

Apache blast leaves Burrup vulnerable

Jennifer Hewett and Michael Sainsbury | *June 07, 2008*

THE massive explosion at Apache Energy's Varanus Island facility highlights the relevance of the fragility of the single-input ammonia plant owned by Burrup Holdings.

The company -- which is in the midst of a \$500 million capital raising by way of initial public offering -- has been forced to bring a planned \$30 million plant shutdown forward after Apache said its gas supply might take months to come back on stream.

"Our specialist team of engineers, including assessment and recovery experts, have made an initial assessment that partial restoration of gas supply is likely to take a couple of months," Apache chief Tim Wall said.

The incident also highlighted the importance of force majeure provisions contained in the gas supply agreement between Burrup and the Harriet joint venture.

This week's supply crisis aside, doubts still surround the future of the 20-year gas contract that Burrup Holdings has for the critical single input into its profitable West Australian ammonia plant.

Despite signing the long-term contract for liquid natural gas with the Harriet Syndicate of gas producers -- Apache Corp, Tap Oil and Kufpec -- which pumps the energy supply from wells under the sea, it remains extremely unclear whether the supply will last.

According to the prospectus, the Harriet JV is required to have uncommitted proven reserves of gas available for supply to Burrup Fertilisers for the lesser of 20 years and the remaining term of the supply period. However, the most recent gas reserves report indicates that the reserves are sufficient for six to seven years.

All three Harriet JV partners had issued force majeure notices to Burrup with respect to their future long-term ability to meet their gas supply obligations.

Apache and Kufpec have since withdrawn their notices but Tap's notice remains in force.

However, according to Burrup, the Harriet JV has so far not responded to Burrup's demands to identify the sources of the gas from which they intend to supply Burrup over the term of 20 years in a manner that is satisfactory to Burrup.

The prospectus states that Apache Northwest has agreed with Burrup Fertilisers under a side letter to vary the Harriet GSPA so that it will supply the defaulting sellers' percentage interest of gas.

However, the prospectus does not make it clear whether Apache's obligations under the side letter apply in a force majeure situation.

Standard practice in oil and gas supply agreements seems to indicate that in the event that the force majeure circumstances applied, TAP and/or the other Harriet JV partners would not be defaulting sellers.

The prospectus for Burrup notes that on November 23, 2006, Tap Oil, one of three members of the Harriet syndicate, issued a force majeure notice to Burrup in respect to its long-term ability to meet its gas supply obligations under the Harriet agreement.

In an interview with The Australian, entrepreneur Pankaj Oswal said that there were no problems with the gas supply.

"Right now, as we stand, they have signed a gas contract," he said.

"There is a contract and the GSA has stood on its four legs given that they issued a force majeure and had to withdraw it," he said.

"That showed the strength of the GSA and how far you can go with the GSA."