

1 February 2016

Adjudication Branch
Australian Competition & Consumer Commission
GPO Box 3131
Canberra ACT 2601

Lodged (by online/email): adjudication@accc.gov.au

Applications for authorisation A91516-A91517 – Australia Pacific LNG Pty Limited and others – Consultation on possible information disclosure condition

The Competitive Energy Association of Australia (CEA) welcomes the opportunity to make a submission to the Australian Competition & Consumer Commission's (ACCC) consultation on possible information disclosure conditions for LNG participants' outage coordination.

The CEA represents the policy positions of 22 electricity and downstream natural gas businesses operating in competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses.

The CEA and member entities have previously highlighted the significance that LNG outage information can have in relation to domestic energy markets and welcome the ACCC's ongoing investigation of this issue.

The CEA strongly disagrees with the applicants' views as expressed in the ACCC letter to interested parties of 19 January 2016 that "*the concerns raised by interested parties are not related specifically to the application for authorisation*".

Information asymmetry relating to large participants

Each applicant is likely to hold significant information relating to their own internal production and consumption forecasts and strategies. Despite the knowledge relating only to the operation of a participant's portfolio, most markets require large participants to publish this information to the market in some form. This reduces information asymmetry and facilitates market confidence and trading. 'Medium Term Projected Assessment of System Adequacy' (MTPASA) required under the National Electricity Rules, or the 'Medium Term Capacity Outlook' (MTCO) required under the National Gas Rules are examples of this type of individual disclosure requirements where participants determine outage timing in isolation. The AEMC has also proposed that LNG facilities be required to publish regularly updated outage schedules for this purpose¹.

Information asymmetry when large participants share market sensitive information

The applicants have requested permission to gain knowledge of the outage information of each other applicant. Such information is price sensitive and if not disclosed would

¹ AEMC 2015, *East Coast Wholesale Gas Market and Pipeline Frameworks Review*, Stage 2 Draft Report, 4 December 2015, Sydney. Page 101

constitute “inside information”. As identified in the ACCC letter to interested parties, a lack of transparent, timely disclosure of information may erode confidence and liquidity in energy trading markets, and reduce efficiency for all participants.

The applicants’ proposed disclosure condition

The CEA is concerned that the proposed information disclosure requirement leaves significant scope for incomplete, outdated, and otherwise unreliable information.

Critically, the CEA consider that the disclosure must occur

- as soon as reasonably practicable, and
- be updated when information changes, regardless of whether the change is discussed by the applicants under the requested authorisation

These conditions ensure that the representation made to the market does not become misleading by delayed publication or omission.

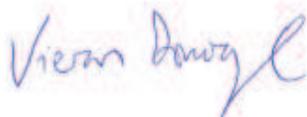
The CEA also consider that the disclosure must relate to all aspects of outage information addressed by the proposed authorisation – including short term or forced outages.

In order to maximise the usefulness of the information to other parties so as to maintain a level playing field in the eastern Australia gas market, the CEA consider that some amendments should be made to the condition. Please see a marked-up version of the condition at Attachment 1 for our suggested changes. In summary these deal with the following issues:

- Clause 2: The requirement that information be published as soon as practicable should not be encumbered by the arbitrary reference to two business days.
- Clause 4: The requirement that information be published should be imposed where the outage is greater than one day **or** the information is disclosed between applicants.
- Clause 6: The proposal that information disclosure be on a “good faith” or “reasonable expectations” basis is supported, so long as the information is updated transparently when intentions or expectations change (clause 8).
- Clause 7: Clarification is required as to what would constitute “information substantially the same as Maintenance information” and who would determine this. The CEA consider that this decision should be explicitly assigned to the ACCC.
- Clause 8: (a) should be removed to ensure that information does not become misleading through inaction.

Any questions about our submission should be addressed to Panos Priftakis, by email to panos.priftakis@esaa.com.au or by telephone on (03) 9205 3115.

Yours sincerely



Kieran Donoghue
General Manager, Policy & Research

Attachment 1 - Marked up version of the condition

Disclosure of information regarding Scheduled Maintenance of LNG Facilities

1. The purpose of these conditions is to make publicly available "Maintenance Information" (as defined in paragraph 2) that an LNG Producer discloses to the other two LNG Producers in the course of scheduling maintenance activities pursuant to the authorisation granted by the Australian Competition and Consumer Commission on [insert date] (**Authorisation**).
2. The LNG Producer will disclose the following information (**Maintenance Information**):
 - (a) the LNG Producer's reasonable expectation of the dates when the Scheduled Maintenance Activities will commence and conclude;
 - (b) whether the Scheduled Maintenance Activities are expected to involve any of the following:
 - (i) Shutdown of one half or less of an LNG train;
 - (ii) Shutdown of greater than one half of an LNG train but not greater than one LNG train; or
 - (iii) Shutdown of greater than one LNG train,

as soon as is practicable, ~~but within 2 business days of after~~ disclosing such Maintenance Information to the other LNG Producers pursuant to the Authorisation. For the avoidance of doubt, preliminary discussions between LNG Producers for the purpose of determining possible dates is not Maintenance Information.
3. For the purposes of this requirement of disclosure, an LNG Producer will reasonably expect the occurrence of Scheduled Maintenance Activities when the LNG Producer has undertaken sufficient planning to define the scope of the shutdown of one or more of its LNG trains associated with the Scheduled Maintenance Activities and has confirmed the availability of contractors for the proposed shutdown period.
4. For the purposes of this requirement of disclosure, Scheduled Maintenance Activities means the performance of scheduled maintenance activities at an LNG Facility:
 - (a) involving the complete or partial shutdown of an LNG train, ~~and;~~
 - (b) where the shutdown is expected to have a duration of a minimum of 1 day, ~~and;~~
 - ~~(c) which has been disclosed by an LNG Producer to the other LNG Producers pursuant to the Authorisation.~~
5. The LNG Producer will satisfy the requirement of disclosure under paragraph 2 if it:
 - (a) provides the Maintenance Information to the Australian Energy Market Operator (**AEMO**) who accepts receipt of the Maintenance Information and publishes it on the Natural Gas Services Bulletin Board (**Bulletin Board**) or similar publication; or
 - (b) if the Maintenance Information is not able to be published on the Bulletin Board, publishes the Maintenance Information on its internet website in a manner that is easily accessible to interested parties.

6. It is acknowledged that the information disclosed by the LNG Producer may be subject to change for a number of operational or commercial reasons. The provision of the Maintenance Information by the LNG Producer may be made subject to the following disclaimer:

"[insert name of LNG Producer] provides the Maintenance Information on the basis that the information:

- *is provided in good faith and is disclosed as a condition of the Authorisation; and*
- *is based on each LNG Producer's reasonable expectations and is subject to change."*

7. The LNG Producers will comply with the requirement of disclosure under paragraph 2 unless and until:

- (a) ~~The Maintenance Information ceases to be "inside information" as the LNG Producers they~~ are required to disclose the Maintenance Information or information substantially the same as the Maintenance Information in compliance with another statutory or regulatory obligation including, but not limited to, an obligation of disclosure arising under the National Gas Law or the National Gas Rules (or any regulation, rule, procedure or instrument made thereunder); or
- (b) the ACCC consents to the LNG Producers that the disclosure requirement under paragraph 2 no longer applies.

8. Nothing in these conditions obliges an LNG Producer:

- ~~(a) to update information previously disclosed under these conditions; or~~
- (b) to make any other information publicly available,

in a way that would involve disclosure of information that that LNG Producer has not disclosed to the other two LNG Producers pursuant to the Authorisation.