30 August 2022

To: The United Nations High-Level Expert Group on the Net-Zero Emissions Commitments of Non-State Entities (HLEG)

Dear High-Level Expert Group,

Australian academics call on the UN HLEG to set forth recommendations for minimising greenwashing in Scope 3 avoided emissions claims and net-zero commitments

The United Nations sets the stage for governments and regulators around the world to manage the realities of climate change through the adoption of resolutions and issuing of recommendations and standards as an example to follow. We welcome this initiative that responds to calls for the UN to take a more active role in commitments of non-state actors, including managing transnational partnerships, recording their commitments, and holding them accountable[i]. To that end, we offer this contribution to the recommendations, which concerns greenwashing tactics used to mislead governments and investors, and further delay the critical energy transition.

Our contribution addresses greenwashing of Scope 3 emissions from natural gas projects by non-State actors (e.g. energy industry consultants, financial institutions, and fossil fuel companies) through conflation of a project's Scope 3 emissions estimates and claims about 'avoided emissions' arising from the project's implementation. As a context to this submission, we note the availability of relevant frameworks for estimating and reporting a project's Scope 3 emissions and any avoided emissions claims for the project, such as the *GHG Protocol for Project Accounting*[ii] and the *Global GHG Accounting and Reporting Standard for the Financial Industry*[iii].

We discuss three scenarios in which such greenwashing occurs.

1. claims about emissions from a natural gas project in an environmental approvals context;
2. decision-making by financial institutions for a natural gas project; and
3. 'green' labelling of investment in natural gas.

The conflation of Scope 3 emissions and avoided emissions is an alarming trend in the approach of companies which continue to pursue financing and environmental approvals for new fossil fuel projects. Downstream Scope 3 emissions relate to the emissions produced by an entity's customers. For example, the emissions released by the burning of fossil fuels to produce energy are Scope 3 emissions of the fossil fuel provider. Avoided emissions are emission reductions claimed to arise because of a project's implementation versus the emissions that would have in the absence of the project. Such a claim might be advanced on the basis of evidence of a net-reduction in emissions where the use of transported gas displaces the use of a higher emitting alternative fuel (e.g. coal or fuel oil).

When entities attempt to claim avoided emissions as offsetting the Scope 3 emissions for a project, or as justification not to report Scope 3 emissions at all, a significant opportunity arises for those entities to greenwash when seeking financing or environmental approvals, and in making net-zero commitments. The basic fallacy underlying the conflation of Scope 3 emissions and avoided emissions was recently summarised by Justice Thornton in a UK High Court decision:

> "Instead of calculating the gross emissions from the Project, the Climate Report presents an assessment of the emissions 'avoided' by the Project going ahead. However, the GHG Protocol on Project Accounting expressly states that if avoided emissions are addressed this must be done separately "*Any claims of avoided emissions related to a company's sold products must be reported separately from the company's…scope 3 inventories*." (GHG Protocol Technical Guidance for Calculating Scope 3 Emissions Version1.0 (2013), Category 11 page 114). This is because Scope 3 emissions and avoided emissions are separate concepts. The former is an estimate of the gross emissions from a Project whilst the latter identifies a counterfactual baseline of emissions that will be emitted in the absence of a proposed project and assesses the reduction in emissions which come

> about as a result of the project in question proceedings (thereby arriving an assessment of the emissions 'avoided' by the project)."[iv] (emphasis in original)

A recent example of the conflation of Scope 3 emissions and what, in effect, are claims of avoided emissions, is in Woodside Energy Ltd's North West Shelf Project Expansion in Western Australia, which the Western Australian Environmental Protection Agency (EPA) recommended for government approval in June 2022, subject to appeals. Last month, an author of this contribution submitted an appeal to the EPA[v] detailing, among other grounds, that the EPA did not critically assess the Scope 3 emissions which would result from the project and, specifically, did not critically evaluate Woodside's claims that the project would displace coal in customer markets and that this could result in a net decrease in global emissions, despite Woodside not providing an empirical foundation for this claim. Woodside environmental documentation referred to this claim as the project's "downstream customer benefits (Scope 3 benefits)".

Woodside had been previously made aware of the lack of foundation for claims of emissions reduction through coal-gas displacement in Asian energy markets when it commissioned the CSIRO, Australia's peak scientific research body, to investigate claims that additional LNG in Asia would reduce emissions in the report "Modelling the emission impact of additional LNG in Asia"[vi]. Woodside reportedly abandoned the report when it did not substantiate their claims, and it was only released on a Freedom of Information Act application[vii]. The report showed that more gas could actually displace renewables rather than coal, but instead of accepting the findings, Woodside engaged another private consultant who produced a report with statements that matched their ambitions for greater LNG production. From the CSIRO report:

> "Gas can assist GHG emissions mitigation during the period when carbon prices or equivalent signals are strong enough to force high renewable electricity generation shares. Until the carbon price reaches that strength, increased gas supply's impact on GHG emissions reduction is either negative or neutral. Also, after renewables have reached a high share, additional gas supply has nothing further to contribute to emission reduction."

Policymakers are repeating the claims that Woodside has made[viii], and more broadly have been noted to be using political greenwashing tactics to attract support for natural gas projects, including selective disclosure and misleading language. In a Canadian context, political science researchers have noted that Ontario frames natural gas as a transition to cleaner future but has already phased out coal fired production, so it is unclear where the transition is leading. The British Columbia Government, alongside the Canadian LNG Alliance, are also using the promise of reducing international emissions as rationale for new projects, while "sidestepping the position of BC as a leading exporter of Canadian coal".[ix] This deflection away from the ongoing or increased generation of emissions sources domestically by promising international emissions reductions is a red herring fallacy.

In 2020, UK Export Finance (UKEF) approved finance equivalent to $1.15 Billion USD for a LNG Project in Mozambique, which relied on equivalent logic of emissions avoidance in the context of Scope 3. The Friends of The Earth (FoE), a UK-based NGO, brought a challenge to the UK High Court[x]. The decision was split between the two presiding judges and is proceeding to appeal.

In the decision, Justice Stuart-Smith rejected the challenge on the grounds that climate change was outside the scope of required considerations for UKEF, and that the Paris Agreement did not provide clear foundation for the challenge based on opaque language and irreconcilable goals. Justice Stuart-Smith positioned that Mozambique needs the gas field for poverty alleviation, which is in contradiction with climate change goals. "The tension between these two objectives suggests that it is too simple to assert that a course of action is contrary to the Paris Agreement because it goes against one or more principles established by the Agreement while satisfying one or more others." The rationalisation that the goals need be mutually exclusive appears to rest on the foundation that alternative project financing strategies such as those into renewable energy could not satisfy both poverty alleviation and climate change goals, which we take to be the spirit of the Paris Agreement.

Conversely, Justice Thornton conversely concluded that given available climate science, and in consideration of Article 2(1)(c) of the Paris Agreement "making finance flows consistent with a pathway towards low greenhouse gas emissions and climate resilient development", UKEF did not fully consider the climate change risks. Justice Thornton identified flaws in the UKEF documentation, and observed, by way of example, that:

> "The climate assessment does not include a calculation of the gross emissions from the Project (Scope 3). It conflates Scope 3 emissions with avoided emissions. It expresses inconsistent views on the global emissions impact. On the one hand it suggests that the Project <u>can be expected</u> to lead to a net reduction in global emissions, as to which the evidence base in support is unclear. On the other hand it expresses a circumspect view that the Project <u>may</u> lead to a decrease in future greenhouse emissions <u>provided that</u> the Project LNG is used to replace and/or displace the use of more polluting fossil fuels. In the context of the Paris Agreement, there is a material difference between the two positions because of the direct correlation between emissions and temperature rise. As the Netherlands Supreme Court put matters in the Urgenda case: '*All greenhouse gas emissions led to a reduction in the carbon budget still available*.'"[xi] (emphasis in original)

The lack of consistency between the judgements is representative of an ongoing confusion in the understanding of responsibility for climate action and expected standards as it relates to measuring and reporting emissions from natural gas projects.

Last month, the EU also controversially approved 'green' labelling of investment in gas, allowing fossil fuel companies to tap into an ever-growing ESG investment market, valued at $35 Trillion USD globally[xii]. The move has divided European nations, and risks diverting resources away from investment in renewable energy. It has been noted that firms have a significant incentive to greenwash in order to meet ESG financing conditions[xiii], but lowering the bar for funding-seekers does not provide a viable solution to end this practice and simply legitimises it. The labelling of gas as green may also generate market inefficiency by signalling to climate-conscious investors that gas is a viable future pathway that aligns with their values. Instead, this kind of greenwashing can lead to scepticism and harm investment in legitimate renewable efforts, as has been demonstrated in the consumer market for environmentally responsible goods[xiv]. In the commitment to new fossil fuel projects, long-term investment also offers either the risk of 'carbon lock-in' where emissions are pre-committed for the life of the project[xv], or stranded assets if they are abandoned before the end of their life in favour of low-carbon alternatives. Regarding the risks:

> "While there is some potential to produce modest reductions in the amount of climate change by substituting inefficient coal energy systems with efficient natural gas energy systems, the potential for natural gas to reduce greenhouse gas emissions is limited. Even this limited potential for benefit from expanded natural gas deployment could be eroded if the expanded natural gas deployment delays introduction of near zero emission energy systems."[xvi]

Energy plays a fundamental role in social and economic development, and we acknowledge the pressures governments face to ensure the provision of this essential resource, but we must ensure that energy is provided in a sustainable way that does not destroy our future and sustainable low-carbon options which are available. The cost of clean energy such as PV solar and onshore wind generation are already reportedly cheaper in many regions than fossil-fuel-based options[xvii], even without considering the additional costs to LNG projects of implementing Carbon Capture and Storage (CCS) technology, which is also part of the promise to minimise their impacts. So far, this approach has failed to deliver promised results[xviii].

We perceive the likelihood for non-state actors to substantiate net-zero emissions commitments on the same foundations as the examples given above, using the hypothetical Scope 3 emissions reductions to act as an "offset" (or a net global emissions reduction) for the balance of new emissions that are being generated. This exemplifies yet another tactic for non-state actors to avoid accepting responsibility for their Scope 3 emissions. Indeed, with the North West Shelf example above, Woodside claims to target net-zero operations by 2050, referring to Scope 1 and 2 emissions. Regarding its substantial and growing Scope 3 emissions, Woodside claims these are outside of their responsibility, while simultaneously minimising these Scope 3 emissions through claims that LNG from its Australia gas projects generate, or will generate, a net benefit to the global emission accounts because their LNG will displace coal. As noted in the appeal to the North West Shelf extension, empirical evidence to substantiate this claim is critically lacking[xix], and this kind of selective accounting is allowing the largest GHG emitters to dramatically increase their emissions and claim it is in the service of climate action[xx].

Relevant research literature is far from conclusive that these projects offer any material reductions in global greenhouse gas emissions[xxi]. The IEA Net Zero by 2050 pathway includes no new oil and gas fields[xxii], which was the only institutional pathway found to meet the 1.5 °C Paris Agreement goal in recent analysis[xxiii]. While LNG has been described as a 'transition fuel' and modelling has been explored to show how it can contribute to a low-carbon energy transition over the long term based on historic trends and future technological advancements, the researchers investigating these models point out that "Notwithstanding the fact that natural gas is cleaner burning than coal and oil, it is still a fossil fuel and therefore not by itself compatible with a low carbon future … natural gas production would generate a substantial amount of carbon, which would surpass that of oil and coal around 2030 … the GEM outcomes would not limit CO_2 concentrations in the atmosphere to less than a doubling from pre-industrial levels"[xxiv]. This is a path that we cannot afford, and as litigation and regulatory appeals fail to conclusively convince governments and regulators of the urgency of action in this area, we appeal to the HLEG to set clear guidance on this point.

In addition to the risks presented associated with greenwashing projects, such as those within the LNG industry, we also perceive an incentive for greenwashing by non-state actors in the value chains of their products and services. In particular, we draw attention to the aviation and shipping industries, which sit outside the scope of the Paris Agreement[xxv]. International Air Transport Association (IATA) Director-General Willie Walsh has said "With the collective efforts of the entire value chain and supportive government policies, aviation will achieve net zero emissions by 2050."[xxvi] This laudable commitment from a fuel-intensive industry is encouraging ,but without clear independent standards and guidelines, the industry could establish a similar pattern of selective disclosure and misleading statements that over-promise, ignore GHGs beyond CO_2, provide limited detail about the actions to be taken to implement high-level commitments, and focus disproportionately on carbon offsets.

It is our belief that the substantial prospect of non-state actors continuing to embrace greenwashing strategies to avoid any substantial reductions in emissions and obfuscate net-zero pledges threatens to undermine a genuine transition to a low-carbon future. Fossil fuel interests continue to use their power to dominate discourse and set the narrative of gas as a viable pathway to a low-carbon future[xxvii]. We maintain that governments and corporate entities must be held to a duty of care to avoid what is foreseeable harm[xxviii], and avoid infringement on the declared universal human right of "access to a clean, healthy and sustainable environment."[xxix] We must act in harmonious partnerships to stop this kind of disingenuous behaviour quickly and comprehensively, for the benefit of our people and planet.

Yours Sincerely,

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The submitting authors would like to acknowledge the contributions of the late Sarah Flynne to advancements in climate law and economics, and who serves as an inspiration for this submission and much of our ongoing work.

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