

6 September 2023

Australian Energy Regulator  
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By Email: [AERgasreform@aer.gov.au](mailto:AERgasreform@aer.gov.au)

Dear Sir/Madam

## **AER Draft Pipeline Information Disclosure Guidelines**

We refer to consultation on the draft pipeline information disclosure guidelines dated July 2023 (**Draft Guidelines**) and welcome the opportunity to provide feedback. Epic Energy appreciates the AER's commitment to gathering stakeholder input on this complex and important topic.

### **1. Financial Statements**

The Draft Guidelines provide detail with respect to the provision of financial information and historical demand information as prescribed by Rule 101D of the National Gas Rules (**NGR**). In particular, the Draft Guidelines set out the way service providers must publish that information and prescribes it to be via completion of the 'Part 10 financial reporting template' (**FRT**).

#### *Initial Observations on the FRT*

Epic Energy identified a number of errors within the FRT, including calculation errors, which it has relayed to the Australian Pipelines and Gas Association (APGA). We note these errors were identified in APGA's submission dated 25 August 2023 and accordingly, we do not repeat them here. We would however, like to reiterate support for their correction and understand the AER has already committed to address those issues.

#### *Specified Pipeline Services*

In paragraph 2.2 of the Draft Guidelines particular separate pipeline services are specified. These specified services are used in several places for example in reporting revenues and costs (via tables 2.4.1 and 2.5.1 of the FRT). Specifying that separate pipeline services must be reported on in this context creates challenges because it does not necessarily reflect the way pipeline services are sold. Epic Energy's view is that there must be some flexibility included in the published version of the Draft Guidelines to accommodate a situation where specified pipeline services are grouped together. That is, there must be flexibility to properly reflect commercial contracting reality.

In Epic Energy's case, some of our pipeline services are typically grouped together, for example as 'transportation services' or 'storage services'. Epic Energy groups 'park services'



with 'loan services' to provide a 'storage service'. Separating out the revenues and costs of a storage service into the separate items for 'park' and 'loan' could only be done through an allocation, and we do not believe it would be helpful to a user of the MAPS because typically they prefer the 'storage service' that Epic Energy offers because it affords more commercial flexibility.

#### *Allocation of costs and revenues to Pipeline Services*

Epic Energy appreciates that the Draft Guidelines set out the principles, methodology and arrangements service providers must adopt to determine the allocation of costs and revenues to a pipeline and to each pipeline service (including so that it can complete the Statement of revenues and expenses in the FRT). Further, Epic Energy understands that service providers are responsible for developing detailed principles and policies for attributing costs (refer Rule 103(4) NGR) and revenues to a pipeline and to a pipeline service.

Nevertheless, Epic Energy wishes to point out the challenges that complying with the above will bring and asks that the final version of the Draft Guidelines provide some flexibility and/or discretion when assessing compliance with the NGR and the final version of the Draft Guidelines to accommodate the matters set out below.

Gas pipelines are constructed to deliver a suite of services over time which are broadly categorised as either transportation services (firm and non-firm) or storage services. Both of which are driven by the length, diameter and pressure of the pipeline. The quantity of available transportation and storage is derived from many factors including the line pack capacity of the pipeline and the delivery point pressure of the pipeline's users. The mix of services between transportation and storage changes over time because of the changing operations of the pipeline and the contracted services including delivery pressure, maximum daily delivery quantities and maximum hourly delivery quantities.

Critically, the suite of pipeline services are provided using the entire pipeline system which is a complex system because of the interdependencies outlined above. The majority of, if not all, costs are properly allocated as shared costs for which the Draft Guidelines do not have an available allocator. This leaves pipeline operators needing to create allocation principles that will be arbitrary and are unlikely to provide meaningful information to users. The financial reporting template further requires percentage values to be input to allocate asset value to pipeline services.

While Epic Energy will act in accordance with the NGR and the Draft Guidelines, we consider that flexibility and discretion should be included in the Draft Guidelines to accommodate the challenges we have raised above. The AER should consider whether it is possible for a service provider to meet the Access Information Standard in respect of the template and guidelines.

#### *Recovered Capital Values*

The Draft Guidelines require service providers to publish recovered capital values that are consistent with the asset valuation objective for each non-scheme pipeline. Unless inconsistent with the asset valuation objective, the Draft Guidelines mandate use of the recovered capital method set out in NGR 113Z(5)(b).

Epic Energy understands the Draft Guidelines would require calculation of the asset value in accordance with the recovered capital method as set out in Rule 113Z(5)(b). However, where this produces an outcome that is inconsistent with the asset valuation objective then a service provider would have to show how it is inconsistent and then could use an alternative method,



so long as that alternative method is consistent with the asset valuation objective (noting the service provider would have to demonstrate and provide the information set out at page 24 of the Draft Guidelines).

In its previously published basis of preparation document (available on its website), Epic Energy identified the methodology used to calculate the asset value for the MAPS. Its preliminary view is that this method will continue to provide a result which is consistent with the asset valuation objective, in contradistinction to a calculation based on the recovered capital method, which we consider (on our preliminary view) would produce an outcome inconsistent with the asset valuation objective.

We anticipate that we would continue to report in a similar manner as under Part 23, and that the guidelines and FRT should clearly accommodate this.

We note that there is ambiguity as to whether a previously calculated, disclosed and reviewed valuation under Part 23 could satisfy the requirements of the Guidelines. For example, Epic Energy has applied gearing ratios from the AER's rate of return instrument but it could be possible to estimate a pipeline gearing ratio for some periods. It would be preferable that where a service provider has published information under Part 23 and it has met the assurance requirements under Part 23, that the Guidelines explicitly 'grandfather' this.

## **2. Actual Prices Payable Information**

The Draft Guidelines specify that if a pipeline service is procured under an access contract on non-price terms that are not the same or substantially the same as the standing terms, the service provider must specify those non-price terms.

In Epic Energy's view, those requirements go beyond what is specified in the NGR. In particular, Rule 101E(h) states that:

*"whether the pipeline service is provided on the same or substantially the same non-price terms as those set out in the standing terms published for the pipeline under rule 101C(1)(a);"*

This sub-rule is drafted narrowly and on its face requires a simple 'yes' or 'no' response for each disclosable contract. It does not require detail on non-price terms.

Satisfying the more onerous requirements in the Draft Guidelines raises several issues for service providers such as Epic Energy, as set out below.

### **(a) Potential breach of confidentiality provisions**

Epic Energy's Gas Transportation Agreements typically contain provisions around confidentiality which are subject to an exemption when compliance with law is required. The circumstances imposed by the Draft Guidelines could mean that Epic Energy is exposed because it would be breaching the confidentiality obligations in the GTA to meet the requirements of the Draft Guidelines, which may not necessarily meet the definition of 'law'.

### **(b) Potential for misleading construction of contractual provisions**

Contractual clauses should not be read in isolation and the disclosure of a provision concerning a non-standard term, without the wider context or negotiation background, has the potential for an inaccurate construction of the relevant clauses and its effect on the eventual contracted price.



There are a variety of contractual clauses which have a direct impact on pricing, as they are consequential to the commercialisation of the service. However, non-price terms are generally tailored for individual customers and can relate to matters such as corporate structure of the customer, credit rating, the customer's intended use of the service or often the drafting preferences of various legal advisors.

(c) Administrative Burden

Provisions on non-price terms can be numerous and the disclosure of these clauses would impose a significant administrative burden on service providers with very little benefit to a potential customer. Due to the number and length of such provisions a potential customer might spend considerable time reviewing them, without full context and information on relevant commercial negotiations, as such they would not provide any meaningful insight to inform their own negotiation strategy.

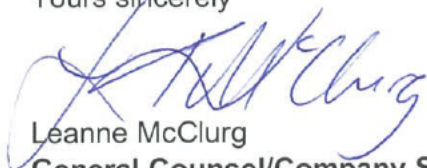
Provisions of summaries of such clauses would not be acceptable as this could create legal or other interpretation issues and result in incorrect summaries being provided.

### 3. Conclusion

Epic Energy appreciates the opportunity to provide feedback. We would be pleased to meet with you to discuss these matters in more detail, should this be helpful.

If you wish to contact us, please contact Jordan Dodd [REDACTED] in the first instance.

Yours sincerely



Leanne McClurg  
**General Counsel/Company Secretary**  
**Epic Energy Group**