

**IN THE HIGH COURT OF AUSTRALIA
PERTH REGISTRY**

No. P 47 of 2013

BETWEEN:

**ELECTRICITY GENERATION
CORPORATION (ABN 58 673 830 106)
t/as VERVE ENERGY**

Appellant

and

**WOODSIDE ENERGY LTD
(ABN 63 005 482 986)**

First Respondent

**BP DEVELOPMENTS AUSTRALIA
PTY LTD
(ABN 54 081 102 856)**

Second Respondent

**CHEVRON AUSTRALIA PTY LTD
(ABN 29 086 197 757)**

Third Respondent

**BHP BILLITON PETROLEUM
(NORTH WEST SHELF) PTY LTD
(ABN 41 004 514 489)**

Fourth Respondent

**SHELL DEVELOPMENT (AUSTRALIA)
PTY LTD (ABN 14 009 663 576)**

Fifth Respondent

AND

No. P 48 of 2013

**WOODSIDE ENERGY LTD
(ABN 63 005 482 986)**

First Appellant

**BP DEVELOPMENTS AUSTRALIA
PTY LTD (ABN 54 081 102 856)**

Second Appellant

**CHEVRON AUSTRALIA PTY LTD
(ABN 29 086 197 757)**

Third Appellant

**BHP BILLITON PETROLEUM (NORTH
WEST SHELF) PTY LTD
(ABN 41 004 514 489)**

Fourth Appellant



Dated: 17 October 2013

Filed on behalf of the Respondents/Appellants by:

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**SHELL DEVELOPMENT (AUSTRALIA)
PTY LTD (ABN 14 009 663 576)**

Fifth Appellant

and

**ELECTRICITY GENERATION
CORPORATION (ABN 58 673 830 106)
t/as VERVE ENERGY**

Respondent

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**APPELLANTS' (IN P 48/2013) AND RESPONDENTS' (IN P 47/2013)
CHRONOLOGY**

PART I: CERTIFICATION

1. The appellants in P 48/2013 (who are the respondents in P 47/2013) (together **Sellers**) certify that this chronology is suitable for publication on the internet.

PART II: CHRONOLOGY

DATE	EVENT	REFERENCE
04.03.04	Sale and Purchase Agreement (GSA) between the Sellers and Electricity Generation Corporation trading as Verve Energy (Verve) (formerly known as Western Power corporation)	
03.06.08	A fire at Apache's Varanus Island facility caused a cessation of the production of natural gas at that facility and reduced the supply of natural gas to Western Australia by a significant proportion.	J[11], paragraph 3 of Agreed facts
03.06.08	Verve nominated for a quantity of gas equivalent to MDQ and SMDQ as the daily amount of gas it requires under the GSA for the week ending 10 June 2008. The Sellers' Representative, North West Shelf Gas Pty Ltd (NWSG) responded to Verve's nomination, initially by notifying Verve that the Sellers intend to make available the gas requested, and later by notifying of an intention to make MDQ available under the GSA and a further volume under the First Short Term Agreement (as defined below).	CA[10]
From 03.06.08	As a result of the explosion at Varanus Island production plant, Apache sought supply of gas from the Sellers and Japan Australia LNG (MIMI) Pty Ltd (MIMI) for various customers of Apache, including customers who required gas for electricity generation in regional Western Australia. As well, there were many other customers seeking to buy substantial quantities of gas from the defendants at prices well above the price payable by Verve for SMDQ. The aggregate quantities of gas sought were far in excess of those which the defendants could produce and supply, after	J[12], CA[13], CA[54]

	taking into account their existing firm supply commitments.	
04.06.08-30.06.08	The trial judge found that the Sellers determined that they were not able to supply SMDQ on 4 June 2008 or the remaining days in June 2008 after taking into account all relevant commercial, economic and operational matters.	J[77]
04.06.08	The Sellers and MIMI offered to buyers, including to Verve, short term gas supply agreements for the period between 4 June to 30 June 2008. The price for the gas was at a nominated price (June 2008 Price), which was market price and exceeded the price for SMDQ. Demand exceeded supply, and many customers were turned away.	J[13], J[76], CA[57]
04.06.08	<p>Verve's managers discussed the Sellers' offer and decided to accept the offer for a quantity equivalent to the quantity of SMDQ gas that it required.</p> <p>After discussion amongst Verve managers, Verve decided to contract to receive less than the amount of gas which would have been supplied as SMDQ (because Mr Waters, Verve's general manager of trading and fuel, only had authority to enter into contracts up to a certain price).</p> <p>At 6.05PM, Ms Clare (Verve) informed Mr De la Fuente (Sellers' Representative) that Verve "is prepared to accept gas on the basis offered but without prejudice to our rights" under cl.3.3 of the GSA.</p> <p>The Sellers, MIMI and Verve entered into a short term agreement, which was fully interruptible, for the period 8.00am on 4 June 2008 to 8.00 on 30 June 2008 (First Short Term Agreement)</p>	J[76], CA[57]
10.06.08	Verve gave notice to the Sellers and NWSG of a dispute under cl.21.1(b) of the GSA. Verve said it had "claims for damages" arising from the alleged breach, calculated by reference to the difference between the price payable for SMDQ gas and the price payable under the First Short Term Agreement, and the cost of alternative fuel.	
Around mid-June 2008	By mid-June 2008, it was well known (and there were press reports) that the Apache outage was likely to continue until at least the end of September 2008.	Para 134 of witness statement Alberto De la Fuente; para 86 of witness statement of Trevor Haliburton
20.06.08	NWSG invited tenders (including from Verve) for the purchase of gas under a further short term interruptible agreement for the period 30 June 2008 to 29 September 2008.	J[78]

20.06.08 (morning)	Mr De la Fuente (NWSG) telephoned Mr Tanner (Verve) and informed him of the tender process. Mr De la Fuente said that the Sellers could not supply SMDQ gas for that period.	J[78], Para 81 of witness statement of Jason Waters; paras 15-18 of statement of Frank Tanner
20.06.08	Mr Waters (Verve) telephoned Mr Rule (NWSG) and said that the tender process was putting Verve in a “risky position” and, “[i]f we don’t get the gas under the tender we would have to consider other avenues such as court proceedings”.	Paras 81, 82 of witness statement of Jason Waters
20.06.08 (midday)	Mr Tanner requested a copy of the tender package on behalf of Verve and received a copy that afternoon.	
24.06.08	Urgent board approval was sought and obtained for Verve to tender at a particular price.	Paras 91-94 of Statement of Jason Waters
24.06.08	After further consideration, urgent board approval was again sought and obtained for Verve to tender at a higher price.	Paras 95-96 of Statement of Jason Waters
Between 24.06.08 and 30.06.08	Verve’s tender was successful, and the Sellers, MIMI and Verve entered into a further short term agreement, which was fully interruptible, for the period 8.00am on 30 June 2008 to 8.00 on 30 September 2008 (Second Short Term Agreement). The Sellers and MIMI subsequently supplied gas to Verve under the Second Short Term Agreement resulting from the tender process. The price under the Second Short Term Agreement was the market price at the time.	J[15], J[78], CA[58]
30.06.08 to 30.09.08	The trial judge found that the Sellers genuinely determined that they were not able to supply SMDQ on each day during the period of the Second Short Term Agreement taking into account all relevant commercial, economic and operational matters.	J[79]
01.07.08	NWSG issued Tax Invoice VE1 on behalf of the Sellers and MIMI under the First Short Term Agreement for the period 4-29 June 2008.	
01.07.08	NWSG issued Tax Invoice WPRC52 on behalf of the Sellers under the GSA for the period 1-30 June 2008.	
04.08.08	NWSG issued Tax Invoice VE2 on behalf of the Sellers and MIMI under the Second Short Term Agreement for the	

	period 30 June 2008 to 31 July 2008.	
04.08.08	NWSG issued Tax Invoice WPRC53 on behalf of the Sellers under the GSA for the period 1-31 July 2008.	
01.09.08	NWSG issued Tax Invoice VE3 on behalf of the Sellers and MIMI under the Second Short Term Agreement for the period 1-31 August 2008.	
01.09.08	NWSG issued Tax Invoice WPRC54 on behalf of the Sellers under the GSA for the period 1-31 August 2008.	
7.09.08, 26.09.08, 27.09.08, 28.09.08, 29.09.08, 30.09.08	Verve reduced the quantity of gas it required pursuant to cl.9.4 or cl.9.7 of the GSA. Other than those dates, Verve continued to submit nominations to receive SMDQ under the GSA.	J[72], CA[59]
30.09.08	NWSG issued Tax Invoice VE4 on behalf of the Sellers and MIMI under the Second Short Term Agreement for the period 1-29 September 2008.	
01.10.08	NWSG issued Tax Invoice WPRC55 on behalf of the Sellers under the GSA for the period 1-30 September 2008.	
20.03.09	Verve filed Writ and Statement of Claim	
21.04.09	Verve filed Amended Statement of Claim, by which it included claims based on money had and received, duress, and unconscionability	
14.03.11	Verve informed the Court that it no longer pursued claims for failure of consideration and unconscionability.	
30.09.11	Le Miere J delivered judgment in <i>Electricity Generation Corporation t/as Verve Energy Ltd</i> [2011] WASC 268.	
20.02.13	The Court of Appeal delivered judgment in <i>Electricity Generation Corporation t/as Verve Energy v Woodside Energy Ltd</i> [2013] WASCA 36.	

Dated: 17 October 2013


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