

**NATIONAL GAS LAW
SECTION 277
INFRINGEMENT NOTICES ISSUED TO
APA (SWQP) PTY LIMITED (ACN: 066 656 219)**

TO: APA (SWQP) Pty Limited (ACN: 066 656 219)

Level 25, 580 George Street

Sydney NSW 2000

Infringement Notice Nos.: AER22-2021 to AER23-2021

1. The Australian Energy Regulator (**AER**):
 - a. has reason to believe that APA (SWQP) Pty Limited (**APA**), being a transportation service provider within the meaning of section 2 of the *National Gas Law* (**NGL**), has breached rule 649(1) of the *National Gas Rules* (**NGR**), as described in Schedule 2 and 3 (**the alleged breaches**); and
 - b. has decided to serve these two (2) Infringement Notices on APA under section 277 of the NGL.
2. Rule 649(1) of the NGR, as described in Schedule 1, is a civil penalty provision within the meaning of the NGL.
3. The infringement penalty is \$20,000 for each of the alleged breaches.

Note: If APA chooses to pay each of the two (2) \$20,000 infringement penalties, the combined infringement penalty amount is \$40,000.

**WHAT CAN APA DO IN RESPONSE TO THIS
INFRINGEMENT NOTICE?**

In respect of each of these two (2) Infringement Notices:

4. APA can choose whether or not to comply with the Infringement Notice. If APA chooses not to comply with the Infringement Notice, the AER may commence proceedings against it in relation to the alleged breach.
5. If APA chooses to comply with the Infringement Notice, it must pay the Infringement Notice penalty to the AER, on behalf of the Commonwealth, by 14 December 2021, being not less than 28 days after the date of service of the Infringement Notice, beginning on the day after the day on which this Infringement Notice is served (**the compliance period**).
6. To ensure payment is made in accordance with the Infringement Notice, payment must be received on or before 14 December 2021.

7. If APA pays the infringement penalty within the compliance period, the AER will not institute proceedings in respect of the alleged breach unless the Infringement Notice is withdrawn before the end of the compliance period in accordance with section 282 of the NGL.

HOW TO PAY AN INFRINGEMENT PENALTY

8. APA may pay each of the two (2) \$20,000 infringement penalties in three ways:

(a) by cheque made out to the “ACCC Official Administered Account”,* enclosing a copy of the Infringement Notice and delivered to:

Australian Energy Regulator
GPO Box 520
MELBOURNE VIC 3001

You should allow at least five business days for payment to be received.

or

(b) by electronic funds transfer to the following account:*

Account name: ACCC Official Administered Account
BSB: 032-730
Account: 146550

Please ensure that you include the Infringement Notice No. (AER22-2021 to AER23-2021) for each infringement penalty being paid in the description field to identify payment.

You should allow at least two business days for payment to be received.

or

(c) by credit card via the ACCC online payment system at www.accc.gov.au/payments.*

Please ensure that you include the Infringement Notice No. (AER22-2021 to AER23-2021) for each infringement penalty being paid in the description field to identify payment.

You should allow at least two business days for payment to be received.

*The Australian Competition and Consumer Commission handles the receipt of infringement penalty payments for the AER on behalf of the Commonwealth of Australia. All payments received are paid into the Consolidated Revenue Fund.

9. Please allow sufficient time for your payment to be received within the compliance period.
10. APA will be issued with a tax invoice following payment of each infringement penalty.

DATE OF ISSUE: 8 November 2021



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Clare Savage
Chair
Australian Energy Regulator

SCHEDULE 1

RELEVANT RULES AND PROCEDURES

NGR

1. Part 25, rule 653(1) of the NGR provides:
 - (1) *A facility operator for an auction facility must, for each gas day on and from the date the auction facility becomes subject to the capacity auction:*
 - (a) *determine and update the auction quantity limits for the auction facility for the gas day in accordance with the Capacity Transfer and Auction Procedures (CTA Procedures); and*
 - (b) *provide the auction quantity limits and any update to AEMO at the time required by the [CTA Procedures].*
2. Rule 649(1) of the NGR provides:
 - (1) *A transportation service provider or transportation facility user required by a provision of [Part 25] to make a record or give information or data to AEMO or the AER, including information resulting from calculations, must make the record or prepare and submit that information or data and perform those calculations in accordance with the Part 24 information standard.*
3. Rule 593 of the NGR defines the ‘Part 24 information standard’ as follows:

Part 24 information standard means the practices, methods and acts that would reasonably be expected from an experienced and competent person engaged in the ownership, operation or control of a transportation facility of the applicable type acting with all due diligence, prudence and foresight and in compliance with all applicable legislation (including these rules), authorisations and industry codes of practice.
4. Rule 649(1) of the NGR, which is the subject of these Infringement Notices, is a civil penalty provision under Schedule 3 of the *National Gas (South Australia) Regulations*.

CTA Procedures

5. The CTA Procedures are a statutory instrument provided for by section 91BRP of the NGL.
6. Clause 19.1(a) of the CTA Procedures requires a facility operator to determine and send to AEMO the auction quantity limits for the following gas day for each product component associated with an auction service provided by means of any of its auction facilities, as provided for in clause 19.2.
7. The auction quantity limits to be determined for each product component associated with a pipeline for forward haul products are specified in table 19.2.1 of the CTA Procedures.

8. Table 19.3 of the CTA Procedures sets out, for each product component, the value to be determined for each gas day and used to calculate the auction quantity limits.
9. Clause 14.3(a) of the CTA Procedures provides that the timings set out in the CTA Timetable must be complied with.

SCHEDULE 2

Infringement Notice No.: AER22-2021

MATTERS CONSTITUTING AN ALLEGED BREACH OF A CIVIL PENALTY PROVISION: RULE 649(1) OF THE NATIONAL GAS RULES

1. APA is a:
 - (a) ‘transportation service provider’ within the meaning of section 2 of the NGL in respect of the South West Queensland Pipeline (**SWQ Pipeline**), and
 - (b) ‘facility operator’ within the meaning of rule 647 of the NGR in respect of the SWQ Pipeline.
2. The SWQ Pipeline:
 - (a) is an ‘auction facility’ within the meaning of rule 647 of the NGR; and
 - (b) was, between 10 May 2019 and 31 May 2019, subject to the capacity auction by the operation of clause 2 of Schedule 5, Part 4 of the NGR.
3. On 10 May 2019, 27 May 2019, 28 May 2019, 29 May 2019 and 31 May 2019 (the **2019 Gas Days**), APA was required to ‘give information or data to AEMO’ under rule 653(1) of the NGR. In particular, APA was required to determine and update the auction quantity limits for the SWQ Pipeline in accordance with the CTA Procedures; and provide the auction quantity limits and any update to AEMO at the time required by the CTA Procedures.
4. APA failed to include 20 TJ arising from a firm contract with [REDACTED] in its auction quantity limit calculations for the 2019 Gas Days due to a systems design issue. As a result, it did not determine its auction quantity limits in accordance with the CTA Procedures.
5. APA did not have adequate systems, processes and controls in place to ensure that all relevant firm contracts were captured in its auction quantity limit calculations.
6. APA’s practices, methods and acts for submitting auction quantity limits in respect of the 2019 Gas Days did not meet the standard reasonably expected from an experienced and competent facility operator acting with all due diligence, prudence and foresight and in compliance with all applicable rules.
7. APA’s conduct in respect of the 2019 Gas Days amounted to a failure to ‘prepare and submit that information or data and perform those calculations’, being the auction quantity limits for the SWQ Pipeline, in accordance with the Part 24 information standard, in contravention of rule 649(1) of the NGR.

SCHEDULE 3

Infringement Notice No.: AER23-2021

MATTERS CONSTITUTING AN ALLEGED BREACH OF A CIVIL PENALTY PROVISION: RULE 649(1) OF THE NATIONAL GAS RULES

1. APA is a:
 - (a) transportation service provider within the meaning of section 2 of the NGL in respect of the South West Queensland Pipeline (**SWQ Pipeline**), and
 - (b) ‘facility operator’ within the meaning of rule 647 of the NGR in respect of the SWQ Pipeline.

2. The SWQ Pipeline:
 - (a) is an ‘auction facility’ within the meaning of rule 647 of the NGR; and
 - (b) was, between 28 May 2020 and 31 July 2020, subject to the capacity auction by the operation of clause 2 of Schedule 5, Part 4 of the NGR.

3. On 28 May 2020 and 31 July 2020 (the **2020 Gas Days**), APA was required to ‘give information or data to AEMO’ under rule 653(1) of the NGR. In particular, APA was required to determine and update the auction quantity limits for the SWQ Pipeline in accordance with the CTA Procedures; and provide the auction quantity limits and any update to AEMO at the time required by the CTA Procedures.

4. APA failed to include 20 TJ/day arising from its firm contract with [REDACTED] in its auction quantity limit calculations for the 2020 Gas Days due to a systems design issue. As a result, it did not determine its auction quantity limits in accordance with the CTA Procedures.

5. APA did not have adequate systems, processes and controls in place to ensure that all relevant firm contracts were captured in its auction quantity limit calculations.

6. APA’s practices, methods and acts for submitting auction quantity limits in respect of the 2020 Gas Days did not meet the standard reasonably expected from an experienced and competent facility operator acting with all due diligence, prudence and foresight and in compliance with all applicable rules.

7. APA’s conduct in respect of the 2020 Gas Days amounted to a failure to ‘prepare and submit that information or data and perform those calculations’, being the auction quantity limits for the SWQ Pipeline, in accordance with the Part 24 information standard, in contravention of rule 649(1) of the NGR.