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Lochard Energy submission – Part 18A price reporting guidelines and actual prices payable template

Lochard Energy appreciates the opportunity to provide feedback on the draft pipeline information disclosure guidelines published by the Australian Energy Regulator (**AER**) on 26 July 2023 (**Guidelines**).

As the owner and operator of the Iona Underground Gas Storage Facility in Port Campbell, Victoria (**Iona Facility**), our comments focus on the price reporting guidelines for Part 18A facilities contained within section 9 (**Part 18A Guidelines**) and the draft 'actual prices payable template for Part 18A service providers' also published by the AER on 26 July 2023 (**Part 18A Template**).

Lochard Energy supports the objectives of the reforms to provide increased transparency for users of pipelines, storage and compression service facilities. However, our view is that modifications to the Part 18A Guidelines and the Part 18A Template should be made to:

- ensure the information required from Part 18A service providers, and the format in which it is presented, better reflect the nature of the products and contracting structures used by service providers, and do not create confusion for prospective users and the market; and
- clarify certain aspects of the Part 18A Guidelines and their application to Part 18A service providers, and reduce the complexities for Part 18A service providers in preparing and publishing the information required.

In summary, there is an opportunity to make some targeted improvements to the way the Guidelines would operate for Part 18A facilities like the Iona Facility, so as to reduce the extent of the administrative burden on resource-limited organisations like ours and facilitate a higher overall level of compliance. This can be achieved without compromising the effectiveness of the reforms in delivering the outcomes envisaged by new Part 18A of the National Electricity Rules (**NGR**).

Our feedback on these issues is set out below.

I. The ‘services’ for which prices and terms must be published

There is a need for greater clarity, and increased flexibility, in how the relevant information is to be provided for facilities which provide a bundled service comprising both storage and compression (where the services and pricing structure cannot be separated into individual service components).

a. Treatment of facilities that provide a bundled storage and compression service

The draft Part 18A Guidelines and Part 18A Template propose that a Part 18A service provider must separately identify prices and terms (in relation to both its standing terms and actual prices payable information) for a range of different service types, as listed in sections 9.4.2 and 9.5. These proposed service types include injection capacity, actual injection services used,¹ withdrawal capacity, actual withdrawal services used, compression capacity and compression services used.²

A less prescriptive approach should be taken in the final Part 18A Guidelines and Part 18A Template in defining the ‘services’ in respect of which prices and terms must be separately published. This would allow flexibility for service providers to define the service categories they actually offer so as to more accurately represent the prices and terms attached to those services within the contracting structure. This principle could be given effect in the Guidelines by either:

- deleting the service type lists³ in sections 9.4.2 and 9.5 and instead referring more generally to ‘services’ or ‘facility services’; or, alternatively
- providing that a Part 18A service provider must separately identify prices and terms for each of the listed service types, ‘but only to the extent that the service type is relevant to that provider’s service and pricing structure’.

This is particularly important for a service provider like Lochard Energy who provides bundled services to customers and where the individual components of the services do not operate in a stand-alone fashion from a technical, engineering or commercial perspective.

Lochard Energy’s standard offering for the Iona Facility is a bundled gas storage service comprising:

- pipeline withdrawal / reservoir injection capacity rights;
- storage capacity rights; and
- pipeline injection / reservoir withdrawal capacity rights,

along with associated compression as required to provide that package of services. Lochard Energy’s standard offering does not involve providing compression as a standalone, or

¹ Lochard Energy also considers that distinguishing between service capacity and ‘actual services used’ in describing service prices and terms is unnecessary in cases where the relevant pricing components can be provided in relation to the relevant bundle of services as a whole – e.g. setting out both fixed and variable charges for a bundled storage and compression service.

² Part 18A Guidelines, part 41 and parts 43-44.

³ I.e. the references to injection capacity, actual injection services used, withdrawal capacity, actual withdrawal services used, storage capacity, actual storage used, vaporisation capacity, vaporisation services used, liquefaction capacity, liquefaction services used, compression capacity and compression services used.

separately priced, service, with the Iona Facility compressors instead being primarily used as part of the delivery of bundled gas storage services.

The main exception is where secondary compression capacity is provided to a user under an Operational Transportation Services Agreement (**OTSA**), e.g. for day-ahead auction capacity. This scenario reflects the regulatory obligations in Parts 24 and 25 of the NGR to offer OTSAs in a prescribed form even though standalone compression services are not offered by Lochard Energy as part of its standard contracting model for primary capacity. Only one market participant has entered into an OTSA with Lochard Energy to date.

Our pricing model is structured around this bundled package of services and cannot easily be separated into individual components – e.g. for storage rights, pipeline injection, pipeline withdrawal or compression services as separated components. An attempt to separate service terms and pricing in this way would not reflect the structure of Lochard Energy's contracts, resulting in unhelpful and potentially confusing information being presented to the market.

Lochard considers that this less prescriptive approach in defining the 'services' offered by a Part 18A facility is consistent with Part 18A of the NGR, which:

- refers generally to 'facility services' and 'services' in defining the obligations of service providers to publish standing terms and actual prices payable information;⁴ and
- does not require any specific level of granularity in the Part 18A Guidelines in relation to separately identifying prices and terms by reference to the proposed list of 'service types'.⁵

b. Treatment of Operational Transportation Services Agreements

We would also appreciate clarification as to whether the AER was expecting that the standing terms and actual prices payable information to be provided by Part 18A facilities under the Part 18A Guidelines would be published in relation to OTSAs (for which separate requirements exist under Parts 24 and 25 of the NGR).

⁴ The concepts of 'service' and 'facility service' are not defined in respect of Part 18A of the NGR, although clause 198A(2) provides that a reference to a 'facility service' on a Part 18A facility 'includes a service provided by means of the facility and a service ancillary to the provision of a service provided by means of the facility'.

⁵ We note that clause 198H(2)(b) provides that the Part 18A Guidelines must 'specify the level of detail of information required to be published under [Part 18A], which must be the level of detail reasonably required to enable a user or prospective user to negotiate on an informed basis with a service provider of a Part 18A facility for the provision of a facility service'. Given this, allowing service providers to define their services in a manner which allows them to most accurately describe the offering, price and terms is the approach that is most consistent with this requirement.

II. Actual prices payable information

There is a need for greater clarity as to the nature of the non-price terms that must be published. The level of information required should be reasonable and proportionate. This should cover only such additional non-price term information as is genuinely necessary to serve the purposes of Part 18A having regard to confidentiality obligations owed to existing customers in relation to bespoke non-price terms which prospective users do not need to know in order to be able to negotiate on an informed basis.

a. Specifying the non-price terms of the contract

Section 9.5 of the Part 18A Guidelines proposes that a service provider will, in publishing actual prices payable information, also be required to 'specify the non-price terms of the contract'.⁶ This suggested requirement is also contemplated within the draft Part 18A Template (namely, within the 'non-price terms and conditions' section, which includes an 'other' information field).

Lochard Energy considers it critical that clearer guidance is provided as to the intended scope of this requirement, and proposes that its scope should be aligned with the requirements of Part 18A of the NGR.

Specifically, while the NGR requires service providers to publish specific listed categories of non-price information (such as the service term, services provided, service priority etc.), a service provider is only required to indicate 'whether the service is provided on the same or substantially the same non-price terms as those set out in the [service provider's standing terms]' for all other non-price terms not specifically listed under the NGR.⁷ The NGR does not contemplate that service providers should go further than this and publish specific details of these non-conforming terms, other than to the extent that this may be necessary to convey the level of information a prospective user may genuinely need to know (and to ensure compliance with the Part 18A information standard).

Confidentiality obligations owed to individual customers, including foundation customers, in relation to bespoke non-price terms that are not material to understanding the specified information set out in Part 18A of the NGR should be taken into account. In the case of the Iona Facility, given the relatively small number of contracts, and the facility's unique role in the market, it would not be difficult for market participants to deduce the identities of counterparties to individual service contracts for which actual prices payable information is being provided. Requiring the details of all non-standard non-price terms to be published would therefore allow users to have access to confidential and commercially-sensitive negotiated terms within their competitors' contracts of a kind that goes well beyond what is necessary to achieve the objectives of the new Part 18A.⁸

Our view is that the broad requirement to publish non-price terms of user contracts should be removed from the Part 18A Guidelines and Part 18A Template, with service providers instead being obliged to:

⁶ Part 18A Guidelines, part 44.

⁷ NGR, rule 198G(1).

⁸ Lochard Energy also notes that there is little guidance in the Part 18A Guidelines and Part 18A template as to the extent to which a service provider is required to identify deviations from its standing terms. Like other service providers who raised this issue during the industry workshop on 15 August, Lochard considers that further clarity on the AER's expectations would be needed if the AER chooses to retain this broad new requirement within the Part 18A Guidelines and Part 18A Template.

- specify whether or not the relevant contract is on the same or substantially the same non-price terms as its standard terms (as contemplated by rule 198G(1)(g) of the NGR); and
- publish such further additional information about non-price terms as is necessary to ensure that any information published is not false or misleading in a material particular, in compliance with the Part 18A information standard.⁹

b. Part 18A Template

Following on from the above, Lochard requests the AER to:

- Provide some flexibility for the service provider to be able to insert additional columns under the ‘Applicable quantity for the service’, as this would provide a clearer representation of the capacity rights comprising the service, reflecting the conventions understood by the users and the market; and
- remove the columns under ‘non-price terms of contract if different from standing terms’, reflecting our feedback at section II.a. above. The last column ‘any other notes relevant to service terms and condition, including prices’ should be sufficient in allowing for comments on other non-price terms that may be relevant.

III. Format of Standing terms

Service providers should be permitted to publish their standing terms in full, rather than only in ‘tabular form’.

Section 9.6.1.2 of the Part 18A Guidelines proposes that standing terms must be published in ‘tabular form’.

Lochard Energy queries the value of this requirement and suggests it is either removed from the Part 18A Guidelines or given as an alternative option to publishing the standard contract terms in full (similar to what occurs with standard OTSAs). Full contract terms would provide greater clarity and transparency for users and prospective users of Part 18A facilities (as compared to a ‘term sheet’-style tabular format), would reduce the risk of prospective users misunderstanding the true effect of the full contractual terms, and would also reduce the information provision burden and costs for service providers.

IV. Other issues for consideration/clarification

a. Accounting and assurance requirements

Section 9.1.1 of the Part 18A Guidelines provides that:

To enable Part 18A service providers to meet the assurance requirements discussed at section 6.2 of these guidelines, appropriate internal accounting procedures must be established and maintained by the Part 18A service provider. These internal accounting procedures must allow the Part 18A service provider to demonstrate the extent and nature of transactions associated with each Part 18A facility, and the allocation of applicable fees, costs and services.

⁹ This latter requirement could be covered in the Part 18A Template using a field similar to that set out in column ‘AG’ of the current draft template.

Lochard Energy is unclear as to the intended effect of this section.

In particular, we note that the section 6.2 assurance obligations under the Guidelines apply to pipeline service providers (rather than Part 18A service providers) and relate to categories of information which are not relevant to Part 18A facilities. We also note that Part 18A of the NGR does not require or contemplate accounting or assurance obligations of this nature for Part 18A facilities.

On this basis, we ask that section 9.1.1 is removed from the final version of the Part 18A Guidelines.

b. Price escalation mechanisms

Sections 9.4.2 and 9.5 of the Part 18A Guidelines both state that 'price escalation mechanisms include any terms that deliver services at a higher priority, faster rate, after a shorter notice period or in [bigger/greater] volumes'.¹⁰ However, no explanation is provided as to what this relates to, including whether it is proposed that specific types of 'price escalation information' must be provided.

Lochard Energy is unclear as to the intended effect of these references, and asks that they are removed or clarified within the Guidelines.

c. Reference to section 4 of the Guidelines

Section 9.5 of the Part 18A Guidelines provides that Part 18A service providers must publish actual prices payable information on their website in accordance with 'Section 4 of these guidelines'.

Lochard Energy is unclear as to the intended effect of this reference, noting that section 4 of the Guidelines relates to actual prices payable information for pipelines. We query whether the reference in this sentence should instead be to section 9.6 of the Part 18A Guidelines, which sets out the details of how and where Part 18A information is to be published.

d. Timing for commencement of the information publication requirements

Lochard Energy understands the AER's current expectation is that service providers will commence publishing standing terms and actual prices payable information by 22 December 2023, and that this expectation applies equally to Part 18A services providers.

The information publication requirements for Part 18A service providers are new obligations which are heavily influenced by the content of the Part 18A Guidelines. In the form currently proposed, the scope of the publication requirements extend materially beyond what is mandated by Part 18A of the NGR, and the current drafts also include several areas in which further clarification is required.

Lochard Energy is hopeful that these issues will be removed or clarified (as applicable) within the final Part 18A Guidelines. If the current draft guidelines are not amended to address the issues identified in these submissions, the need for additional time for full implementation will be heightened, given the increased compliance burden involved in seeking to comply with the current Part 18A Guideline drafting.

We therefore ask the AER to consider extending the commencement date for the new Part 18A requirements to the end of Q1 2024. Lochard Energy considers that the benefits to the market would outweigh the modest delay, by allowing for a higher quality and consistency

¹⁰ Part 18A Guidelines, parts 42 and 44.



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of information to be provided across the market than if the implementation was to be unnecessarily rushed.

Opportunity to meet with the AER to discuss our submission

We would appreciate an opportunity to meet with you to further discuss the issues outlined in our submission. Please contact [REDACTED] [REDACTED] to arrange a time for a discussion or if you have any queries.

Yours sincerely

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