purchase contracts &amp; strategies, bidding process</i>
5	<i>Zia Mian, Director General, OUR Hopeton Heron</i>	<i>Regulation of SPV, gas purchasing, pass-throughs for gas &amp; FSRU costs, access to facility</i>
6	<i>JPS: Damian Obiglio, CEO Robert Dickerman</i>	<i>Discussion of SPV, fuel switching, CCGT investments</i>
5	<i>Hon. Audley Shaw, Minister of Finance Wayne Henry</i>	<i>General project discussion, reporting. SPV</i>
6	<i>PCJ – Stephen Wedderburn</i>	<i>Further discussions on SPV structure</i>
<i>November</i>		
4	<i>Christopher Zacca. OPM</i>	<i>Discussion of findings and recommendations</i>
5	<i>Meeting with HE [sic] Prime Minister, Amb. Douglas Saunders, Cab Sec, Christopher Zacca, OPM</i>	<i>Findings and Recommendations</i>
5	<i>Meeting with HE [sic] Prime Minister, Amb. Douglas Saunders, Cab Sec, Christopher Zacca, OPM Jamaica LNG Team</i>	<i>Findings and Recommendations</i>

It is instructive to note that the Public Officers/Officials with which the meetings were held, all played an integral role and were appointed and/or assigned responsibilities for the LNG Project and/or a component of same, at some point throughout the duration of the project. In fact, meetings were held with persons, such as Mr. Stephen Wedderburn, who was appointed and/or assigned to the project from inception.

The OCG found that the Cabinet received a submission in connection with a recommendation for the GOJ to enter into an Implementation Agreement with the Exmar Consortium (Jamaica) Limited for the Liquefied Natural Gas (LNG) Project, along with (a) the report from the Independent Consultants (DMP Resources) on the LNG Project, and (b) a response from the LNG Team to the report of the Independent Consultants.

It is instructive to note that at the referenced private meeting which was held on 2010 November 5, between the Hon. Bruce Golding, Prime Minister of Jamaica, and the Contractor General, Greg Christie, at which time the Prime Minister provided the Contractor General with a draft copy of the referenced LNG Assessment Report.

In the referenced meeting, the Prime Minister also expressed concerns in respect of the Findings of the referenced Report and informed the Contractor General, *inter alia*, that in the upcoming week he would be addressing the issue by removing the project from the current Ministry (MEM) to the Office of the Prime Minister (OPM), which would assume full responsibility for overseeing the entire project.

It is instructive to note that on 2010 November 29, Cabinet had before it Submission No. 531/MEM-52/10 in regard to the permission, which was being sought to negotiate an Implementation Agreement with the '*preferred bidder*' for the 'FSRU LNG Project'.

The Cabinet admitted the following persons to the meeting: Mrs. Hillary Alexander, Permanent Secretary, MEM, Mr. Douglas Leys, Solicitor General, Mr. Glenford Watson, Legal Officer, MEM, Mr. Stephen Wedderburn, LNG Coordinator, PCJ, Mr. Vohn Sachs, Partner, Latham and Watkins, and Mr. Joe Fossella, Consultant, CH-IV International.

Cabinet Decision No. 44/10, which was dated 2009 November 29, stated, *inter alia*, the following:

*“The report from DMP Resources outlined the results of their assessment of the LNG Project which covered the aspects of technology, risk, timelines and financing. The report raised issues and made recommendations with regard to regulation, project management and coordination, financial feasibility assessment, deferral of the Implementation Agreement, the reliability of timelines for power plant readiness, the special purpose vehicle (SPV), and the project timelines and impact.*

*The responses from the LNG Team addressed the issues raised by DMP Resources with regard to the business principles; the commercial structures; and the regulatory framework...*

*The Cabinet highlighted concerns regarding the following issues:*

- *the gaps identified by the Consultants from DMP Resources and stated in their report;*
- *that negotiations for a project of that size and nature were proceeding prior to the institution of a regulatory framework;*
- *having a new and separate regulator and regulatory framework vis-à-vis having the Office of Utilities Regulation (OUR) as regulator, and whether having a separate regulator was feasible, affordable or desirable;*
- *the likelihood of financial closure without the appropriate regulatory framework being in place;*
- *the disparate views of the many State agencies involved and the need for harmonization of the various perspectives on the matter and for a coordinated approach;*

- *the gas demand analysis;*
- *the commitment of off-takers to facilitate signing-off on the Implementation Agreement;*
- *the risks associated with each of the two options available to either halt the project process and start over again or to address the issues identified and continue the project process;*
- *the need to proceed with the Project in the most effective and efficient way possible, in light of the scale of the Project and its expected far-reaching and potential long-term positive outcomes for the country;*
- *the concerns of the OUR regarding the proposed conferral of exclusive rights for twenty years, essentially monopoly status;*
- *the minimum volume and capacity of the FSRU, and the associated issues of unused capacity and the implications for consumers;*
- *demand and price certainty; the price differential of gas versus oil; certainty and accuracy in terms of throughput, end-users, and firm commitments from prospective off-takers;*
- *the need for specific and detailed information to be provided on the proposed tax structure and regime, and for research to be done on tax regimes and regulatory frameworks in other jurisdictions; and*
- *the need for an approach that brought together and consolidated all the constituents interest and factors, clearly demonstrated the Government's commitment to the LNG Project and support for its end goals, and advanced the Project process... ”<sup>245</sup>*

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<sup>245</sup> Cabinet Decision No. 44/10, which was dated 2009 November 29.

The OCG found that the officials who were present in the referenced Cabinet meeting responded to the issues in Cabinet, in accordance with their comments on the LNG Independent Assessment Report.

The OCG found that the Prime Minister, in the Cabinet meeting which was held on 2010 November 29, advised the Cabinet that “...*he would assume overall direction for the LNG Project, and a Project Coordination Unit would be established in the Office of the Prime Minister. He also said he would convene a preliminary meeting that week with the relevant entities to arrive at a definitive position which incorporated all the factors necessary to move the Project forward...*”

On 2010 December 6, the Cabinet “...*agreed that the Submission should be withdrawn from the Agenda; and noted that the draft Implementation Agreement had been finalized and would be referred to the Project Committee established to oversee the direction of the LNG Project, along with the report from the Independent Consultants and the response thereto...*”<sup>246</sup>

Therefore, the OCG found that the decision to remove the Project was based upon the Findings and Recommendations from the Independent Consultants Report.

By way of Cabinet Decision 45/10, which was dated 2010 December 6, the Cabinet also indicated that “...*a Project Steering Committee had been established; and the membership comprised named representatives of the Office of the Prime Minister, the Ministry of Finance and the Public Service, the Ministry of Energy and Mining, the Petroleum Corporation of Jamaica, the Attorney General’s Chambers, as well as representatives of the private sector in the persons of Messrs Richard Byles, Howard Mitchell and Peter Melhado...*”

It is instructive to note that the Prime Minister, the Hon. Bruce Golding, submitted Cabinet Submission No. 631/CO 10/2010, which was dated 2010 December 9, in which it indicated, *inter alia*, the following:

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<sup>246</sup> Cabinet Decision No. 45/10, which was submitted to the OCG, by the Cabinet Secretary, under the cover of letter dated 2010 December 22.

### Steering Committee

1. Mr. Christopher Zacca - Special Adviser to the Prime Minister, Chairman
2. Dr. Wayne Henry - Technical Adviser to the Minister of Finance and the Public Service
3. Mrs. Annmarie Rhoden - Deputy Financial Secretary, MFPS
4. Mr. Fitzroy Vidal - Ministry of Energy and Mining (MEM)
5. Ms. Sonia Mitchell - Office of the Prime Minister (OPM)
6. Mr. Parris Lyew Ayee - Chairman, PCJ
7. Mr. Nigel Logan - Group Managing Director (Acting), PCJ
8. Ms. Herma McRae - Attorney General's Chambers (AGC)
9. Mr. Richard Byles - Private Sector
10. Mr. Howard Mitchell - Private Sector
11. Mr. Peter Melhado - Private Sector
12. Project Coordinator - to be urgently sourced and engaged

### Core Technical Team

1. Project Coordinator - to be engaged
2. Legal and Regulatory - Ms. Cherry Lewis, Office of Utilities Regulation (OUR)
3. Commercial and Financial - Mr. Marc Johnson, DBJ
4. Technical - Dr. Earl Green, Group Chief Technical Director, (PCJ)
5. Government Policy and Procurement - Mr. Peter Johnson (OUR)

### Ministerial Committee

1. Hon. Bruce Golding - Prime Minister, Chairman
2. Hon. James Robertson - Ministry of Energy and Mining

3. Hon. Audley Shaw - Minister of Finance and the Public Service
4. Hon. Laurence Broderick - Minister of State, Ministry of Energy and Mining
5. Senator the Hon, Marlene Malahoo-Forte - Minister of State, Ministry of Foreign Affairs and Foreign Trade

Further, by way of a News Release from the OPM, which was dated 2010 December 15, and which was entitled “*PM NAMES COMMITTEE AND SETS TARGET FOR LNG PROJECT*” it was reported that “*Cabinet has approved the new arrangements for the Liquefied Natural Gas (LNG) Project for which Prime Minister Bruce Golding has assumed responsibility.*”

The referenced News Release further stated the following:

*“...it was confirmed that a Ministerial Committee has been established chaired by the Prime Minister. Other members include Energy and Mining Minister, James Robertson; Finance Minister Audley Shaw, State Minister for Energy and Mining, Laurence Broderick and State Minister for Foreign Affairs and Foreign Trade, Mrs. Marlene Malahoo-Forte.*

*....under the arrangement, a Steering Committee has been established chaired by Christopher Zacca, Special Adviser to the Prime Minister with support from a core technical team. The Steering Committee will report to the Ministerial Committee at least every two weeks...administrative and related support will be provided by the Office of the Cabinet...”*

## **Recent Developments in regard to the ‘FSRU LNG Project’**

Having regard to the fact that the OCG found, and subsequently confirmed, that the OPM assumed overall responsibility for the ‘FSRU LNG Project’, the OCG, by way of a Statutory Requisition, which was dated 2011 February 3, wrote to the Cabinet Secretary to ascertain, *inter alia*, a detailed list of the established Committees and their respective purposes.

Ms. K. Sewell Mills, responded to the OCG’s Statutory Requisition, for and on behalf of the Cabinet Secretary, by way of a letter which was dated 2011 February 28, and stated the following:

*“The following are the lists of the Committees and Sub-Committees that have been formed for the basis of providing guidance to the activities related to the proposed Financing, Development, Ownership, Operation of an FSRU LNG Re-gasification Terminal and Natural Gas Transmission System in Jamaica.*

a. Ministerial Sub-Committee:

*This Ministerial Sub-Committee will oversee the operations of the LNG Steering Committee and advise and update the Cabinet of the progress of the Project.*

*The members of this Ministerial Sub-Committee are:*

- *Prime Minister- Honourable Bruce Golding, MP*
- *Minister of Energy and Mining - Honourable James Robertson, MP*
- *Minister of Finance and the Public Service- Honourable Audley Shaw, MP*
- *Minister of Transport and Works- Honourable Lester (Mike) Henry, CD, MP*
- *Minister of State, Ministry of Energy and Mining - Honourable Laurence Broderick, MP*

b. LNG Steering Committee:

*The LNG Steering Committee reports to the Ministerial Sub-Committee and, assisted by the LNG Core Technical Team, oversees the overall activities related to the LNG Project.*

*The members of the LNG Steering Committee are:*

- *Chairman- Christopher Zacca*
- *Project Manager- Ernie Megginson*
- *Ministry of Finance and Public Service- Dr. Wayne Henry*
- *Ministry of Finance and the Public Service -Ann Marie Rhoden*
- *Ministry of Energy & Mining- Fitzroy Vidal*
- *PCJ - Nigel Logan*
- *PCJ - Parris Lyew-Ayee, OD*
- *Office of the Prime Minister- Sonia Mitchell*
- *Private Sector- Richard Byles*
- *Private Sector- Howard Mitchell*
- *Private Sector- Peter Melhado*

c. LNG Legal and Regulatory Sub-Committee:

*The LNG Legal and Regulatory Sub-Committee reports to the LNG Steering Committee and oversees the legal and regulatory activities related to the LNG Project.*

*The members of the LNG Legal and Regulatory Sub-Committee are:*

- *Chairman - Howard Mitchell*
- *Members – Sonia Mitchell (OPM), Cheryl Lewis (OUR), Herma McRae (Att. General's Dept)*

d. LNG Commercial and Financial Sub-Committee:

*The LNG Commercial and Financial Sub-Committee reports to the LNG Steering Committee and oversees the commercial and financial activities related to the LNG Project.*

*The members of the LNG Commercial and Financial Sub-Committee are:*

- *Chairman - Christopher Zacca*
- *Members- Nigel Logan, Richard Byles, Peter Melhado, Peter Johnson, Ernie Megginson, Dr. Wayne Henry and Parris Lyew-Ayee*

e. LNG Technical Sub-Committee:

*The LNG Technical Sub-Committee reports to the LNG Steering Committee and oversees the technical activities related to the LNG Project.*

*The members of the LNG Technical Sub-Committee are:*

- *Chairman - Ernie Megginson*
- *Members- Fitzroy Vidal, Dr. Earl Green, Fritz Pinnock and Worrel Lyew The LNG Steering Committee is in discussions with NEPA to include one of their representatives on the LNG Technical Sub-Committee and expand the role of this sub- committee to include environmental matters.*

f. Core Project Team:

*The Core Project Team reports to the LNG Steering Committee and oversees the basic day- to-day activities related to the LNG Project.*

*The members of the Core Project Team are:*

- *Chairman - Ernie Megginson (Project Manager)*
- *Legal & Regulatory- Cheryl Lewis (OUR)*
- *Commercial & Financial- Marc Johnson (DBJ)*
- *Technical- Dr. Earl Green (PCJ)*
- *Govt. Policy & Procurement- Peter Johnson (OUR)”<sup>247</sup>*

The OCG found that the Cabinet Secretary, Ambassador Douglas Saunders, wrote to the NCC on 2010 December 9 requesting permission to use the Direct Contracting Procurement Methodology to contract Mr. Ernest Megginson as the Project Manager for three (3) months in the amount of US\$105,000.00, based upon the following:

- *“The studies to be commissioned and work activities to be performed are critical to inform the way forward with the LNG implementation, which is of strategic and national importance, and the project is at risk if the new project structure is not implemented on an urgent basis. Therefore, the contracting of the project manager is urgent;*
- *The required expertise is not readily available locally and Mr. Megginson is available to undertake the assignment immediately;*
- *His knowledge of the international Energy Industry and experience in the project management of global large scale energy projects are extensive.”*

The NCC, by way of a letter, which was dated 2010 December 20, and which was addressed to the Cabinet Secretary, stated, *inter alia*, the following:

*“The National Contracts Commission considered the matter at its meeting held on 2010 December 15 which included a presentation...from the Office of the Cabinet, and requested further and better particulars regarding the selection of Mr. Ernest Megginson as the Project Manager.*

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<sup>247</sup> Response from Ms. K. Sewell Mills, who responded for and on behalf of the Cabinet Secretary, which was dated 2011 February 28. Response #3

*Subsequently the Commission received a letter dated 2010 December 16 containing additional information to support the initial submission by the Cabinet Office. Having reviewed the matter, the National Contracts Commission offered no objection to the request...*

*The National Contracts Commission's approval is subject to the Cabinet Office utilizing the three (3) month period to conduct a tender process aimed at procuring the services of a full Time Project Manager for the LNG Project."*

The Cabinet Secretary, Ambassador Douglas Saunders, wrote two (2) letters to the NCC on 2011 January 17. In his first letter, the Cabinet Secretary, stated, *inter alia*, the following:

*"The Government of Jamaica under its National Energy Policy has chosen LNG as the preferred alternative energy source in order to deliver vitally needed lower cost energy, both to benefit the citizens of Jamaica, as well as to enable Jamaican industries to be globally competitive. In October 2010 an independent consultant was engaged to assist the Office of the Cabinet in its assessments of the proposed Project, its technology, risks, timelines and financing. The report was presented to Cabinet and by Decision No44/10 date 29<sup>th</sup> November 2010, Cabinet endorsed the formation of a new project management structure to oversee the project. The project management team is to commission a number of relevant studies and carry out the necessary work activities as outlined by the Project Execution Plan, to inform, drive, and manage the implementation of the LNG Project.*

*An [sic] LNG Project Task Force/Steering Committee assisted by the LNG Core technical team will oversee the process. These entities will report to a Ministerial Committee. The Project Manager has been appointed on 3<sup>rd</sup> January 2011 to act as Secretary to the LNG project Task Force.*

*The Cabinet Office now requests the permission of the NCC to use the Limited Tendering Methodology to procure a consultancy firm to execute the LNG Commercial Services covering the following activities:*

- *Preparation of RFP for securing the services of LNG Aggregator*
- *Assistance in organizing and participating in discussions with potential LNG Aggregators*
- *Review of bid submittals for LNG Aggregator and recommendation of selected bid*
- *Assistance in negotiating LNG supply contracts and gas sales agreements*

*In accordance with the procurement guidelines, the consulting firms listed below are proposed based on the nature of the work required, their relevant experiences and proven track record within this area.*

- *Featherwood Capital*
- *DSP Resources*
- *Flower LNG*
- *Galway Group*
- *CH-IV*

*The Cabinet Office's budget for this activity is Thirty Million Jamaican Dollars (J\$30,000,000.00) or Three Hundred and Forty Four Thousand Eight Hundred and Twenty Eight United States Dollars (US\$344,828.00).*

In his second letter, the Cabinet Secretary indicated, *inter alia*, the following:

*"...The Cabinet Office now requests the permission of the NCC to use the Limited Tendering Methodology to procure a consultancy firm to execute the LNG Technical Services covering the following activities:*

- *Assist in reviewing the technical design and cost basis of the submittals for the LNG receiving and re-gasification facilities and the onshore gas pipeline systems that are required for the LNG Project.*
- *Assist in the evaluation and assessment of the least-cost alternatives, using best-available technology and industry benchmarks, for the capital and operating costs, as well as energy efficiency, of the proposed facilities.*
- *Assist in the negotiations with the proposed LNG facilities development companies in finalizing the technical design of the facilities required for the LNG Project.*

*In accordance with the procurement guidelines, the consulting firms listed below are proposed based on the nature of the work required, their relevant experiences and proven track record within this area.*

- *Fluor*
- *Aker Solutions*
- *Worley Parsons*
- *Foster Wheeler*
- *CH-IV*

*The Cabinet Office's budget for this activity is Thirty Million Jamaican Dollars (J\$30,000,000.00) or Three Hundred and Forty Four Thousand Eight Hundred and Twenty Eight United States Dollars (US\$344,828.00).*

The OCG found that on 2011 January 21, the NCC wrote to Ambassador Douglas Saunders, Cabinet Secretary, OPM, with respect to the foregoing requests. The referenced letter stated the following:

*“The National Contracts Commission considered the matter at its meeting held on **2011 January 19** and is requesting that the Cabinet Office provide further and better particulars in regard to how the short list of consulting firms were arrived at, the*

*Selection Methodology as well as how the estimated value of **Thirty Million Dollars (\$30,000,000.00)** was determined.”*

On 2011 January 24, the Cabinet Secretary, wrote to the NCC and provided the NCC with its rationale for recommending the selected companies to be invited to tender, along with a breakdown of the estimate for the work which was to be undertaken.

The NCC wrote to Ambassador Douglas Saunders, Cabinet Secretary, OPM, on 2011 January 28, regarding the Consultancy Services for LNG Technical and Commercial Services. In the referenced letter, the NCC stated, *inter alia*, the following:

*“The matter was again considered at the NCC’s meeting held on **2011 January 29** when your letter dated **2011 January** was tabled.*

*Having reviewed the matter, the National Contracts Commission offered no objection for the Cabinet Office to utilize the Limited Tender Procurement Methodology...”*

By way of the LNG Steering Committee Status Report of 2011 February 7, the OCG found that the RFP’s were “... *issued for LNG Commercial and Technical Advisors.*”

Due to the fact that the referenced procurements are associated the ‘FSRU LNG Project, the OCG will continue to monitor this component of the LNG Project in accordance with the provisions of the Government of Jamaica (GOJ) Handbook of Public Sector Procurement Procedures (Revised 2010 October which was made effective 2011 January).

The OCG, in its Follow-Up Requisition to the Cabinet Secretary, Ambassador Douglas Saunders, OPM, which was dated 2011 February 3, posed, *inter alia*, the following question:

*“Please provide an Executive Summary detailing the current role(s) and responsibility(ies) of the Office of the Prime Minister in the implementation of the proposed Financing, Development, Ownership, Operation of an FSRU LNG Re-*

*gasification Terminal and Natural Gas Transmission System in Jamaica.”<sup>248</sup>*

Ms. K. Sewell Mills responded to the OCG’s Statutory Requisition on 2011 February 28, for and on behalf of the Cabinet Secretary, and stated the following:

*“The LNG Project Oversight Committee will be comprised of the Honourable Prime Minister, as the Chairman, and other ministers to be determined. This Ministerial Committee will oversee the operations of the LNG Steering Committee and advise and update the Cabinet of the progress of the Project.”<sup>249</sup>*

The OCG, in its referenced Requisition, further posed the following question:

*“Please provide an Executive Summary detailing the basis upon which the ‘negotiations’ which are currently underway with the ‘preferred bidder’, the Exmar Consortium, are being undertaken, in regard to the proposed Financing, Development, Ownership, Operation of an FSRU LNG Re-gasification Terminal and Natural Gas Transmission System in Jamaica.”<sup>250</sup>*

Ms. K. Sewell Mills, in her response to the OCG’s Statutory Requisition, stated the following:

*“The LNG Steering Committee has not initiated negotiations with the Exmar Consortium pending the completion of the following tasks:*

- a. A comprehensive review of the proposed costs of the FSRU LNG Re-gasification Terminal and Natural Gas Transmission System, including the benchmarking of these costs against recent projects of similar scope around the world.*
- b. The completion of a risk assessment of the project.*

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<sup>248</sup> OCG’s Requisition to the Cabinet Secretary, which was dated 2011 February 3. Question #1

<sup>249</sup> Response from Ms. K. Sewell Mills, who responded for and on behalf of the Cabinet Secretary, which was dated 2011 February 28. Response #1

<sup>250</sup> OCG’s Requisition to the Cabinet Secretary, which was dated 2011 February 3. Question #2

- c. *The finalization of a regulatory framework, which will form the basis for negotiating the tariffs for the FSRU LNG Re-gasification Terminal and Natural Gas Transmission System.*
- d. *Resolution of the issues related to exclusivity and taxes in the draft Implementation Agreement”.*

The OCG further found by way of Notes from the Meeting of the Liquefied Natural Gas (LNG) Core Project Team which was held on 2011 January 13, that **“Mr. Megginson informed the meeting that he has requested that the representatives from CH-IV, namely, Mr. Joseph Fossella and Mr. Pat LaStrapes have been removed [sic] from the project. Discussions were ongoing regarding a replacement...”** (OCG’s Emphasis)

The Hon. Bruce Golding, on 2011 April 7, submitted to the OCG, a copy of two (2) Legal Opinions, which were prepared by Attorneys-at-Law, Livingston, Alexander & Levy, in regard to the procurement procedures for the ‘FSRU LNG Project’.

The first Opinion, which was dated 2011 March 24, stated, *inter alia*, the following:

1. *“Where a competitive tender is required, usually invitations are sent to contractors within the particular field of expertise. It is a well established principle of law that there is an implied obligation that Tenders are to be considered fairly. Accordingly, there is an implied term to act in good faith.*
2. *A review of the Bid Evaluation Report shows Joseph Fossella attending several of the meetings concerning the evaluation of the bids and also reports that were rendered on behalf of CH\*IV.*
3. *An email from Craig Anderson of Black & Veatch Corporation to Mr. Christopher Zacca on the 14<sup>th</sup> day of February 2011 states, that Fossella worked for Black & Veatch as a Consultant until April 18, 2009.*

4. *...Tom Norton of Excelerate Energy...confirmed that Mr. Joe Fossella formally of Black & Veatch Corporation, whilst still at Black & Veatch started the LNG Liquefaction Alliance Project between Black & Veatch, Excelerate and Exmar, and worked on the project for six or seven months up to his retirement.*
5. *It is manifestly clear...that Joe Fossella did have some connection with Exmar at the time when the alliance was formed and he worked on it for some time at least until 2009 not a long period before his engagement in the LNG project for PCJ. Certainly, questions arose as to whether he was able to give an independent evaluation of the competitive bid between Hoegh and Exmar.*

*It is submitted that Mr. Fossella ought not to have participated in the evaluation of the rival bids so soon after working with Exmar in the alliance up to 2009 because he would not have been able to bring an independent and open mind.*

6. *A review of Stephen Wedderburn's statements concerning Exmar clearly shows that he ought not to have participated in the evaluation process, particularly the e-mail of the 6<sup>th</sup> September 2009 which clearly shows that he had a pecuniary interest in a project with Exmar.*

***It is trite law that a person who has the proprietary or pecuniary interest in a matter should not participate in a situation where a decision has to be made concerning a party in which the participants has such an interest.***

*Mr. Wedderburn having a pecuniary interest in a project with Exmar, as is clear from his e-mail and other e-mails describing them as the front runner and other such similar statements ought not to have participated in any way in the bid evaluation. Moreover, it is remarkable that in the e-mail of the 6<sup>th</sup> September 2009 he stated he would not participate in the bid evaluation, nevertheless, he participated in several meetings.*

7. **Consequently, it is clear that the decision is tarnished as the tender process could not be considered as transparent, fair or unbiased.**

8. *It is manifestly clear therefore that the evaluation done by CH-IV International is incorrect as Excelerate Energy was not a part of the Exmar Consortium...The review having stated the relationship between Exmar and Excelerate, as joint venture partners, clearly shows that Excelerate ought to have been invited to tender. This certainly casts a very serious and grave concern on the tender process for Exmar to have been declared the preferred bidder, when its joint venture partner who the review determined as Exmar's strength was excluded.*

**It is therefore inconceivable to comprehend on what basis Exmar could be determined the preferred bidder in view of the foregoing and clearly gives the inference of apparent bias and lack of good faith.**

9. **The only reasonable conclusion that can be drawn is that the Request For Proposal was not sent to Excelerate so as to exclude them.**

10. *It is also interesting to observe that when one looks at **the scores given by CH-IV International and those of the Bid Evaluation Committee they are virtually identical.** There can be no question that it is clear that CH-IV International's valuation must have influenced the Evaluation Committee.*

11. *Although the Bid Evaluation Committee was set up to determine the two bids that were received nevertheless **the decision of the Committee can be discredited as a review of the facts clearly indicate that persons who had an apparent conflict of interest were permitted to participate in the evaluation of the bids and were at several meetings and consequently could have influenced the outcome of the bids.***

12. **The tender process was seriously flawed from its inception** as the invitation to tender was not sent to all persons who had the requisite expertise and were leaders in the

*field...Certainly it is a cardinal principle of a competitive tender process that all the players in the field should be invited to tender. It certainly is unfair, lacks transparency and good faith when the lead players are omitted...*

**The tender process in this regard is flawed and could not withstand scrutiny under judicial review.**<sup>251</sup> (OCG's Emphasis)

The second Opinion, which was dated 2011 March 29, stated, *inter alia*, the following:

1. *“Although Moore left the PCJ in November 2008, it is relevant to consider his knowledge concerning the LNG Project. In this regard, it is of paramount importance to begin by examining in particular an e-mail from as far back as February 1, 2008 from Stephen Wedderburn to Ian Moore.*

**It is manifestly clear in this e-mail that there had been prior discussions between Wedderburn and Moore concerning the prospective LNG Project.**

*In the first paragraph Wedderburn refers to a previous note regarding a Norwegian company which would not be a provider of LNG but rather would be a competitor to Exmar to supply the floating regas facilities. Wedderburn then indicated that it raises a point which he wants to discuss with Moore which is how to treat the other companies who are interested in providing floating regas solutions.*

*There can be no doubt that at this point in time; consideration was being given to the FSRU aspect of the project.*

2. **This e-mail certainly confirms that there was discussion concerning the potential applicants for the FSRU project and makes it abundantly clear that the preferred person was Exmar.**

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<sup>251</sup> Legal Opinion, which was prepared by Attorney-at-Laws, Livingston, Alexander & Levy on 2011 April 7.

3. *Whilst we have no other e-mails passing between them between February an [sic] November which is unfortunate, the last e-mail is on the 6<sup>th</sup> day of November 2008 in which he sends a press release from Exmar on the 5<sup>th</sup> day of November 2008 which announces the formation of an alliance to advance its efforts in the development of floating liquefaction solutions...In the e-mail Wedderburn states, that he was pleased to have played a role in introducing Exmar and Black & Veatch to each other.*

**The foregoing clearly shows that Wedderburn's bias in favour of Exmar to the exclusion of all other potential applicants. There can be no doubt that his views in favour of Exmar as frontrunner and other laudatory comments on Exmar would have some influence on Moore.**

4. **Certainly, Moore's action hereinafter is germane as it is indicative that he was aware that there was an opportunity in which he can engage in and benefit from the project.**

*First, Moore had a company incorporated in the British Virgin Islands and thereafter a company incorporated in Jamaica on the 19<sup>th</sup> day of June 2009 under the name "EDC LNG Limited".*

5. *It is of paramount importance to appreciate that the Request for Proposals was issued on the 12<sup>th</sup> day of November 2009, shortly thereafter, Moore had the name of the company changed to "Caribbean LNG (Jamaica) Limited"... Thereafter, even more remarkable that when the Exmar Consortium sent in its proposals, that CLNG was a member of the Exmar Consortium. **It is therefore clearly obvious that the name change bore relationship to the submission by the Exmar Consortium.***

6. **...There can be no doubt that the information that he had concerning Exmar, the tender process and most importantly information on how to put together a strong tender in conjunction with his subsequent participation within the Exmar Consortium, when it is appreciated that he was a former Chairman of the PCJ makes it obvious to**

**any innocent bystander that there is a lack of transparency in the tender process and if not, unfairness.**

7. ...CLNG was a partner in Exmar Consortium. **Comment must also be made that it was a partner in a venture that it could not be making any substantial financial contribution to the capital expenditure thereof.** This raises the question, when was it then necessary to involve CLNG as a partner to the Consortium in a venture of this nature as far as the tender process is concerned. **Certainly, Moore’s corporate profile shows that he lacks the expertise necessary to play a pivotal role in any project of this nature.**
  
8. ...It is known that other parties who should have participated were not given the opportunity to do so, as the Request For Proposals [sic] were not given to them...This is clearly as [sic] case of being biased and **was certainly designed to reduce any competition that Exmar may have had particularly from Excelerate who was the leader in the field.**” (OCG’s Emphasis)

The OCG notes that the referenced Legal Opinions, which were obtained from the private Bar, support certain of the considered Conclusions which have been detailed herein. More specifically, the Legal Opinions have been able to establish a *prima facie* case of improper and irregular conduct on the part of certain present and former public Officials/Officers and, in consequence, support certain of the OCG’s Findings which are detailed herein.

In point of fact, the referenced Legal Opinions clearly indicate that **“The tender process in this regard is flawed and could not withstand scrutiny under judicial review.”**<sup>252</sup> It is without fear of contradiction that the OCG must reiterate its stated position that the referenced procurement process is one which has exhibited signs of irregularity, impropriety, undue influence, the use of ‘sensitive insider information’ by former Public Officer in their now current private capacities and potential conflicts of interest, amongst other concerns.

Further, and having regard to the OCG prior concerns, which were stated in its letter of 2010

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<sup>252</sup> Legal Opinion which was prepared by Attorney-at-Laws, Livingston, Alexander & Levy on 2011 April 7.

June 22, it is instructive to note that the OCG, by way of a letter, which was dated 2010 November 16, had in fact advised Mr. Glenford Watson, Senior Legal Officer, MEM, “*to summarily and immediately abort the subject process*”.

It is instructive to note that the OCG’s recommendation to the MEM came at a time when its Investigation was ongoing and had already been informed by sworn statements and supporting documentary evidence. Needless to say, such a recommendation was not accepted by the GOJ and/or its affiliate agencies.

Having regard to the fact that the ‘FSRU LNG Project’ continued unabated throughout the life of the OCG’s Investigation, the OCG, by way of a Follow-Up Requisition to the Cabinet Secretary, Ambassador Douglas Saunders, OPM, which was dated 2011 March 30, posed the following question:

*“Please provide a current status update of the LNG Project, in particular, the proposed Financing, Development, Ownership, Operation of an FSRU LNG Re-gasification Terminal and Natural Gas Transmission System in Jamaica.”<sup>253</sup>*

The Office of the Cabinet, by way of its response to the OCG’s Statutory Requisition, which was dated 2010 April 18, stated, *inter alia*, the following:

*“The current status of the LNG Project is:*

- *LNG Supply – Road show presentations were held with various LNG suppliers in Houston, Texas during March 8-17, 2011. An [sic] RFP is being prepared for LNG supply with plans to issue in late May or early June 2011.*

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<sup>253</sup> OCG’s Statutory Requisition to the Cabinet Secretary, Ambassador Douglas Saunders, OPM, which was dated 2010 March 30. Question #1.

- *LNG Offtake – Key offtakers (e.g. JPS/Marubeni, JEP and Jamalco) worked with LNG Project team to confirm their natural gas requirements for a base load projection.*
- *Regulatory Framework – A draft regulatory framework document was prepared and reviewed by LNG Legal & Regulatory Sub-Committee and external legal counsel.*
- *Infrastructure – Discussions were held with the Port Authority of Jamaica regarding confirming site selection for FSRU and with NEPA regarding the environmental permitting requirements of the infrastructure. No negotiations have been held with the Exmar Consortium. Meeting was held with Ministerial Sub-Committee on April 13, 2011 where the LNG Steering Committee submitted its recommendation for cancelling the former tender for the Financing, Development, Ownership, Operation of an [sic] FSRU LNG Re-gasification Terminal and Natural Gas Transmission System issued by PCJ in November 2008 and re-tender the FSRU and onshore natural gas pipelines in separate RFPs.*
- *Advisor – The LNG Project team has engaged a Financial Advisor (Taylor-Dejongh), an [sic] LNG Commercial Advisor (Featherwood Capital) and an [sic] LNG Technical Advisor (WorleyParsons).<sup>254</sup> (OCG’s Emphasis)*

Based upon the foregoing, the OCG has found that the newly established LNG Steering Committee within the OPM has taken a decisive step to recommend, in light of the referenced Legal Opinions, that the process for the ‘FSRU LNG Project’ be re-tendered.

The Office of the Cabinet, by way of its response to the OCG’s Statutory Requisition, which was dated 2010 April 18, submitted a copy of a Memo that was prepared by the Solicitor General, Mr. Douglas Leys, which was dated 2011 April 11, and which was captioned “*Opinion by Livingston Alexander & Levy concerning Tender Process for the LNG Project*”.

The referenced Memo stated, *inter alia*, the following:

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<sup>254</sup> Response from Ms. K. Sewell, for and on behalf of the Cabinet Secretary, OPM, which was dated 2011 April 18. Response #1

*“...You have asked for my comments on the above captioned opinion by Messrs. Livingston Alexander & Levy Attorneys-at-Law...**I have reviewed the said opinion and am in substantial agreement with the views posited by the Attorneys...**”*

*...On the assumption that those factors mentioned in the opinion are true, the bidding process on a whole in this matter would be regarded by a court as being unfair and not implemented in good faith. The issues upon which such a finding would be made are summarized as follows:*

- (i) Excelerate was an applicant in a pre-qualification process for the FSRU-LNG project in Jamaica in 2007. Its application was late. That process was never completed. Only the same applicants for the 2007 pre-qualification were invited to participate in the RFP process in 2009. Excelerate was not invited. This is both a good faith and fairness issue.*
- (ii) Joe Fossella albeit not a member of the bid evaluation team was an influential factor in the evaluation of the bids. The opinion infers that he had a prior association with Exmar for a period which was sufficiently close to the time it submitted its bid for him not to be a totally disinterested person. If this inference is correct there is a fairness issue as far as Joe Fossella is concerned.*
- (iii) Excelerate was assessed as part of the Exmar bid i.e. as part of the consortium. It was also assessed as being an integral part of the consortium albeit it was never presented by the other members of the consortium as being a part of it. This is a compliance, fairness, and good faith issue.*
- (iv) Stephen Wedderburn albeit not a member of the bid evaluation team was also an influential factor in the evaluation of bids. He had stated in an email dated February 1, 2008 to Ian Moore the then Chairman of PCJ that Exmar was a clear front runner even before the bids were in. In addition he has admitted*

*that he had a pecuniary interest in the outcome of Joint Venture between Exmar and another company in Columbia. This is a fairness issue.*

- (v) *Mr. Ian Moore was the former Chairman of PCJ, the owner. Mr. Moore and Mr. Wedderburn collaborated about the project when he was Chairman. Approximately 7 months after he left the PCJ as Chairman, he incorporated a company which became a part of the Exmar consortium. Mr. Moore by virtue of his position and collaboration with Stephen Wedderburn on the project would have had information on the same. **The fact that he formed a company shortly after leaving PCJ, which company was part of the Exmar Consortium raises an issue that he was privy to inside information which he used for a material benefit.** This raises a fairness issue and a good faith issue.*

**For these reasons I support the conclusion in the opinion that on a whole the integrity of the tender process was compromised.”**

The foregoing opinion from the Solicitor General, which is the Attorney for the GOJ, supports and confirms the reasoning and substantive legal issues which were delineated in the Legal Opinions from Livingston, Alexander and Levy, private Attorneys-at-Law.

Collectively, the Legal Opinions from the Solicitor General and Livingston, Alexander and Levy, Attorneys-at-Law, have unequivocally brought into sharp focus the issue of the lack of fairness and transparency in the tender process for the ‘FSRU LNG Project’. Further, the issues of a conflict of interest and the probable use of ‘insider information’ on the part of Mr. Ian Moore, former Chairman of the Board, PCJ, are matters which have compounded and brought into greater disrepute the legitimacy, fairness and transparency of a poorly planned and executed tender process which was driven, in large, by the technical expertise of Mr. Stephen Wedderburn, the LNG Project Coordinator, PCJ.

It must, however, be clearly recalled that Mr. Stephen Wedderburn, by his own admission and in

his sworn declaration to the OCG, which was dated 2010 November 15, divulged his prior business association with Exmar Marine NV and indicated, as follows:

***“In the period December 2008 to June 2009, when I was not a public official, I was involved on a part-time basis in attempts to broker a floating liquefaction project to facilitate the export of LNG from Colombia. Exmar N.V. was a client of the brokerage firm, Annica, with which I was involved and in the conduct of this engagement I liaised with Mr. Bart Lavent, Managing Director – LNG, Exmar N.V. As part of my activities I met with several gas companies in Colombia, including Promigas who has now become a member of the Exmar Consortium. These interactions were solely in respect of the Colombian project. I have received no remuneration in respect of these activities as my involvement was purely on a success basis in which I would be remunerated only if a Final Investment Decision were taken in regard to the project. The Colombian floating liquefaction project has not been realized.”***<sup>255</sup>

In light of the foregoing, the OCG has found that Mr. Stephen Wedderburn, due to his prior association with Exmar Marine NV, which was of a pecuniary nature, is in a conflicted and highly invidious position and, as such, should not have been permitted to play any role, whatsoever, in the tender process and, in particular, the considerations which have lent themselves to the selection of a *‘preferred bidder’*.

The OCG was also made aware of the existence of an alleged third party Legal Opinion which allegedly challenged the referenced Legal Opinions from Attorneys-at-Law, Livingston, Alexander and Levy with respect to the *‘FSRU LNG Project’*.

Of significant interest to the OCG was the fact that the OCG was informed that the referenced alleged third party Legal Opinion was developed and/or written by/or with the assistance of someone who was attached to the MOFPS and/or who was instrumental in the drafting or development of the GOJ Public Sector Procurement Procedures.

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<sup>255</sup> Response from Mr. Stephen Wedderburn, LNG Project Coordinator, PCJ, which was dated 2010 November 15. Response #42

Of even greater significance was the fact that it was further brought to the attention of the OCG that the referenced alleged third party Legal Opinion had found its way into the possession of Mr. Paul East, Director, CLNG.

In an effort to secure the formal submission of the referenced Legal Opinion, the OCG wrote to Mr. Paul East, Director, CLNG, by way of a Statutory Requisition, which was dated 2011 April 29. The referenced OCG Statutory Requisition posed, *inter alia*, the following questions and requisitions:

*“Please provide a copy of the referenced document as a formal attachment to your response to the OCG’s Statutory Requisition.*

*Please provide **an Executive Summary** detailing the nature and content of the referenced ‘document’. The Executive Summary should include, inter alia, the following:*

- i. A detailed response attesting to the legitimacy of the referenced ‘document’;*
- ii. The complete name (s) and substantive title(s) of the author(s) of the ‘document’;*
- iii. The name of the entity and/or institution, whether public or private, from which the referenced document emanated;*
- iv. The date, time and circumstances by which you came to be in possession of the referenced document, inclusive of the name(s) and title(s) of the person(s) and/or entity(ies), whether public or private, who/which provided you with the referenced ‘document’;*
- v. The reason(s) and basis, if any, which were given by the named person(s) and/or entity (ies) for providing you with the referenced ‘document’.*

*Are you aware of any other person(s) who, to date, has/have seen and/or been made privy to the referenced ‘document’? If yes, please provide full particulars of the identity of the referenced person(s), inclusive of their name(s) and title(s), and the circumstances under which the named person(s) became privy to the referenced ‘document’.*

*Has anyone assisted you in completing this Requisition and/or answering the OCG's questions? If yes, please provide the following information:*

- a. The name(s) and title(s) of the person(s) who assisted you in completing this Requisition and/or answering the OCG's questions;*
- b. The nature of your relationship, if any, with the person(s) identified in (a) above;*
- c. The nature of the assistance rendered to you in completing this Requisition and/or answering the OCG's questions.*

*Have you consulted and/or collaborated with anyone (a) in your efforts to complete this Requisition and/or (b) in the formulation of your responses to the questions which have been posed to you in this Requisition? If yes, please provide the following information:*

- a. The name(s) and title(s) of the person(s) with whom you consulted and/or collaborated in completing this Requisition and/or answering the OCG's questions;*
- b. The nature of your relationship, if any, with the person(s) identified in (a) above;*
- c. The question(s) of this Requisition in respect of which the consultation and/or collaboration was undertaken by you (Please state the respective Question #'s and sub-parts, where applicable).*
- d. The nature of the consultation and/or collaboration which was undertaken by you in completing this Requisition and/or in answering the OCG's questions.*

*Are you aware of any additional information which you believe could prove useful to this Investigation or is there any further statement in regard to the Investigation which you are desirous of placing on record? If yes, please provide full particulars of same.*"<sup>256</sup>

Mr. Paul East, in his response to the OCG's Statutory Requisition, which was dated 2011 May 3, stated, *inter alia*, the following:

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<sup>256</sup> OCG's Statutory Requisition that was addressed to Mr. Paul East, Director, CLNG, which was dated 2011 April 29. Questions #1(a), 1(b), 3, 4 & 5.

*“The referenced document is provided herewith under the cover of Attorney-at-Law David Won Ken’s letter;*

*The referenced document is a legal opinion*

- i. It is legitimate;*
- ii. It was authored by attorney-at-law David Wong Ken;*
- iii. It emanated from the law firm Wong Ken & Co.*
- iv. The referenced document was received by me on or before 21<sup>st</sup> April 2011. The referenced document was provided to me by attorney-at-law David Wong Ken. I received the referenced document in my capacity as a director of a member of the Exmar Consortium;*
- v. The referenced document was given to me by David Wong Ken in discharge of his obligation as attorney-at-law for the Consortium.*

*...To the best of my knowledge only the members of the Exmar Consortium and their duly appointed officers and attorneys have seen the referenced document.*

*Yes, attorney-at-law David Wong Ken assisted me with the completion of this Requisition.*

- a. Attorney-at-Law David Wong Ken is for the purpose hereof the local Attorney-at-Law for the Consortium;*
- b. Legal representative;*
- c. The assistance rendered to me is in the nature of legal assistance;*

*Yes, I have consulted with Attorney-at-Law David Wong Ken in completing the OCG’s Requisition.”<sup>257</sup>*

It is instructive to note that attached to the referenced response from Mr. Paul East, Director, CLNG, was a letter to the OCG from Attorneys-at-Law, WongKen & Co, which was dated 2011 May 3. Please see below a copy of the said letter:

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<sup>257</sup> Response from Mr. Paul East, Director, CLNG, which was dated 2011 May 3. Responses # 1(a), 1(b), 3, 4 & 5.

**BY HAND**

3<sup>RD</sup> May 2011

The Office of the Contractor General  
PIOJ Building  
16 Oxford Road  
Kingston 5

OFFICE OF THE CONTRACTOR-GENERAL  
1ST FLOOR, PIOJ BUILDING  
16 OXFORD ROAD  
P.O. Box 540  
KINGSTON 5, JAMAICA, W.I.

Attention: Mr. Maurice Barrett – Chief Investigator

Dear Sirs,

Re: OCG's enquiry – Concerning Allegations Regarding the Proposal for the Financing, Development, Ownership, Operation of an FSRU LNG Regasification Terminal and Natural Gas Transmission System – Formal Requisition for Information and Documentation to be Supplied under the contractor General Act

We are the local attorneys at law for the Exmar Consortium and some of its component members in respect to the captioned matter. We confirm that we are the authors of a document entitled 'Public Procurement Opinion' dated April 15 2011, that was prepared in our capacity as attorneys at law for the Consortium.

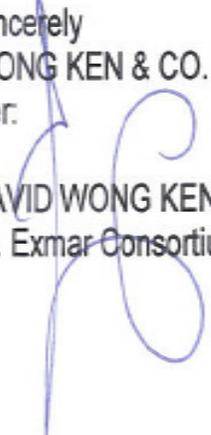
We are of the view that the said Opinion is covered by Attorney Client Privilege. The members of the Consortium have discussed the matter and have decided that consistent with their resolve to cooperate fully with that Office they would formally submit the Public Procurement Opinion. They now do so in a limited way without surrendering their Attorney Client Privilege in respect of the materials, interviews and research that has gone into the compilation of the Opinion. Further the subject matter of the Opinion deals with the legal remedies available to the Consortium against the PCJ/GOJ if certain events come to pass. You will appreciate the prejudice that dissemination of the Legal Opinion could work on our clients.

In the circumstances it is a term of providing the Opinion to the OCG that it be treated as highly a confidential document not to be discussed with anyone outside of the OCG, nor are copies thereof to be distributed outside of that Office. In accordance with our instructions and subject to the foregoing please find enclosed herewith the PUBLIC PROCURMENT OPINION. Kindly consider that the document is now being submitted through the proper and formal channels.

We have assisted Mr. East in compiling the answers to your Requisition and have provided him with a sealed envelope containing this letter together with the Public Procurement Opinion to be included in his response to you.

Please feel at liberty to contact the undersigned if we can be of further assistance.

Sincerely  
WONG KEN & CO.  
Per:  
DAVID WONG KEN  
cc. Exmar Consortium



Having regard to the conditions and restrictions which were outlined in the foregoing letter, the OCG took a decision not to review the Legal Opinion which was reportedly prepared by Attorneys-at-Law, WongKen & Co.

Consequently, by way of letter, which was dated 2011 May 4, the OCG returned the referenced Legal Opinion to Mr. David Wong Ken, Attorney-at-Law, WongKen & Co, without reading and/or retaining a copy of same. Detailed overleaf is a verbatim copy of the referenced OCG Letter of 2011 May 4 which particularized, *inter alia*, the OCG's position:



Any reply or subsequent reference to this communication should be addressed to the Contractor-General and the following reference quoted:-

REF No. :  
TELEPHONE No. : 876-929-8560/6466  
FAX No. : 876-929-2476  
E-mail: mbarrett@ocg.gov.jm

OFFICE OF THE CONTRACTOR-GENERAL  
PIOJ Building  
16 Oxford Road  
P.O. BOX 540  
KINGSTON 5  
JAMAICA, W.I.

**URGENT AND IMMEDIATE**

May 4, 2011

COPY

Mr. David Wong Ken  
Attorney-at-Law  
WongKen & Co.  
Marbella Estate  
Twelve Miles  
P.O. Box 57, Bull Bay  
St. Thomas

Dear Sir:

**Re: OCG's Enquiry - Concerning Allegations Regarding the Proposal for the Financing, Development, Ownership, Operation of an FSRU LNG Re-gasification Terminal and Natural Gas Transmission System - Formal Requisition for Information and Documentation to be Supplied under the Contractor General Act**

We write with reference to the Office of the Contractor General's (OCG's) ongoing Investigation into the captioned matter, and the OCG's Statutory Requisition, which was dated April 29, 2011, that was addressed to Mr. Paul East, Director, Caribbean LNG (Jamaica) Limited.

We wish to acknowledge receipt of Mr. Paul East's sworn written response, which was dated May 3, 2011, and the respective enclosures thereto, which were submitted to, and received at our Offices on May 4, 2011 at approximately 12:48 p.m., in fulfillment of the captioned matter.

The OCG must also take the opportunity to acknowledge the fact that, under cover of a letter which was dated May 3, 2011, under your signature, and which was included in Mr. Paul East's submission, you advised the OCG, *inter alia*, that you are the "local attorneys-at-law for the Exmar Consortium and some of its component members."

The referenced letter further advised the OCG of the conditions and restrictions under which Mr. Paul East has furnished the OCG with a copy of the "Public Procurement Opinion" that was prepared by WongKen & Co., in its capacity as "attorneys at law for the Consortium".



The referenced letter advised the OCG, *inter alia*, that:

1. The Legal Opinion was provided to the OCG, by the members of the Consortium, “...in a limited way without surrendering their Attorney Client Privilege in respect of the materials, interviews and research that has gone into the compilation of the Opinion”.
2. It is a term of your provision of the Opinion to the OCG that “...it be treated as highly a confidential document not to be discussed with anyone outside of the OCG, nor are copies thereof to be distributed outside of that Office.”

In the circumstances, the referenced Legal Opinion can serve no useful purpose to the OCG in the conduct of its Investigation and, consequently, we are, herein, returning same to your formal attention.

Having regard to the foregoing, we must advise you that the OCG has taken a decision not to read the referenced private Legal Opinion, save and except that we have noted only the following from the document:

1. The fact that the Legal Opinion was entitled “*Public Procurement Opinion*”;
2. The fact that the Legal Opinion was dated April 15, 2011;
3. The fact that the Legal Opinion was signed, “*Sincerely, David Wong Ken*”
4. The fact that the Legal Opinion is embodied in a six (6) page document.

We would like to thank you for your cooperation in the matter.

Should you have any questions, please do not hesitate to contact me.

Yours sincerely,

Maurice Barrett  
Chief Investigator  
For and on behalf of the Contractor General

Copy: Mr. Paul East, Director, Caribbean LNG (Jamaica) Limited

Enclosure – Sealed Envelope enclosing the Legal Opinion

Having regard to the foregoing, the OCG is unaware of the material content of the Legal Opinion which purportedly emanated from WongKen & Co., and which was reportedly prepared on behalf of the Exmar Consortium.

## TIMELINE OF SIGNIFICANT EVENTS

<b>Timeline</b>	<b>Occurrence</b>	<b>OCG's Observation</b>
2001 April	<p>Mr. Anthony Hylton was appointed Minister of Mining and Energy (MME) during which "... <i>the Ministry commenced the formulation of an energy policy and strategy, which called for the diversification of energy sources to include LNG, coal and renewables i.e. wind, solar, thermal etc.</i>"</p> <p>Mr. Zia Mian also indicated that he was the Energy Advisor to the then Minister of MME, and recommended that "...<i>Jamaica should consider the natural gas as a potential diversification fuel to generate electricity and steam from the bauxite/alumina sectors...</i>"</p>	This period highlights the initiation of certain discussions into LNG as an alternative source of energy to Jamaica.
2004 August – 2008 August	Stephen Wedderburn was engaged by the PCJ as Group Technical Director of the PCJ.	
2004 November 9	MOU entered into between the National Gas Company of Trinidad and Tobago Limited (NGC) and the PCJ.	
2005 September 12	Initial contract between PCJ and the Technical Consultants, CH-IV International was approved by the Cabinet.	
2006 August 3	Front End Engineering Design (FEED) Study on LNG which was conducted by Mustang Engineering for the PCJ and the National Gas Company of Trinidad and Tobago Limited in which a land-based facility was being considered.	No other formal studies or pre-assessments were conducted by the MEM or the PCJ for the 'FSRU LNG Project'

Timeline	Occurrence	OCG's Observation
2006 December 1	Meeting held between Mr. Anthony Hylton, in his capacity as Minister of MoFAFT, representatives from the Embassy of Jamaica, Mr. Stephen Wedderburn, Mr. Nicolas Saverys and representatives from the Exmar Marine NV and other affiliates of the said company in Brussels, Belgium.	From as early as 2006, Exmar Marine NV was courting the GOJ with respect to introducing LNG to Jamaica.
2007 January 9	A Meeting was held in which a presentation was made by Exmar Marine NV to the MEM and the PCJ. The meeting was chaired by the former Minister, Mr. Anthony Hylton.	
2007 March	Another presentation was given by Exmar Marine NV and, thereafter, a 'Mandate' was given to Exmar Marine NV by the GOJ to assist the Government in purchasing LNG and/or natural gas.	<p>The former Minister Mr. Anthony Hylton stated in his response to the OCG's Statutory Requisition, which was dated 2011 February 4, <i>inter alia</i>, that "... 'Mandates' were signed between 2006-2007 between a number of possible LNG providers in the LNG industry in an effort to identify supplies of LNG which could be supplied by Trinidad..."</p> <p>Whereas a Mandate was signed between the GOJ and Exmar Marine N.V., the OCG found no evidence that a mandate was also provided to the other LNG providers.</p>
2007 April	The Invitation to Pre-qualify was issued by the PCJ.	
2007 May 25	Deadline for the submission of the proposals from the prospective bidders for the pre-qualification exercise.	<p>Nine (9) companies/consortia submitted proposals.</p> <p>The OCG found that the pre-qualification exercise was not completed.</p>

Timeline	Occurrence	OCG's Observation
2007 December 7	Mr. Ian Moore was appointed the Chairman of the PCJ Board of Directors.	
2007 December to 2008 August 6	Several pieces of correspondence were exchanged between Mr. Ian Moore, Mr. Stephen Wedderburn, Mr. Bart Lavent of Exmar Marine NV, Mr. Conrad Kerr (a then representative of Merrill Lynch and current partner in CLNG), amongst others.	The email correspondence highlighted a concerted effort to introduce LNG to Jamaica, where information was being shared by the named parties.
2008 November	Mr. Ian Moore demitted Office as Chairman of the PCJ Board.	
2009 May 5	Prime Minister announces in Budget Presentation that Jamaica will pursue an LNG Project.	
2009 May	Mr. Stephen Wedderburn submitted a proposal to the MEM to coordinate the Liquefied Natural Gas Project.	<p>The proposal which was submitted to the MEM by Mr. Stephen Wedderburn was, <i>inter alia</i>, against utilizing the GOJ Public Sector Procurement Procedures to award and implement the 'FSRU LNG Project'.</p> <p>Mr. Stephen Wedderburn proposed that "...rather than going through a formal procurement system to select an FSRU provider (which will waste time and unduly delay the execution of more important aspects of the Project such as the identification of LNG supply) that one of these two companies be selected by interview."<sup>258</sup></p> <p>Mr. Stephen Wedderburn identified and ranked two (2) companies, namely, Exmar Marine NV and Golar, and stated that they were the only companies to "...actually have floating regasification systems in operation..."<sup>259</sup></p>

<sup>258</sup> Ibid.11.

<sup>259</sup> Ibid. 11

Timeline	Occurrence	OCG's Observation
2009 September	Meeting was held with the Hon. Bruce Golding, the Hon. Daryl Vaz, Mr. Ian Moore and Mr. Paul East of CLNG.	<p>This meeting was in regard to the pre-feasibility study which was undertaken by EDC LNG (now CLNG), Promigas and Exmar Marine NV.</p> <p>The referenced representatives presented a copy of the completed feasibility study to the Prime Minister.</p> <p>The OCG was informed by Mr. Ian Moore that <i>“Initially we disagreed with HPM and said this is a private sector initiative that would see electricity pricing going down by more than 30% <u>HPM then countered by saying what if another company said they could lower the cost by 40% that could cause a problem so he said he saw no way but to go to bid.</u>”</i></p>
2009 October 28	Cabinet approved, by way of Decision No. 44/09, the use of the Floating Storage Re-gasification Unit (FSRU) for the importation of Liquefied Natural Gas.	
2009 October	The pre-feasibility study which was conducted by EDC LNG (now CLNG), Promigas and Exmar Marine NV was completed.	

Timeline	Occurrence	OCG's Observation
2009 November 4	<p>Permanent Secretary in the MEM sent a letter sent to the NCC seeking permission to issue the RFP for the LNG FSRU Project to the nine (9) companies that previously submitted proposals in the 2007 prequalification exercise.</p> <p>In the referenced letter, the Permanent Secretary indicated that <i>"...it is extremely desirable that proposals be received from interested applicants by January 2010. This will not be likely unless the RFP is issued within the coming weeks (preferably by November 11, 2009), in order to meet the projected timelines..."</i></p>	The OCG found that there was a sense of urgency by the MEM to ensure that certain timelines were met for the 'FSRU LNG Project'.
2009 November 5	The NCC endorsed the recommendation of the Permanent Secretary in the MEM <i>"...to utilize the Limited Tender Methodology to invite the nine (9) consortia who had submitted application for pre-qualification..."</i>	
2009 November 12 & 13	The RFP was issued for the 'FSRU LNG Project'	The Nine (9) pre-qualified companies/Consortia were in receipt of a copy of the RFP.
2009 December 8	Meeting of the PCJ Board of Directors	The Minutes of the Meeting record that there were certain concerns which were expressed by the PCJ Board of Directors in regard to the guidelines which were used by Mr. Stephen Wedderburn along with the LNG Steering Committee in the preparation of the RFP.
2009 December 8 & 9	Scheduled site visit for the potential bidders	

<b>Timeline</b>	<b>Occurrence</b>	<b>OCG's Observation</b>
2009 December 22	The deadline for submission of the proposal was extended by way of an Addendum, which was sent via email correspondence to the nine (9) potential bidders from January 5, 2010 to February 15, 2010.	
2010 February 12	<p>A <i>'Bid Evaluation Matrix Report: Framework for Review and Evaluation of Proposals'</i> was prepared by the Consultants, CH-IV International for use during the evaluation of the bids.</p> <p>The Bid Evaluation Matrix contained a 'Review Matrix'. The Report indicated that "...each Proposal will be objectively reviewed against the following sub-criteria for each category..."</p>	<p>The OCG was not provided with any evidence to suggest that the bidders were informed, by way of an Addendum, or otherwise, of the 'Review Matrix'.</p> <p>The referenced document was prepared three (3) days prior to the deadline for the submission of the bids.</p>
2010 February 15	The extended deadline for the Tender Closing and Opening of the bids.	<p>Two (2) bids were received from Hoegh LNG and the Exmar Consortium.</p> <p>The OCG found that a third bid was received from Golar LNG, by way of an email after the deadline for submission. This bid was rejected.</p>

Timeline	Occurrence	OCG's Observation
2010 February 16	Presentation of Proposals on the 'FSRU LNG Project' by the potential bidders who submitted a bid.	<p>There was no established basis upon which the potential bidders were instructed to present their proposals as it was not used in the Evaluation of the Bids.</p> <p>This was confirmed by way of a letter from Mr. Godfrey Perkins, Secretary of the PCJ Procurement Committee, to Dr. Audley Darmand, Chairman of the PCJ's LNG Technical Evaluation Committee which was dated 2010 March 29, in which it was stated that <i>"Please note that the actual Presentation of the submission by the bidders was not considered as, was not interpreted as and did not form a part of the Bid Evaluation Process by any member of the aforementioned Committee..."</i></p> <p>No rationale was provided by the PCJ with respect to the intended purpose for the referenced presentations.</p>
2010 March 29	Mr. Arthur Ransome, Vice President & General Manager of CH-IV provided Dr. Audley Darmond with <i>"...a summary of the attributes of each proposal submitted and the final scores..."</i> , which outlined, <i>inter alia</i> , a summary of the scores which were allotted to the evaluated bids.	
2010 March 29	The Chairman of the LNG Technical Evaluation Committee gave its recommendation by way of a Final Report.	The OCG found that the Report, which was submitted by the Chairman, was similar to the report which was submitted by CH-IV International.

Timeline	Occurrence	OCG's Observation
2010 April 5	<p>CH-IV International wrote to Dr. Audley Darmand, Chairman of the PCJ Technical Evaluation Team, in regard to certain concerns which were expressed by the PCJ Procurement Committee with respect to:</p> <p><i>1. Particulars of the principals of each of the three entities within Exmar consortium ...</i></p> <p><i>2. Corporate and financial profile of CLNG as well as the experience of this company in the business of LNG supplies...</i></p>	<p>The OCG found that the PCJ Procurement Committee expressed concern with regard to the structure of the Exmar Consortium and, in particular, CLNG, whose corporate and financial profile was not provided.</p> <p>The OCG found that the letter from CH-IV International sought to explain the basis upon which the Exmar Consortium was selected, the structure of the Consortium and the role of each member of the Consortium.</p>
2010 April 8	New contract signed between CH-IV International and the PCJ.	The OCG found that CH-IV International began work for and/or on behalf of the PCJ prior to a written contract being executed. In point of fact, CH-IV International commenced evaluation of the bids prior to 2010 April 8 and provided the PCJ with an updated 'Review Matrix' on 2010 February 12.
2010 April 12	Mr. Godfrey Perkins, Secretary, PCJ Procurement Committee, wrote to the then Group Managing Director, Dr. Ruth Potopsingh, expressing concerns in regard to the Evaluation Report which was received from CH-IV International for the proposed 'FSRU LNG Project'.	<p>The OCG found that the PCJ Procurement Committee indicated that the report which was received from CH-IV International was, <i>inter alia</i>, inadequate.</p> <p>The OCG found that the PCJ Procurement Committee wrote to the Chairman of the Evaluation Committee, Dr. Audley Darmand, on 2010 March 26, expressing the said concerns regarding the report which was submitted by the Technical Consultants, CH-IV International. A request was also made for the missing items to be submitted.</p>

<b>Timeline</b>	<b>Occurrence</b>	<b>OCG's Observation</b>
2010 April 14	Mr. Godfrey Perkins, Secretary, PCJ Procurement Committee, wrote to Ms. Kathryn Phipps, then Chairman of the PCJ Board of Directors, indicating that the Procurement Committee approved the recommendation in accordance with the final report of the Technical Consultants, CH-IV International.	
2010 April 14	The then PCJ Board of Directors approved the Bid Evaluation Report to be forwarded to the Accounting Officer in the MEM subject to the corporate profile of the company CLNG being obtained and incorporated.	
2010 May 5	A presentation was made to the NCC by representatives from the MEM and the PCJ.	
2010 May 13	The NCC supported the request of the PCJ to enter into negotiations with the 'preferred bidder', the Exmar Consortium, relating to the 'FSRU LNG Project'.	The OCG noted that the NCC requested a copy of the matrix clearly setting out the comparison of the bidders' responsiveness to the evaluation criteria, points allotted and the criteria weighting of all bidders.
2010 May 31	The Cabinet deferred consideration of a Cabinet Submission No. 255/MEM – 16/12 which was entitled " <i>Permission to Negotiate with the preferred bidder for the provision of a Floating Storage Regasification Unit (FSRU) and Related Infrastructure for the Liquefied Natural Gas (LNG) Project</i> " to allow for further consultation.	
2010 June 1	Latham & Watkins, Legal Consultants for the 'FSRU LNG Project' was engaged by the PCJ.	

Timeline	Occurrence	OCG's Observation
2010 June 7	<p>By way of Cabinet Decision No. 22/10, Cabinet reviewed the matter and noted that, <i>“The Prime Minister advised that he had discussions with the Ministry of Finance and the Public Service on the matter, but there remained issues to be resolved...”</i></p> <p><i>After consideration, the Cabinet agreed that an independent comparative assessment was to be done on the use of a Floating Storage Regasification Unit, and in this regard instructed that:</i></p> <p><i>(v) the Ministry of Energy and Mining seek to have the tender validity period extended by the recommended tenderer for a period of two months;</i></p> <p><i>(vi) the Ministry of Energy and Mining act expeditiously to obtain the services of a consultant through the World Bank to undertake an independent assessment;</i></p> <p><i>(vii) the Minister of Finance and the Public Service have discussions with the World Bank regarding the technical assistance and the financing; and</i></p> <p><i>(viii) that the Office of Utilities Regulation be requested to assist with the recommendation of a suitable consultant.”</i></p>	

Timeline	Occurrence	OCG's Observation
2010 June 14	<p>Cabinet Decision No. 23/10, indicated, <i>inter alia</i>, the following:</p> <p>(i) <i>“agreed to the selection and announcement...of Exmar Marine as the Preferred Bidder to finance, build, own and operate a Floating Storage Regasification Unit and related infrastructure (jetty, sub-sea and on-land pipeline infrastructure) for delivery of supplies of natural gas...</i></p> <p>(ii) <i>granted....permission to enter into negotiations with the Preferred Bidder to finance, build, own and operate the Floating Storage Regasification Unit and related infrastructure on such terms and conditions as are to be approved by the Ministry of Finance and the Public Service, the National Contracts Commission, the Solicitor General and the Cabinet;</i></p> <p>(iii) <i>directed that the finalization of the negotiations was subject to the completion... of a technical assessment of the Project and the procurement procedures utilized, which assessment was to be done by an independent consultant supported by the World Bank; and</i></p> <p>(iv) <i>noted that this Decision superseded the instruction by way of Decision No. 22/10 of 7 June, 2010, for the Ministry...to seek to have the tender validity period extended for a period of two months.”</i></p>	<p>The Cabinet approved the recommendation for the award of contract for the 'FSRU LNG Project' to the Exmar Consortium and also for the PCJ to enter into negotiations with the said bidder.</p> <p>The OCG noted that the finalization of the negotiations was subject to an independent assessment which was supported by the World Bank.</p>

Timeline	Occurrence	OCG's Observation
2010 June 22	<p>The OCG, by way of two (2) separate letters which were dated 2010 June 22, and which were addressed to Mr. Nigel Logan, Acting Group Managing Director, PCJ, and Mrs. Hilary Alexander, the MEM Permanent Secretary, issued a written '<i>Notice of Enquiry</i>' concerning the tender and contract award processes for the 'FSRU LNG Project'.</p> <p>In the referenced letter, the OCG advised the Acting Group Managing Director of the PCJ, Mr. Nigel Logan, that the OCG took the decision to secure, without delay or reservation certain documents and associated correspondence which will inform its Enquiry.</p> <p>The OCG took into custody a number of files, both hardcopy and electronic, from the PCJ and the MEM, in regard to the 'FSRU LNG Project'. This was undertaken pursuant to Sections 4 (2) (b) and 4 (3) of the Contractor General Act.</p>	
2010 July 9	<p>A Letter of Notification was sent to the Successful Bidder, by Mr. Nigel Logan, Acting Group Managing Director, PCJ. The letter was addressed to a Mr. Bart Lavent, Director LNG, Exmar Marine NV, and informed the '<i>preferred bidder</i>' of the recommendation to enter into negotiations subject to the decisions which were made by the Cabinet.</p>	

<b>Timeline</b>	<b>Occurrence</b>	<b>OCG's Observation</b>
2010 July 15	OCG's Interview with the former Chairman of the PCJ Board of Directors, Ms Kathryn Phipps.	The OCG observed that the former Chairman of the Board of Directors had severe concerns in regard to certain activities which were being undertaken between the MEM and certain Public Officers and/or key players in the overall tender process for the 'FSRU LNG Project'.
2010 July 23	The Hon. James Robertson submitted to the Cabinet a recommendation, by way of Cabinet Submission 382/MEM No.33/10, for the approval of the Negotiation Team.	
2010 August 23	The Cabinet approved the recommendation for the Negotiation Team.	
2010 November 1	The NCC approved the utilization of the Sole Source Procurement Methodology for the re-engagement of the services of Taylor- DeJongh as the financial Consultants for the 'FSRU LNG Project'.	
2010 November 3	The Final Assessment Report which was prepared by the independent consultants, Mr. Donald Hertzmark and Mr. Haydn Furlonge. The consultants were reported as being obtained by the World Bank.	<p>The Report indicated, <i>inter alia</i>, that the independent contractors were engaged "...by the Office of Cabinet at the beginning of October 2010 to review the progress on the proposed LNG regasification facility, the downstream pipeline and storage Projects and impacts of gas supply on the country's electricity and industrial sectors."</p> <p>The OCG noted that several key Findings and Recommendations were made in the referenced Report to the extent that the independent consultants recommended, <i>inter alia</i>, that certain modifications should be undertaken failing which "...the current process be scrapped and that a new round of bidding be instituted with a separate owner-operator for the FSRU who will also undertake the responsibility to purchase gas."</p>

Timeline	Occurrence	OCG's Observation
2010 November 11	<p>The OCG received a letter from Mr. Glenford Watson, Senior Legal Officer, MEM.</p> <p>The referenced letter requested the OCG's opinion "<i>...as to whether, as a general principle, it would be permissible for the Government to enter into an Implementation/Direct Agreement with the Project Company and the members of the Project Company (Consortium) as co-signees?</i>"</p>	
2010 November 16	<p>OCG's Letter which was addressed to Mr. Glenford Watson, Senior Legal Officer, MEM. The referenced OCG Letter stated, <i>inter alia</i>, the following:</p> <p><i>"You have sought the advice of the Office of the Contractor General (OCG) as to whether it would be permissible for the Government to proceed to enter into agreements with Exmar and Promigas , both of which are a part of the Exmar Consortium, the very entity which is at the center of the captioned OCG Enquiry.</i></p> <p><i>Having regard, among other things, to (a) the matters which are outlined in the OCG's Notice of Enquiry which was dated June 22, 2010, and which was formally conveyed to your Ministry and to the PCJ, and (b) the fact that a major and extensive OCG Investigation is currently under way, it would be highly inappropriate for the OCG to render any advice to you other than for you to summarily and immediately abort the subject process."</i></p>	The MEM submitted the OCG's recommendation to the Chambers of the Attorney General.

Timeline	Occurrence	OCG's Observation
2010 December 7	The opinion from the Chambers of the Attorney General, which was entitled <i>“Letter of November 16, 2010 from the Office of the Contractor General in connection with the LNG Project</i> indicated that the OCG <i>“...acted ultra vires to the CG Act in which the advice rendered in the instant case is of no legal effect and is void.”</i>	
2010 December 7	By way of a letter, which was dated 2010 December 7, Ambassador Douglas Saunders provided the OCG with a copy of a document which was entitled <i>“LNG Assessment Report: Assessment Report Comments”</i> , which was prepared by CH-IV International for the Jamaica LNG Task Force. Of note, the referenced report was not dated.	The OCG noted that the <i>“LNG Assessment Report: Assessment Report Comments”</i> reviewed the independent assessment report, which was prepared by the independent consultants, and its recommendations and was of the opinion that <i>“...the Report was not sufficiently informed.”</i>  The Team requested that the Cabinet...undertake the following actions: (a) <i>Sign off on the Implementation Agreement (“IA”) during the week of November 28 and b) Proceed immediately with the LNG supply acquisition plan.”</i> <sup>260</sup> (OCG's Emphasis)
2010 December 9	The Cabinet Office requested permission to use the Direct Contracting Procurement Methodology to contract Mr. Ernest Megginson as the Project Manager for three (3) months.	
2010 December 9	The NCC approved the recommendation of the Cabinet Office to contract Mr. Ernest Megginson as Project Manager, subject to the Cabinet Office utilizing the three (3) month period to conduct a tender process aimed at procuring the services of a full-time Project Manager for the LNG Project.	

<sup>260</sup> Ibid.71

Timeline	Occurrence	OCG's Observation
2011 April 7	The Hon. Bruce Golding, on 2011 April 7, submitted to the OCG, a copy of two (2) Legal Opinions, which were prepared by Attorneys-at-Law, Livingston, Alexander & Levy, in regard to the procurement procedures for the 'FSRU LNG Project'.	The OCG notes that both Legal Opinions clearly states, <i>inter alia</i> , that " <i>The tender process...is flawed and could not withstand scrutiny under judicial review.</i> "
2011 April 11	The Office of the Cabinet, by way of its response to the OCG's Statutory Requisition, which was dated 2010 April 18, submitted a copy of a Memo that was prepared by the Solicitor General, Mr. Douglas Leys, and which was captioned " <i>Opinion by Livingston Alexander &amp; Levy concerning Tender Process for the LNG Project</i> ".	The OCG found that the Opinion of the Solicitor General was in " <i>...substantial agreement with the views posited by the Attorneys...</i> "  The Solicitor General, which is the Attorney for the GOJ, supported and confirmed the reasoning and substantive legal issues which were delineated in the Legal Opinions from Livingston, Alexander and Levy, private Attorneys-at-Law.

## **Conclusions**

Based upon the sworn responses which were received from certain Public Officials/Officers within the MEM, the PCJ, the Cabinet Office and other persons of interest, who were affiliated with, and/or involved in, the LNG Project and/or the recommendation for the selection of the ‘*preferred bidder*’ for the ‘FSRU LNG Project’, which have been reviewed and cross-referenced, the OCG has arrived at the following considered Conclusions:

1. The OCG has concluded that since 2001, the GOJ’s energy policy has evolved significantly. The OCG has found that over the period, 2001 to 2011, the GOJ, has pursued the LNG Project at different stages and having regard to various technical considerations.

In this regard, the OCG has found that, prior to 2008, the GOJ undertook a Front End Engineering Design (FEED) study and engaged in significant research with respect to the suitability of LNG, specifically with regard to the development of a land-based facility.

It is instructive to note that Ms. Marcia Forbes, the then Permanent Secretary, MEM, also indicated, to the OCG, that the GOJ had discussions regarding “... **land-based versus off-shore system and the implications, the pros and cons of each concerned me in terms of long-term benefits/threats to Jamaica.**”

However, during the tenure of the then Minister, Mr. Clive Mulling, coal was the preferred choice as an energy source and the LNG Project was officially halted. Hence, the LNG project was formally halted until 2009, when the present Prime Minister, the Hon. Bruce Golding, made an announcement in his Budget Presentation that Jamaica would once again be pursuing LNG.

2. The OCG has found and concluded that between the period of 2005 through to 2006, Mustang Engineering undertook a Front End Engineering Design (FEED) Study, on behalf of the PCJ, in regard to the setting up of a local land-based LNG Project.
3. Based upon the sworn documentary evidence which has been adduced to the OCG, by representatives of the PCJ and the MEM, the OCG has found, and concluded, that there were no formal pre-assessments and/or studies which were undertaken and/or conducted on behalf of the PCJ and/or the MEM for the 'FSRU LNG Project'.
4. The OCG has concluded that both Exmar Marine NV and Merrill Lynch presented proposals to the GOJ with respect to the introduction of LNG in Jamaica. However, the GOJ did not act upon any of the referenced proposals and, instead, sought to pursue the introduction of LNG, to Jamaica, via the competitive route.

As such, a pre-qualification exercise was undertaken by the PCJ in 2007 April, and, consequently, nine (9) prospective bidders responded to an 'Invitation to Pre-Qualify' as LNG providers in 2007 May. However, this process was not completed.

Subsequently, in 2009 November, following upon the GOJ's resumed consideration of LNG as a viable fuel source, the Limited Tender Procurement Methodology was utilized, by the PCJ, to invite the nine (9) entities which had previously responded to the request for pre-qualification in 2007.

5. Based upon the documentary evidence which has been provided to the OCG, the OCG has found and concluded that, over the period of 2001 to 2009, Exmar Marine NV has been actively seeking to introduce LNG in Jamaica.

In point of fact, Exmar Marine NV made unsolicited overtures to the PCJ, in 2007, to develop LNG facilities in Jamaica and held discussions with GOJ officials during the period of time in which there was an ongoing debate regarding the benefits of coal versus LNG and CNG, as alternative energy sources.

Exmar Marine NV also informed the OCG that it had its first meeting with the then Minister of Foreign Affairs and Foreign Trade in Brussels, Mr. Anthony Hylton, in 2006 December and, for the first time, was made aware of the potential interest of Jamaica in the FSRU Technology.

Subsequently, in 2007 March, following upon a presentation by Exmar Marine NV, a 'Mandate' was signed between the GOJ and Exmar Marine NV. The referenced 'Mandate' authorized Exmar Marine NV to act as an agent for and/or on behalf of the GOJ, to assist it in the purchasing of LNG and/or natural gas. In the same year, Exmar Marine NV participated in the 2007 Pre-Qualification exercise which was initiated by the PCJ.

However, after the Pre-Qualification process was halted, Exmar Marine NV stated that it continued “...*unsolicited meetings in respect of sharing ideas on the feasibility of importing LNG and natural gas use in Jamaica...*”

Further, the OCG found that Exmar Marine NV held meetings with representatives of the PCJ at the Gastech Conference on 2008 March 10-13, in Bangkok. Of import, is the fact that the GOJ Representatives who were involved in the referenced Conference included Mr. Ian Moore, the then Chairman of the Board of Directors of the PCJ and current Director of CLNG – the local Jamaica corporate partner in the Exmar Consortium, Mr. Stephen Wedderburn, LNG Project Coordinator, and Mr. Patrick Dallas, Advisor to the then Minister, Mr. Clive Mullings.

6. The OCG has found, and concluded, that, in 2009 June, Exmar Marine NV held a meeting with the Minister of Energy and Mining, the Hon. James Robertson, the then Permanent Secretary, Ms. Marcia Forbes, representatives of Promigas, Merrill Lynch and EDC LNG, now known as CLNG (Jamaica) Ltd., and that “*The goal of the meeting was to advise the Government of the intent to conduct the pre-feasibility studies to determine the economic and technical viability of developing a private*

**project to import LNG and supply natural gas for use by private bauxite sector entities.**<sup>261</sup>(OCG Emphasis)

The OCG has also concluded, based upon the documentary evidence with which it is seized, that in 2009 July, Exmar Marine NV met with representatives of the MEM and presented "... **the approach that would be taken by the group to demonstrate the feasibility of providing LNG to the bauxite sector.**"<sup>262</sup>

7. The OCG has found and concluded that the company, EDC LNG Limited (which was renamed Caribbean LNG (Jamaica) Limited on 2009 December 8), was incorporated in Jamaica on 2009 June 19.
8. The OCG has also found and concluded that the Directors and the three (3) majority beneficial shareholders of Caribbean LNG (Jamaica) Limited are as follows:
  - i. Mr. Ian Moore, former Chairman of the PCJ Board of Directors;
  - ii. Mr. Paul East; and
  - iii. 'Mr. Al Kerr', otherwise known as Mr. Conrad Kerr, former Global Head of LNG, Merrill Lynch.
9. Based upon the documentary evidence which has been presented to the OCG, the OCG has found and has been led to conclude the following:
  - i. That a MOU was signed between CLNG and Promigas on 2009 July 17.
  - ii. That a MOU was signed between CLNG and Exmar Marine NV on 2009 July 22.
  - iii. That a MOU between Exmar Marine NV, Promigas S. A., and CLNG was signed on 2010 February 15, the same date as the extended deadline for the submission

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<sup>261</sup> Response from Exmar Marine NV, which was dated 2010 December 22. Response #4

<sup>262</sup> Response from Exmar Marine NV, which was dated 2010 December 22. Response #4

of the bids for the 'FSRU LNG Project'. The referenced MOU of 2010 February 15, had replaced the two (2) previous MOU's.

10. The OCG is of the considered opinion that the company, Caribbean LNG (Jamaica) Limited was formed for the sole purpose of the 'FSRU LNG Project'. This is based upon (a) the nature of the company and the date on which it was formed; (b) the fact that approximately one (1) month after the incorporation of the company, two (2) MOU's were signed between EDC LNG (the then name of the company) and Promigas and Exmar Marine NV, on 2009 July 17 and 22, respectively, (c) the fact that despite being formed in 2009 June, EDC LNG, on its own apparent initiative, was able to successfully undertake and complete a feasibility study, by 2009 October, in regard to the introduction of FSRU LNG technology to Jamaica, and (d) the fact that a qualification requirement of the RFP, which was issued in 2009 November, was that the potential bidder ought to have the '*use of local expertise*'.
11. The OCG has concluded that the GOJ, through the PCJ, utilized the GOJ Public Sector Procurement Procedures (2008 November), in accordance with the Limited Tender Procurement Methodology, to contract a suitable provider for the 'FSRU LNG Project'. In this regard, the NCC, by way of a letter which was dated 2009 November 5, endorsed the proposal of the MEM to utilize the Limited Tender Procurement Methodology to invite the nine (9) entities, which had submitted applications for Pre-Qualification in 2007 May, to re-submit proposals for the 'FSRU LNG Project'.
12. The OCG found that the MEM and the PCJ received certain approvals from the PCJ Procurement Committee, the PCJ Board of Directors, the NCC and the Cabinet in respect of the 'FSRU LNG Project'.

However, the OCG found that the then PCJ Board of Directors expressed several concerns with respect to the manner in which approvals were being requested for the referenced project. In point of fact, the Minutes of the PCJ Board of Directors which was dated 2009 December 10, indicated that the approval from the Cabinet preceded

the approval from the Procurement Committee “...and the Committee could not interfere with Cabinet’s decision...”

Further, the Minutes of the Meeting of the PCJ Board of Directors, which was held on 2009 December 22, indicated, *inter alia*, that “...the Board took a decision that if an application was received for extension then the Board would consider it...that has not been done and yet there are letters going out indicating that a decision was taken to grant an extension after consultation with the PCJ and with the Ministry.”

The foregoing has led the OCG to conclude that there was indeed irregularity with respect to at least one (1) component of the approval process for the ‘FSRU LNG Project’. In point of fact, the OCG has concluded that the very approval process itself was improper due to the fact that the approval of PCJ Board of Directors was circumvented.

13. The OCG has concluded that the MEM and the PCJ breached Sub-section S-3100 of the GOJ Public Sector Procurement Procedures (2008 November) which provides, *inter alia*, that “**All adopted sub-criteria should be specified in the RFP... If points allocated to these sub-criteria are not disclosed in the RFP, the Evaluation Committee should allocate them before proposal submission, to reduce the risk of manipulations during the evaluation process...**”

In this regard, the OCG found that the PCJ and/or the MEM, did not provide the potential bidders with the amended evaluation criteria, as detailed in the ‘Review Matrix’, which was dated 2010 February 12. It should be noted that the referenced ‘Review Matrix’ was dated three (3) days before the deadline for the submission of bids on 2010 February 15.

14. The OCG has concluded that the initial oversight structure which was established, within the PCJ, to guide the ‘FSRU LNG Project’, did not promote the principles of good corporate governance.

In this regard, the OCG found that at least three (3) of the members of the PCJ Board of Directors served on the LNG Task Force, which is not a part of the approved PCJ Corporate Governance structure, and the LNG Evaluation Committee. Further, there were instances in which the PCJ Board of Directors raised concerns with respect to the decision-making process for the 'FSRU LNG Project'.

Further, the OCG has found and concluded that the PCJ was responsible for the implementation of the 'FSRU LNG Project'. However, the parent Ministry, the MEM, had direct responsibility with regard to the overall policy guideline for the project.

The OCG has not seen any evidence to suggest that any of the Accounting and/or Accountable Officers within the MEM and/or the PCJ took effective and decisive steps to ensure good corporate governance in the reporting structure which was established to guide the 'FSRU LNG Project'.

15. The OCG is of the considered opinion, and has concluded, herein, that Mr. Stephen Wedderburn's (a) prior involvement and/or affiliation with Exmar Marine NV and Mr. Joseph Fossella, a representative of CH-IV International and (b) current involvement in guiding the Tender process for the 'FSRU LNG Project', has compromised the integrity of the entire 'FSRU LNG Project'.

The OCG's Conclusion is premised, *inter alia*, upon the following:

- i. Mr. Stephen Wedderburn, in 2009, in his then private and personal capacity, had submitted a proposal to the MEM in which he recommended, *inter alia*, that the formal GOJ procurement procedures be by-passed in order to expedite the LNG project.

The OCG also found another instance in which Mr. Arthur Ransome of CH-IV International indicated that, based upon the recommendation of Mr. Stephen Wedderburn, CH-IV International subcontracted Mr. Joseph Fossella's company,

Clean Skies, in order to by-pass the stringencies of the GOJ's procurement process.

- ii. Mr. Stephen Wedderburn, in several pieces of written correspondence, has consistently identified Exmar Marine NV as a company with which the GOJ should negotiate in regard to the LNG Project. In point of fact, Mr. Wedderburn, on 2008 May 16, ranked several of the prospective LNG providers and placed Exmar Marine NV as the number one contender. Such a ranking was undertaken by Mr. Wedderburn prior to an actual tender process and is, without question, indicative of a demonstrated bias towards Exmar Marine NV.
- iii. Questions are also raised with respect to Mr. Stephen Wedderburn's relationship with Mr. Joseph Fossella who was instrumental in the evaluation of the bids for the 'FSRU LNG Project'. Mr. Fossella is a former employee of Black & Veatch and the proprietor of Clean Skies LLC. Further, the OCG has found, based upon the documentary evidence, that Mr. Wedderburn has taken credit for introducing Exmar Marine NV to Black & Veatch.

Incidentally, the OCG has also found and concluded that Mr. Fossella was a part of the 'negotiating team' for and on behalf of Black & Veatch, which led to the formation of an alliance between Exmar Marine NV and Black & Veatch.

- iv. Prior to the PCJ's Board of Directors deliberations on 2009 December 22, for the re-engagement of CH-IV International, Mr. Stephen Wedderburn had exchanged several pieces of correspondence with representatives of CH-IV International and Clean Skies and passed information to CH-IV International with respect to the PCJ Board of Directors' discussion in regard to the requirements for the technical services for the 'FSRU LNG Project'.
- v. Having regard to the foregoing, it is instructive to note that Mr. Stephen Wedderburn disclosed to the PCJ his pecuniary interest in a project in which

Exmar Marine NV was involved. However, the OCG has found no evidence to suggest that Mr. Stephen Wedderburn disclosed his relationship with Mr. Joseph Fossella, a sub-contractor of CH-IV International, who was actively involved in the Evaluation of the Bids for the 'FSRU LNG Project'.

Based upon the foregoing, the OCG has concluded that Mr. Stephen Wedderburn's actions were professionally unethical, tantamount to a flagrant conflict of interest and, in consequence, breached Sub-Section S-1040 of the Revised GOJ Public Sector Procurement Procedures (2008 November).

The OCG's conclusions and concerns are further compounded by the fact that Mr. Stephen Wedderburn, in his sworn response to the OCG, asserted that "*As LNG Project Coordinator I am responsible for overseeing the day-to-day activities of the LNG Project and acting as the focal point for communications in respect of the project. In respect of procurement activities this includes drafting RFPs and issuing these RFPs once they have been approved, handling bidders' queries and drafting clarification responses.*"

The foregoing puts it beyond doubt that, due to Mr. Stephen Wedderburn's prior associations and demonstrated bias, and the critical role which he has played in the 'FSRU LNG Project', the entire integrity of the tender process has been compromised, brought into disrepute and is tainted by a conflict of interest and a gross lack of objectivity which has been evidenced, *inter alia*, by certain email correspondence which were either written by or sent to Mr. Stephen Wedderburn.

16. The OCG has concluded that Exmar Marine NV had a distinct advantage over the other potential bidders for the 'FSRU LNG Project' as a result of the extensive work which it undertook with respect to introducing LNG to Jamaica since 2006.

In point of fact, prior to the commencement of the tender period in 2009 November, Exmar Marine NV had meetings with EDC LNG (now CLNG) and Promigas (now

members of the Exmar Consortium), in which it was disclosed that they were undertaking a pre-feasibility study to “...determine the economic and technical viability of developing a private project to import LNG and supply natural gas for use by private bauxite sector entities.”<sup>263</sup> (OCG Emphasis)

It must be reiterated that EDC LNG (now CLNG) is the company which was formed by Mr. Ian Moore, former PCJ Board Chairman, and other interested parties in 2009 June.

Further, and having regard to the fact that Exmar Marine NV was also privy to information which was not made available to the other bidders and was afforded the privilege of having an ongoing working relationship with representatives of the PCJ, in the persons of Mr. Stephen Wedderburn and Mr. Ian Moore, the involvement of Exmar Marine NV in the tender process was highly irregular and unfair to the other bidders which were involved in the process.

Consequently, the foregoing initiative would have given the Exmar Consortium a distinct, and hence, irregular, improper and unfair advantage in the tender process.

17. The OCG has concluded that the overall tender process for the ‘FSRU LNG Project’ has been compromised having regard, *inter alia*, to the following:

- i. Mr. Ian Moore, during his tenure as the PCJ Board Chairman, was, at a minimum, (a) privy to information with respect to the possibilities of introducing LNG to Jamaica; (b) privy to discussions which Mr. Stephen Wedderburn had with Mr. Bart Lavent of Exmar Marine NV; (c) found to have requested information from Mr. Stephen Wedderburn regarding, *inter alia*, the feasibility of LNG to Jamaica; and (d) attended several meetings and had numerous discussions with potential bidders.

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<sup>263</sup> Response from Exmar Marine NV, which was dated 2010 December 22. Response #4

- ii. Subsequently, after Mr. Ian Moore's tenure ended as the Chairman of the PCJ Board of Directors in 2008 November, he established the company, EDC LNG (now CLNG), approximately seven (7) months after. EDC LNG (now CLNG) subsequently formed a business partnership with the said Exmar Marine NV, which was found to have been lobbying for the introduction of LNG to Jamaica from 2006. The CEO of EDC LNG (now CLNG), Mr. Conrad Kerr, happens to be the former Global Head of LNG for Merrill Lynch, a company that (a) proposed to joint venture with the GOJ for the introduction of LNG to Jamaica, albeit being rejected; and (b) had had several meetings and discussions with Mr. Bart Lavent of Exmar Marine NV, in respect of which both Mr. Stephen Wedderburn and Mr. Moore were informed.
  
- iii. Mr. Stephen Wedderburn was also found to have played a key role in establishing (a) the alliance between Exmar Marine NV and Black & Veatch and (b) the sub-contract between Mr. Joseph Fossella's company, Clean Skies LLC, and CH-IV International.

Of note, is the fact that Mr. Joseph Fossella was the former Vice President, Business Development for Black & Veatch and had also worked with the company, as a Consultant, up to April 18, 2009. The OCG has also found that Mr. Fossella played an integral role in the evaluation of the bids for the 'FSRU LNG Project'. Mr. Fossella was further found to have "...started the LNG Liquefaction Alliance Project between Black & Veatch, Excelebrate and Exmar, and worked on the project for six or seven months up to his retirement."

- iv. Mr. Stephen Wedderburn was also found to have played a key role in establishing (a) the alliance between Exmar Marine NV and Black & Veatch and (b) the sub-contract between Mr. Joseph Fossella's company, Clean Skies LLC, and CH-IV International. Mr. Fossella was further found to have "...started the LNG Liquefaction Alliance Project between Black & Veatch, Excelebrate and Exmar, and worked on the project for six or seven months up to his retirement."

v. Exmar Marine NV, having been identified as trying to introduce LNG to Jamaica since 2006, was found to have been considerably more favoured over the other bidders. Further, the Exmar Consortium was found to have been at an advantage with respect to the preparation of a proposal, as Exmar Marine NV's previous proposal was used as a benchmark for the 'FSRU LNG Project'. The OCG's conclusion is buttressed by the fact that the Exmar Consortium was the only bidder that did not request an extension of the submission deadline.

18. The OCG has concluded that there are several questions which have been raised with respect to the Exmar Consortium's capabilities to fulfill the requirements for the 'FSRU LNG Project', specifically with respect to its abilities to (a) design and build any fixed infrastructure facilities; and (b) to commercially operate the vessels.

The OCG's foregoing conclusion is premised upon the fact that Exmar Marine NV has substantially partnered with Excelerate Energy LP on projects of a similar nature. In this regard, Mr. Shaun Davison of Excelerate Energy LP, asserted that Exmar Marine NV (a) operated the vessels, on behalf of Excelerate Energy LP, by providing physical crew; (b) did not design or build any fixed infrastructure facility; (c) does not control operationally or commercially the vessels; and (d) does not have the technology patents.

Further, the OCG found that CH-IV International evaluated the strength of the Exmar Consortium with respect to the partnership between Exmar Marine NV and Excelerate Energy LP. However, of import is the fact that Excelerate Energy LP is not a part of the Exmar Consortium.

Also, and quite importantly, is the fact that CH-IV International, in assessing the specific experience and capabilities of the Exmar Consortium, in relation to the assignment, did not undertake an independent assessment of Exmar Marine NV's capabilities outside of its partnership with Excelerate Energy LP.

Therefore, the OCG is unable to state definitively whether Exmar Marine NV, on its own, is capable of performing the required tasks for the 'FSRU LNG Project', given that a substantial portion of its experience has been in partnership with Excelerate Energy LP.

19. The OCG has concluded that the evaluation process, which led to the recommendation to award the contract to the Exmar Consortium, was flawed. This is premised, *inter alia*, upon the following:

- i. The Technical Consultants, CH-IV International, in assessing the proposal from the Exmar Consortium, utilized information which was not presented in the Consortium's bid. In this regard, CH-IV indicated in its report that **"...information obtained from their websites demonstrate clearly the nature of the joint venture between Exmar and Excelerate in terms of development, construction, management and operation of the LNGRV fleet."**
- ii. The Technical Consultants, CH-IV International, evaluated the strength of the Exmar Consortium with respect to the partnership between Exmar Marine NV and Excelerate Energy LP. However, Excelerate Energy LP is not a part of the Exmar Consortium.
- iii. The Technical Consultants, CH-IV International, in assessing the specific experience and capabilities of the Exmar Consortium, in relation to the assignment, did not undertake an independent assessment of the Exmar Marine NV's capabilities outside of its partnership with Excelerate Energy LP.

Consequently, the OCG is unable to substantiate the recommendation which was made to award the contract to the Exmar Consortium based upon the flaws which have been identified above.

20. Notwithstanding the initiative of Exmar Marine NV, during 2008, there was significant sharing of information between Exmar Marine NV, Mr. Stephen Wedderburn, Mr. Conrad Kerr and Mr. Ian Moore with respect to Exmar Marine NV's lobbying for the introduction of LNG in Jamaica.

During the tenure of Mr. Ian Moore as the Chair of the PCJ Board of Directors (2007 December to 2008 November), the LNG Project was purportedly inactive. However, the documentary evidence which has been provided to the OCG suggests that Mr. Ian Moore and Mr. Stephen spearheaded an initiative to steer the GOJ's energy policy away from coal to LNG.

Consequently, the OCG found that a relationship between Mr. Bart Lavent of Exmar Marine NV, Mr. Stephen Wedderburn, Mr. Conrad Kerr and Mr. Ian Moore developed, wherein the named parties collaborated in an effort to promote LNG.

Having regard to the foregoing, the OCG is of the considered opinion that Mr. Stephen Wedderburn's involvement in the LNG project (a) created a conflict of interest situation specifically with respect to the roles and responsibilities which were assigned to him during the tender process and (b) raised questions of impropriety and irregularity. The OCG's conclusion is also premised upon the following:

- i. Mr. Wedderburn was instrumental in developing the RFP which was issued to the prospective bidders on 2009 November 12 and 13. It should be noted that the RFP was drafted in the absence of a comprehensive project plan for the 'FSRU LNG Project'. In this regard, Mr. Wedderburn, in the Meeting of the PCJ Board of Directors, which was held on 2009 December 10, indicated that *"...the team did not really have a master plan, so it is looking for the proposals to come and then dissect from there adding that he was waiting on the proposals to guide him in terms of plans for the project..."*

- ii. Further, the RFP which was prepared by Mr. Stephen Wedderburn, and the LNG Task Force, amongst others, was alleged to have been rushed for same to be issued by 2009 November. In this regard, it was reported by Mr. Nigel Logan, the Acting Group Managing Director, PCJ, that the RFP “...*was sent to the members of the Procurement Committee by email...for the Committee to approve, for it to be sent out that same day by midnight... **the Procurement Committee of course would not have been able to meet at such short notice and essentially did not have a chance to read over the RFP, before it went out...**”*

Having regard to the foregoing, the OCG found that the RFP was not duly approved by the PCJ Procurement Committee prior to it being issued.

- iii. It was reported that Mr. Stephen Wedderburn, who was not supposed to have been involved in the process for the evaluation of the bids, was present at several of the meetings of the LNG Technical Evaluation Committee in which the Chairman, Dr. Audley Darmand, indicated that Mr. Wedderburn’s presence was necessary as he was required to develop the ‘*instrument of measure*’.

Of note, Mr. Stephen Wedderburn was fully aware that his involvement in the evaluation process would have been unethical as he stated in an email to Dr. Ruth Potopsingh, which was dated 2009 September 6, prior to his official re-engagement at the PCJ, *inter alia*, that “... *it has already been decided that I would not be involved in the evaluation of any LNG FSRU proposals for Jamaica. I therefore hope that people are not creating a red herring out of this matter. I also note that my involvement in the Colombia project was widely known by officials of the Ministry, PCJ and JBI long before I was approached to assist with the Jamaican project...*”

- iv. By way of an email which was dated 2008 January 23, Mr. Stephen Wedderburn also informed Mr. Ian Moore and Mr. Conrad Kerr, amongst others, that “...PCJ wants the Exmar proposal to be treated as the base case for the implementation of the LNG project in Jamaica...”

21. The OCG has concluded that Merrill Lynch had approached the GOJ in 2007 proposing a willingness to be a joint venture partner in developing the LNG project. However, the proposal was rejected by the GOJ.

The OCG further found that representatives from Merrill Lynch, namely, Mr. Conrad Kerr, then Global Head of LNG, Mr. Stephen Hanan and Mr. Andrew Gray (Chief Operating Officer – Latin America & the Caribbean), communicated with Mr. Stephen Wedderburn, during the period. There were several pieces of email correspondence which were identified, by the OCG, which indicated that Merrill Lynch had discussions and meetings with Mr. Bart Lavent, Director - LNG, Exmar Marine NV, with respect to the LNG Project in Jamaica.

In at least one instance, the OCG found that information was being shared on the “...existing and potential future LNG demand at the various prospective end-users in Jamaica”, between Mr. Stephen Wedderburn, Mr. Conrad Kerr, and Mr. Bart Lavent, amongst the other referenced representatives of Merrill Lynch.

Having regard to the foregoing, the OCG found that information was being shared between both Mr. Conrad Kerr and Mr. Ian Moore, who are now Directors and Shareholders of CLNG, a partner company of the Exmar Consortium, and Mr. Stephen Wedderburn, within the period of 2007 to 2008. Further, the said information was being shared with Mr. Bart Lavent of Exmar Marine NV.

The OCG is of the considered opinion that the apparent working relationship which existed between the named individuals, which involved the sharing of information regarding LNG, and the subsequent establishment of a corporate entity, CLNG, in

2009, by Mr. Conrad Kerr and Mr. Ian Moore, which is a principal member of the consortium which submitted a bid for the 'FSRU LNG Project', has compromised the entire LNG Project.

It is abundantly clear from the documentary evidence that both Mr. Ian Moore and Mr. Conrad Kerr, who have now partnered with the preferred bidder, the Exmar Consortium, via the formation of CLNG, were, in their then respective substantive capacities, involved in some form of information trading with a representative of Exmar Marine NV, a company which has been lobbying for the introduction of LNG to Jamaica from as early as 2006.

The OCG is of the considered opinion that the collective fact circumstances surrounding the events, meetings, networking, and subsequent business ventures which have developed between the named individuals, rises above mere coincidence and closely resembles that of a contrived and collusive collaborative effort which was driven by their knowledge of Jamaica's prospective requirements for LNG based upon information which was previously garnered by the named persons in their then respective employment capacities.

22. The OCG identified an email from Mr. Stephen Wedderburn, which was dated 2008 January 23, that was addressed to Mr. Stephen Hanan of Merrill Lynch, and which was copied to Mr. Ian Moore and other representatives from Merrill Lynch, in which Mr. Wedderburn stated, *inter alia*, that “...**PCJ wants the Exmar proposal to be treated as the base case for the implementation of the LNG Project in Jamaica and the proposal being developed for the Prime Minister should reflect this...**”

The foregoing statement made by Mr. Stephen Wedderburn suggests that the 'implementation' of the LNG Project to Jamaica was tailored in accordance with a proposal of Exmar Marine NV.

The OCG further found, by way of an email which was dated 2008 January 9, from Mr. Stephen Wedderburn to Mr. Ian Moore and Mr. Conrad Kerr, amongst other, that the Exmar Marine NV had given a presentation on “...an adjusted proposal from Exmar...” which was attached to the referenced email.

Having regard to the foregoing, the OCG is of the view that once the referenced proposal was used as a base-case for the implementation of the LNG Project, by whatever means, the entire ‘FSRU LNG Project’ would have been compromised and skewed in favour of Exmar Marine NV and, consequently irregular, improper and unfair to the other bidders.

23. The OCG has concluded that the Accounting and Accountable Officers within the MEM and the PCJ, whilst having knowledge of Mr. Wedderburn’s prior affiliation with Exmar Marine NV, allowed Mr. Stephen Wedderburn to (a) participate in the process which preceded the evaluation of the bids, (b) serve on the decision-making Committees/Task Forces for the ‘FSRU LNG Project’ and (c) communicate with the potential bidders during the tender process with respect to the ‘FSRU LNG Project’.

The OCG has, therefore, concluded that the Accounting and Accountable Officers of the MEM and the PCJ were complicit in their duties as it regards mitigating and/or preventing the conflict of interest situation in which Mr. Stephen Wedderburn has become embroiled.

24. The OCG has concluded that the re-engagement of CH-IV International was highly irregular, improper and breached the GOJ Public Sector Procurement Procedures.

This is premised upon the fact that (a) the NGC of Trinidad and Tobago was also a party to the 2005 contract with the PCJ and CH-IV International; and (b) the scope of work which was required by the technical consultant for the ‘FSRU LNG Project’ was different from the scope of work which was detailed in the 2005 contract.

Consequently, the new contract which was signed with CH-IV International, in 2010 April, included the development and utilization of a 'Review Matrix' which effectively increased the consultant's scope of works.

Having regard to the changes to the parties in the contract and the increased scope of works, the OCG is of the considered opinion that the PCJ should have initiated a new tender process for the Technical Advisors. However, having failed to undertake this new tender process, the PCJ should have, at a minimum, sought the approval of the NCC and the Cabinet with respect to the variation of the contract pursuant to Sub-section S-2040 of the GOJ Public Sector Procurement Procedures.

25. The OCG has, therefore, concluded that the re-engagement of the Technical Consultants, CH-IV International, was done in contravention of Section S-2040 of the GOJ Public Sector Procurement Procedures (2008, November).
26. The OCG has concluded that Mr. Ian Moore, on one of his official trips in March 2008, held discussions with Exmar Marine NV with respect to the introduction of LNG in Jamaica.

The OCG, having considered the information which was provided to it, herein concludes that a relationship seems to have been fostered between representatives of Exmar Marine NV, Mr. Stephen Wedderburn and Mr. Ian Moore during the period 2007 December to 2008 November, wherein, all the named parties were working together and sharing ideas on the feasibility of LNG and natural gas in Jamaica. This relationship is demonstrated by the numerous email correspondence which continued to be exchanged up to the time at which Mr. Ian Moore demitted office from the PCJ, in 2008 November, as the company's chair.

27. With respect to the role, involvement and/or affiliation of the former Chairman of the PCJ Board of Directors, Mr. Ian Moore, in the overall LNG project, the OCG has made the following determinations:

- i. During Mr. Ian Moore's tenure he actively sought to promote LNG and was in communication with Mr. Stephen Wedderburn and Mr. Bart Lavent of Exmar Marine NV.
- ii. Mr. Ian Moore's active lobbying for LNG involved the attendance of several meetings with LNG stakeholders such as Golar LNG, Merrill Lynch and Exmar Marine NV.
- iii. Mr. Ian Moore's active lobbying for LNG occurred at a time when the LNG project was officially halted as the then Minister, Mr. Clive Mullings, was pursuing coal as the preferred fuel choice for Jamaica.
- iv. Mr. Ian Moore, as the then Chairman of the PCJ Board of Directors, working in conjunction with Mr. Stephen Wedderburn, was sufficiently provided with a wealth of information regarding LNG and the prospects for LNG in Jamaica.
- v. During Mr. Ian Moore's tenure, Exmar Marine NV continued its courting of the GOJ with respect to the introduction of LNG in Jamaica.

Consequently, the OCG has concluded that Mr. Ian Moore, during his tenure at the PCJ (2007 December to 2008 November), (a) worked with Mr. Stephen Wedderburn to promote LNG in Jamaica; (b) gained a wealth of knowledge on LNG and was exposed and/or had access to the propriety information which the GOJ had in its custody with respect to LNG; (c) came into contact with representatives of Exmar Marine NV and Mr. Conrad Kerr, formerly of Merrill Lynch; and (d) participated in at least one (1) GOJ funded trip in which he held discussions with representatives of Exmar Marine NV with respect to introducing LNG in Jamaica.

28. Having regard to (a) Mr. Moore's lobbying for LNG during his tenure as Chairman of the PCJ Board of Director, and (b) the apparent mutual working relationship between Mr. Bart Lavent of Exmar Marine NV, Mr. Stephen Wedderburn and Mr. Ian Moore,

several questions of impropriety and irregularity with respect to bidding process are raised.

This is premised, *inter alia*, upon the following:

- i. Approximately seven (7) months after demitting office at the PCJ in 2008 November, Mr. Ian Moore became the Majority Beneficial Shareholder of EDC LNG (now CLNG) on 2009 June 19.
- ii. The OCG found that the company Caribbean LNG (B.V.I.) Limited, the primary Shareholder of CLNG (Jamaica) Limited, was incorporated on 2009 December 22, approximately one (1) month after the issuance of the RFP for the 'FSRU LNG Project'.
- iii. The sole Shareholders of the company, Caribbean LNG (B.V.I.) Limited, are Mr. Ian Moore and Mr. Paul East.
- iv. CLNG and Promigas, another party to the Exmar Consortium, signed a MOU on 2009 July 17.
- v. CLNG and Exmar Marine NV signed a MOU on 2009 July 22.
- vi. Exmar Marine NV, Promigas and CLNG, signed a MOU replacing all other MOUs on 2010 February 15, the same day which was the deadline for the submission of the bids for the 'FSRU LNG Project'.
- vii. In 2009 June, Exmar Marine NV indicated that a meeting was held with Mr. James Robertson and the then Permanent Secretary, Ms. Marcia Forbes and EDC LNG (now CLNG) to advise the GOJ of its intent to conduct a pre-feasibility study to determine the economic and technical viability of a private project to import LNG and supply natural gas.

It is instructive to note that Mr. Ian Moore, in his response to the OCG's Requisition of 2010 December 3, indicated that EDC LNG (now CLNG) engaged an engineering firm called Bechtel Oil and Gas in 2009 July to conduct the pre-feasibility study.

- viii. EDC LNG (now CLNG) completed a pre-feasibility study in 2009 October on its own volition which was one (1) month prior to the issuance of the RFP in 2009 November.
- ix. Coincidentally, Exmar Marine NV was the only company which did not request an extension of time for submitting its bid.
- x. By way of an email which was dated 2008 January 23, Mr. Stephen Wedderburn informed Mr. Ian Moore and Mr. Conrad Kerr, amongst others, that "...*PCJ wants the Exmar proposal to be treated as the base case for the implementation of the LNG project in Jamaica...*"
- xi. Mr. Stephen Wedderburn, in a meeting at the PCJ Board of Directors, which was held 2009 December 10, indicated that the Team did not have a master plan for the project and, as such, was looking for the proposals which would be received in response to the RFP to guide the plan for the project.
- xii. Mr. Conrad Kerr, a director and shareholder of CLNG, who was also in communication with Mr. Ian Moore, during his tenure as Chairman of the PCJ Board of Directors, and Mr. Bart Lavent of Exmar Marine NV, was an executive employee of Merrill Lynch at the time that Merrill Lynch had submitted a proposal to the GOJ with respect to LNG, albeit that Merrill Lynch's proposal was rejected by the PCJ.

29. Mr. Ian Moore, in his capacity as a Director and Majority Beneficial Shareholder of CLNG, indicated in his sworn response to OCG' Statutory Requisition, which was

dated 2010 December 3, that “There was no approved and/or active LNG Project during my tenure at the PCJ. The entire period of my tenure was consumed by an ongoing debate between the merits of coal and LNG as an energy source.”

Mr. Moore further indicated to the OCG that *“The PCJ Board of Directors, as a whole, received recommendations from the Petroleum Corporation of Jamaica (PCJ) Procurement Committee for review and endorsement by the Board, as appropriate, and on-ward recommendation to the Ministry of Mining and Energy (MEM) PC.”*

Upon a review of the Minutes of the PCJ Board of Directors, during Mr. Ian Moore’s tenure, the OCG found that the LNG Project was only mentioned in the formal Minutes of the PCJ’s Board of Directors on two (2) occasions.

However, and despite the sworn assertions of Mr. Ian Moore, the OCG has seen evidence of several pieces of email correspondence, in 2008, which revealed that Mr. Ian Moore, during his tenure, was in frequent communication and attended several meetings, with Mr. Stephen Wedderburn, then Group Technical Director, PCJ, Mr. Conrad Kerr, then Global Head of LNG, and other representatives of Merrill Lynch, Mr. Bart Lavent of Exmar Marine NV, and other individuals, with respect to lobbying for LNG in Jamaica.

In at least one instance, Mr. Stephen Wedderburn was identified as requesting information, for and on behalf of Mr. Ian Moore, regarding the *“Floating Energy Solution concept”* and, amongst other things, enquiring how long it would take for same to be delivered.

The OCG also found evidence to indicate that Mr. Stephen Wedderburn advised and updated Mr. Ian Moore in regard to developments and issues which concerned LNG, and in particular, provided Mr. Ian Moore with information which was continuously being shared between Mr. Bart Lavent of Exmar Marine NV and himself (Mr. Stephen Wedderburn).

In addition, the OCG was also provided with information from Mr. Nigel Logan, Acting Group Managing Director, PCJ, which indicated that the PCJ incurred expenses in the sum of \$24,430,345.82 and \$1,829,198.42 in the years 2007 and 2008, respectively, in regard to the LNG Project.

Irrespective of Mr. Ian Moore's statement that "*There was no approved and/or active LNG Project during my tenure at the PCJ*", the fact circumstances and documentation which have been provided to the OCG sharply contradict such an assertion. It is the OCG's considered opinion that (a) since email correspondence was being exchanged between Mr. Ian Moore, Mr. Stephen Wedderburn and Mr. Bart Lavent of Exmar Marine NV, regarding the feasibility of LNG in Jamaica, (b) the PCJ was expending money during the tenure of Mr. Ian Moore, and (c) since Mr. Ian Moore was in fact copied on certain emails, he would have been privy to ongoing considerations and discussions. In this regard, Mr. Moore's assertions raise serious questions regarding the credibility of such a response and whether the LNG was in fact inactive as has been suggested.

30. For the period of 2003 to 2010, the PCJ expended a total of \$251,408,280.88 with respect to the LNG Project.

It is instructive to note that of this amount, an aggregated value of \$16,345,677.61 was expended on '*Travel Expenses (Foreign)*' and \$212,353,624.67 was spent on '*Consultancy Fees (Foreign)*'.

Further, of the \$212,353,624.67 which was expended on '*Consultancy Fees (Foreign)*' Mustang Engineering was paid \$96,608,451.25 between the period of 2005 to 2007. It is instructive to note that the FEED Study which was undertaken by Mustang Engineering was for a '*land-based facility*' and not the '*FSRU LNG Project*'.

Pursuant to the 2010 April 8 contract between PCJ and CH-IV International, Mr. Nigel Logan, Acting Group Managing Director, PCJ, in his response to the OCG's Statutory

Requisition, which was dated 2011 February 15, indicated, *inter alia*, that the contract “... is for US\$387,000 of which US\$425,923.02 has been paid.”

31. Given the fact that during Mr. Ian Moore’s tenure the official GOJ Energy Policy was geared towards coal, and Mr. Ian Moore’s sworn assertion that “*There was no approved and/or active LNG Project during my tenure at the PCJ*”, the OCG is unable to determine (a) on whose behalf Mr. Stephen Wedderburn and Mr. Ian Moore were working in all instances; and (b) under whose Authority both gentlemen were sharing information and/or correspondence with, *inter alia*, Mr. Conrad Kerr and Mr. Bart Lavent of Exmar Marine NV.

Consequently, the OCG is unable to determine under whose authority and for whose benefit Mr. Stephen Wedderburn and Mr. Ian Moore were acting given (a) that several of the referenced correspondence were not shared with any other Accounting and/or Accountable Officers of the PCJ and/or the MEM, (b) the curious and seeming conspiratory circumstances surrounding the Exmar Consortium’s exposure to information, (c) the timing and formation of CLNG and (d) the fact that CLNG, in conjunction with Exmar Marine NV, were sufficiently poised to have completed a feasibility study one month prior to the issuance of the RFP by the PCJ.

However, the OCG found at least one (1) instance in which both Mr. Ian Moore and Mr. Stephen Wedderburn, while on an official GOJ trip, met with representatives of Exmar Marine NV and shared information with respect to the promotion of LNG.

32. Having regard to any questions in respect of (a) insider information trading; (b) bid rigging and/or (c) corruption, the OCG has made, *inter alia*, the following determinations:

- i. As previously highlighted, Exmar Marine NV was placed at a distinct advantage based upon (a) its 2007 Mandate with the GOJ; (b) the prior sharing of information with Mr. Stephen Wedderburn and Mr. Ian Moore between 2007 and

2008; (c) work which was undertaken in 2007; and (d) the pre-feasibility study which was undertaken in 2009 October.

- ii. During Mr. Ian Moore's tenure (2007 December – 2008 November) there were several pieces of email correspondence between Mr. Bart Lavent of Exmar Marine NV, Mr. Stephen Wedderburn, Mr. Ian Moore, and Mr. Conrad Kerr then of Merrill Lynch. In the referenced correspondence, all parties were privy to information on LNG and it appears that they were collectively working to introduce LNG in Jamaica.
- iii. Two (2) of the parties who were privy to the above referenced correspondence, namely, Mr. Ian Moore and Mr. Conrad Kerr, subsequently formed a company, EDC LNG (now CLNG) in 2009 June.
- iv. The referenced company was formed approximately seven (7) months after Mr. Ian Moore demitted office.
- v. Mr. Ian Moore, as the then Chairman of the PCJ Board of Directors would have been privy to all the information with respect to LNG which was in the possession of the PCJ.
- vi. Mr. Stephen Wedderburn, who was in prior communication with Exmar Marine NV and who, by all accounts, had a working relationship of some sort with Exmar Marine NV (a) was a key person responsible for the drafting of the RFP; (b) in communication with the bidders throughout the tender period; (c) was assisting the Evaluation Committee to develop the '*instrument of measure*'; (d) had communicated on more than one occasion that Exmar Marine NV was his number one ranked company in the FSRU industry; and (e) had on several occasions recommended that the formal procurement process be undermined and/or bypassed in the name of expediency.

Based upon the foregoing determinations, the OCG is of the considered view that the referenced matter is one which presents adequate evidence which would demand that further investigations and consultations be undertaken by the State's law enforcement and criminal prosecutorial agencies with the objective of determining whether Mr. Ian Moore, Mr. Stephen Wedderburn and/or Mr. Conrad Kerr, and/or any other Public Official/Officer or person, conspired or attempted to use insider information and/or proprietary information to enure a benefit to themselves and/or to any person or entity with which they were/are associated and/or in which they had or may have a pecuniary interest.

## **Referrals**

The OCG, in the conduct of its Investigation, is required to be guided by Section 21 of the Contractor-General Act.

**Section 21 of the Contractor-General Act** provides as follows:

**“If a Contractor-General finds, during the course of his Investigations or on the conclusion thereof that there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body, he shall refer the matter to the person or persons competent to take such disciplinary or other proceeding as may be appropriate against that officer or member and in all such cases shall lay a special report before Parliament.”** (OCG’s Emphasis)

1. Pursuant to the mandatory statutory obligations which are imposed upon a Contractor General by Section 21 of the Contractor General Act, the OCG is hereby formally referring a copy of this Report to the Learned Director of Public Prosecutions, the Auditor General and the Financial Secretary in the MOFPS, for them to determine and to advise what steps may be taken to hold to account the Accounting and/or the Accountable Officers within the MEM and the PCJ, with respect to certain irregularities and improprieties, in the planning, conceptualization and implementation of the ‘FSRU LNG Project’, which were identified by the OCG during the course of its Investigation.

This Referral is being made having regard to the identified breaches of the Revised GOJ Public Sector Procurement Procedures Handbook (2008 November) and, in consequence, the breaches of the attendant Public Sector Regulations which were promulgated in 2008 December, which resulted from the referenced irregularities and improprieties.

The Referral is being made on the basis that there is sufficient *prima facie* evidence which is contained herein and, more particularly and importantly, in the sworn statements that were furnished to the OCG by the relevant Respondents, to suggest, *inter alia*:

- a. That the entire tender process for the ‘FSRU LNG Project’ has been compromised, brought into disrepute and tainted by a conflict of interest and a gross lack of objectivity and impartiality due to (i) Mr. Stephen Wedderburn’s prior associations with certain named contractors, (ii) Mr. Wedderburn’s demonstrated bias towards Exmar Marine NV, and (iii) the critical role which was played by Mr. Wedderburn in the ‘FSRU LNG Project’, as has been evidenced by, *inter alia*, certain email correspondence which was either written by and/or sent to Mr. Stephen Wedderburn.

Having regard to the foregoing, the OCG is also of the considered opinion that Mr. Stephen Wedderburn’s actions were professionally unethical and constituted a conflict of interest and, in consequence, constituted a breach of Sub-Section S-1040 of the Revised GOJ Public Sector Procurement Procedures (2008 November).

Sub-Section S-1040 of the Revised GOJ Public Sector Procurement Procedures (2008 November) provides, *inter alia*, as follows:

*“CONFLICT OF INTEREST*

*All personnel involved in handling a procurement process are expected to observe the GOJ Code of Conduct for Civil Servants outlined in the Staff Orders and to be free of interests or relationships that are actually or potentially detrimental to the best interests of GOJ and shall not engage or participate in any transaction involving a company, its affiliates, divisions or subsidiaries in which they have even minor interests.*

*Any GOJ personnel involved in a procurement process that has assumed, or is about to assume, a financial or other outside business relationship that might involve a conflict of interest, must immediately inform their supervisors in writing of the circumstances involved. This information is to be reviewed at an appropriate level for a decision whether a conflict of interest is present, and if so, what course of action will be taken.”*

- b. That the re-engagement of the Technical Advisors, CH-IV International, in 2010 April, was undertaken, without the stipulated approvals, in contravention of Sub-section S-2040 of the Revised GOJ Public Sector Procurement Procedures Handbook (2008 November) and, in consequence, in contravention of the attendant Public Sector Regulations which were promulgated in 2008 December.

Sub-Section S-2040 of the Revised GOJ Public Sector Procurement Procedures (2008 November) provides, *inter alia*, as follows:

***“EXPENDITURE AUTHORITIES***

*The expenditure authorities required before a Procuring Entity may enter into a contract are currently as follows:*

<b><i>Threshold</i></b>	<b><i>Authority</i></b>
<b><i>J\$10,000,000 and below</i></b>	<i>The Accounting Officer/Head of Entity shall approve subject to procedures included herein.</i>
<b><i>Above J\$10,000,000 – J\$30,000,000</i></b>	<i>The Accounting Officer/Head of Entity shall endorse on the recommendation of the NCC.</i>
<b><i>Above J\$30,000,000</i></b>	<i>Cabinet, on the recommendation of the NCC and the Accounting Officer/Head of Entity shall approve.</i>

*The threshold values above relate to gross amount payable to contractors. These figures will be revised from time to time as approved by Cabinet.”*

- c. That in respect of a document which was entitled “*Framework for Review and Evaluation of Proposals*”, which was dated 2010 February 12 and the subsequent use of a “*Review Matrix*” to evaluate the proposals which were received for the ‘FSRU

LNG Project’, the OCG was not provided with, nor has it seen, any evidence to suggest that the referenced ‘Review Matrix’, which was designed by the Consultants, CH-IV International, for and on behalf of the PCJ, was issued to the potential bidders, via an Addendum or otherwise, prior to the submission deadline.

The non-disclosure of same, to the bidders, is in contravention of Sub-Section No. S-3100 of the GOJ Public Sector Procurement Procedures (2008 November), which provides that:

***“All adopted sub-criteria should be specified in the RFP... If points allocated to these sub-criteria are not disclosed in the RFP, the Evaluation Committee should allocate them before proposal submission, to reduce the risk of manipulations during the evaluation process...”*** Consequently, the OCG found the foregoing to be irregular and in breach of the GOJ’s Public Sector Procurement Guidelines and Regulations.

- d. That the OCG has found no evidence to suggest that Mr. Stephen Wedderburn disclosed his relationship with Mr. Joseph Fossella, a sub-contractor of CH-IV International, who was actively involved in the Evaluation of the Bids for the ‘FSRU LNG Project’.

It is important to note that Section 36 (1) of the Public Sector Procurement Regulations (2008 December) imposes a duty upon ***“...any public officer directly or indirectly involved with the procurement process and particularly in the preparation of bidding documents, evaluation, contract negotiations and contract management and payments*** to-(a) declare to the head of his entity or chairman of the entity's procurement committee any potential conflict of interest in relation to a proposed Government contract;(b) ***declare to the head or chairman, any relationship with a bidder, supplier, contractor or consultant and refrain from taking part in either the decision making process or the implementation of any prospective Government contract where such a relationship exists.*** (OCG Emphasis)

The OCG, is of the considered opinion, that it is within the purview of the Director of Public Prosecutions, the Auditor General and the Financial Secretary, in the Ministry of Finance and the Public Service (MOFPS), to determine and to advise what appropriate and/or applicable actions may be taken or initiated against the representatives of the MEM and the PCJ, having regard to all of the circumstances of the case.

In the foregoing regard, it is of critical import to note the following sections of the Public Sector Procurement Regulations:

*39. A person who-(a) contravenes any provision of these Regulations;(b) aids, abets, counsels or procures the contravention of any such provision;(c) is knowingly involved in or is a party to any such contravention;(d) conspires with any other person to contravene any such provision, is liable in damages for any loss caused to any other person by such conduct. Civil liability.*

*40. A person who-(a) contravenes these Regulations; or (b) aids, abets or otherwise knowingly facilitates or is an accessory to the contravention of these Regulations, commit an offence and is liable, on summary conviction in a Resident Magistrate's Court, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding three months or to both such fine and Offences and penalties.*

3. Pursuant to the mandatory statutory obligations which are imposed upon a Contractor General by Section 21 of the Contractor General Act, the OCG is hereby formally referring a copy of this Report to the Commissioner of Police and the Learned DPP for them to undertake such further investigations, as they may deem to be appropriate, into the actions of Mr. Ian Moore, Mr. Stephen Wedderburn and Mr. Conrad Kerr with respect to the multiple irregularities and improprieties which have been identified by the OCG during the course of its Investigation and which have been documented herein.

In particular, the matter is being referred to the Commissioner of Police and the DPP for them to determine whether Mr. Ian Moore and/or Mr. Stephen Wedderburn used their respective Public Offices in a conspiratory, fraudulent, corrupt, clandestine and/or

surreptitious manner to enure a future illicit benefit for themselves, Caribbean LNG (Jamaica) Limited and/or the Exmar Consortium through, *inter alia*, the irregular utilization of proprietary insider information and/or through the exhibition of a bias or preferential treatment towards Exmar Marine NV, in the referenced tender process for the 'FSRU LNG Project'.

The investigations should, among other things, specifically seek to determine whether there was a conspiracy or agreement between Mr. Ian Moore and/or Mr. Stephen Wedderburn and/or any or all of the named persons to facilitate, *inter alia*, what could be the possible commission, on the part of any and/or all of them, of an act or acts of corruption, contrary to Section 14 of the Corruption Prevention Act, or to otherwise determine if Mr. Ian Moore and/or Mr. Stephen Wedderburn and/or any or all of the named persons may have committed or aided and abetted an act or acts of corruption or other criminal offence.

5. Pursuant to the mandatory statutory obligations which are imposed upon a Contractor General by Section 21 of the Contractor General Act, the OCG is hereby formally referring a copy of this Report to the Learned Director of Public Prosecutions (DPP) for such further action as she may deem to be appropriate on the basis that the OCG has found that there is sufficient evidence which is contained herein and, more particularly and importantly, in the sworn statements that were furnished to the OCG by the relevant Respondents, to suggest that the PCJ and, more precisely, its lawful Accounting Officer, Mrs. Hillary Alexander, aided and abetted by Mr. Stephen Wedderburn, caused a Government contract to be irregularly, improperly and unlawfully awarded to CH-IV International, in contravention of the approval requirements of the RPPH and, consequently, in contravention of the Public Sector Procurement Regulations which make such breaches a criminal offence.

It is instructive to note that the Public Sector Procurement Regulations were promulgated with the approval of the Cabinet of the Government of Jamaica, effective 2008 December, with the intent of giving legal force to, and imposing criminal sanctions for,

breaches of the GOJ's Procurement Rules.

The OCG has found that the 2010 April contract which was awarded to CH-IV International, by the PCJ, was awarded in breach of Subsection S-2040 of the RPPH. These are the applicable provisions which govern the approval requirements which were applicable to the award of a contract to CH-IV International. Further, the OCG has found that CH-IV had already begun to evaluate bids for the 'FSRU LNG Project' prior to the signing of a formal contract on 2010 April 8.

The evidence which was provided to the OCG indicates that the PCJ failed to secure the necessary prior approvals of the NCC which would have been required for the increase in the scope of works which the Technical Consultants were re-engaged to provide.

Section 7 of the Public Sector Procurement Regulations provides as follows:

*"7. Tender Proceedings for prospective government contracts shall be conducted according to the procedures outlined in the Handbook, as amended from time to time, and more particularly for the purposes of these Regulations the procedures as regards-*

- (a) invitations to tender;*
- (b) qualification of suppliers;*
- (c) requirements for the publicising of bid Opportunities and Contracts;*
- (d) receipt and opening of bids;*
- (e) bid validity; and*
- (f) bid evaluation"*

Section 40 of the Public Sector Procurement Regulations provides as follows:

*"40. A person who-*

- (a) contravenes these Regulations; or*
- (b) aids, abets or otherwise knowingly facilitates or is an accessory to the contravention of these Regulations, commit an offence and is liable, on summary conviction in a*

*Resident Magistrate's Court, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding three months or to both such fine...*”

6. Pursuant to the mandatory statutory obligations which are imposed upon a Contractor General by Section 21 of the Contractor General Act, the OCG is hereby formally referring a copy of this Report to the Attorney General, for her to determine whether the members of the PCJ Board of Directors and/or the respective Accountable Officers within the MEM and/or the PCJ, were complicit in their statutory obligations by allowing Mr. Stephen Wedderburn to be integrally involved in the tender process for the ‘FSRU LNG Project’ despite his prior disclosure of having had commercial dealings with Exmar Marine NV.

The OCG has found that there is evidence which is recorded herein and, more particularly and importantly, in the sworn statements that were furnished to the OCG by the relevant Respondents, which would suggest that there was, *inter alia*, a breach of duty on the part of the then PCJ Board of Directors, in contravention, *inter alia*, of Sections 17(1) (a) and (b) and 6 of the Public Bodies Management and Accountability Act.

It is instructive to record that Sections 6 and 17 of the Public Bodies Management and Accountability Act impose certain specific responsibilities upon the Board of Directors of Public Bodies as well as Board Members themselves.

Had these and other responsibilities been fully discharged in the instant matter, the affairs of the PCJ and, in particular, the tender process for the ‘FSRU LNG Project’, would not have been shrouded in the appearance of unethical and/or improper practices.

It is particularly important to record that Boards of Directors of Public Bodies are appointed, *inter alia*, to efficiently and effectively manage the affairs of Public Bodies and to ensure the accountability of all individuals who manage and administer the affairs and resources of the said Public Bodies.

**Section 6 of the Public Bodies Management and Accountability Act** provides, *inter alia*, as follows:

*“6. Every board shall-*

*(c) take such steps as are necessary-*

*(iii)for the efficient and effective management of the Public Body;*

*(iv)to ensure the accountability of all persons who manage the resources of the Public Body;*

*(d) develop adequate information, control, evaluation and reporting systems within the body;*

*(c) develop specific and measurable objectives and performance targets for that body;*

*(d) advise the responsible Minister on matters of general policy relating to the management of the body”.*

**Section 17 (1) of the Public Bodies Management and Accountability Act** provides, *inter alia*, as follows:

*17- (1) “Every director and officer of a Public Body shall, in the exercise of his powers and the performance of his duties-*

*(c) act honestly and in good faith in the best interests of the Public Body; and*

*(d) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances including, but not limited to the general knowledge, skill and experience of the director or officer.*

**Section 25 of the Public Bodies Management and Accountability Act** provides, *inter alia*, as follows:

*25. (1) If the Court is satisfied on an application by the Attorney-General that any person has contravened any of the provisions of-*

*(a) section 4 (acquisition of shares and payment of dividends);*

*(b) section 5 (exercise of borrowing powers);*

- (c) section 6 (corporate governance);*
- (d) section 14 (general duties of auditors);*
- (e) section 15 (failure to furnish information to auditor);*
- (f) section 20 (levels of emoluments);*
- (g) section 21 (restriction on formation of new companies),*

*the Court may exercise any of the powers referred to in subsection (2).*

*(2) The Court may-*

- (a) order the person concerned to pay to the Crown such pecuniary penalty not exceeding one million dollars; or*
- (b) grant an injunction restraining that person from engaging in conduct described in subsection (1).*

*(3) In exercising its powers under this section the Court shall have regard to*

- a) the nature and extent of the default;*
- (b) the nature and extent of any loss suffered by any person as a result of the default;*
- (c) the circumstances of the default;*
- (d) any previous determination against the person concerned.*

*(4) If in the opinion of the Attorney General there is a contravention of section 7, 8 or 9, he may make an application to the Court and the provisions of subsections (1), (2) and (3) shall apply in relation thereto.*

## **Recommendations**

Section 20 (1) of the Contractor-General Act mandates that “*after conducting an Investigation under this Act, a Contractor-General shall, in writing, inform the principal officer of the public body concerned and the Minister having responsibility therefore of the result of that Investigation and make such Recommendations as he considers necessary in respect of the matter which was investigated.*” (OCG Emphasis)

In light of the foregoing, and having regard to the Findings and Conclusions that are detailed herein, the OCG now makes the following considered Recommendations:

1. The OCG must strongly recommend that the current tender process for the ‘FSRU LNG Project’ be immediately and summarily aborted and a new OCG supervised and scrutinized process be undertaken by the PCJ and the MEM.

The foregoing Recommendation is one which is buttressed by the OCG’s unearthing of overwhelming and incontrovertible evidence which is indicative, *inter alia*, of a lack of transparency, the absence of fairness, and a glaring demonstration of impropriety and irregularity in the circumstances which surrounded the bidding process for the referenced FSRU LNG Project. The OCG’s Recommendation is also founded upon the conflict of interest issues, and the documented bias and preferential treatment, which were displayed by Mr. Stephen Wedderburn in favour of the ‘*preferred bidder*’, Exmar Marine NV – a company with which Mr. Wedderburn had himself declared that he had a previous working relationship, as well as a pecuniary interest which was predicated upon the success of an Exmar Marine NV related project which was to be executed in Colombia.

2. The OCG must recommend that Accounting and/or Accountable Officers should scrupulously adhere to the GOJ Procurement Guidelines and Regulations in the award of contracts.

Further, the OCG must also highlight and recommend that in instances in which approval

for the award of a Government contract is being granted by an Accounting and/or Accountable Officer, any such approval must be given within the parameters of the established GOJ procurement and accounting procedures.

3. The OCG recommends that in instances in which a Public Body has identified that there is a breach of the procurement procedures, the responsible agency should seek to remedy the said breach in an expeditious and effective manner, as opposed to continuing with the implementation of the project in violation of applicable GOJ Public Sector Procurement Procedures, the Regulations and other governing laws.
4. The OCG also feels compelled to strongly recommend that the Cabinet should move with expedition to develop and to implement a comprehensive and over-riding policy to be applicable to all Public Body Boards, to govern, restrict or prohibit, for a specified time, as the case may be, the award of Government contracts (or the divestment of publicly owned assets) by a Public Body, to former members of its Board of Directors, or to any entity in which a former Board member may have a pecuniary interest.
5. Transparency, the appearance of fairness and the need to avoid the possibility of a conflict of interest, in the public procurement process, require that there should be, among other things, a distinct separation of the Public Officials and Officers who sit and vote on a Public Body's established Procurement Committee with respect to a particular procurement, and the Officials and Officers who grant final approval for the procurement.

Consequently, the OCG recommends that these considerations should be borne in mind when appointing persons to the PCJ's Board of Directors, the PCJ's Evaluation Committee, the PCJ's Procurement Committee and any other established PCJ Committee, so as to ensure that the highest possible degree of integrity and objectivity in the execution of the respective functions of the said Committees is attained.

6. The OCG is compelled to remind Public Officials who are involved in the procurement process that they are required to uphold the highest standards of ethical conduct, and to

observe the GOJ's Code of Conduct for Civil Servants which is outlined in the Staff Orders. Above all, Public Officials should, at all times, remain free of interest in relationships that could be potentially detrimental to the best interests of the GOJ.

Consequently, Public Officials should not participate and/or engage in any GOJ process which is related to a transaction which is to be executed between the GOJ and a company or entity, or its associated affiliates, divisions or subsidiaries, in which the Public Official has an interest.

Further, Public Body individuals who are involved in the procurement process should disclose any personal or other relationships and interests which they may have with a bidder, supplier, contractor and/or consultant. Pursuant to Section 4, Volume 1, of the Revised GOJ Public Sector Procedures (2010 October), such Public Body individuals should not take part in either the decision-making process, or the implementation of any contract, where any such relationship or interest exist.

7. Heads of Ministries, Departments and Agencies who are aware that a Public Officer is in a conflict of interest situation are strongly recommended to take the necessary action, in accordance with applicable administrative procedures, to remove such an officer from the conflicted situation. Such action will ensure legitimacy and good governance in the administration and management of the GOJ's procurement process and the GOJ's affairs.
8. The OCG believes that it is timely to remind all Public Officials/Officers, who abuse their office and authority for personal gain and/or for the benefit of others, that there are circumstances in which such conduct is likely to rise to the level of a criminal act of corruption. The provisions that are contained in Section 14 (1) (b) of the Corruption Prevention Act are instructive in this regard. They provide simply that "*A public servant commits an act of corruption if he, in the performance of his public functions, does any act or omits to do any act for the purpose of obtaining any illicit benefit for himself or any other person*".

An act of corruption is punishable upon summary conviction in a Resident Magistrate's Court, in the case of a first offence, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment; and in the case of a second or subsequent offence, to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment;

Upon conviction in a Circuit Court, an act of corruption is punishable, in the case of a first offence, to a fine not exceeding five million dollars or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment; and in the case of a second or subsequent offence, to a fine not exceeding ten million dollars, or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

9. The OCG wishes to strongly reiterate a recommendation that it has previously made that the GOJ should implement and adopt an anti-corruption measure to impose the following mandatory requirements as a part of the its contracting and procurement processes:
  - i. All Private Entities that are desirous of bidding or tendering on Government contracts which exceed \$275,000 in value and/or who are part of a 'Consortium' which is bidding on a Government contract should be required to disclose sworn particulars of all of its beneficial owners.
  - ii. A "**Private Entity**" should be deemed to be an entity which is not a publicly listed company or corporation but which is a privately owned or held sole-tradership, partnership, cooperative, company, corporation, trust, business association or other entity.
  - iii. The particulars which should be required to be disclosed should include:
    - a) The name(s) of the beneficial owner(s) of the Private Entity;

- b) The title(s) of the beneficial owner(s);
  - c) The current nationality(ies), address(es) and telephone number(s) of the beneficial owner(s);
  - d) The nature, share or percentage of the owner's beneficial interest in the Private Entity;
  - e) The date(s) on which the beneficial interest in the Private Entity was acquired.
- iv. The Disclosure requirement should be a standard component and 'Responsiveness Criterion' for all GOJ Tender Documents, Requests for Proposals and Invitations to Tender, such that any Tender or Bid which is unsupported by the Disclosure will be rendered non-responsive and invalid and, thus, null and void.
  - v. The particulars of beneficial owners should be required to be declared and certified before a Justice of the Peace or a Notary Public, to be complete, accurate and truthful. If a false statement or declaration is made in any Disclosure Form, the maker thereof should be deemed to have committed a criminal offence.
10. Finally, it is recommended that the Ministry of Finance and the Public Service should issue a Circular to all Public Bodies, Departments and Agencies of Government, to advise that a Contractor General, pursuant to Section 4 of the Contractor General Act, has lawful jurisdiction over the award and implementation of **all** government contracts, to ensure merit, impartiality, propriety and regularity in the said award, irrespective of whether any such contracts have been exempted, by the Government, from the purview of its procurement guidelines.

## **Special Note and Recommendation**

The OCG, in the conduct of the referenced Statutory Investigation, has been faced with what is best described as a seemingly debilitating and potentially costly obstacle in the execution of its statutory mandate to “*ensure*”, *inter alia*, that Government contracts are awarded impartially and on merit, and in circumstances which do not involve impropriety or irregularity.

In the discharge of its statutory mandate, the OCG, in 2010 June, had highlighted certain inherently critical and fundamentally flawed occurrences in the formal tender process for the ‘FSRU LNG Project’ which was being undertaken by the PCJ/MEM.

The OCG’s concerns and suspicions were articulated in its Formal Letters of Enquiry which were addressed to the Accounting and Accountable Officers of the MEM and the PCJ, and which were dated 2010 June 22, regarding the ‘FSRU LNG Project’.

However, and despite the OCG’s documented concerns that the good governance tenets of public contracting, which have been imposed by Parliament upon Public Bodies and Public Officers, were being violated, a seemingly cavalier and arbitrary decision was nevertheless taken by the current GOJ Administration to proceed with the tender process for the ‘FSRU LNG Project’, without any due consideration whatsoever being given to the stated OCG concerns.

Indeed, it is instructive to note that, on 2010 July 1, an article was published on the Radio Jamaica website which was entitled “*LNG deal with Exmar stands – Golding*”. The referenced media article indicated as follows:

*“The Prime Minister has declared that the government will not stop the push for a cheaper energy alternative to oil.*

*This is despite the Contractor General's probe of the award of the contract to the Exmar Consortium to supply Liquid Natural Gas (LNG) to Jamaica.*

*“Greg Christie (Contractor General), God bless him, says he wants to scrutinize the whole transaction to see how we got to where we got to and I say yes, we welcome that.*

*But in the meanwhile, we need to get cheaper energy to the productive sector, so you go on looking at it but we’re going to continue negotiating because we want to get this in place as quickly as possible,” Mr. Golding said.”*

Further, on 2010 July 2, an article was published in the Jamaica Gleaner, which was entitled “LNG financing, supplies unsettled”. The referenced media article indicated, *inter alia*, as follows:

*“The consortium will absorb all the financial risk, with no backing from Jamaica, neither in the form of capital or loan guarantees, Energy Minister James Robertson affirmed.*

*Jamaica, however, has put \$1 billion into the LNG plan, some of it funding from multilateral sources, according to Robertson and acting managing director of the Petroleum Corporation (PCJ) of Jamaica Nigel Logan.*

*Robertson, who along with the consortium members, met Tuesday with **Gleaner** editors, said the project is unlikely to enter its mobilisation phase before January 2011, but that the supply contracts should be tied down by year end.*

*The contractor general's probe of the procurement process, including the role of former PCJ chairman Ian Moore - a director of CLNG - in the selection of the Exmar consortium, will not slow the negotiations nor the project, Robertson said.”*

For the avoidance of doubt, it must be recalled, and emphasized, that the OCG is an Independent, Quasi-Judicial Anti-Corruption Commission of the Parliament of Jamaica, which was established by law, for the purposes of ‘ensuring’, among other things, probity, competition, transparency, accountability, and value for money in the award of Government of Jamaica contracts and, to that end, is empowered to monitor and to investigate the award of Government contracts.

However, it is well known that the OCG has no powers under the law to enforce its own recommendations, or to bring to a halt a Government procurement or contracting process which it has good reason to believe is exhibiting signs of corruption, impropriety or irregularity.

The inescapable question which must be forcefully asked, therefore, is what good purpose is served by maintaining, in place, a Commission of the Contractor General, at a cost to the Jamaican taxpayer which is currently in excess of \$180 million per annum, if the considered concerns, recommendations, injunctions and/or findings of the OCG can be summarily and arbitrarily ignored by the Executive arm of the State, the very authority which the OCG was established to monitor and to investigate?

Is it that the OCG was intended by the Executive and Legislative arms of the Jamaican State to be a toothless bulldog?

Or is it that Parliament, in enacting the Contractor General Act, and by requiring a Contractor General to swear to a solemn Oath to “*ensure*” that Government contracts are awarded ‘*impartially and on merit and in circumstances that do not involve impropriety or irregularity*’, was being insincere in its injunction by virtue of the simple fact that it has refused and/or has failed to date to give to the Contractor General the very tools and powers which he obviously requires to enable him to effectively discharge and to enforce his mandate?

It is respectfully submitted that these are very serious and critical questions in respect of which the taxpayers of Jamaica must demand, and should be provided with, credible and responsible answers, not only from the incumbent Administration, but also from the State.

It is against this background, and having regard to the substantive Findings which are embodied in this Report of Investigation, as well as in light of the considered Conclusions and Recommendations that are detailed herein, that the OCG now feels compelled to once again reiterate its Recommendation that the powers with which it is imbued, under the Contractor General Act, be significantly strengthened to, among other things, empower a Contractor General to bring to a halt a Government procurement, contract award or asset divestment process

which is, in the OCG's considered view, exhibiting patent signs of impropriety, irregularity or corruption.

There is nothing which is untoward or exceptional about the OCG's recommendation that the Contractor General Act should be amended and strengthened for the purposes of giving the Commission the power to halt a Government contracting activity, pending the outcome of an Investigation, nor is the OCG's posture one which should be considered as being ill-conceived.

Indeed, a similar power, for a national procurement regulatory commission, has been proposed for consideration by the Trinidad and Tobago Legislature, in the "*Draft Legislative Proposal for an Act to be called Public Procurement and Disposal of Public Property Act, 2010*".

Section 13 (4) of the referenced Draft Bill provides that "*The Commission upon hearing the parties to a transaction may direct the suspension of the procurement process pertaining to a transaction pending the outcome of an investigation and in so doing shall provide reasons.*"

Consistent with the foregoing draft provision, it is widely known that the OCG, in Jamaica, upon or before the initiation of a major Investigation, will publicly provide detailed and cogent reasons for the recommendations which it makes to the Government to halt an irregular procurement. Such disclosures are deliberately made by the OCG, out of an abundance of caution, to ensure, among other things, that its reasons for initiating an Investigation are not only well founded, but can withstand public scrutiny, should the need arise.

This strategic OCG measure was exhibited as recently as 2011 January in respect of the GOJ's then Proposed Sale of the Sandals Whitehouse Hotel to the Gordon 'Butch' Stewart led Sandals Group.

However, and despite the OCG's 22 page documented reasons for making its Recommendations to halt the proposed divestment, and to restart the same under the direct monitoring supervision of the OCG as is required by law, the OCG's Recommendations were summarily set aside by the incumbent Administration which declared that the Sale would proceed despite the OCG's

expressed concerns, positions and Recommendations.

To further compound the matter, it was also indicated by the Administration that such Recommendations from the OCG were immature because the OCG's Investigation was not yet completed.

This raises another curious question as to whose interests are being served when an Administration is allowed to proceed with a Government contracting activity which is presumed to be irregular, improper or corrupt, by simply stating that it, the Administration, will act after the OCG's Investigation therein is completed, when it knows full well that the horse would have already bolted from the gate and that no effective remedial actions can be taken after the fact.

It is also instructive to note that, in 2010 July, the OCG was faced with a similar challenge regarding its Investigation into the divestment of a lucrative state asset, namely the divestment of the GOJ's 45% stake in JAMALCO to the Chinese firm Zhuhai Hongfan.

In the referenced case, the OCG detailed at least five (5) major considerations, which, when taken together, raised very serious questions about transparency, value for money, competition and a potential conflict of interest, amongst other concerns, in respect of the proposed asset divestment.

However, and despite the foregoing expressed concerns, it was reported in the Jamaica Observer newspaper on Wednesday 2010 June 9, as follows:

*“Responding to questions from the Opposition spokesman on energy Phillip Paulwell yesterday, Robertson said that the Government had no plan to halt the negotiations despite the (OCG's) investigation.*

*"The Government has entered into a legally binding contract and we will not be halting. We will be co-operating fully with the contractor general. We are not in a position to halt, we have entered into a contract and it is a very good contract in the interest of the*

*country," Robertson told Paulwell."*

Not surprisingly, the fact is that the Government has since reportedly abandoned its so called "*legally binding contract*" with Zhuhai Hongfan, a development which will be publicly addressed by the OCG when it formally completes and submits its Special Report of Investigation into the matter.

Be that as it may, in the instant matter of the 'FSRU LNG Project', the OCG's Findings, Conclusions and Recommendations are not only well founded in fact and in reason, but they are also buttressed by the independent Legal Opinions which were solicited by the Administration, at additional and unnecessary cost to the Jamaican taxpayer, from the private law-firm of Livingston, Alexander and Levy.

Further, and as is now known, the Livingston, Alexander and Levy Opinions have also received the support of the Government's own attorney, the Solicitor General.

The referenced Opinions are not only highly indicative of those of the OCG's expressed concerns which were communicated to the Government from as early as 2010 June 22, but they also fully support the OCG's formal recommendation, which was made to the MEM, at the MEM's request, by way of letter which was dated 2010 November 16, wherein the Government was urged by the OCG to "*summarily and immediately abort the subject process*". It is critical to note that the referenced OCG letter was copied to the Honourable Prime Minister, the Honourable Minister of Energy and Mining, the MEM Permanent Secretary and the Group Managing Director (Acg.) of the PCJ.

The Legal Opinions also lend legitimacy to the OCG's call for the Commission of the Contractor General, in the public interest, to be urgently endowed with the power to halt the award of a GOJ contract when signs of irregularity or impropriety are being exhibited.

When fully contextualized, it is now crystal clear, from the matters that are set out herein, that the circumstances which surround the development, tender and approval for the award of a contract for the 'FSRU LNG Project', are such that they cannot, whether individually or collectively, withstand public scrutiny and/or any measure for probity.

In the final analysis, it must be said that had the warnings, concerns and/or considered Recommendation of the OCG been heeded by the Administration when they were formally communicated on 2010 June 22, and again on 2010 November 16, and had the Government responded then by halting the tender process for the FSRU LNG Project, and taken the decision to immediately restart same under the supervision of the OCG, the massive losses which the Jamaican taxpayer will now have to bear in consequence, *inter alia*, of the delayed restart of the 'FSRU LNG Project', would have been entirely avoided.

# APPENDIX I



Any reply or subsequent reference to this communication should be addressed to the Contractor-General and the following reference quoted:-

No. :

TELEPHONE No.: 876-929-8560/6466

FAX No. : 876-929-2476

E-mail: gchristie@ocg.gov.jm

**OFFICE OF THE CONTRACTOR-GENERAL**  
**PIOJ Building**  
**16 Oxford Road**  
**P.O. BOX 540**  
**KINGSTON 5**  
**JAMAICA, W.I.**

Urgent and Immediate

June 22, 2010

Mrs. Hillary Alexander  
Permanent Secretary  
Ministry of Mining and Energy  
PCJ Building  
36 Trafalgar Road  
Kingston 10

COPY

Dear Permanent Secretary:

Re: Notice of Enquiry Concerning the Tender and Contract Award Processes for the Financing, Development, Ownership, Operation of an FSRU LNG Re-gasification Terminal and Natural Gas Transmission System

The Office of the Contractor General (OCG), acting on behalf of the Contractor General, has commenced an Enquiry into the tender and contract award processes for the "Financing, Development, Ownership, Operation of an FSRU LNG Re-gasification Terminal and Natural Gas Transmission System."

The Enquiry will run parallel to the OCG's ongoing monitoring of the referenced procurement, which began in December 2009, following upon the LNG Invitation to Pre-Quality which was issued by the Petroleum Corporation of Jamaica (PCJ) in April 2007. The OCG's monitoring activities, regarding the said procurement, has so far focused upon compliance with the requirements of the Government Procurement Guidelines and conformance with the terms and conditions of the Tender Document.

The OCG's Enquiry into the referenced tender and contract award processes is being undertaken pursuant to the powers which are vested in a Contractor General, by the Contractor-General Act (1983) and, in particular, pursuant to the provisions which are contained in Sections 4, 15 (1) and 18 of the Act.

As such, it is very important that your attention is formally directed to the following provisions of the Contractor General Act:

- (1) Sections 4 (1) (a) (i) and (ii) which mandates the Contractor General, "... on behalf of Parliament- to monitor the award and the implementation of Government contracts with a view to ensuring that such contracts are awarded impartially and on merit (and that) the circumstances in which each contract is awarded ... do not involve impropriety or irregularity ...".



- (2) Section 15 (1) which prescribes the discretionary power of a Contractor General to conduct an investigation into any or all of the following matters:
- (a) "the registration of contractors";
  - (b) "tender procedures relating to contracts awarded by public bodies";
  - (c) "the award of any Government contract";
  - (d) "the implementation of the terms of any Government contract";
  - (e) "the circumstances of the grant, issue, use, suspension or revocation of any prescribed licence";
  - (f) "the practice and procedures relating to the grant, issue, suspension or revocation of prescribed licences".
- (3) Section 4 (2) (b) which prescribes the power of a Contractor General "to have access to all books, records, documents, stores or other property belonging to Government, whether in the possession of any officer of a Public Body or a contractor or any other person".
- (4) Section 4 (3) of the Act which prescribes the power of a Contractor General to "require any Public Body to furnish in such manner and at such times as may be specified by the Contractor General, information with regard to the award of any contract and such other information in relation thereto as the Contractor General may consider desirable".

The OCG has decided to secure, without delay or reservation, certain documents and associated correspondence which will inform its Enquiry. The OCG's decision has been fortified and deemed necessary by the following considerations, amongst others:

- (a) The receipt of an anonymous complaint, dated Wednesday, June 16, 2010, from a seemingly knowledgeable source, which has alluded to allegations of impropriety and irregularity in the selection of Exmar as the "preferred bidder";

The referenced complaint has alleged as follows:

*"So who are the local player in Exmar, who the government announced as the preferred bidder for LNG. What is their personal and professional relationship with the current energy minister. how much did they donate to him in the last campaign. How much support did he provide to their bid. Have they been in business with him before in providing international bypass facilities. You are worried about the bauxite deal. This one is worse"*

- (b) Certain now identifiable and pronounced concerns which are predicated, *inter alia*, upon certain recent disclosures, allegations and/or reports which were disseminated through the local print and electronic media;
- (c) A review of the unedited Hansard of the Sitting of the House of Representatives of June 15, 2010; and



- (d) A review of the official documents which were disclosed as having being entered upon the official records of the Registrar of Companies of Jamaica in relation to Caribbean LNG (Jamaica) Limited as at June 21, 2010.

In light of the gravity of the allegations, which were received by the OCG on June 16, 2010, the OCG, by way of a written statutory Requisition, which was dated June 18, 2010, requisitioned the Hon. James Robertson, Minister of Energy and Mining, to respond to certain interrogatories which are related to the said allegations.

In addition to the referenced allegations, the OCG's concerns were further heightened on Friday, June 18, 2010 by the public disclosures and pronouncements, regarding the 'Liquid Natural Gas (LNG) Deal', which were made, *inter alia*, on the Nationwide News Network (NNN) during its 5:00 PM News broadcast and its 5:30 PM News Commentary Programme.

In particular, the media reports and associated disclosures have alleged that Caribbean LNG (Jamaica) Limited is a part of the 'Exmar Consortium' and has as its majority Shareholder and one of its Directors, one Mr. Ian Moore, the former Chairman of the Board of the PCJ. PCJ, as you are no doubt aware, is the Public Body which is presently conducting the referenced procurement. In point of fact, the referenced media reports have alleged that Mr. Moore has some thirty percent (30%) shareholdings in Caribbean LNG (Jamaica) Limited.

It is public knowledge that Mr. Ian Moore's association with the PCJ was terminated in November 2008 by the then Minister of Energy, Mr. Clive Mullings.

The OCG's concerns were further compounded when a review of the records of the Registrar of Companies of Jamaica did not corroborate the reports and disclosures which were made in the media as regards Mr. Moore's shareholder status in Caribbean LNG (Jamaica) Limited – a company which the Registrar's records indicate was incorporated in Jamaica on June 19, 2009, approx. seven (7) months after Mr. Moore demitted office as the Chairman of the PCJ.

In point of fact, and according to the information which is evidenced upon the formal records of the Registrar of Companies of Jamaica, the majority shareholder of Caribbean LNG (Jamaica) Limited is a corporate entity which is listed as Caribbean LNG (BVI) Limited. The records indicate that the entity was organized and is registered in the British Virgin Islands and holds some 5.2 million shares, or approx. 80% of the indicative issued share capital, of Caribbean LNG (Jamaica) Limited.

Other listed shareholders of Caribbean LNG (Jamaica) Limited include AC. Kerr LLC (800,000 shares), Andrew Bogle (395,654 shares), Old Harbour Estates Ltd. (47,826 shares), Maritime & Transport Services Ltd. (47,826 shares), and Albert Donaldson (50,001 shares).

The records of the Registrar of Companies of Jamaica also indicate that while Mr. Ian Moore and a Mr. Paul East are directors of Caribbean LNG (Jamaica) Limited, they are not listed shareholders. A Mr. Al Kerr and "Bogle, Andrew (Ceased)" are listed as the other directors of the company.



Based upon the foregoing, the OCG is, therefore, at present, unaware of the identity of the beneficial majority owner or owners of Caribbean LNG (Jamaica) Limited and the true relationship(s) which subsist(s), if any, between that entity and any person and/or entity which is a party to, or which is or has been involved in the 'LNG Deal'.

Consequently, the OCG is now gravely concerned, amongst other things, about the following:

- (a) The possibility of a potential conflict of interest, taking into consideration Mr. Ian Moore's former position as a public officer and the Chair of the Board of Directors of the PCJ, and his now documented position as a Director of the 'local' company, Caribbean LNG (Jamaica) Limited, which is alleged to be a part of the prospective PCJ contract awardee, the Exmar Consortium;
- (b) Mr. Moore's probable prior involvement in (i) the underlying considerations which would have informed the current procurement process, a process which was initiated in earnest in April 2007 and which overlapped with Mr. Moore's tenure as the PCJ Board Chairman, (ii) the prospective contract award to the Exmar Consortium and/or (iii) Mr. Moore's probable exposure to and use of 'sensitive' information by virtue of his former position as the Chairman of the PCJ Board of Directors;
- (c) The OCG's suspicions, *inter alia*, about the possibility of 'bid-rigging', the use of proprietary insider information and/or the consequential potential for a *prima facie* finding of corruption in the underlying processes which would have informed the Bid/Bids which was/were submitted in response to the PCJ's Procurement Process; and
- (d) The fact that because the majority shareholder of Caribbean LNG (Jamaica) Limited is an off-shore company which is registered in the British Virgin Islands and whose current human shareholders are unknown, there is the unknown factor of whether there are any 'connected persons' or public officers who, by virtue of their being beneficial shareholders of Caribbean LNG (Jamaica) Limited, could improperly benefit from the contract which is to be prospectively awarded to the Exmar Consortium.

In light, *inter alia*, of the considerations, concerns and suspicions which are detailed herein, the OCG is, therefore, hereby requesting that the complete file(s) pertaining to the Tender and Contract award processes for the "Financing, Development, Ownership, Operation of an FSRU LNG Re-gasification Terminal and Natural Gas Transmission System", be made available, by you, for review or custody by an OCG Team, at 11:30 AM, today, June 22, 2010.

All other files, inclusive of any associated correspondence, Tender Documents/Requests for Proposals, Addenda, Bids Received, Evaluation Assessments and Reports and any other information, as is determined in the sole discretion of the OCG Team, should also be made available, by you, for scrutiny or custody.

The OCG's Team will be led by Mr. Craig Beresford, Senior Director, Monitoring Operations, Corporate Communications and Special Projects. Mr. Beresford will be accompanied by a specialized OCG Audit Team and a member of the Island Special Constabulary Force (ISCF).



In order to effectively facilitate the review process, we are requesting that access to a photocopier and/or photocopy services be made available during the course of the review.

I would like to thank you in advance for your full and anticipated cooperation in this endeavor.

Respectfully yours,

A handwritten signature in black ink, appearing to be 'G. Christie', written over a horizontal line.

Greg Christie  
Contractor General

Copy: The Hon. James Robertson, Minister of Energy and Mining  
Mr. Nigel Logan, Group Managing Director (Ag.), PCJ  
Ambassador Douglas Saunders, CD, Cabinet Secretary



OFFICE OF THE CONTRACTOR-GENERAL  
1<sup>ST</sup> FLOOR, PIOJ BUILDING  
16 OXFORD ROAD  
P.O. BOX 540  
KINGSTON 5  
JAMAICA, W.I.

TELEPHONE No.: 929-0075  
929-6460/6

E-Mail: [kjones@ocg.gov.jm](mailto:kjones@ocg.gov.jm)

---

### FACSIMILE TRANSMISSION

urgent

for your comment

please reply

for your information

---

**DATE:** June 22, 2010  
**TO:** The Hon. James Robertson, MP – Minister  
Mrs. Hillary Alexander – Permanent Secretary  
**AGENCY/COMPANY:** Ministry of Energy & Mining  
**FAX NUMBER:** (876)-929-8103, 960-1623  
**FROM:** Kadian Jones, Executive Secretary  
for and on behalf of the Contractor-General  
**FAX NUMBER:** (876) 929-2476  
**TOTAL PAGES (including cover sheet):** 6

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**COMMENTS:**

Please see letter dated June 22, 2010, hardcopy will follow.

*P.S. fax confirmed by Veronica McFarlane  
@ 11:33 AM*

*Minister's fax confirmed by Tasney Edwards  
@ 11:34 AM  
Kant 22/6/10*



Any reply or subsequent reference to this communication should be addressed to the Contractor-General and the following reference quoted:-

No. :

TELEPHONE No.: 876-929-8560/6466

FAX No. : 876-929-2476

E-mail: gchristie@ocg.gov.jm

**OFFICE OF THE CONTRACTOR-GENERAL**  
**PIOJ Building**  
**16 Oxford Road**  
**P.O. Box 540**  
**KINGSTON 5**  
**JAMAICA, W.I.**

Urgent and Immediate

June 22, 2010

Mr. Nigel Logan  
Group Managing Director (Ag.)  
Petroleum Corporation of Jamaica (PCJ)  
The PCJ Building  
36 Trafalgar Road  
Kingston 10

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In addition to the referenced allegations, the OCG's concerns were further heightened on Friday, June 18, 2010 by the public disclosures and pronouncements, regarding the 'Liquid Natural Gas (LNG) Deal', which were made, *inter alia*, on the Nationwide News Network (NNN) during its 5:00 PM News broadcast and its 5:30 PM News Commentary Programme.

In particular, the media reports and associated disclosures have alleged that Caribbean LNG (Jamaica) Limited is a part of the 'Exmar Consortium' and has as its majority Shareholder and one of its Directors, one Mr. Ian Moore, the former Chairman of the Board of the PCJ. PCJ, as you are no doubt aware, is the Public Body which is presently conducting the referenced procurement. In point of fact, the referenced media reports have alleged that Mr. Moore has some thirty percent (30%) shareholdings in Caribbean LNG (Jamaica) Limited.

It is public knowledge that Mr. Ian Moore's association with the PCJ was terminated in November 2008 by the then Minister of Energy, Mr. Clive Mullings.

The OCG's concerns were further compounded when a review of the records of the Registrar of Companies of Jamaica did not corroborate the reports and disclosures which were made in the media as regards Mr. Moore's shareholder status in Caribbean LNG (Jamaica) Limited – a company which the Registrar's records indicate was incorporated in Jamaica on June 19, 2009, approx. seven (7) months after Mr. Moore demitted office as the Chairman of the PCJ.

In point of fact, and according to the information which is evidenced upon the formal records of the Registrar of Companies of Jamaica, the majority shareholder of Caribbean LNG (Jamaica) Limited is a corporate entity which is listed as Caribbean LNG (BVI) Limited. The records indicate that the entity was organized and is registered in the British Virgin Islands and holds some 5.2 million shares, or approx. 80% of the indicative issued share capital, of Caribbean LNG (Jamaica) Limited.

Other listed shareholders of Caribbean LNG (Jamaica) Limited include AC. Kerr LLC (800,000 shares), Andrew Bogle (395,654 shares), Old Harbour Estates Ltd. (47,826 shares), Maritime & Transport Services Ltd. (47,826 shares), and Albert Donaldson (50,001 shares).

The records of the Registrar of Companies of Jamaica also indicate that while Mr. Ian Moore and a Mr. Paul East are directors of Caribbean LNG (Jamaica) Limited, they are not listed shareholders. A Mr. Al Kerr and "Bogle, Andrew (Ceased)" are listed as the other directors of the company.



Based upon the foregoing, the OCG is, therefore, at present, unaware of the identity of the beneficial majority owner or owners of Caribbean LNG (Jamaica) Limited and the true relationship(s) which subsist(s), if any, between that entity and any person and/or entity which is a party to, or which is or has been involved in the 'LNG Deal'.

Consequently, the OCG is now gravely concerned, amongst other things, about the following:

- (a) The possibility of a potential conflict of interest, taking into consideration Mr. Ian Moore's former position as a public officer and the Chair of the Board of Directors of the PCJ, and his now documented position as a Director of the 'local' company, Caribbean LNG (Jamaica) Limited, which is alleged to be a part of the prospective PCJ contract awardee, the Exmar Consortium;
- (b) Mr. Moore's probable prior involvement in (i) the underlying considerations which would have informed the current procurement process, a process which was initiated in earnest in April 2007 and which overlapped with Mr. Moore's tenure as the PCJ Board Chairman, (ii) the prospective contract award to the Exmar Consortium and/or (iii) Mr. Moore's probable exposure to and use of 'sensitive' information by virtue of his former position as the Chairman of the PCJ Board of Directors;
- (c) The OCG's suspicions, *inter alia*, about the possibility of 'bid-rigging', the use of proprietary insider information and/or the consequential potential for a *prima facie* finding of corruption in the underlying processes which would have informed the Bid/Bids which was/were submitted in response to the PCJ's Procurement Process; and
- (d) The fact that because the majority shareholder of Caribbean LNG (Jamaica) Limited is an off-shore company which is registered in the British Virgin Islands and whose current human shareholders are unknown, there is the unknown factor of whether there are any 'connected persons' or public officers who, by virtue of their being beneficial shareholders of Caribbean LNG (Jamaica) Limited, could improperly benefit from the contract which is to be prospectively awarded to the Exmar Consortium.

In light, *inter alia*, of the considerations, concerns and suspicions which are detailed herein, the OCG is, therefore, hereby requesting that the complete file(s) pertaining to the Tender and Contract award processes for the "Financing, Development, Ownership, Operation of an FSRU LNG Re-gasification Terminal and Natural Gas Transmission System", be made available, by you, for review or custody by an OCG Team, at 10:15 AM, today, June 22, 2010.

All other files, inclusive of any associated correspondence, Tender Documents/Requests for Proposals, Addenda, Bids Received, Evaluation Assessments and Reports and any other information, as is determined in the sole discretion of the OCG Team, should also be made available, by you, for scrutiny or custody.

The OCG's Team will be led by Mr. Craig Beresford, Senior Director, Monitoring Operations, Corporate Communications and Special Projects. Mr. Beresford will be accompanied by a specialized OCG Audit Team and a member of the Island Special Constabulary Force (ISCF).



In order to effectively facilitate the review process, we are requesting that access to a photocopier and/or photocopy services be made available during the course of the review.

I would like to thank you in advance for your full and anticipated cooperation in this endeavor.

Respectfully yours,

A handwritten signature in black ink, appearing to be 'G. Christie'.

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Greg Christie  
Contractor General

Copy: The Hon. James Robertson, Minister of Energy and Mining  
Mrs. Hillary Alexander, Permanent Secretary, Ministry of Energy and Mining  
Ambassador Douglas Saunders, CD, Cabinet Secretary