

Submission to the ACCC

Background

1. Australia Pacific LNG Pty Limited Project (**APLNG**), the Queensland Curtis LNG Project (**QCLNG**) and the Gladstone LNG Participants (**GLNG**) (the **Applicants**) submitted applications for authorisation to the Australian Competition and Consumer Commission (**ACCC**) on 15 October 2015.
2. The ACCC has received a number of submissions in response to the application. Each of the submissions are supportive of the applications for authorisation. However, some of them focus on the consequence of shutdowns for the supply of gas into the domestic market. Those submissions:
 - (a) seem to assume that the conduct for which authorisation is sought is broader than is in fact the case; and
 - (b) conflate the consequences of shutdown by any one participant with the consequences of the proposed authorisation.
3. If granted, the authorisations would permit the Applicants to discuss and agree the sequencing and proposed timing of scheduled maintenance works at each of their LNG Facilities on Curtis Island, Gladstone. Contrary to the position which may appear from the submissions, the application would not lead to the exchange of information between the Applicants about:
 - (a) what they individually propose to do with their excess gas during the period of a maintenance shutdown; or
 - (b) the volumes of gas that may result from the proposed shutdowns.
4. The conduct for which authorisation is sought is narrow and covers only:
 - (a) discussions by which the Applicants identify the maintenance requirements (including the scope and duration of shutdowns), classify maintenance campaigns as either minor or major, identify optimal timings for maintenance, schedule maintenance in a way so as to minimise contractors mobilisation and demobilisation costs and develop a process to organise the scheduling of maintenance at each of their LNG Facilities; and
 - (b) the exchanging of information about maintenance techniques and operational processes, potential resource constraints associated with shutdowns and their mitigation and disclosing the names of maintenance contractors appointed by the Applicants to perform maintenance at their LNG Facility.
5. The matters raised by the submissions are:
 - (a) A concern that the supply of excess gas into the domestic wholesale gas market during a maintenance shutdown period will, due to the sheer volume of that gas, have an impact on that market, in particular the price for gas - In summary, this concern arises from any single shutdown and is not a consequence of coordination on maintenance shutdowns;
 - (b) The Applicants will, through coordinating their respective maintenance schedules and disclosing their unscheduled maintenance requirements, receive information that is not publicly available thereby putting other market participants at a competitive disadvantage; and
 - (c) The Applicants should be required to publicly disclose information in relation to their scheduling of maintenance shutdowns of their LNG Facilities. Such information

would include the name of the facility, the volume of gas reduction and the start and end dates of the maintenance shutdown.

6. The Applicants' submissions in response are that:

- (a) Decisions as to what the Applicants will do with their excess gas during a maintenance shutdown period will be made individually and will not be discussed with the other Applicants other than within the scope of any confidential bilateral gas sale and purchase agreements. The question of whether and what gas will be sold under commercial arrangements during maintenance/shutdown is an independent decision to be made by each LNG project, and will not be the subject of coordination between the parties. The supply of excess gas into the domestic wholesale gas market is a consequence of any individual shutdown given the amount of gas involved and not the consequence of coordination. In other words, some "shutdown" gas will occur regardless of whether the authorisation is granted; the only effect of the authorised conduct would be that any "shutdown" gas would occur consecutively rather than concurrently;
- (b) Unscheduled maintenance is not, by its very nature coordinated and is responsive to specific circumstances as and when they arise. Further, the timing of any scheduled shutdown says nothing about how any individual applicant may or may not choose to deal with the available gas resulting from that shutdown. In addition, since concurrent shutdown gas would be expected to exceed domestic demand, the authorisation application may create benefits to the domestic market to the extent that it smooths the availability of gas for supply under commercial arrangements, but would not otherwise affect the domestic market. A coordinated approach to the scheduling of maintenance of the LNG Facilities will reduce the risk of there being a significant and more volatile impact on that market; and
- (c) The Applicants will not be disclosing between themselves, as part of operational shutdown decisions, information regarding the volumes of gas that may be available for supply under commercial arrangements during the shutdown of an LNG Facility. Technical and operational information only will be exchanged between them.

7. APLNG and GLNG have been provided with a copy of the submission dated 30 November 2015 (except for any confidential parts) made by QGC on behalf of QCLNG. The QCLNG submission provides that:

- (a) the proposed conduct will result in significant public benefits, including the avoidance of inefficiency in production and wastage of resources;¹
- (b) the proposed conduct will not involve the Applicants sharing information about the supply of gas - it will involve the exchange of limited information in relation to the timing of scheduled maintenance campaigns (i.e. sequencing and timing of maintenance, the scope and duration of shutdowns and identifying optimal times for carrying out maintenance) which will not provide the Applicants with any insights as to each other's supply positions;² and
- (c) many of the issues raised in the submissions made to the ACCC are not attributable to the proposed conduct.³

8. The Applicants agree with and support these submissions made by QCLNG.

¹ Submission of QCLNG at Section 2.

² Submission of QCLNG at Sections 3.1 and 3.2.

³ Submission of QCLNG at Section 3.3.

Applicants' comments on the Submissions

9. The Applicants have been provided with copies of the submissions that were made by ERM Power Limited (dated 16 November 2015), Stanwell Corporation Limited (dated 20 November 2015), Energy Supply Association of Australia (**ESAA**) (dated 23 November 2015) and Energy Australia Pty Ltd (dated 23 November 2015).
10. Each of these submissions are supportive of the Applicants' applications for authorisation. However, these submissions have recommended that as a condition of the ACCC's grant of authorisation each of the Applicants be required to publicly disclose certain information in relation to their proposed scheduling of maintenance works at their LNG Facilities. The submissions invariably have suggested that any relevant disclosures by the Applicants could be made via the existing Natural Gas Services Bulletin Board (**Bulletin Board**).
11. The Applicants submit that the submissions referred to above are misguided in a number of respects. Firstly, the submissions argue that each of the Applicants will, through coordinating their respective planned maintenance schedules and disclosing their unscheduled maintenance requirements, receive information that is relevant to financial and physical markets in which they trade. As such information will not be publicly available, the Submissions argue that this information asymmetry will place other market participants at a distinct competitive disadvantage.⁴
12. This assertion is factually incorrect. As noted above, the conduct for which authorisation is sought does not include the Applicants exchanging information among themselves regarding the volumes of gas that may be available for supply under commercial arrangements during the shutdown of an LNG Facility. Any information that the Applicants exchange will only be technical and operational information regarding the conduct of planned maintenance of the LNG Facility. As such, it will not be possible for the other Applicants to determine, based on that information, whether and what volumes of gas will be available for supply. In order to determine that information, the Applicants would need to have knowledge of a number of other relevant factors including the amount of storage the LNG Facility has (such as available pipeline line-pack and reservoir), the extent to which gas wells will be turned-down, and details of any other gas supply arrangements entered into by the relevant LNG Facility. Therefore, the Applicants submit that the perceived information asymmetry relevant to the volume of gas that may be available for supply is overstated.
13. Secondly, it is argued in the submissions that because of the aforementioned information asymmetries, the Applicants should be required to disclose relevant information to the public, including, for example, the name of the facility, the volume of gas reduction and the start and end dates of the maintenance shutdown.⁵ It is suggested that the Applicants could publicly disclose this information via the Bulletin Board.
14. The Applicants refer to Section 3 of the QCLNG submission and endorse the comments contained therein.

Interim authorisation

15. The Applicants have also applied for an interim authorisation from the ACCC. Interim authorisation will enable prompt disclosure of potential overlapping scheduled maintenance in 2016 and enable alternative scheduling to be put in place if clashes are identified.
16. As noted above, the Applicants have already independently commenced planning their shutdowns for the carrying out of maintenance at their LNG Facilities. If an interim

⁴ Submission of ESSA at p. 2, Submission of ERM Power at p. 1, Submission of Energy Australia at p. 1.

⁵ Submission of ESSA at p. 2, Submission of Stanwell at p. 3, ERM Power's submission recommends (at p. 2) that information in relation to the timing and duration of scheduled and unscheduled maintenance and impacts on capacity should be reported for a two year rolling period (similar to the Medium Term Projected Assessment of System Adequacy published for the NEM).

authorisation is not granted to the Applicants, then they will continue to carry out this planning independently of each other. However, that has the adverse consequences identified in the submission in support of the application.

17. The Applicants seek an interim authorisation in December 2015, as distinct from when the ACCC issues its Draft Determination, because so long as the Applicants are independently planning their respective maintenance shutdowns, a considerable amount of progress can be made in the space of only a couple of months. The parties propose to be actively progressing this planning during the course of December, January and February. If an interim authorisation were not granted before Christmas, the Applicants will effectively lose the opportunity for discussions to be on a joint basis during the latter part of December, all of January and likely a good part of February given the usual ACCC programming at this time of the year.
18. If no interim authorisation is granted, planning will need to be undertaken separately. This makes the benefits arising from discussions and coordination less likely to be feasible for the next round of major maintenance shutdowns, given the extent to which arrangements are likely to have progressed in this time. For example, it may be the case that each of the Applicants will have already secured maintenance contractors and settled on timings for the shutdown of their LNG Facilities, potentially at the same time that maintenance will be scheduled at one of the other LNG Facilities.
19. The simultaneous scheduling of maintenance shutdowns of the LNG Facilities would, as discussed below, have a far greater impact on the domestic wholesale gas market, as well as requiring material flaring of gas (due to their being insufficient storage capacity and a supply of excess gas that far exceeds the demand of the domestic wholesale gas market and the other LNG producers).
20. Therefore, an interim authorisation in December 2015 would avoid these circumstances arising.

Impact on domestic wholesale gas market

21. Where one of the Applicants shuts down its LNG Facility, that LNG producer will need to have made arrangements to deal with the excess gas which, for the duration of the shutdown period, will not be available for LNG production. As set out in the submission in support of the application for authorisation there are generally four options for managing any excess gas:⁶
 - (a) turning down the CSG wells to the extent possible;
 - (b) storing excess gas produced but not supplied during the shutdown period;
 - (c) selling excess gas to third parties; or
 - (d) flaring the gas.
22. Each of the Applicants will make their own independent decisions as to how they will manage their excess gas during a shutdown period. The conduct for which authorisation is sought does not include any arrangement as to how any or all of the Applicants will seek to manage their excess gas.
23. Insofar as the Applicants decide to supply their excess gas into the domestic wholesale gas market, that decision would arise irrespective of whether an authorisation is granted by the ACCC.
24. The submissions have noted that the supply of excess gas into the domestic wholesale gas market as a result of the maintenance shutdowns of the LNG Facilities will have an impact on

⁶ Section 4 (pp. 11-12) of the Applicants' *Submission in support of application for authorisation*.

that market in terms of gas flows as well as pricing.⁷ Any such impact is likely to be a consequence of a shutdown by any one applicant and not the result of the conduct for which authorisation is sought.

25. It is the Applicants' view that a coordinated approach to their scheduling of maintenance shutdowns of their LNG Facilities will have a much less volatile impact on the domestic wholesale gas market insofar as there would be a prolonged supply of excess gas into that market rather than the potential for there to be the simultaneous shutdown of more than one of the LNG Facilities (absent coordination) which would potentially result in a substantial short-term increase in supply of excess gas. The Applicants note that the ESSA agrees that coordinated scheduling of maintenance shutdowns between the LNG Facilities could avert significant future market distortions.⁸ It is considered that an uncoordinated approach to the scheduling of maintenance of the Applicants' LNG Facilities would have a far greater deleterious impact on the domestic wholesale gas market than a coordinated approach.

Disclosure of information by the Applicants

26. As noted above, the conduct for which authorisation is sought does not involve exchange by the parties among themselves regarding the volumes of gas available for supply under commercial arrangements during maintenance/shutdown. Any information exchange between them pursuant to the authorisation sought will be technical and operational information regarding the conduct of the maintenance shutdowns. It will not be possible for proponents to readily determine from that information whether and what volumes of "shutdown" gas will be available, since that further question depends on factors such as the extent to which the LNG project has storage, line pack, turn down or other options available to it, or has already entered into commercial arrangements for the supply of excess gas. The Applicants will not have any clear visibility of these issues.
27. Accordingly, the proposals put in submissions to the ACCC would not merely rectify an information asymmetry (doing that would require publication *only* of the technical and operational information to be shared between the applicants). In fact those proposals would require disclosure of information that would far exceed that necessary to rectify any asymmetry (e.g. volumes). The AEMC and ACCC are already considering the extent of transparency required regarding the availability of gas from the LNG projects to domestic suppliers, and this will cover any shutdown gas, regardless of whether shutdown timing is coordinated or not. The information disclosure issue is independent of the authorised conduct (i.e. it arises regardless of whether the authorisation is granted).
28. With respect to the question of disclosure, this issue has been comprehensively addressed in the separate submission of QCLNG.
29. In all the circumstances:
- (a) it is not appropriate to attach information disclosure conditions to the authorisation in circumstances where any potential need for information disclosure is not caused by the authorised conduct, and the proposed disclosure would vastly exceed the disclosure which will occur among the participants pursuant to the authorised conduct; and
 - (b) even if the ACCC has the power to impose conditions regarding information disclosure, it would not be appropriate for it to do so in circumstances where careful consultation is already underway by the appropriate bodies, and where the ACCC would either duplicate the inquiries and role of those bodies by imposing its own conditions or (if it did not undertake similarly detailed inquiries itself) risk imposing ill-adapted conditions on the authorisation.

⁷ Submission of ESSA at p- 1-2, Submission of Stanwell at p. 1, Submission of ERM Power at p. 1.

⁸ Submission of ESSA at p. 2.

30. This is even more so in the context of considering an interim authorisation in this case. Of course, the Applicants are prepared to have further discussions with the ACCC about this issue prior to the ACCC making its final decision on the applications for authorisation.