

## Australia Pacific LNG Pty Ltd & Ors: Application for Re-authorisation of A91516 and A91517

### RESPONSE TO ORIGIN SUBMISSION

On 24 February 2021, Australia Pacific LNG Pty Limited, QCLNG Operating Company Pty Ltd and GLNG Operations Pty Ltd (together, the **Applicants**) lodged an application with the Australian Competition and Consumer Commission (**ACCC**) for reauthorisation of the conduct the subject of applications A91516 and A91517 (**Authorisation**). The Application for reauthorisation departed from the previous Authorisation granted by the ACCC in 2016 in one respect, being that the Applicants seek an amendment to the reporting condition to the Authorisation (**Condition**), namely, that the Condition be replaced by reporting pursuant to the Gas Transparency Measures under the National Gas Law (**GTM**) at the time those measures commence.

On 23 March 2021, Origin lodged a brief submission (**Submission**) in response to the Application supporting the continuation of the authorised conduct, but noted that it was *"imperative that a key aspect"* of the Condition did not change. Origin stated that while the GTM will allow for the reporting of useful information on a more granular basis, medium term capacity outlooks would only be provided for 12 months ahead. As the current Condition does not include any time frame for reporting, Origin submits that maintaining the principle of open ended reporting is "crucial" in assisting market participants manage their own portfolios.

This submission sets out the Applicants' response to the Submission.

#### Key points in response

1. ***Dual reporting regimes would create inefficiency and duplication for negligible benefit***

The Submission infers that the Applicants should be the subject of two forms of reporting:

- (a) Maintenance Information scheduled within a 12 month window reported by the Applicants subject to the GTM, as will be required by changes to the National Gas Law; and
- (b) Maintenance Information scheduled beyond the 12 month window reported by the Applicants according to a condition in similar form to the current Condition.

The requirement for two forms of reporting carries a risk of disparity between the information sets, particularly where the GTM are continuously updated while longer term maintenance planning may be subject to ad hoc amendment, as discussed further below. Any time there is duplicative reporting (that is, reporting of similar but not the same information under two or more differing reporting regimes), there is a chance of inconsistency and for misunderstandings to arise. This risk is heightened where:

- (a) the reporting would be required in two separate areas of the Gas Bulletin Board (**GBB**) rather than in one single consolidated location as under the GTM; and
- (b) where reporting under the Condition permits market participants to draw their own and potentially different conclusions about the capacity of the Applicants, compared to the definitive measures provided for under the GTM.

The imposition of two methods of reporting is inefficient, may result in market confusion and places a reporting burden on the Applicants which is not warranted where the benefit to be derived from disjunctive reporting has not been articulated by Origin or any other party.

2. ***The Submission does not explain why reporting of capacity beyond 12 months is "crucial"***

Origin has not provided any information to substantiate this assertion such as an explanation of why knowledge of Applicants' medium term capacity outlook beyond 12 months is a crucial input to the management of Origin's own portfolio or to what degree, and how, Origin relies on longer term capacity forecasting by the Applicants. This last point is important because it is clear that information posted to the GBB by the Applicants during the period of Authorisation can and does change over time as it requires updating.

There are many reasons why changes occur, from the availability of resources (operating crew, contractors, lead time for critical equipment etc.), medium term operations performance, production and shipping related modifications. These matters become more certain as shut down planning is developed, hence needing adjustment over the period. Maintenance information which may be posted to the GBB significantly in advance of the activity is therefore inherently changeable. The Applicants expect that reporting under the GTM will be consistently more accurate, given the 12 month time frame and the requirement for continuous reporting.

Accordingly, the ACCC ought not accept at face value Origin's assertion about the critical nature of such information absent any explanation of:

- (a) how Origin uses that information in its operation; and
- (b) why any disparity in information between the Applicants and the rest of the market would not be resolved by the requirement that the Applicants provide more accurate and granular information continuously over a forward looking 12 month period.

3. ***Similar concerns have not been raised by any other market participants***

Other than the Submission, the ACCC has not received submissions from other gas retailers on this particular matter or that raise any other concerns.

If long term capacity reporting was a crucial input in assisting gas industry participants to manage their own portfolios, the Applicants would expect the ACCC to have received similar submissions from other market participants, such as those entities and organisations that provided submissions in response to the Applicants' first authorisation application in late 2015 prior to the release of the draft decision.

In the absence of such submissions, the ACCC ought not accept that medium term capacity reporting over 12 months is inadequate for the market as a whole.

4. ***The Applicants remain committed to public reporting for the period of re-authorisation***

In 2015, Origin's submission of 16 December 2015 stated that *"the need for the LNG facilities to discuss maintenance schedules amongst themselves so as to avoid concurrent shutdowns could be negated through the public reporting of any planned maintenance. This aligns with the Australian Energy Market Commission's (AEMC) recent recommendation that LNG processing facilities should be required to report their facility's short and medium-term capacity outlook and material intra-day changes in capacity"*.

This is now what the Applicants are suggesting take place. In this respect, the Applicants and Origin are in agreement.

The Authorisation granted in 2016 was conditional on public reporting of planned maintenance on the GBB and the Applicants have duly reported under that condition for the period of authorisation.

During the requested period of re-authorisation, the Applicants propose to continue to post Maintenance Information to the GBB as required by the current condition up to and until the commencement of the GTM. Then, at the commencement of the GTM the Applicants propose

to report publicly on the broader and more detailed categories of information required by those measures. This means that if the re-authorisation is granted on the terms sought, the Applicants will be subject to stringent public reporting obligations throughout the period of re-authorisation, either under the Condition or, post introduction of the GTM, under the GTM.

The Applicants maintain that public reporting under the GTM will continue to provide the market with the information it seeks in the most transparent, workable and reliable manner.

### **Further observations**

If, in response to these concerns raised by Origin, the ACCC is minded to consider the imposition of a Condition that requires reporting in addition to what is required under the GTM, some careful thought should be given to the test for authorisation and its requirements.

The Applicants note that if a net public benefit is achieved by reporting pursuant to the GTM, there is no legal principle that requires a remedy to provide *increased* net public benefits, particularly where that additional reporting would place an administrative burden on the Applicants for negligible benefit for market participants.