Public Utilities Clause – How will our client’s policies respond in the face of the WA outages?

By Dr Allan Manning of the LMI Group

Background

As you would have heard, Western Australia is facing several months of severe gas shortages after a massive pipeline explosion at Apache Energy’s Varanus Island plant in the northwest of the state on 3 June 2008.

It has been confirmed that the loss is at the premises of the gas supplier and that the damage occurred on land. Both of these factors are important when considering policy response.

Client Preparedness

Based on the experience of the Longford Gas Crisis, it is rare to find a client that has anything other than minimal alternative standby units under their business continuity plan. Insurance is therefore treated as the most cost effective solution for many businesses.

Policy Response

The level of cover afforded by the Public Utilities cover varies significantly between policies.

AIMs Wording (Austbroker and IBNA Business Policy)

Under the Extensions of cover under the AIMS wordings negotiated for members, the insurer will pay for loss of income that results from an interruption of the insured’s business that is caused by insured damage to land based property located in Australia that belongs to or is under the control of any company or authority producing, supplying or delivering the electricity, gas, water, sewage or communication services, used by the insured.

As such business interruption losses resulting from a loss of gas to the Insured’s premises will be insured.

Industrial Special Risks Wordings:

Unlike most business package policies, the cover for Public Utilities does not extend to cover remote premises in the standard wordings. Cover is only afforded if the electricity or gas supplier is located at or adjacent to the Insured premises. Further there is no cover for telecommunications or sewage works.

The word premises is not defined in either the Mark IV or MKV wording and if we take the meaning of premises to be land and or building or a parcel of land, and if the Public Supplier undertaking has been granted exclusive and/or partial possession of the land on which supply lines and the like are installed and traverse then could it be argued that this land is land based premises?

During the Longford Crisis, there was some confusion regarding the term Public Authority, however, the word public does not mean the ownership of the supply but the fact that it supplies a utility to the public.
As reported with the Varanus Island loss the impact of loss of supply is immediate “brick makers Midland Brick and Austral shutting their kilns the week of the damage” most policies include a 48Hr or 72 hrs deductible.

Also consider the endorsement Contractual Fines and Penalties when addressing consequential loss exposures for Public Utilities

MKV:
We refer to David Goodlad’s Modified MK V Wording (recommended you use the modified MKV wording as a minimum base by all IAA AR’s when placing MKV cover)

9. **EXTENT OF COVER (modified mkv wording)**

9.1 Provided that the Insured has paid or agreed to pay the premium stated in the Schedule, the Insurer will indemnify the Insured in accordance with the provisions of Clause 10 (Basis of Settlement) against loss resulting from the interruption of or interference with the Business, provided the interruption or interference is caused by Damage occurring during the Period of Insurance to:

9.1.1 any building or any other property or any part thereof used by the Insured at the Premises for the purposes of the Business;

9.1.2 any property belonging to the Insured or for Damage to which the Insured is responsible, while such property is at any storage premises within Australia or at any situation within Australia where the Insured has any work or process carried out by others;

9.1.3 any electricity sub-station, gas or water pumping station of a public supply undertaking which is situated on or immediately adjacent to the Premises;

As you will see from this Clause 9.1.3 of the cover “relates to sub stations located on or immediately adjacent to the Insured’s premises the following extends cover to premises which are remote from the insured’s premises.

**REMOTE PREMISES OF PUBLIC UTILITIES**

Extent of Cover Clause 9.1.3 is amended to read:

9.1.3 any generating station or sub-station of the public electric supply undertaking, any land-based premises of the public gas supply undertaking or of any natural gas producer linked directly therewith or any waterworks or pumping station of the public water supply undertaking; from which undertakings the Insured obtains electricity, gas or water;

We refer to above and recommend that word premises be replaced with property.
Notwithstanding the aforementioned the following broadens cover to include supply lines and communication links and may be more palatable to underwriters with or without clause 9.1.3.5.

**PUBLIC UTILITIES AND TELECOMMUNICATIONS**

Extent of Cover Clause 9.1.3 is amended to read:

9.1.3.1 any generating station, sub-station or supply line of the public electric supply undertaking from which the Insured obtains electricity,

9.1.3.2 any land-based premises of the public gas supply undertaking, or of any natural gas producer linked directly therewith, from which the Insured obtains gas, including Damage to any overland, subterranean or undersea pipe and, notwithstanding Property Exclusion 5.15, any offshore gas or oil production rig,

9.1.3.3 any waterworks, pumping station and, notwithstanding Property Exclusion 5.9.1, any supply pipe or channel, of the public water supply undertaking from which the Insured obtains water,

9.1.3.4 any land-based premises, pipeline or ocean outfall of the public sewerage undertaking linked to premises used by the Insured,

9.1.3.5 any land-based premises, any overland, subterranean underwater or undersea cable or transmission line or, notwithstanding Property Exclusion 5.4.2, any satellite, forming part of a telephone, telex, facsimile or other telecommunication network used by the Insured;
The last alternative under the MKV extends the aforementioned to note and allow that the following policy exclusions do not apply to the Public Utilities and Telecommunications endorsement i.e:

6.2.2 erosion, subsidence, earth movement or collapse resulting therefrom;

6.2.3 Flood; or

6.2.4 the action of water from the sea, tidal wave or high water;

PUBLIC UTILITIES AND TELECOMMUNICATIONS (B)

Extent of Cover Clause 9.1.3 is amended to read:

9.1.3.1 any generating station, sub-station or supply line of the public electric supply undertaking from which the Insured obtains electricity,

9.1.3.2 any land-based premises of the public gas supply undertaking, or of any natural gas producer linked directly therewith, from which the Insured obtains gas, including Damage to any overland, subterranean or undersea pipe and, notwithstanding Property Exclusion 5.15, any offshore gas or oil production rig,

9.1.3.3 any waterworks, pumping station and, notwithstanding Property Exclusion 5.9.1, any supply pipe or channel, of the public water supply undertaking from which the Insured obtains water,

9.1.3.4 any land-based premises, pipeline or ocean outfall of the public sewerage undertaking linked to premises used by the Insured,

9.1.3.5 any land-based premises, any overland, subterranean underwater or undersea cable or transmission line or, notwithstanding Property Exclusion 5.4.2, any satellite, forming part of a telephone, telex, facsimile or other telecommunication network used by the Insured;

The provisions of Excluded Circumstances 6.2.2, 6.2.3 and 6.2.4 do not apply to this extension.

CGU AUSTBROKER MKV AGREED WORDING:
Remote Premises of Public Utilities endorsement extends cover to Land Based utilities limited to 5% of declared value or 100,000 whichever is the lesser (note the endorsement is noted in the schedule but not the wording proper)

QBE AUSTBROKER MKV AGREED WORDING
Public Utilities extension extends cover to the facility but specifically excludes;
transmission cables, subterranean cables, undersea cables or cable supports or towers
gas pipeline, wellhead, drilling or production rig
water supply excluding dam or catchment area facilities

Notes that the extension is subject to a sub-limit noted in the schedule so must be included in drafting sheets quote

VERO AUSTBROKER MKV AGREED WORDING
Public Utilities extension extends cover to the facility but specifically excludes:
- transmission cables, subterranean cables, undersea cables or cable supports or towers
- gas pipeline, wellhead, drilling or production rig
- water supply excluding dam or catchment area facilities

(The transmission and distribution exclusion provides a writeback but it is ambiguous)

**Zurich Austbroker MKV Agreed Wording**
Public Utilities sub- limited to 5% of declared value or 100,000 whichever is the lesser (no endorsement is noted the wording proper)

**Allianz Austbroker MKV Agreed Wording**
No endorsement is noted however clause 9.1.3 extends to cover any generating station or substation of the public electric supply undertaking, any land based premises of the public gas supply undertaking or of any natural gas producer linked directly therewith or any waterworks or pumping station of the public water supply undertaking; from which undertakings the Insured obtains electricity, gas or water
**INDUSTRIAL SPECIAL RISKS WORDINGS:**

**MKIV:**

**THE EXTENT OF COVER**

**PUBLIC UTILITIES EXTENSION**

Any loss resulting from interruption of or interference with the Business in consequence of damage to property, caused by a peril damage as a result of which is insured hereunder, at any electricity station or sub-station, gas works or water works of a public supply undertaking which is situated on or immediately adjacent to the Premises shall be deemed to be loss resulting from Damage to property used by the Insured at the Premises.

**PUBLIC UTILITIES MEMORANDUM EXTENDED**

Any loss resulting from interruption of or interference with the Business directly or indirectly in consequence of damage anywhere in Australia to any communication link, subterranean or undersea pipe or cable and/or electric power station or substation, gas works, waterworks or supply line of the public supply undertaking which the insured obtains electric current, gas or water shall be deemed to be loss resulting from damage to property used by the insured at the premises. It shall not be a condition precedent to liability under this endorsement that payment shall be made or liability admitted under section 1 of the policy.

**REMOTE PREMISES OF PUBLIC UTILITIES**

The Memorandum headed Public Utilities Extension is amended to read

Any loss resulting from interruption of or interference with the Business directly or indirectly in consequence of damage anywhere in Australia to any generating station or sub-station of the public electricity, supply undertaking any land-based premises of the public gas supply undertaking or any natural gas producer linked directly therewith or any waterworks or pumping station of the public water supply undertaking from which undertakings the Insured obtains electricity, gas or water, shall be deemed to be loss resulting from Damage to property used by the Insured at the Premises.
VERO AUSTBROKER MKIV AGREED WORDING
Remote Premises of Public Utilities endorsement extends cover to Land Based utilities and the Transmission and Distribution exclusion specifically notes that the exclusion does not apply to the Public utilities extension.
No sub limit noted in schedule but provision shown for same.

CGU AUSTBROKER MKIV AGREED WORDING
Remote Premises of Public Utilities endorsement extends cover to Land Based utilities limited to 5% of declared value or 100,000 whichever is the lesser.

QBE AUSTBROKER MKIV AGREED WORDING
Public Utilities extension extends cover to the facility but specifically excludes;
- transmission cables, subterranean cables, undersea cables or cable supports or towers
- gas pipeline, wellhead, drilling or production rig
- water supply excluding dam or catchment area facilities

Notes that the extension is subject to the sub-limit noted in the schedule.

ZURICH AUSTBROKER MKIV AGREED WORDING
Remote Premises of public Utilities endorsement extends cover to Land Based utilities limited to 5% of declared value or 100,000 whichever is the lesser.

ALLIANZ AUSTBROKER MKIV AGREED WORDING
Remote Premises of public Utilities endorsement extends cover to Land Based utilities.
Apache Energy assessing cost of explosion at off-shore plant

A fire at Apache Energy's off-shore gas plant on Varanus Island off Karratha. (Apache Energy: User supplied)

Apache Energy says it is too soon to assess the cost of an explosion which has forced the company to close down its off-shore gas plant on Varanus Island.

The company says one of the plant's pipelines ruptured yesterday causing a fire and explosion.

No one was injured in the incident, but about 160 employees were flown to nearby Barrow Island.

The company supplies some of the state's biggest miners including Rio Tinto and Alcoa, and its operations account for 30 per cent of Western Australia's gas demand.

Apache's Managing Director, Tim Wall, says he does not know how long it will take to repair the damage.

"Well it will be finding the equipment first and then once you find the pipe you can then get it repaired fairly quickly," he said.

"But if we've got to get in and make sure there is not other damage, it's just going to take an engineering team to go in and look not only at the pipelines but the exterior of the facility itself.

"We've had people on the construction site on point waiting to come out, we've had engineers and such waiting to go out to the facility and so as soon as we can get to the site and make the evaluation we will have people to repair it."

Blast rocks Varanus Island plant

By Upstream staff

An explosion has rocked Apache Energy's Varanus Island gas plant, off Western Australia, sparking a fire and affecting gas export pipelines to the Australian mainland, the US company said.
Apache said the blast occurred at about 0540 GMT. No one was hurt, all personnel have been accounted for and evacuation procedures are under way.

It is believed that gas supplies will be affected for a number of days.

Apache Energy managing director Tim Wall said in a statement: "We are doing everything we can to ensure the safety of personnel and minimise the impact of the incident.

"We have notified government authorities and also gas customers who will be affected by the disruption in gas supply.

"Further information will be made available as we appraise the situation."

Woodside Petroleum said it would help Apache deal with the gas shortfall.

"Woodside is doing what it can to assist Apache deal with the incident," spokesman Roger Martin said. "We will do what we can to help cover some of the shortfall for pipelined gas supplies in Western Australia."

Varanus Island supplies 30% to 40% of Western Australia state's domestic gas supply. The plant is in the North West Shelf area of the state.

Apache Energy is a unit of US producer Apache Corporation.

**WA gas supply cut 30pc by blast at Varanus Island**

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Elizabeth Gosch | June 07, 2008

**WESTERN Australia is facing several months of severe gas shortages after Tuesday's massive pipeline explosion at Apache Energy's Varanus Island plant in the northwest of the state.**
The fire wiped out more than 30 per cent of the state's supplies and Premier Alan Carpenter has called a crisis meeting of ministers, industry representatives and experts tomorrow to discuss solutions to the gas shortage, which is affecting the state's booming resources-driven economy.

The explosion wiped out Apache's main gas export line, which carries gas 100km from the island to the mainland. It shut down gas production on the island, which accounts for about 35 per cent of the state's supplies.

Major mining and industry partners of Apache Energy, including BHP Billiton, Rio Tinto and Burrup Fertilisers, are already feeling the pinch as their gas supplies are cut.

The crisis has also begun to hit the construction and building sectors with brick makers Midland Brick and Austral shutting their kilns this week.

Energy Minister Fran Logan said during a visit to Varanus Island: "There's no doubt this will have an impact on the WA economy. I was hoping it wasn't going to be as bad as what we have seen here today."

Apache managing director Tim Wall confirmed it would be at least three months before the plant was operational, and even then it would only be producing gas through its John Brooks gas train which accounts for just over half the gas production.

"It's pretty easy to say there is a lot of damage here and we are looking at alternatives to try to get gas to market as soon as possible but it will be at least several months before we have partial sales," Mr Wall said.

He said Apache would probably have to conduct a worldwide search to locate the valves necessary to repair its pipeline.

During a tour of the explosion site yesterday, Apache energy field superintendent Ross Paton said he initially thought Tuesday's explosion was a helicopter crash. "Once I got outside I knew straight away it was a gas fire by the colour," he said.

He said all staff and workers were mustered to a safety point within 20 minutes without injury. "Not one person received a scratch on them," he said.

Three separate investigations are under way on the island, including one by Apache Energy, an independent inquiry involving fire experts and forensic scientists flown in from Singapore, and a separate investigation by the National Offshore Petroleum Safety Authority.

Mr Wall said the investigations were likely to be completed midway through next week and workers would then begin clearing the site in preparation for repairs and rebuilding.

He said the section of pipeline that initially ruptured and exploded would be removed and sent for forensic testing.

"It's going to be something to do with the materials in that pipeline that caused it," Mr Wall said
Carpenter says lenders will be flexible with WA workers
17 June 2008 | Content provided to you by AAP.

PERTH, June 16 AAP - Workers hit by the WA gas shortage will receive some relief after banks and credit providers gave assurances they would be flexible with those unable to meet their repayments, the WA government says.

Premier Alan Carpenter today said the government had negotiated with the institutions on behalf of Unions WA, following the June 3 explosion and fire at the Varanus Island gas plant in the state's north.

WA lost one third of its domestic gas supply and the shortage has resulted in thousands of people being either laid off or asked to take their annual leave until supplies are resumed.

The WA Chamber of Commerce and Industry (CCI) has estimated 14 per cent of 83 companies it recently surveyed may shut down or will be shutting down soon.

Mr Carpenter today sought to reassure West Australians that the crisis would be short-lived, saying the Varanus Island plant was expected to begin partial operations within two months.

He said in the meantime, the state's householders should continue to conserve their energy consumption, while laid-off workers should expect to regain full employment as the situation improved.

"This is a temporary situation," Mr Carpenter told reporters.

"It's a matter of how quickly we can get out of this situation, so credit providers and banks know that their customers are going to be able to access full-time employment once again."

Prime Minister Kevin Rudd said today he would do what he could to help WA cope with the shortages.

He backed the WA government's response to the crisis and said the federal government was involved in the WA government's gas supply disruption recovery committee.

"(We have) taken steps to help find work for anyone who lost their job as a result of the explosion," Mr Rudd told parliament.

"The government will remain very much in close contact with the government of West Australia to examine further any other areas where the Australian government can support WA during what is a very difficult time."

Mr Rudd urged large commercial users to do "everything possible" to minimise their gas consumption, to help protect retail users.

"It does appear that the (Apache) facility will be out of action for some weeks and possibly some months," he said.

WA Opposition Leader Troy Buswell said today he would write to the Australian Competition and Consumer Commission (ACCC), calling for it to closely monitor gas and diesel prices in WA to prevent profiteering.

But Mr Carpenter said there had been no profiteering and that the use of diesel to replace gas would always be up to 10 times the cost.