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sachiko.suzuki@marketforces.org.au

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## SGX Whistleblower Complaint Regarding JERA Bonds (Security name: JERA CO US\$300M 3.665%B270414 ISIN Code: XS2456872063)

### Introduction

JERA CO. Inc. (JERA) has omitted information and failed to provide sufficient detail to enable investors to understand and appreciate the risks associated with investing in the company's U.S. dollar bond issued on the Singapore Exchange on April 14, 2022 (Bond).<sup>1</sup> As such, the Singapore Exchange (SGX) must investigate whether JERA is in violation of the Securities and Futures Act and the SGX Rulebooks.

JERA has failed to provide information material to potential Bond investors in both an offering circular dated April 7, 2022 (Offering Circular)<sup>2</sup> and in subsequent public information, given JERA's ongoing disclosure obligations. Specifically, JERA has failed to provide requisite information on:

- The material financial risk associated with JERA's significant exposure to the Liquefied Natural Gas (LNG) industry
- Litigation which could have a material effect on JERA's future financial prospects.

These omissions are material to investors' understanding of JERA's business, financial conditions, prospects, and risks.

### 1. JERA is subject to the relevant law governing securities in Singapore and subject to SGX investigatory powers

JERA issued a 300 million U.S. dollar 3.665 per cent bond on the Singapore Exchange (Bond) on April 14, 2022<sup>3</sup>, providing information to lenders in the Offering Circular.

The Bond is subject to the Securities and Futures Act (SFA) and the SGX Rulebooks and is therefore subject to SGX investigatory powers.

Specifically, under the SGX Rulebook, Rule 603 (Prospectus, Offering Memorandum and Introductory Document), the offering memorandum must "include information in sufficient detail to enable the targeted investors to have a full and proper understanding of the

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<sup>1</sup> [https://www.jera.co.jp/english/information/20220415\\_884](https://www.jera.co.jp/english/information/20220415_884)

<sup>2</sup> JERA Offering Circular dated April 7, 2022, online: <https://links.sgx.com/FileOpen/JERA-Offering%20Circular%20-%207%20April%202022.ashx?App=Prospectus&FileID=55252>

<sup>3</sup> [https://www.jera.co.jp/english/information/20220415\\_884](https://www.jera.co.jp/english/information/20220415_884)

applicant's business, financial conditions, prospects, and risks.”<sup>4</sup> Moreover, the SFA, section 243, states that “...a prospectus must contain all information that investors and their professional advisers would reasonably require to make an informed assessment.”<sup>5</sup> The Offers of Investments Regulation 2018 further prescribes a checklist of information that must accompany the prospectus of a debenture, such as “risk factors that are specific to the relevant entity and its industries” and legal or arbitration proceedings that “have a material effect on the financial position or profitability of the relevant entity”.<sup>6</sup>

The SGX Rulebook, Rule 323 provides for a **continuing disclosure obligation** for issuers of debt securities in respect of information which “may have a material effect on the price or value of its debt securities or on an investor's decision whether to trade in such debt securities.”<sup>7</sup>

## **2. JERA has omitted key information which would enable investors to make an informed assessment**

### *1. Non-disclosure of material financial risks associated with JERA's significant exposure to the LNG industry*

The fossil fuel industry, including the LNG industry, is highly susceptible to systemic risks including major geopolitical events and climate change. As an energy company with significant exposure to the entire LNG value chain,<sup>8</sup> JERA's disclosure of the risks facing the LNG industry and how the company intends to manage those risks is severely lacking. As set out below, neither the Offering Circular nor JERA's other reporting offer sufficient information for investors to make an informed assessment.

**Information on the impact of the Russia-Ukraine war is directly relevant to JERA's business and may have a short-term impact on the company's operations.** This may in turn affect JERA's liquidity in the short term, and in turn, its default risk in the next five years. While JERA recognises that the war could have “negative effects on the Japanese economy”, and therefore on the company,<sup>9</sup> such brief mention does not contain sufficient information for investors to make an informed assessment of the financial position and performance of JERA. Additionally, the crisis has accelerated a transition away from fossil fuels, including from LNG to renewable energy as explained below (see Section 3). Given the Bond's maturity in 2027, investors should be provided with more detailed information discussing what the specific impacts on JERA's performance could be.

**Investors are increasingly demanding disclosure of material climate-related financial risks.** The Financial Stability Board's Task Force on Climate-related Financial Disclosures

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<sup>4</sup> <https://rulebook.sgx.com/rulebook/603>

<sup>5</sup> <https://sso.agc.gov.sg/act/sfa2001?ProvIds=P113-#pr243->

<sup>6</sup> <https://sso.agc.gov.sg/SL/SFA2001-S664-2018?DocDate=20181005&ProvIds=Sc10-#Sc10->

<sup>7</sup> <https://rulebook.sgx.com/rulebook/323-0>

<sup>8</sup> Offering Circular, note 2, pp 1, 40, and 56

<sup>9</sup> Offering Circular, note 2, p 7

(TCFD) recommends companies disclose material information on how climate change transition assumptions – and alternative climate transition scenarios – are expected to impact capital allocation, asset lives and stranded asset risks, impairments and commodity prices to investors. The Institutional Investors Group on Climate Change (European investor group) warns that “Accounting assumptions or estimates that ignore structural changes to demand that come from Paris-alignment will tend to misrepresent companies’ economic position.”<sup>10</sup> By “Paris-aligned,” investors generally mean meeting the global goal of limiting warming to 1.5 degrees or achieving net zero emissions by 2050.<sup>11</sup> The scenario most widely used by companies to produce climate change transition risk information required by investors is the International Energy Agency (IEA)’s Net Zero by 2050 scenario (NZE2050), which projects a sharp decline in LNG trade and infrastructure.<sup>12</sup> In contrast, JERA is pursuing significant LNG projects,<sup>13</sup> which would not come online until the second half of this decade. The material financial risks facing these projects and JERA’s business more generally under an energy scenario aligned with the climate goals of the Paris Agreement is not properly disclosed to potential Bond investors.

**JERA has not responded to investors’ climate risk disclosure expectations and is lagging its global peers.** In the Offering Circular, JERA states its commitment to a “clean energy economy”<sup>14</sup> and discusses its approach to decarbonisation under “JERA Zero CO<sub>2</sub> Emissions 2050”<sup>15</sup> plan. However, JERA has not to date produced an analysis demonstrating its alignment with, or the risks posed by, NZE2050 or any other 1.5 degrees or net zero emissions by 2050 pathways.

By contrast, other similarly situated companies provide this analysis to their investors, for example:

- **Capital expenditure (capex):** Enel discloses (in Euros and as a proportion of total) historical capex dedicated to low-carbon products, services and technologies.<sup>16</sup> The company also provides medium-term capital allocation targets by technology type and phase-out targets for coal and gas assets.<sup>17</sup> BP provides a target for capital allocation: “by 2025, more than 40% of our capital expenditure will be in our transition growth businesses, and around 50% by 2030.”<sup>18</sup>

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<sup>10</sup><https://sarasinandpartners.com/wp-content/uploads/2020/11/Investor-Expectations-for-Paris-aligned-Accounts.pdf>

<sup>11</sup>[https://www.parisalignedinvestment.org/media/2021/03/PAII-Net-Zero-Investment-Framework\\_Implementation-Guide.pdf](https://www.parisalignedinvestment.org/media/2021/03/PAII-Net-Zero-Investment-Framework_Implementation-Guide.pdf)

<sup>12</sup> <https://www.iea.org/reports/net-zero-by-2050>

<sup>13</sup> <https://www.marketforces.org.au/campaigns/international/japans-fossil-gas-expansion/>

<sup>14</sup> Offering Circular, note 2, p 59

<sup>15</sup> Offering Circular, note 2, p 60

<sup>16</sup> Enel 2021 Annual Report, p 137, online:

[https://www.enel.com/content/dam/enel-com/documenti/investitori/informazioni-finanziarie/2021/annuali/en/integrated-annual-report\\_2021.pdf](https://www.enel.com/content/dam/enel-com/documenti/investitori/informazioni-finanziarie/2021/annuali/en/integrated-annual-report_2021.pdf)

<sup>17</sup> Enel Capital Markets Day 24/11/2021 presentation, p 11, online

<https://www.enel.com/content/dam/enel-com/documenti/investitori/informazioni-finanziarie/2021/2022-2024-strategic-plan.pdf>

<sup>18</sup> BP 2021 Sustainability Report, p 1, online:

<https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/group-reports/bp-sustainability-report-2021.pdf>

- **Potential impairments:** Shell discloses a sensitivity analysis for the carrying values of its gas assets using a range of price scenarios, including NZE2050.<sup>19</sup>
- **Gas demand:** Equinor presents net present value sensitivities under four IEA scenarios against the company's central planning scenario, allowing investors to gauge the company's own demand expectations.<sup>20</sup> Santos discloses a similar analysis.<sup>21</sup>

JERA has omitted material information regarding key risks facing its LNG business, amounting to failure to provide:

- Sufficient detail to enable the targeted investors to have a full and proper understanding of JERA's business, financial conditions, prospects, and risks
- Information reasonably required to make an informed assessment about potential investment in the Bond
- Information about risk factors that are specific to the relevant entity and its industries
- Information that may have a material effect on the financial position or profitability of the relevant entity.

## *II. Failure to disclose litigation which could have a material effect on JERA's prospects*

JERA broadly mentions litigation risk in its Offering Circular and states that litigation could be material if successful,<sup>22</sup> but fails to disclose any specific cases.

In December 2021, JERA purchased a 12.5% equity stake in the new Barossa gas field,<sup>23</sup> a controversial project in northern Australia opposed by Tiwi Islands First Nations community members.<sup>24</sup> The Barossa project has been labelled "both a major financial risk and a serious climate risk".<sup>25</sup> In March 2022, Tiwi Islanders filed an injunction to the district court in South Korea seeking to block the Export-Import Bank of Korea and Korea Trade Insurance Corp financing of Barossa.<sup>26</sup> This case was yet to be decided at the time of Offering Circular,<sup>27</sup> and therefore should have been disclosed as an ongoing litigation process in the offering.

Further litigation by Tiwi Islanders challenging the Barossa project demonstrates the significant legal risk facing the project and JERA as a significant equity partner. The Federal Court of Australia found in September 2022 that the project's approval by the National

<sup>19</sup> Shell 2021 Annual Report, p 242-243, online:

[https://reports.shell.com/annual-report/2021/\\_assets/downloads/shell-annual-report-2021.pdf](https://reports.shell.com/annual-report/2021/_assets/downloads/shell-annual-report-2021.pdf)

<sup>20</sup> Equinor 2021 Sustainability Report, p 22, online:

<https://www.equinor.com/content/dam/statoil/documents/sustainability-reports/2021/sustainability-report-2021-equinor.pdf>

<sup>21</sup> Santos 2022 Climate Change Report, p 40, online:

[https://www.santos.com/wp-content/uploads/2022/03/Santos-2022-Climate-Change-Report\\_web.pdf](https://www.santos.com/wp-content/uploads/2022/03/Santos-2022-Climate-Change-Report_web.pdf)

<sup>22</sup> Offering Circular, note 2, p 80

<sup>23</sup> [https://www.jera.co.jp/english/information/20211208\\_809](https://www.jera.co.jp/english/information/20211208_809)

<sup>24</sup> <https://www.sbs.com.au/news/why-these-tiwi-islanders-are-worried-about-one-of-australia-s-newest-gas-projects/66e605aa-6a33-48b8-9e81-b98e6664de28>

<sup>25</sup> [https://ieefa.org/wp-content/uploads/2021/03/Should-Santos-Proposed-Barossa-Gas-Backfill-for-the-Darwin-LNG-Facility-Proceed-to-Development\\_March-2021.pdf](https://ieefa.org/wp-content/uploads/2021/03/Should-Santos-Proposed-Barossa-Gas-Backfill-for-the-Darwin-LNG-Facility-Proceed-to-Development_March-2021.pdf)

<sup>26</sup> <https://www.bloomberg.com/news/articles/2022-03-23/australian-islanders-take-on-korean-backers-of-dirty-gas-project>

<sup>27</sup> <https://www.naturalgasworld.com/south-korea-court-rejects-case-against-barossa-project-press-98389>

Offshore Petroleum and Safety Environmental Management Authority (NOPSEMA) was unlawful, as NOPSEMA had failed to ensure First Nations communities were properly consulted.<sup>28</sup> The Federal Court also rejected an appeal in December 2022, upholding the original finding of invalidity of the environmental permits, meaning the project cannot proceed without adequate community consultation taking place and new approvals being granted.<sup>29</sup>

JERA has also failed to disclose litigation commencing in 2019 in the context of the under-construction Yokosuka coal power project, located on the outskirts of Tokyo.<sup>30</sup> The Yokosuka project is highly contentious due to local opposition and litigation relating to the environmental impact assessments for the project.<sup>31</sup> While Tokyo District Court rejected the case on 27 January 2023, the plaintiffs intend to appeal the case<sup>32</sup>, and if the litigation is successful, the approval for the environmental impact assessments for the project would be cancelled.

JERA failed to disclose in its Offering Circular and on an ongoing basis on any of these legal cases which can and have caused material disruptions to major projects.

### **3. The omissions are material to Bond investors as they are likely to negatively impact on JERA's financial position**

This section will elaborate on why the omissions explained in the previous section are material to investors.

*1. The failure to disclose how JERA perceives the risks associated with the LNG industry and how it intends to manage them prevents investors from properly assessing JERA's value drivers<sup>33</sup>*

Given JERA's significant exposure to the entire value chain of the LNG industry, and the climate change transition risks facing the industry, the omissions outlined in 2(l) above are likely to have material impacts on JERA's financial position. In 2021, global LNG imports reached 372 million tonnes.<sup>34</sup> JERA claims to be one of the largest LNG traders in the world, trading 37 million tonnes of LNG in 2021.<sup>35</sup> As outlined previously, JERA has an obligation to disclose "risk factors that are specific to the relevant entity and its industries."<sup>36</sup> However, due to the omission of critical climate risk information relevant to the LNG industry and JERA specifically and a lack of ongoing disclosure, investors are not given the opportunity to properly assess JERA's value drivers.

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<sup>28</sup> <https://www.abc.net.au/news/2022-09-21/nt-tiwi-islands-santos-barossa-court-decision/101462146>

<sup>29</sup> <https://www.abc.net.au/news/2022-12-02/nt-santos-loses-appeal-barossa-tiwi-island/101726772>

<sup>30</sup> <http://climatecasechart.com/non-us-case/yokosuka-climate-case/>

<sup>31</sup> <https://beyond-coal.jp/en/news/yokosuka-action/>

<sup>32</sup> <https://www.tokyo-np.co.jp/article/227808>

<sup>33</sup> Such as costs, revenues, profits and capital expenditure requirements

<sup>34</sup> [https://giignl.org/wp-content/uploads/2022/05/GIIGNL2022\\_Annual\\_Report\\_May24.pdf](https://giignl.org/wp-content/uploads/2022/05/GIIGNL2022_Annual_Report_May24.pdf)

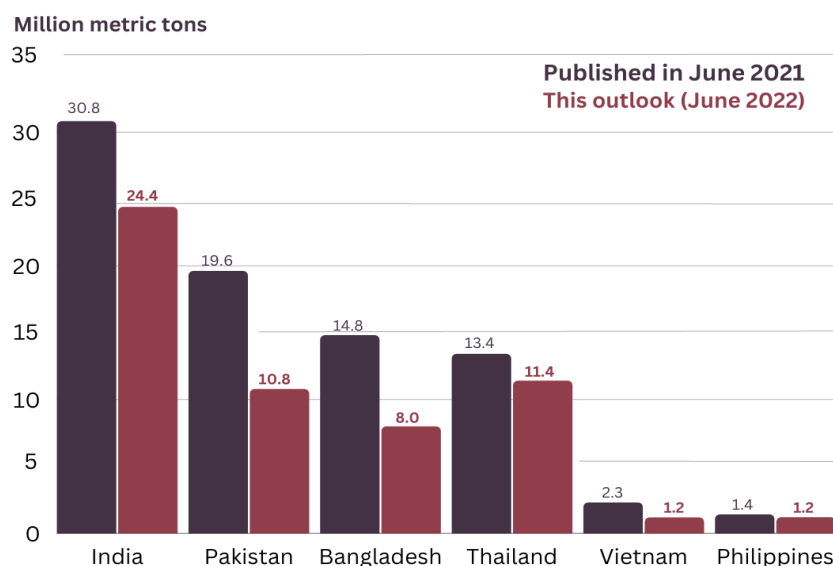
<sup>35</sup> <https://www.jera.co.jp/english/corporate/infographics/>

<sup>36</sup> <https://sso.agc.gov.sg/SL/SFA2001-S664-2018?DocDate=20181005&ProvIds=Sc10-#Sc10->

**LNG demand projections in key markets have been cut due to limited availability and high prices caused in part by Russia’s invasion of Ukraine, with volatility expected to continue for years to come.** The Institute for Energy Economics and Financial Analysis has stated “as long as unaffordable LNG prices and procurement challenges persist, 96.7 billion U.S. dollars of proposed LNG-related infrastructure projects in Pakistan, Bangladesh, Vietnam, and the Philippines will face a heightened risk of underutilization or cancellation”.<sup>37</sup> JERA is exposed to this risk through its holdings in companies such as Summit Power<sup>38</sup> in Bangladesh<sup>39</sup> and Aboitiz Power<sup>40</sup> in the Philippines. The chart below compares LNG demand forecasts for 2025 as of June 2021 and June 2022 in these countries, showing significant downward revisions.

**Chart 1: LNG demand in 2025 in South and Southeast Asia**

### LNG demand in 2025 - forecast revisions



Recreated from Bloomberg New Energy Finance, *Global LNG Market Outlook 2022-26* <sup>41</sup>

**A fire incident in June 2022 at Freeport LNG terminal in Texas is an example of risk inherent in the LNG industry.** The estimated collective loss from the fire is as much as 8 billion U.S. dollars.<sup>42</sup> The Freeport LNG fire is not necessarily an isolated incident. A report

<sup>37</sup> <https://ieefa.org/resources/economic-case-lng-asia-crumbling>. See also <https://www.spglobal.com/commodityinsights/en/market-insights/latest-news/lng/123022-asian-lng-markets-to-brace-for-more-uncertainty-macro-risks-in-2023>

<sup>38</sup> [https://www.jera.co.jp/english/information/20220425\\_891](https://www.jera.co.jp/english/information/20220425_891)

<sup>39</sup> <https://thefinancialexpress.com.bd/trade/govt-unable-to-import-spot-gas-for-forex-constraint-1666578488>

<sup>40</sup> [https://www.jera.co.jp/english/information/20210927\\_765](https://www.jera.co.jp/english/information/20210927_765)

<sup>41</sup> <https://spotlight.bloomberg.com/story/global-lng-market-outlook/page/5/7?bbgsum-page=DG-WS-PROF-BLOG-POST-139527&tactic-page=602005>

<sup>42</sup> <https://www.reuters.com/business/energy/exclusive-freeport-lng-retracts-force-majeure-widening-losses-gas-buyers-sources-2022-08-10/>

published by Marsh, one of the global leaders in insurance brokerage and risk management, reveals that the hydrocarbon extraction, transport, and processing industry constantly experiences large property damage losses for nearly half a century.<sup>43</sup> It points out that “many energy companies’ business resilience strategies continue to lag.” This means similar incidents could happen again in any parts of JERA’s LNG value chain. And if that happens, it will be financially material.

**A rapid transition to renewable energy may undercut the LNG industry.** JERA’s power generation assets are predominantly gas-fired,<sup>44</sup> with only 2% of its total power generation capacity coming from renewables. The Offering Circular or the company’s other disclosures do not disclose any information to suggest JERA plans to rapidly shift its capital allocation towards renewables.<sup>45</sup> The latest analysis by the IEA forecasts a significant change in the shares of renewables versus fossil fuels in power capacity between 2022 and 2027 (see Chart 2). It points out that “fossil fuel supply disruptions have underlined the energy security benefits of domestically generated renewable electricity,” and “renewables are the only electricity generation source whose share is expected to grow, with declining shares for coal, natural gas, nuclear and oil generation.”<sup>46</sup> This change is likely to affect JERA’s assumptions about fossil fuel-related assets, including the running rate and recoverable value, through to 2027 and beyond, thereby raising serious questions about the company’s financial position.

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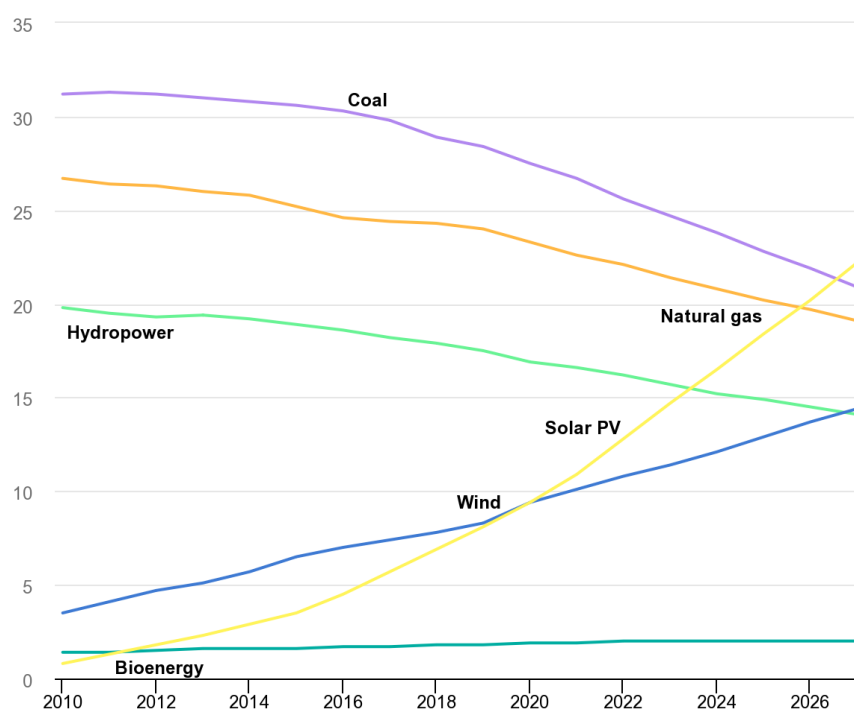
<sup>43</sup><https://www.marsh.com/us/industries/energy-and-power/insights/100-largest-losses-in-the-hydrocarbon-industry.html>

<sup>44</sup> [https://www.jera.co.jp/static/files/corporate/ir/pdf/2022Q\\_Investors%20Meeting\\_en.pdf](https://www.jera.co.jp/static/files/corporate/ir/pdf/2022Q_Investors%20Meeting_en.pdf), p 19-24

<sup>45</sup> Offering circular, note 2, p 51

<sup>46</sup> <https://www.iea.org/reports/renewables-2022/executive-summary>

**Chart 2: Share of cumulative power capacity by technology, 2010-2027**



*International Energy Agency, Renewables 2022*<sup>47</sup>

**“JERA Zero CO<sub>2</sub> Emissions 2050”<sup>48</sup> plan shows JERA is relying on unproven technologies to mitigate climate change transition risk, without disclosing any detail to support this plan.** JERA’s climate plans rely heavily on ammonia and hydrogen produced from fossil fuels with carbon capture and storage (CCS). In its 2022 TCFD reporting, JERA estimates the financial benefits of introducing ammonia co-firing power generation will be 50 billion to 250 billion Japanese yen per year between 2030 and 2050 (under the ‘below 2-degree’ scenario, compared with the base case of 100% coal power).<sup>49</sup> However, JERA does not disclose key assumptions to support this claim, such as: carbon, hydrogen, ammonia or LNG prices, nor does it disclose information about the claimed emissions benefits of the technologies. Moreover, these new technologies have a track record of failure, a fact which JERA has failed to adequately disclose in the Offering Circular and other reporting.<sup>50</sup> For example, in 2021, the Gorgon LNG project, in which JERA has a stake, failed to achieve its CCS target leading to the project lead, Chevron, and its partners, being forced to buy carbon credits equivalent to 184 million U.S. dollars as a penalty.<sup>51</sup>

<sup>47</sup> <https://www.iea.org/reports/renewables-2022/executive-summary>, Licence: CC BY 4.0

<sup>48</sup> Offering circular, note 2, p 60

<sup>49</sup> [https://www.jera.co.jp/static/files/corporate/CCB/00.jera\\_2022j\\_\[%E5%85%A8%E3%83%9A%E3%83%BC%E3%82%B8\]2.pdf](https://www.jera.co.jp/static/files/corporate/CCB/00.jera_2022j_[%E5%85%A8%E3%83%9A%E3%83%BC%E3%82%B8]2.pdf)

<sup>50</sup> <https://www.marketforces.org.au/campaigns/international/investors-left-blue-by-fossil-hydrogen-and-ammonia/>

<sup>51</sup> <https://www.reuters.com/business/sustainable-business/chevron-invest-29-mln-address-co2-injection-shortfall-australia-lng-site-2021-11-11/>



## *II. Litigation is likely to impact the expected revenues from key JERA projects*

As outlined previously, JERA has an obligation to disclose any legal or arbitration proceedings that “have a material effect on the financial position or profitability of the relevant entity”.<sup>52</sup> In fact, JERA admits in the Offering Circular that ongoing legal cases, “should they turn out to be successful, ...could materially adversely affect the Group’s business, financial condition or results of operations.”<sup>53</sup>

JERA has a 12.5% stake in the Barossa gas fields, which are expected to produce 3.4 million tonnes per annum (MTPA) of LNG starting 2025. The financial implications of any delay or cancellation could be material as JERA would need to procure LNG elsewhere at significantly higher spot market prices. In June 2022, the operator of the Barossa project, Santos, stated in court that stopping drilling would cause “a daily loss in the order of hundreds of thousands of dollars” and that “a delay in the commencement of drilling operations will prejudicially impact upon the scheduled work necessary to be undertaken once drilling is completed, because essential contractors and equipment may become unavailable”.<sup>54</sup> As explained in Section 2 (II), with the project now unable to proceed without new approvals being granted, it is clear JERA should have disclosed this litigation risk.

The Yokosuka coal power plant is one of the thermal power stations JERA hopes will replace its recently decommissioned thermal power stations.<sup>55</sup> JERA decided to decommission and write-off these plants, as they are no longer financially viable.<sup>56</sup> Any delay of the commercial operation date or cancellation of Yokosuka coal power plant (1.3 GW, or 2%, of JERA’s 66GW total generation capacity in Japan) would impact JERA’s ability to generate cash from the plant to recover its investment. JERA could also risk breaching power purchase agreements with buyers including TEPCO Energy Partner and Chubu Electric Miraiz.

## **Conclusion**

The items detailed above should be deemed material omissions as defined by the FSA section 243 and the Offers of Investments Regulation 2018. These omissions are material given JERA’s significant exposure to the LNG industry and the transition risks facing that industry, as well as the financial impact litigation can and is having on key JERA projects. Unless these omissions are corrected, investors will be unable to make an informed assessment of JERA’s expected financial performance. We, therefore, urge the SGX to investigate the case and take appropriate action.

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<sup>52</sup> <https://sso.agc.gov.sg/SL/SFA2001-S664-2018?DocDate=20181005&ProvIds=Sc10-#Sc10->

<sup>53</sup> Offering Circular, note 2, p 80

<sup>54</sup> <https://www.edo.org.au/wp-content/uploads/2022/12/Draft-letter-of-complaint-to-ASIC-Santos-Barossa-complaint.pdf>

<sup>55</sup> [https://www.jera.co.jp/english/information/20220331\\_872](https://www.jera.co.jp/english/information/20220331_872)

<sup>56</sup> <https://www.nikkei.com/article/DGXZQOUC313QX0R30C22A3000000>