

Submission to the ACCC

Background

1. On 18 February 2016 the ACCC:
 - (a) decided to grant interim authorisation to the Applicants,¹ subject to the imposition of a condition; and
 - (b) published its Draft Determination in which the ACCC proposes to grant authorisation to the Applicants for a period of five years, subject to the imposition of a condition,

in respect of the applications for authorisation which were submitted to the ACCC by the Applicants on 15 October 2015.

2. On 4 March 2016 the Applicants provided a submission to the ACCC in response to the ACCC's Draft Determination.
3. The Applicants have been provided with copies of three submissions which the ACCC received from interested parties in relation to the Draft Determination. The ACCC has invited the Applicants to provide a further submission to the ACCC in response to those submissions.

Submission in response to Submissions

4. The submissions were received by the ACCC from ERM Power Limited (**ERM Power**), Stanwell Corporation Limited (**Stanwell**) and Energy Australia. The Stanwell submission raises a number of issues, some of which have also been addressed in the ERM Power and Energy Australia submissions. The Applicants propose to respond to all of the issues raised by responding to each of the issues as raised by Stanwell in its submission.

Shutdown size

5. Stanwell has indicated that where one of the LNG Producers proposes to shut down more than one of its LNG trains for carrying out maintenance works, clause 2(b) of the proposed Condition of Authorisation² does not oblige the LNG Producer to advise whether the shutdown involves the whole or only part of the second LNG train. Stanwell's proposed amendment to clause 2(b) of the Condition of Authorisation would oblige the LNG Producers to also specify whether the maintenance involves a shutdown of greater than one LNG train but less than one and a half LNG trains, or greater than one and a half LNG trains.
6. The Applicants do not object to the proposed amendment to clause 2(b) of the Condition of Authorisation.

Preliminary discussions

7. Stanwell has noted that clause 2(c) of the proposed Condition of Authorisation specifically excludes the disclosure of preliminary discussions between LNG Producers for the purpose of determining possible dates for Scheduled Maintenance Activities.
8. Stanwell has indicated its concerns that LNG Producers may use the information shared during preliminary discussions to derive an advantage in their negotiations with domestic gas market participants. Stanwell has proposed that a new clause be inserted into the Condition of Authorisation which would have the effect of ensuring preliminary discussions (which are not

¹ Australia Pacific LNG Pty Limited Project (**APLNG**), the Queensland Curtis LNG Project (**QCLNG**) and the Gladstone LNG Participants (**GLNG**).

² Set out in Attachment A to the Draft Determination.

intended to be published as part of the Condition of Authorisation) are kept in strict confidence within the LNG producer's planning team until after they are legitimately disclosed through the Condition of Authorisation.

9. The Applicants do not agree with Stanwell's concerns or proposal for the inclusion of an additional clause to govern preliminary discussions. Stanwell's proposal is unnecessary, impractical and would be difficult to enforce.
10. In addition, the type of information being disclosed during preliminary discussions is likely to be limited to whether an LNG facility will undertake any maintenance activities (involving rate reduction of more than half a train) in any given year. The preliminary discussions will not involve the disclosure of information concerning the specific dates or the scope of a scheduled shutdown. This is made clear by paragraph (c) of clause 2. The market sensitivity of the type of information that will be disclosed during preliminary discussions is unlikely to be meaningful or give the LNG producers any material advantage in their negotiations with domestic gas market participants.

Unscheduled vs Scheduled outages

11. Stanwell has indicated that it has concerns that the Draft Determination proposes to allow LNG Producers to "inform one another of ad hoc unplanned maintenance requirements." In Stanwell's view, unplanned maintenance is likely to have a greater impact on the domestic gas market than scheduled maintenance due to the lack of time that gas market participants will have to make plans to otherwise divert the gas.
12. Stanwell has submitted that if the ACCC authorises ad hoc unplanned maintenance information to be shared with other LNG Producers, then the ACCC should make it a condition that this information is also disclosed to the wider market to prevent information asymmetry issues arising. Stanwell proposes that the term "Scheduled Maintenance Activities" as adopted in the Condition of Authorisation be amended to "Maintenance Activities" thereby extending the scope of the definition to encompass both "scheduled" and "unscheduled" maintenance activities.
13. The Applicants oppose Stanwell's proposal. The Applicants note that an unscheduled maintenance event will typically occur unexpectedly within a short time frame, ranging from a matter of minutes to days. All unplanned maintenance events will be managed separately by the Applicants. That is, in the case of an LNG producer needing to undertake unscheduled maintenance, the LNG producer would not seek to coordinate or schedule the maintenance in concert with the other LNG producers.
14. Any information that would be disclosed (if any) by an LNG producer required to undertake unscheduled maintenance to the other LNG producers is likely to be limited to technical information. Specific information, such as the dates or duration of the unscheduled maintenance activities, would not be disclosed. The only potential scenario in which information regarding unscheduled maintenance would be shared is when a request is made on a bilateral basis (i.e. in a significant emergency or if the Applicants require urgent support for additional maintenance specialist resources including spare parts). Further, the underlying reason for the making of any such request (e.g. performance of unscheduled maintenance) would not be disclosed. The Applicants do not believe that the sharing of technical information will have an impact on the domestic gas markets or provide the LNG producers with any material advantage vis-à-vis other participants in the domestic gas markets.
15. The Applicants also note that in the event one of them is required to perform unscheduled maintenance at their LNG Facilities, market participants will be able to infer that unscheduled maintenance is occurring by observing a reduced gas volume consumption as part of the producer's 7-day outlook reporting as well as physically observing events occurring at the producer's LNG Facility on Curtis Island.

Updating of previously published information

16. Stanwell has also expressed its concern that the proposed Condition of Authorisation will not require the Applicants to update information previously published where that additional information is not shared between them.
17. Stanwell submits that under the proposed Condition of Authorisation, there will be scenarios where changes to scheduled shutdowns will not be required to be disclosed because there will be no impact on the other LNG Producers. However, in those scenarios, critical information relating to the scheduled shutdown will become out of date and, therefore, misleading to domestic gas market participants. Stanwell has proposed that the disclosure obligation include a requirement that disclosed information should not be allowed to become misleading through inaction.
18. The Applicants submit that the submissions which have been made on this issue misunderstand the ACCC's reasoning as to the need for, and effect of, the proposed Condition of Authorisation. That condition requires an LNG producer to publish Maintenance Information where the producer has previously disclosed the same information to one or more of the other LNG producers. Where no disclosure is made, no publication requirement arises. Therefore, if the particulars of a scheduled shutdown were to change (i.e. the shutdown will be completed in a shorter period of time than previously estimated), but the LNG producer did not disclose that information to the other LNG producers (or one of them), then the other LNG producers would not be in a more advantageous position than all other domestic gas market participants. That is, no information asymmetry would arise necessitating the publication of the updated information.
19. It would be both inappropriate and unnecessary for an LNG producer to be required under the Condition of Authorisation to publish information in relation to conduct it proposes to engage in unilaterally. Such conduct would not arise as a result of the authorised conduct. Any broader gas market informational issues do not arise as a result of the Applicants' applications for authorisation and should, therefore, be addressed by other mechanisms.

As soon as practicable

20. Stanwell has indicated that clause 2 of the Condition of Authorisation, as currently drafted, has the effect of diluting the "as soon as practicable" element. Stanwell considers that if it is reasonably practicable that information can be disseminated earlier than the stipulated two business days, then it should be, so as to minimise price sensitive information asymmetry. To this end, Stanwell has proposed that the words ", but within 2 business days of," as they appear in clause 2 be deleted.
21. The Applicants do not share the views expressed by Stanwell in relation to this issue. A requirement that information simply be disclosed "as soon as practicable" is meaningless if the additional portion of the clause does not follow. In the circumstances, the Applicants maintain their view that "within 2 business days" sets out an appropriate and clear deadline for them to publish the Maintenance Information in compliance with clause 2 of the Condition of Authorisation.