



HERBERT  
SMITH  
FREEHILLS

## Submission of the Applicants to the ACCC

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

25 October 2022



## 1 Background

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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**).

The Applicants have been provided with a copy of a submission from Energy Matrix Group Pty Limited (**EMG**) which the ACCC received in relation to the Applicants' Application (**EMG Submission**). The ACCC has invited the Applicants to provide a submission to the ACCC in response to the submission. The EMG Submission does not suggest the Application should not be granted or identify any public detriments that would result from the Application being granted, but rather, speaks to the Condition and re-authorisation period.

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

## 2 Submission in response to the EMG Submission

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The Applicants' response below addresses the following key themes raised by EMG, which can be broadly summarised as:

- certain developments in Western Australia indicate there is a relationship between LNG exports and domestic gas markets;
- removal of the condition set out at Attachment A to the existing authorisation granted by the ACCC on 2 March 2018 (**Condition**) could cause an information asymmetry;
- any reporting condition imposed should also apply to the Northern Territory; and
- the proposed term of authorisation.

### 2.1 Relationship between LNG exports and domestic gas markets

EMG submits that in the last 12 months a number of developments have been approved and agreements executed by the Western Australian Government which create a direct link between Western Australian domestic gas (**domgas**) markets and LNG exports.<sup>1</sup>

The Applicants reject that the Western Australian Government's recent approval of LNG exports as part of the Waitsia Gas Project Stage 2 has somehow altered the dynamic between international LNG and domestic gas markets. While the Waitsia Gas Project State 2 is the first Western Australia onshore project which will export LNG,<sup>2</sup> EMG's submission misunderstands that domgas producer agreements between the Western Australian State and LNG project proponents, including the Waitsia arrangements, have long been a feature of the Western Australian system under Western Australia's

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<sup>1</sup> EMG Submission, p 5.

<sup>2</sup> The first stage of the Waitsia Gas Project was completed in 2016 and connected two wells via 7km of flowline to the refurbished Xyris Production Facility, which had been in care and maintenance since 2010. During the first stage of the Waitsia Gas Project gas was only supplied to the Western Australian market.



Domestic Gas Reservation Policy.<sup>3</sup> Various longstanding domgas obligations exist among LNG producers under the Western Australia's Domestic Gas Reservation Policy including the Gorgon, North West Shelf, Pluto and Wheatstone Projects.

The proposed conduct will not have any direct impact on existing domgas supply arrangements and this will not change with the approval of further LNG and associated domgas developments in Western Australia. Nor will it alter the operations of any gas trading platform, given there is no asymmetry of information for any participant. This is discussed further below.

Further, as set out in the Application, only two of the Applicants (Chevron and Woodside) currently supply gas produced by their LNG Facilities in Western Australia to the domgas market. In each case, the infrastructure and facilities operated to produce gas for supply as domgas can be operated independently from the LNG Facilities.

## 2.2 Removal of the reporting condition will create an information asymmetry

EMG states that the timely provision of information in accordance with the Condition was instrumental for its management in respect of the recent one month planned maintenance of the Wheatstone gas plant.<sup>4</sup> EMG also states that because of the Condition, starting in October 2021, it was able to forward sell gas into the period of the planned April Wheatstone gas plant outage and to start accumulating "stored gas" to make up the production shortfall during the outage. The Applicants reject that the Condition itself delivered these outcomes, and submit that in the absence of the Condition EMG would have been able to achieve the same outcome. In particular:

- 1 EMG submits that relying solely on the Gas Bulletin Board disclosure would result in an outcome where the Applicants will be privy to shared maintenance planning information well in advance of that information becoming available to other market participants via the Gas Bulletin Board.<sup>5</sup> EMG also submits that the deletion of a condition equivalent to the Condition in any replacement authorisation will create an untenable information asymmetry between the wholesale gas markets and gas trading markets, which will damage these markets.<sup>6</sup>

The Applicants disagree with this submission. As set out in the Application, the Applicants must report any planned service work over the following 12-month period that is expected to have a material impact on the capacity of a gas production facility and must, as soon as practicable, report any material changes to this information as they arise. Information relevant to the facilities that may sell gas into spot and short duration markets (i.e. gas production facilities that supply domgas in Western Australia) is therefore available on the Gas Bulletin Board and provided at least 12-months in advance, such that the information asymmetry identified by EMG and associated 'damage' to gas trading markets does not occur. Using EMG's own example, EMG only had 6 months' notice of the planned Wheatstone shutdown and was successfully able to respond – it is unclear to the Applicants why any market participant would need greater than 12 months' notice of potential market outcomes to start planning a response in a spot market.

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<sup>3</sup> See: <https://www.wa.gov.au/government/publications/wa-domestic-gas-policy#the-wa-domestic-gas-policy>.

<sup>4</sup> EMG Submission, p. 6.

<sup>5</sup> EMG Submission, p. 6.

<sup>6</sup> EMG Submission, p. 8.



The information required to be published by the Condition relates to maintenance of LNG facilities which do not in fact supply domestically and merely serves to add an unnecessary administrative burden on the Applicants.

- 2 EMG submits that a vibrant spot, short term and firm gas trading market already operates in Western Australia and in support of this submission compares the volume of gas traded in the gasTrading Spot Market™ in Western Australia with the volume of gas traded in the Wallumbilla Hub and in the Moomba hub over time (see Figure 1).<sup>7</sup>

While the Applicants agree with EMG that there are other spot and short duration markets in addition to the AEMO market, as set out in the Application, in Western Australia the majority of domgas continues to be supplied under long-term contracts with only small volumes traded on spot and short duration markets in Western Australia. The Applicants also disagree that comparing the volume of gas traded in gas supply hubs servicing the east coast gas market, which has very different characteristics to the Western Australia domgas market, with gas traded in the gasTrading Spot Market™ in Western Australia is evidence of there being a vibrant spot, short term and firm gas trading market in Western Australia. The reality is that the vast majority of gas traded in Western Australia is done on a forward basis and the respective spot volumes make up a very small proportion of the overall market (i.e. ~1-3% of total volumes).

The Applicants reiterate their submissions in section 9 of the Application in relation to why the Condition should cease to apply to the requested re-authorisation. The Applicants note that the reference “*Western Australian domgas market is therefore already well informed on planned facility maintenance at LNG Facilities via the Gas Bulletin Board*” includes a typographical error and should refer to “*planned facility maintenance at domgas facilities via the Gas Bulletin Board*”.

### 2.3 Any reporting condition should also apply to the Northern Territory

EMG also submits that any condition to an authorisation of the proposed conduct should also be applied to the Northern Territory as to do otherwise would “*reinforce the apparent acceptance by regulators that anti-competitive behaviour is acceptable in the Northern Territory*”.<sup>8</sup>

This submission is entirely inaccurate and reflects a broader lack of understanding by EMG of the Existing Authorisation. As set out in the Existing Authorisation “*The purpose of this condition is to make publicly available "Maintenance Information" (as defined in paragraph 2) that Chevron, INPEX and/or Woodside (each a 'Disclosing Producer') disclose to another Disclosing Producer or Shell in the course of scheduling maintenance activities for LNG facilities in Western Australia and/or the Northern Territory pursuant to the authorisation granted by the Australian Competition and Consumer Commission on 2 March 2018 (Authorisation).*” The Condition does not apply only to Western Australian facilities.

### 2.4 Duration of a replacement authorisation

EMG submits that because markets are moving and changing quickly there is a prima facie case for a shorter authorisation but notes that this needs to balance with the transaction cost of requiring more regular applications.<sup>9</sup>

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<sup>7</sup> EMG Submission, pp. 4-5.

<sup>8</sup> EMG Submission, p. 6.

<sup>9</sup> EMG Submission, p. 8.



For the reasons set out at section 5.6 of the Application, the Applicants submit that the case for a shorter authorisation is not made out.

In addition, the Applicants reiterate their submission that the benefits associated with the proposed conduct are now greater than at the time of the Existing Authorisation was granted which supports the proposed conduct being re-authorised for a further period of 10 years.