



HERBERT
SMITH
FREEHILLS

Submission of the Applicants to the ACCC

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

27 January 2023



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**).

On 18 January 2023, the Applicants were provided with a copy of a submission from the Department of Jobs, Tourism, Science and Innovation (**JTSI**) on behalf of the Western Australian Government which the ACCC received in relation to the Applicants' Application (**JTSI Submission**). The ACCC has invited the Applicants to provide a submission to the ACCC in response to the JTSI Submission.

JTSI is not supportive of the Applicants' proposal to extend the Authorisation period from five years to 10 years, or the proposal to remove the condition to publish maintenance information. JTSI's reasoning is that circumstances may change over a 10 year period. However, there is no evidence provided to support its argument as detailed below and its arguments should not be accepted.

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

2 Submission in response to the JTSI Submission

In summary:

- in support of re-authorisation not being granted for a period of 10 years, JTSI submits that there is potential for there to be changes in the Western Australian domestic gas market in the next 10-years; and
- in support of the Condition continuing to be imposed, JTSI submits that there is potential for a transparent trading hub to eventuate during the re-authorisation period.

The Applicants' response below addresses each of these submissions.

2.1 Potential changes in the Western Australian domestic gas market

JTSI submits that the efficient operation of the Western Australian domestic gas market may be impacted by a number of potential changes in the next 10 years and lists a number of potential changes (see below). JTSI has not provided any evidence to justify these submissions, but the Applicants have addressed each of these in turn below.

No submissions are advanced by JTSI to explain why such changes provide a basis for re-authorisation to be granted for a period shorter than 10 years, or why the likely public benefits of re-authorisation will not outweigh the likely public harm in years five to 10 of the re-authorisation period. The Applicants submit that there is no evidence to support either finding.



JTSI identifies the following five potential market changes:

1 **The forecast of a tight market by the Australian Energy Market Operator in its 2022 WA Gas Statement of Opportunities, increasing the likelihood that market participants will need up-to-date information on the practical effects of optimisation of LNG and domestic gas market conditions.**

As set out in the Application and the Applicants' submission dated 16 December 2022, the Proposed Conduct will not have any impact on the production of gas for supply by any of the Applicants into the Western Australian and Northern Territory gas supply markets.

Further, any impact on the availability of domestic gas from a domestic gas facility in Western Australia will be reported under the Gas Services Information (GSI) Rules on the WA Gas Bulletin Board.

The potential market change does not provide a basis for re-authorisation to be granted for a period shorter than 10 years.

2 **Improved gas market transparency.**

Any improvement to gas market transparency would only serve to support the Applicants' submission, as increased transparency would undermine any potential theory of harm in relation to the re-authorised conduct.

The Applicants submit that improved gas market transparency therefore supports re-authorisation for a period of 10 years and removal of the Condition.

3 **Increased third party tolling of gas resources through emerging spare processing capacity.**

Tolling of gas involves a facility operator accepting a fee to process gas on behalf of a third party owner of gas. It does not involve any change to operations, i.e. the parties who would be subject to the Authorisation would be unchanged and would continue to operate the relevant LNG Facilities. Tolling contracts are also entered into on a long-term basis, i.e. there is no ability for parties to game a tolling contract around a short-term shutdown procedure. On that basis, it is difficult to see how this change (even if it were to eventuate) could impact market dynamics.

The Applicants therefore submit that this change will not impact the likely public benefits or public harm arising from the Proposed Conduct and does not provide a basis for re-authorisation to be granted for a period shorter than 10 years.

4 **Decarbonisation and greater penetration by renewables and hydrogen.**

Decarbonisation would only serve to reduce the significance to the local economy of hydrocarbon production and in that context would reduce any public detriment associated with the Authorisation. Additionally, it is not relevant to the length of the re-authorisation period (as major renewables and hydrogen developments are unlikely to alter the LNG supply chain in the next 10 years) or the Condition (given the reporting of maintenance of LNG production facilities is unlikely to impact renewables projects).

The Applicants therefore submit that this change will not impact the likely public benefits or public harm arising from the Proposed Conduct and does not provide a basis for re-authorisation to be granted for a period shorter than 10 years.



5 **Transportation of hydrogen through the existing gas transmission pipeline network (e.g. changing the caloric value of natural gas in the system).**

This change is not relevant to the length of the re-authorisation period (as major renewables and hydrogen developments are unlikely to alter the LNG supply chain in the next 10 years). In any event, the Authorisation relates to LNG production facilities, it does not relate to the transmission network.

The Applicants submit that this change will not impact the likely public benefits or public harm arising from the Proposed Conduct and does not provide a basis for re-authorisation to be granted for a period shorter than 10 years.

JTSI also notes the possibility of a transparent trading hub being developed and starting to operate in the next 10 years as a reason for re-authorisation being granted for a period shorter than 10 years. The Applicants reiterate their submission in response to potential change 1 identified above.

Consequently, the potential changes in the Western Australian domestic gas market raised by JTSI do not justify the Proposed Conduct being re-authorised for a period shorter than 10 years.

The Applicants reiterate their previous submissions on why re-authorisation should be granted for a period of 10 years.

2.2 The development of a transparent trading hub

JTSI submits:

- there is a possibility that transparent trading hubs could be developed and start operating in the next 10 years;
- that “[i]f a trading hub is developed within the next 10 years, there could be greater potential for LNG exporters to impact available supply and prices in the WA market”; and
- “[o]n the East Coast, the LNG production facilities must report their maintenance periods on their version of the Gas Bulletin Board (different to the WA GBB), so that gas buyers can monitor outage periods and plan their procurement or hedging around that.”

As set out in the Application, in Western Australia the majority of domestic gas continues to be supplied under long-term contracts with only small volumes traded on spot and short duration markets in Western Australia. The Applicants submit that the likelihood of a liquid and high volume gas trading hub or short term trading market operating in Western Australia is low.

Even if a transparent trading hub is developed in the next 10 years, 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.

Further, as set out in section 9 of the Application, justifying the imposition of a condition on the basis of a condition being imposed on LNG producers engaging in a structurally different market is erroneous. The Proposed Condition must have a direct impact on the market for the supply or acquisition of domestic gas in Western Australia or the Northern Territory to be justified and such an impact does not exist.

JTSI's statements: “The condition of the current authorisation is that should a transparent trading hub eventuate during the authorisation period, the LNG exporters would then be required to report the scheduled maintenance periods on the WA Gas Bulletin Board (WA GBB)” and “If a hub develops, it's important to maintain the condition that LNG production facilities would have to report their maintenance periods on the WA GBB” are factually



inaccurate. The Condition does not require LNG exporters to report scheduled maintenance periods relating to their LNG facilities on the WA Gas Bulletin Board and does not require them to do so in the event a trading hub is developed or starts operating in Western Australia.

The Applicants reiterate their previous submissions on why the Condition should cease to apply to the requested re-authorisation.