

NATIONAL GAS LAW

SECTION 277

INFRINGEMENT NOTICE ISSUED TO

LOCHARD ENERGY (IONA OPERATIONS) PTY LTD (ACN: 608 441 729)

**TO: Lochard Energy (Iona Operations) Pty Ltd**  
**ACN 608 441 729**  
**Level 10, 2 Southbank Bvd**  
**SOUTHBANK VIC 3006**

**Infringement Notice No.: AER11-2021**

1. The Australian Energy Regulator (**AER**):
  - a. has reason to believe that Lochard Energy (Iona Operations) Pty Ltd (ACN: 608 441 729) (**Lochard**), being a transportation service provider within the meaning of the *National Gas Law* (**NGL**), has breached rule 649(1) of the *National Gas Rules* (**NGR**), as described in Schedule 2 to this Infringement Notice (**the alleged breach**); and
  - b. has decided to serve this Infringement Notice on Lochard under section 277 of the NGL.
2. Rule 649(1) of the NGR is a civil penalty provision within the meaning of the NGL.
3. The infringement penalty is \$20,000.

**WHAT CAN LOCHARD DO IN RESPONSE TO THE  
INFRINGEMENT NOTICE?**

4. Lochard can choose whether or not to comply with the Infringement Notice. If Lochard chooses not to comply with the Infringement Notice, the AER may commence proceedings against it in relation to the alleged breach. Lochard is entitled to disregard the Infringement Notice and to defend any proceedings in respect of the alleged breach.
5. If Lochard chooses to comply with the Infringement Notice, it must pay the infringement penalty to the AER, on behalf of the Commonwealth, by **14 April 2021**, being not less than 28 days from the date of service of the Infringement Notice, beginning on the day after the day on which the 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 April 2021**.
7. If Lochard 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period, the AER will not institute proceedings in respect of the alleged breach unless the Infringement Notice is withdrawn before the end of the compliance period in accordance with section 282 of the NGL.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. Lochard may pay the \$20,000 infringement penalty in three ways:
- by cheque made out to the “ACCC Official Administered Account”,\* enclosing a copy of this 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

- by electronic funds transfer to the following account:\*

Account name: ACCC Official Administered Account  
BSB: 032-730  
Account: 146550  
Description: AER11-2021

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

or

- by credit card via the ACCC online payment system at [www.accc.gov.au/payments](http://www.accc.gov.au/payments).\*

Please ensure that you include “AER11-2021” in the payment description field of your online payment 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. Lochard will be issued with a tax invoice following payment of the infringement penalty.

DATE OF ISSUE: 11 March 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. Part 25, 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 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 this Infringement Notice, 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. Schedule 2 of the CTA Procedures sets out the Capacity Trading and Auction Timetable (**CTA Timetable**) for the capacity auction applying to the period commencing 1 October 2019. Clause 14.3(a) of the CTA Procedures provides that the timings set out in the CTA Timetable must be complied with.

7. The CTA Timetable requires a facility operator to calculate and send to AEMO the auction quantity limits for a gas day 'D' no later than 16.30 hours on gas day 'D - 1'. This is extended to a 'delay time' of 18.30 hours on gas day 'D - 1' if a 'delay event' occurs. Delay events include one or more facility operators failing to send auction quantity limits to AEMO by 16.30 hours.

## SCHEDULE 2

### CONDUCT THE SUBJECT OF INFRINGEMENT NOTICE No.: AER11-2021

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

1. Lochard is a:
  - a) ‘transportation service provider’ within the meaning of section 2 of the NGL in respect of the Iona Compression Facility (ICF), and
  - b) ‘facility operator’ within the meaning of rule 647 of the NGR in respect of the ICF.
2. The ICF is:
  - a) an ‘auction facility’ within the meaning of rule 647 of the NGR.
  - b) and was between 29 May 2020 and 31 May 2020, subject to the capacity auction by the operation of clause 2 of Schedule 5, Part 4 of the NGR.
3. The Relevant Rules and Procedures are described in Schedule 1.

#### Relevant Conduct

4. On 29 May 2020, 30 May 2020 and 31 May 2020 (the **Relevant Days**), Lochard did not submit auction quantity limits for the ICF to AEMO for the next day’s capacity auction by the time specified in the CTA Timetable, as required by rule 653(1)(b) of the NGR.
5. Lochard’s systems, processes and controls for submitting auction quantity limits on the Relevant Days did not meet the standard reasonably expected from an experienced and competent facility operator acting with all due diligence, prudence and foresight and complying with all applicable rules.
6. This conclusion is reinforced by Lochard’s failure to address shortcomings in its systems, processes and controls for submitting auction quantity limits following its failure to submit auction quantity limits for the ICF to AEMO by the time specified in the CTA Timetable on 16 November 2019.
7. Lochard’s conduct on the Relevant Days amounted to a failure to ‘submit [that] information or data’ – i.e. the auction quantity limits for the ICF – in accordance with the Part 24 information standard, in contravention of rule 649(1) of the NGR.