



HERBERT
SMITH
FREEHILLS

Submission of the Applicants to the ACCC

Co-ordinated scheduling of maintenance for
Western Australia and Northern Territory LNG
projects

16 December 2022



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**).

1.1 Submissions from interested parties

The Applicants have been provided with the following submissions, which the ACCC received in relation to the Applicants' Application:

- 1 submission from the Northern Territory Government – Gas Taskforce (**NTG**) dated 11 November 2022 (**NTG Submission**);
- 2 submission from AGL Energy Limited (**AGL**) dated 11 November 2022 (**AGL Submission**);
- 3 submission from the Australian Energy Market Operator (**AEMO**) dated 30 November 2022 (**AEMO Submission**); and
- 4 submission from the DomGas Alliance (**DGA**) dated 2 December 2022 (**DGA Submission**),

(together, the **Submissions**).

The ACCC has invited the Applicants to provide a submission in response to the Submissions.

The AEMO Submission, NTG Submission and AGL Submission do not raise any suggestion that the Application should not be granted or identify any public detriments that would result from the Application being granted. In particular AEMO, the market operator who is uniquely well placed to assess the relevant issues in an independent way, has indicated that:

- it does not hold concerns regarding the removal of the 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.

DGA raises some concerns with the Application in its entirety being granted. However, no evidence has been proffered in support of such concerns. For the reasons set out in this submission, these concerns and the DGA Submission more broadly reflect a misunderstanding of the Proposed Conduct and Condition.

The DGA Submission and the AGL Submission speak to the Condition and the AGL Submission also speaks to the re-authorisation period. The positions proffered in support are factually inaccurate and, in any event, are not a basis for the imposition of a reporting condition or re-authorisation being granted for less than 10 years.



1.2 Applicants' submission in response to the Submissions

The Applicants' response below addresses the following key topics raised in the Submissions:

- support for the Application, including the broad range of factors influencing the scheduling of maintenance activities and the absence of a nexus between the Proposed Conduct and a market for the supply or acquisition of domestic gas;
- whether re-authorisation will result in an information asymmetry and whether a reporting condition will address this; and
- the proposed term of authorisation.

Unless indicated, defined terms in this submission have the same meaning as in the Application.

2 Application for re-authorisation

2.1 Support for the Application

AEMO and NTG support the granting of the Application and do not raise any concerns. The Applicants agree with the following positions put forward:

- AEMO states that it is not aware of any operational issues resulting from the current authorisation and that it considers that the *"terms of the re-authorisation, with respect of the Applicants' Western Australian facilities, do not conflict with the objectives of reducing domestic gas supply risks."*¹
- NTG submits that it is *"unlikely the local contracting market would be negatively affected because if specialised skills are available locally, the Northern Territory's LNG producers would likely use them to save on expenses" and that "this could potentially help local SME companies grow"*.²
- NTG also submits that re-authorisation will allow the Northern Territory's LNG producers to keep skilled contractors in Australia by providing a means for consistent work in a timely manner.³

These submissions align with the public benefits arising from the Proposed Conduct set out in the Applicants' Application.⁴

2.2 Broad range of factors influencing the scheduling of maintenance activities

DGA submits that it is concerned that if the Proposed Conduct is re-authorised, from a planned maintenance perspective, it will be more profitable for the Applicants to schedule an outage to have the least impact on LNG exports.⁵

This assumes a linkage between LNG maintenance and domestic gas production which is not correct and no supporting evidence is provided to justify this submission. As set out

¹ AEMO Submission, p. 2.

² NTG Submission, p. 1.

³ NTG Submission, p. 1.

⁴ Application, section 7.

⁵ DGA Submission, p. 1.



in section 1.5 of Attachment 2 to the Application, for the North West region of Australia, weather plays a key influence on the scheduling of maintenance of LNG trains and associated facilities and is one of the primary drivers of the scheduling of maintenance.

The coordination of shutdowns and campaign maintenance will avoid the risk of production being affected at any LNG Facility and will in turn maximise the production of LNG by the LNG Projects.⁶ The Applicants reiterate their submission in the Application that maximising LNG production will allow the LNG industry located in the North West region of Australia to remain internationally competitive, which is a public benefit. Further, it will have no impact on domestic gas production.

2.3 Nexus between the Proposed Conduct and a market for the supply or acquisition of domestic gas

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. The Applicants reject a claim that such a nexus exists and the unsupported assumption in DGA's submission⁷ that it does.

The Applicants agree with, and reiterate AEMO's submission set out above, that the *"terms of the re-authorisation, with respect of the Applicants' Western Australian facilities, do not conflict with the objectives of reducing domestic gas supply risks."* The LNG Facilities the subject of the Application do not supply gas domestically and the Proposed Conduct concerns the sharing of maintenance information about the Applicants' LNG Facilities only.

As set out in the Application and Applicants' submission dated 25 October 2022, only Chevron and Woodside operate domestic gas facilities that currently supply gas they produce in Western Australia into the Western Australian domestic gas supply market. Their respective domestic gas production facilities are physically separate and operate independently to their LNG Facilities.⁸ Therefore, a shutdown of one of their LNG trains does not have an impact on their production of domestic gas for supply into Western Australia. In particular, domestic gas will continue to be produced in response to customer demand for gas and the respective capacities of Chevron's and Woodside's operated domestic gas plants to produce domestic gas.

3 Removal of the reporting condition will create an information asymmetry

AEMO does not hold concerns regarding the removal of the Condition where the Applicants remain compliant with the WA Gas Bulletin Board reporting requirements.⁹ Consistent with the Applicants' submissions in the Application,¹⁰ AEMO notes that the WA Gas Bulletin Board reporting obligations are *"ostensibly more extensive than the reporting condition in the original authorisation"*.¹¹

⁶ Application, section 7.3.

⁷ DGA Submission, p. 2.

⁸ Application, section 8.4; Submission of the Applicants to the ACCC dated 25 October 2022, section 2.1.

⁹ AEMO Submission, p. 2.

¹⁰ Application, section 9.

¹¹ AEMO Submission, p. 2.



AGL and DGA consider that actual or potential information asymmetries arise from the Proposed Conduct. Specifically

- AGL submits that a condition which requires the Applicants to publish maintenance information that they have shared with each other is “appropriate”.¹²
- DGA submits that the WA Gas Bulletin Board serves an especially useful function in the Western Australia gas market, that in a “*heavily concentrated selling market, there is certainly a danger of information asymmetry, and it would benefit market efficiency for as much detail as possible to planned maintenance outages to be made available on the GBB*”.¹³

AGL’s and DGA’s submissions are not substantiated. No material is provided to explain the nature of the information asymmetry being referenced, or how a reporting condition is “appropriate” or would “benefit market efficiency”.

First, as set out above, the Proposed Conduct only relates to the Applicants’ LNG Facilities and will not have any direct impact on existing domestic gas supply arrangements.

Second, the Condition requires reporting of information that the disclosing LNG producers (Chevron, INPEX and Woodside) provide to one another in the course of scheduling maintenance activities for their LNG Facilities. Any impact on the availability of domestic gas in Western Australia will be reported under the Gas Services Information (**GSI**) Rules on the WA Gas Bulletin Board in respect of the relevant domestic gas facility. The Applicants agree with DGA’s own submission, and AEMO’s submission, that the disclosure requirements under the GSI Rules serve a useful function and address transparency issues that may arise between facility operators and those acquiring domestic gas.¹⁴ The Condition does not serve these points.

Even if the Western Australian domestic gas market is concentrated (as noted by DGA), additional reporting conditions placed upon LNG Facilities that do not supply to the Western Australia domestic market will not improve domestic gas market transparency or efficiency. DGA’s assertion that concentration levels have been made worse following Woodside’s acquisition of BHP Petroleum is factually inaccurate. The ACCC closely assessed this acquisition, including considering market concentration, and formed the view that the transaction did not raise competition concerns.

Third, as set out in the AEMO Submission, AEMO administers the WA Gas Bulletin Board established under the *Gas Services Information Regulations 2012* and GSI Rules. The WA Gas Bulletin Board applies to facilities located in Western Australia that are connected to a WA Gas Bulletin Board pipeline. The Applicants’ submit that DGA’s submission that more information should be reported on the WA Gas Bulletin Board is a matter for Government. It is not a matter for the Application, which relates to LNG Facilities.

NTG does not advance any submissions on a reporting condition.

The Applicants reiterate their submissions in section 9 of the Application on why the Condition should cease to apply to the requested re-authorisation.

¹² AGL Submission, p. 1.

¹³ DGA Submission, p. 2.

¹⁴ DGA Submission, p. 2; AEMO Submission, p. 2.



4 Authorisation length

AEMO does not hold concerns regarding the proposed 10 year re-authorisation period where the Applicants remain compliant with the WA Gas Bulletin Board reporting requirements.¹⁵ There is no basis to conclude that the Applicants who are subject to reporting on the WA Gas Bulletin Board won't remain compliant going forward.

Only AGL submits that the length of any re-authorisation should be limited to a period of five years. AGL points to changing market conditions in domestic gas markets as justification for this position. In support of this position, AGL refers to the predicted shortfall in the east coast gas market and the possibility of gas produced in the Northern Territory being transported to Queensland to alleviate this shortfall.¹⁶

The Applicants submit that potential changes in domestic gas market supply conditions are not a basis for re-authorisation to be less than 10 years.¹⁷ The Applicants make the following submissions in response to AGL.

First, even if plans are put in place for gas produced in the Northern Territory to be supplied to the east coast in response to east coast gas shortages, this would not be relevant to three of the four Applicants (whose facilities are in Western Australia) and is not relevant to INPEX's Ichthys facility which does not commercially supply domestic gas, does not participate in the domestic gas market¹⁸ and has no plans to do so in future.

More broadly, the Applicants fail to see how such plans would mean that re-authorisation should be for less than 10 years given the Proposed Conduct relates to the Applicants' LNG Facilities (not domestic gas facilities).¹⁹

Second, AGL has not provided evidence to support a finding that, if re-authorisation is granted for a period of 10 years, the likely public benefits of re-authorisation will outweigh the likely public harm in years five to ten of the re-authorisation period. The Applicants submit that there is no evidence to support such a finding.

Third, the Applicants note that the ACCC may initiate a review of an authorisation if it appears to the ACCC that there has been a material change of circumstances since the authorisation was granted.²⁰ In such circumstances the ACCC could do so if market circumstances did change dramatically. Given that, as set out in the Application, the benefits associated with the Proposed Conduct are now greater than at the time of the Existing Authorisation, it is appropriate that re-authorisation be granted for a period of 10 years.

The Applicants repeat the reasons for a 10 year authorisation term set out at section 5.6 of the Application.

¹⁵ AEMO Submission, p. 2.

¹⁶ AGL Submission, p. 1.

¹⁷ The Applicants note the draft Competition and Consumer Amendment (Gas Market) Bill 2022 released by the Government on Friday, 9 December 2022 which proposes to insert Part IVBB into the Competition and Consumer Act 2010. Part IVBB and associated regulatory instruments provide for a new regulatory framework that empowers the Federal Government to further regulate the east coast gas market. The enactment of the draft Bill will impact the supply and acquisition of new contracted domestic gas (not LNG) sold in the east coast gas market (i.e. not Western Australia or the Northern Territory).

¹⁸ With the limited exception of emergency gas supply arrangements held with Power & Water Corporation.

¹⁹ The Ichthys LNG Project does not supply gas domestically and is the only Northern Territory project operated by one of the Applicants.

²⁰ CCA, s 91C(3).