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18 April 2023  
Matter 82733216  
By Email

Dear Anthony

## **ACCC draft determination re Application for revocation and substitution of Authorisations AA1000396-1 and AA1000396-2**

### **1 Background**

Chevron Australia Pty Ltd (**Chevron**), INPEX Operations Australia Pty Ltd (**INPEX**), Shell Australia Pty Ltd (**Shell**) and Woodside Energy Ltd (**Woodside**) (together, the **Applicants**) submitted a joint application for revocation and substitution of Authorisations AA1000396-1 and AA1000396-2 on 10 August 2022 (**Application**).

On 17 March 2023, the ACCC published a draft determination (**Draft Determination**) in which it proposed to authorise the proposed conduct for a period of five years with a condition. The ACCC also granted interim authorisation to enable the Applicants to continue engaging in the conduct under the Current Authorisation while the ACCC is considering the Application.

The ACCC has invited further submissions about its conclusion that the proposed conduct with a condition is likely to result in a public benefit that would outweigh the likely public detriment.

The Applicants appreciate the ACCC's ongoing consideration of this matter and support the Draft Determination. The Applicants agree with the ACCC's conclusions in respect of the public benefits arising from the proposed conduct the subject of the Application.

The Applicants also welcome the opportunity to make further submission and in taking up this opportunity are focused on the condition proposed and the re-authorisation period. Specifically, the Applicants submit that the ACCC should attach greater weight to the information put forward by the Australian Energy Market Operator (**AEMO**) who, as the market operator, is best placed to assess the relevant issues in an independent way. AEMO has indicated that:

- it does not hold concerns regarding the removal of the reporting condition where the Applicants remain compliant with the WA Gas Bulletin Board reporting requirements (and there is no suggestion by any parties that this would not be the case); and
- it does not hold concerns regarding the proposed 10 year re-authorisation period.

### **2 Domgas supply unaffected by the proposed conduct**

In its Draft Determination, the ACCC concludes that an information asymmetry exists regardless of whether a trading hub or short-term trading market is created as the Applicants may have the ability to leverage their knowledge of when each of the LNG export facilities go offline for maintenance to sell excess gas on the domestic market, or

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otherwise trade advantageously in the affected markets to the detriment of other market participants.<sup>1</sup>

The ACCC makes the following statements to support this conclusion:

- an *“information asymmetry may allow the Applicants an advantage in ‘off market’ transactions, such as bilateral gas supply arrangements”*;<sup>2</sup>
- *“Electricity markets may be affected too, as significant quantities of electricity are produced in gas-fired generators in Western Australia. Electricity is also generated using gas-fired generators in the Northern Territory”*;<sup>3</sup> and
- *“the Ichthys LNG export facility is currently exempt from reporting to the Australian Energy Market Operator’s during the National Gas Rules... there is no maintenance information reported for the Ichthys LNG export facility other than that required by the Condition.”*<sup>4</sup>

There is no basis for this conclusion or the supporting statements.

Firstly, for the proposed conduct to disadvantage domestic gas customers there must be a nexus between the proposed conduct and the market for the supply or acquisition of domestic gas. Such a nexus does not exist.

The Applicants cannot sell excess gas on the domestic market when one of the relevant LNG export facilities goes offline for maintenance. The domestic gas production facilities of Chevron and Woodside (the two Applicants who supply domestic gas) are both physically separate from, and operate independently of, their respective LNG facilities. This means that a scheduled shutdown of one of their LNG trains does not have an impact on the production of domestic gas for supply into Western Australia, neither increasing nor decreasing the volume of gas supplied to domestic markets.

The statement regarding the Applicants having an advantage in ‘off-market’ transactions, such as bilateral gas supply agreements, is therefore not supported by any evidence before the ACCC and the Applicants strongly oppose this statement.

Second, given none of the Applicants regularly supply gas domestically in the Northern Territory, the proposed conduct will not have any impact on domestic gas sold domestically in the Northern Territory nor on any gas fired generators in the Northern Territory. Additionally, to the extent the proposed conduct were to have any impact on the availability of domestic gas in Western Australia which could be said to impact gas-fired generators in Western Australia, this would be reported on the WA Gas Bulletin Board under the Gas Services Information Rules (**GSI Rules**). There is therefore no possible impact of the proposed conduct on domestic gas markets and the statement regarding the impact on electricity markets is therefore not supported by any evidence before the ACCC. The Applicants strongly oppose this statement.

Third, the publication of information regarding scheduling of maintenance at the Ichthys LNG facility is not relevant in circumstances where the Ichthys LNG facility is only likely to supply gas to the Northern Territory domestic market on an emergency basis when requested to do so by PWC (on behalf of the Government). Reporting of Ichthys’ maintenance schedule will therefore have no practical effect – at the time of any emergency demand requirements, either Ichthys will be shutdown and unable to supply gas (in which case the ACCC’s theory of harm cannot arise) or Ichthys will be operating

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<sup>1</sup> Draft Determination, para 4.378.

<sup>2</sup> Draft Determination, para 4.38.

<sup>3</sup> Draft Determination, para 4.38.

<sup>4</sup> Draft Determination, para 4.41.



(i.e. not in fact shutdown) and therefore the conduct to which the authorisation relates will not be relevant at that point in time.

Additionally, given the other Applicants do not operate in the Northern Territory, any additional information that they have regarding Ichthys' shutdown schedule will not impact the domestic gas market.

The Applicants reiterate their previous submissions on why the Condition should cease to apply to the requested re-authorisation.

### **3 There is no evidence before the ACCC to support a finding that ongoing changes to relevant markets are a basis for re-authorisation of only five years**

In its Draft Determination, the ACCC submits that the appropriate period for re-authorisation is five years given ongoing changes to the relevant market, including the:

- *“transition to greater reliance on renewable energy sources*
- *potential creation of short term trading market and/or spot trading market in Western Australia*
- *uncertainty in the domestic energy markets in Western Australia and the Northern Territory, including gas and electricity.”<sup>5</sup>*

The Applicants do not consider there is evidence before the ACCC to support a finding that potential changes in domestic gas market supply conditions of the kind described will result in the likely public benefits of the proposed conduct not outweighing the likely public harm in years six to 10 of the re-authorisation period.

For the reasons set out in the Applicants' submissions, the Applicants submit that:

- it is appropriate for re-authorisation to be granted for a period of 10 years; and
- in circumstances where the ACCC considers that there is a material change of circumstances of the kind described above, which would result in the likely public benefits of the proposed conduct not outweighing the likely public harm going forward, the onus should be on the ACCC to initiate a review<sup>6</sup> of the authorisation during the re-authorisation period.

The submissions put forward by interested parties in support of a five year authorisation period are also unsupported. For example, the ACCC should give no weight to submissions that a transparent trading hub could be developed and start operating in the next 10 years in Western Australia.<sup>7</sup> The only evidence put to the ACCC to support this finding is a reference to a meeting of the Western Australian Gas Advisory Board in October 2021. The outcome of that meeting was a finding that *“a WA trading mechanism should not be pursued further”*,<sup>8</sup> as was set out in the Application. As such, there is no evidence to support the view that there is a potential creation of a short-term trading market and/or spot trading market in Western Australia and that this potential is a reason for a five year re-authorisation period.

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<sup>5</sup> Draft Determination, para 4.69.

<sup>6</sup> CCA, s 91C(3).

<sup>7</sup> The submission from the Department is noted in the Draft Determination as part of the ACCC's assessment of the Condition (at para 4.37) but is also relevant to the ACCC's conclusion regarding the appropriate period of re-authorisation.

<sup>8</sup> Government of Western Australia, Energy Policy WA, Minutes – Gas Advisory Board – Extraordinary Meeting (Meeting Number 202\_10\_28), 28 October 2021, p. 5: <https://www.wa.gov.au/system/files/2022-03/GAB-2021-10-28-Minutes.pdf>. See also page 15 of the Application.

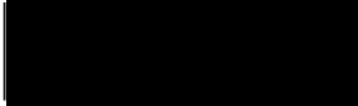


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Even if such a trading market is created, additional reporting conditions placed upon LNG Facilities that do not supply the Western Australia domestic market will not improve domestic gas market transparency or efficiency.

The Applicants reiterate their previous submissions for a 10 year re-authorisation period.

Yours sincerely



**Linda Evans**  
Partner  
Herbert Smith Freehills



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