

Executive Summary

Background

On 1 April 1999, Epic Energy South Australia Pty Limited (Epic) submitted to the Australian Competition and Consumer Commission an access arrangement for the Moomba to Adelaide Pipeline System (MAPS). It sought approval under section 2.2 of the *National Third Party Access Code for Natural Gas Pipelines Systems* (the Code).

The MAPS connects the Cooper Basin production and processing facilities, at Moomba, to markets for natural gas in Adelaide and in regional centres including Port Pirie, Whyalla and Berri. The regional centres are connected to the trunkline by laterals. Most of the demand for gas haulage services arises in the Adelaide area.

The access arrangement describes the terms and conditions on which third parties will gain access to the pipeline. The Commission's assessment involved public consultation and an examination of information provided by Epic and interested parties.

The Commission's assessment

The MAPS access arrangement needs to provide terms and conditions, including tariffs, that are reasonable to businesses and consumers, encourage efficient investment and provide a fair return to the service provider.

To achieve this, the Commission requires Epic to offer tariffs that are nearly ten per cent lower than those originally proposed. The tariffs proposed by Epic in its access arrangement are too high because Epic's capital base is overstated and the rate of return sought by Epic is not consistent with financial market benchmarks and the risks facing the pipeline.

The Commission has determined the capital base of the MAPS to be \$353.3 million at 30 June 2001. This is higher than the capital base proposed in the *Draft Decision* owing to an increase in construction costs caused by exchange rate movements and inflation, and an increase in the maximum capacity of the pipeline to account for the recent expansion undertaken for National Power (now Pelican Point Power).

The Commission considered arguments by Epic that it should receive a higher risk premium to compensate for potential stranding risks. The Commission assessed the risk profile of the pipeline in some detail and determined a level of return appropriate for the risk profile.

The *Final Decision* provides for a post-tax return on equity of 12.6 per cent. This is less than the range of 13.1 to 16.8 per cent proposed by Epic. As a basis for comparison, the rate of return in the *Final Decision* is higher than average returns to superannuation funds and is consistent with returns on other regulated pipelines in Australia.

The Commission has received a substantial number of submissions in respect of the terms and conditions of service that Epic proposed in its access arrangement. It is the Commission's view that the terms and conditions proposed by Epic are too onerous and do not meet the requirements of the Code. The Commission requires amendments to the terms and conditions of service in order to redress the balance between the interests of the service provider and users.

In addition, the access arrangement incorporates an incentive scheme that would permit Epic to earn additional returns if it is able to sell services above a certain level. The Commission believes that this scheme offers upside for Epic.

The Commission believes that the amendments proposed in this *Final Decision* would ensure fair access and appropriate signals to parties involved in future negotiations involving the MAPS.

Table 1: *Final Decision* at a glance

<i>Element</i>	<i>Epic latest proposal</i>	<i>ACCC Final Decision</i>	<i>Page Ref.</i>
Optimised replacement cost (ORC)	\$620m at 30 June 2000 (capacity of 393 TJ per day).	\$625m at 30 June 2001 (capacity of 418 TJ per day).	p. 12
Depreciated optimised replacement cost (DORC) and initial capital base	\$372m at 30 June 2000 (capacity of 393 TJ per day).	\$353.3m at 30 June 2001 (capacity of 418 TJ per day).	p. 20
New facilities investment	Stay in business capital expenditure for the five year period, including expenditure of \$2.6m in 2001.	The proposed capital expenditure forecast by Epic is likely to meet the criteria in section 8.16 of the Code. However, the Commission will review Epic's actual expenditure in the next access arrangement period.	p. 24
Rate of return	Return on equity between 13.1 and 16.8 per cent per annum.	Post-tax nominal cost of equity of 12.6 per cent.	p. 31
Non-capital costs	Epic aggregated forecasts of non-capital costs and historical costs to arrive at best estimates for this access arrangement period.	The operating, maintenance and other non-capital costs for the MAPS are reasonable.	p. 55
Forecast revenue	Proposed revenue of \$52.5m for the full year ending 31 December 2001, equal to revenue under existing contracts.	Forecast revenue for the half year ending 31 December 2001 of \$25.2m. (Full year equivalent for comparative purposes \$50.3m).	p. 59

Initial tariff	Initial tariff determined by applying a system primary capacity of 323 TJ per day.	Initial tariff to be determined by applying a system primary capacity of 348 TJ per day.	p. 63
Cost allocation and tariff setting	Escalation factor of 95 per cent of the CPI to match the escalation factor in current contracts.	Accepts Epic's proposed escalation factor of 95 per cent of the CPI.	p. 63
Incentive structure	Rebateable IT service to provide incentive for Epic to maximise capacity.	Accepts Epic's rebateable IT service.	p. 70
Back haul and part haul tariffs	Epic proposed only a forward haul service.	Does not require back haul and part haul reference services to be offered at this time.	p. 84
Queuing policy	First come first served queuing policy.	First come first served queuing policy for developable capacity. For existing capacity, where there is excess demand capacity will be pro rated unless a prospective user disagrees, in which case a dispute resolution process will be undertaken.	p. 176
Extensions / expansions policy	Extensions and expansions not to be covered unless Epic elects otherwise. Epic proposed that extensions and expansions be priced on an incremental basis.	All expansions are covered unless Epic obtains the Commission's consent otherwise. Extensions are covered unless Epic, by notice to the Commission, elects otherwise. Accepts Epic's proposal that extensions and expansions be priced on an incremental basis.	p. 167
Terms and conditions		Requires Epic to adopt terms and conditions that provide a fair balance between the interests of users and the service provider.	p. 109

Key Issues

Significance of the *Final Decision*

As the MAPS is presently the only pipeline bringing gas into South Australia, it is important for South Australian consumers and businesses that third party access to capacity is provided at reasonable tariffs and on reasonable terms and conditions.

There is currently excess demand for gas in South Australia, and various proposals have been advanced to alleviate this situation, including the construction of a new pipeline from Victoria, and the possible augmentation of the existing MAPS. The access arrangement is an important benchmark for future negotiations involving the MAPS and provides an appropriate framework for industry to make efficient investment decisions to meet South Australia's demand for gas.

The access arrangement will expire on 1 January 2006. A revised access arrangement is to be submitted to the regulator on 1 July 2005.

Initial capital base

In this *Final Decision*, the Commission has calculated an ORC of \$625m and a corresponding DORC of \$353m as the initial capital base (ICB). This compares to the *Draft Decision* where the ORC was \$527m and the ICB was \$310m.

The ORC is higher in the *Final Decision* because:

- It has been calculated at 30 June 2001 instead of 30 June 2000.
- Costs have generally increased in line with exchange rate and CPI movements.
- The Commission has optimised the system to a higher capacity to take into account the recent expansion of the system for Pelican Point Power. Epic's tariffs are to be adjusted by dividing the revenue requirement by a higher volume to account for the increase in the system's capacity.

In addition, the DORC is higher in the *Final Decision* because the Commission has decided not to pursue the deferred tax liability adjustment to the ICB. This decision has been made on the basis of materiality and consistency issues. The ICB was reduced in the *Draft Decision* by \$6m. The Commission's revised approach represents a small windfall gain to Epic.

The ORC of the pipeline system has been examined carefully by both Epic and the Commission. Epic's proposed ORC was subject to comment by interested parties and independent reviews by Worley and Associates and Venton and Associates. The Commission engaged Connell Wagner to evaluate Epic's calculations.

Epic submitted that a decline in the exchange rate since its original proposal would potentially add at least \$55m to the ORC and \$33 million to the DORC. To assess this claim the Commission contracted MicroAlloying International to investigate current pricing of high strength linepipe, a significant component of the total cost. The Commission incorporated the findings of the report in recalculating the ORC.

Rate of return

The *Final Decision* provides for a post-tax nominal return on equity of 12.6 per cent compared to 13.0 per cent in the *Draft Decision*. The return on equity is slightly lower owing to movements in the risk free rate. The underlying parameters used in calculating the return on equity have not changed.

Epic argued that the pipeline faced a significant risk of stranding in the future and it should be compensated through a higher asset beta. The Commission has undertaken a detailed assessment of Epic's risk of stranding and concluded that any such risks are low and already the subject of appropriate compensation.

The table below compares the returns given by the ACCC in recent decisions and those earned through super funds and the Australian stock market.

Table 2: Return on equity comparisons^a

ACCC <i>Final Decision</i> , Oct-98	Victorian gas transmission pipeline systems	13.2
ACCC <i>Final Decision</i> , Jan-00	NSW & ACT electricity transmission (Transgrid & EnergyAustralia)	13.9
ACCC <i>Final Decision</i> , Jun-00	APT – Central West Pipeline	15.4
ACCC <i>Draft Decision</i> , Aug-00	Epic Energy – Moomba-Adelaide Pipeline System	13.0
ACCC <i>Draft Decision</i> , Dec-00	EAPL – Moomba-Sydney Pipeline System	13.0
ACCC <i>Final Decision</i> , Feb-01	SMHEA transmission (Snowy Mtns Hydro-Electric Authority)	11.2
ACCC <i>Draft Decision</i> , May-01	NT Gas – Amadeus Basin to Darwin	12.0
Australia – Super funds (Mercer survey, 30 June 2001)	Pooled superannuation funds – 3 year average return	8.9
Australian Stock Exchange (ASX Fact Book 2001)	Stock market 5 year average ROE – December 1995 to December 2000, (All Ords accumulation index)	11.5

a. Post-tax nominal.

Under the National Gas Code, Epic could achieve a higher return on equity through lower than forecast operations and maintenance costs and the sale of non-reference services.

Table 3: WACC estimates

	Per cent		
	EPIC proposal	Commission Draft Decision	Commission Final Decision
Nominal cost of equity	13.08-16.84	13.05	12.55
Nominal pre-tax cost of debt	7.2-7.5	7.30	6.81
Nominal vanilla WACC	n/a	9.60	9.10
Post-tax nominal WACC	6.85-8.78	8.04	7.58
Post-tax real WACC	4.24-6.13	4.85	5.25
Pre-tax nominal WACC	10.7-13.73	9.85	9.41
Pre-tax real WACC	8.0-10.95 ^(a)	6.70 ^(b)	7.14 ^(b)
Pre-tax nominal WACC	n/a	9.94 ^(b)	9.50 ^(b)
Implied tax wedge	n/a	0.34	0.40

Source: access arrangement information, p. 34 and Commission analysis.

(a) Calculated using forward transformation formula $W_{tr} = (1+W_t)/(1+f)-1$

(b) Based on Commission's cash-flow analysis.

Non-capital costs

The Commission is satisfied that sufficient incentive lies with Epic to operate its compressors, and hence utilise system use gas (SUG) efficiently. Consequently, the party best placed to pay for SUG gas may be the one that is able to purchase gas at the lowest price. It is the Commission's understanding that the shippers may be in a better position to negotiate a favourable price for SUG than the pipeline operator. Therefore, the Commission accepts Epic's proposal that Epic's customers provide SUG for the operation of the MAPS.

Overall, the Commission considers that the forecast non-capital costs proposed by Epic are reasonable, when assessed against widely accepted industry benchmarks. Chapter 4 of this *Final Decision* discusses the use of key performance indicators (KPIs) and performance benchmarks in more detail. It concludes that, on the basis of the available information and based on the KPIs, the operating, maintenance and other non-capital costs for the MAPS are reasonable.

When it reviews the access arrangement, the Commission will consider whether the level of costs continues to be appropriate.

Forecast revenue

Table 4: Revenue requirement for the access arrangement period

Year ending 31 December	Epic proposal	<i>Draft Decision</i> (\$m)	<i>Final Decision</i> (\$m)
2001	52.5	46.3	25.2 (half year)
2002	53.9	47.0	51.4
2003	55.2	47.6	52.5
2004	56.3	48.3	53.6
2005	57.5	49.0	54.7

Notes:

- (a) Epic proposed to extend the Access Arrangement period from 2003 to 2005 in its 2 March 2000 lodgement of its Access Arrangement. Epic did not however provide revenue forecasts for 2004 and 2005. The Commission has established forecasts for 2004 and 2005 by applying Epic's proposed revenue escalation formula (that is, 95 per cent of CPI), assuming inflation of 2.21 per cent.

Revenue in the *Final Decision* escalates more quickly because the Commission has accepted Epic's proposed escalation factor: 95 per cent of CPI to match the escalation factor in its current contracts. The NPV of the two revenue streams is equated by lowering revenue in the first year.

Capacity of the pipeline system

In its access arrangement Epic proposed a system primary capacity of 323 TJ per day. Several interested parties commented that this figure was too low. The Commission agrees that the system primary capacity is too low given the substantial discretion that Epic has to curtail FT services without incurring financial penalty. Epic has argued that the FT service is available 365 days of the year, subject only to force majeure events. This is not the case on examination of the terms of the access arrangement.

In order to redress this anomaly, the Commission considers that the terms of the access arrangement should be amended so that Epic would forfeit the capacity charge in respect of firm service that it curtails.

Epic has recently expanded the capacity of the MAPS to provide additional services for Pelican Point Power. The Commission considers that this additional capacity should be taken into account when determining the system primary capacity. Therefore, the Commission requires the system primary capacity to be set to 348 TJ per day.

Back haul and part haul tariffs/ trigger review

Given the potential for the construction of additional pipelines bringing gas into South Australia, several interested parties have expressed support for back haul and part haul tariffs. The Commission may require inclusion of back haul or part haul reference services if section 3.3 of the Code is satisfied. That is, if the service is likely to be sought by a significant part of the market.

The Commission at this stage can not conclusively state whether or not back haul and part haul services satisfy section 3.3 of the Code. Epic has indicated that it is not prepared to include back haul and part haul services as reference services at this time.

In the *Draft Decision* the Commission proposed that a major events trigger should be incorporated into the access arrangement. However, the concept received significant opposition from potential users. It was felt that the trigger did not provide sufficient certainty in respect of future tariffs to be of assistance in making investment decisions. Therefore, the Commission has decided not to include a trigger mechanism in the access arrangement.

Extensions and expansions policy

Epic proposed that expansions and extensions would not be covered unless it elected otherwise. Users and the Commission were concerned that this provision provided Epic with too much discretion and potentially allowed Epic to exercise market power in respect of expansions. The Commission has required Epic to amend its expansions policy so that all expansions are covered unless Epic obtains the Commission's consent otherwise.

Epic does not possess the same capability to exercise market power in respect of extensions, so the Commission accepts Epic's proposal for extensions to be covered unless Epic, by notice to the Commission, elects otherwise.

The *Final Decision* accepts Epic's proposal that extensions and expansions will be priced on an incremental basis. The Commission gave serious consideration to alternative methods of pricing expansions, especially roll-in.

Incremental pricing is preferred by market participants, largely because of the certainty it provides for future tariffs. However, incremental pricing creates an allocation problem because different tranches of capacity attract different tariffs. Users have a preference for the existing capacity at the reference tariff over the incremental capacity.

The allocation problem can be overcome if a roll-in approach is adopted. Under this approach, new investment would be rolled into the capital base and all users would pay the same price. As such, a particular user may see its tariffs change as new investment is added to the pipeline. Users were concerned with this approach because they felt that it distorted the investment decision of whether to augment the existing pipeline or build a new pipeline.

On balance the Commission considers that an incremental approach to expansions is preferable because:

- it does not distort economic incentives for expansion and new investment;
- a roll-in may not satisfy section 8.16(b) of the Code; and
- the allocation problem can be solved by other means as discussed below.

Queuing policy

As noted above, if an incremental costs approach to expansion is adopted, an allocation problem arises because existing capacity is cheaper than new capacity. The price of existing capacity is regulated and therefore market forces, which would allocate the capacity to whoever was prepared to pay the most for it, can not provide an allocation mechanism. The queuing policy must therefore do so.

Epic's proposed queuing policy was a first in first served queue. Several market participants raised considerable concerns in regard to such a queue. The Commission considers that in an environment of excess demand, such as for the MAPS, a first come first served queuing policy would not be able to allocate capacity in an efficient manner and satisfy the requirements of the Code.

Accordingly, the Commission considered a number of other alternative approaches, including pro rating demand, priority on the basis of public benefit, priority for foundation customers and an auction process.

While most of the alternatives considered have merit, it does not appear that any of the approaches are able to allocate existing capacity consistently within the requirements of the Code in all circumstances. As such, the Commission raised the possibility of having an open season with a dispute resolution process with potential users and Epic. This proposal received broad support from both Epic and potential users.

Subsequently, Epic submitted a revised queuing policy on 29 August 2001. This policy provided for two queues as follows:

- a first in first served queue for developable capacity; and
- for existing capacity, an open season with capacity being allocated on the basis of pro rata where there is excess demand. However, if a user does not agree with the pro rata a dispute resolution process will be conducted to allocate capacity.

While the Commission is concerned that there may be circumstances where a pro rata is not reasonable, the Commission accepts Epic's proposal as it provides for dispute resolution where pro rata is not reasonable.

The Commission considers that inclusion of a dispute resolution process is necessary. This is because it is imperative that the queuing policy provides sufficient flexibility to allow for the most effective outcome, given the particular circumstances at the time.

Accordingly the *Final Decision* requires Epic to incorporate its revised queuing policy of 29 August 2001, into the access arrangement.

Terms and Conditions

Receipt and delivery obligations of users

The access arrangement proposed by Epic placed stringent restrictions on users in relation to both the pressure and volume of gas deliveries permitted. Interested parties commented that these restrictions were too onerous, particularly the provisions relating to gas pressure in clause 12.4 of the access arrangement and those relating to volume in Schedule 2.

The Commission takes the view that it is unreasonable that users be subjected to onerous restrictions in relation to both volume and pressure on the MAPS. Given that it is essential that uniform pressures be maintained to preserve the integrity of the MAPS, users should have more flexibility as to volumes. Accordingly, the *Final Decision* requires the access arrangement to be amended to give users some flexibility at receipt points. In particular, users will not be required to supply exactly 1/24th of

their scheduled daily receipt quantity each hour into the pipeline system. Instead, users will be limited to supplying 110 per cent of 1/24th of the user's scheduled receipt quantity each hour.

National gas standard

Several interested parties commented on the possible introduction of a National Gas Standard. The *Final Decision* requires Epic to adopt the National Gas Standard if it becomes mandatory.

Non specification gas

The access arrangement proposed by Epic gives it stringent powers to deal with the entry of non-specification gas into the pipeline system. Despite comments from interested parties that these powers are too far-reaching, the *Final Decision* largely preserves Epic's powers, in order to allow Epic to maintain pipeline integrity. However, the *Final Decision* adjusts the liability and indemnity provisions in relation to non-specification gas to ensure that Epic exercises its powers reasonably and with due care.

Forecasting, nominating and scheduling of service

The access arrangement proposed by Epic contains rigid procedures which users must conform to when nominating for service. Despite comments by several interested parties as to the severity of these procedures, the Commission accepts the need for strict processes. In the absence of these processes, there would be potential for the contractual rights of users to conflict.

Imbalance procedures

The access arrangement proposed by Epic allows it to exact an excess imbalance charge on users whose deliveries of gas differ from their receipts by more than eight per cent. Interested parties commented that Epic's procedures for rectifying an imbalance are too harsh.

The Commission accepts the need for strong disciplinary measures in a multi-user environment. However, some adjustment is required to the measures proposed by Epic. The *Final Decision* requires Epic to amend the access arrangement to provide that users will only incur liability for any imbalance in respect of the period after they have been notified of the imbalance by Epic. The *Final Decision* otherwise preserves many of Epic's powers to address imbalances, but has adjusted the indemnity provisions of the access arrangement to ensure that Epic exercises its powers reasonably and with due care.

Flexibility between delivery points

In the access arrangement proposed by Epic, an FT user's maximum daily quantity (MDQ) is defined by reference to the sum of the user's primary capacity quantities (PCQs) at each delivery point. Interested parties submitted that this gave users insufficient flexibility to take capacity at different delivery points. The *Final Decision* accepts this definition of MDQ on the basis that the access arrangement permits a user

to access more than their PCQ at a delivery point. Under clause 18.3(c) of the access arrangement a user may obtain capacity at a delivery point in excess of their PCQ, up to the net available capacity of a delivery point.

Some interested parties considered that clause 18.3(c) gives too much flexibility to FT users and might permit them to hoard capacity at delivery points. The Commission is satisfied that the regime proposed by Epic strikes an adequate balance between the interests of IT and FT users. The imbalance provisions should ensure that FT users do not hoard capacity at particular delivery points.

Exclusivity Rights

The access arrangement proposed by Epic provides at clause 4.3(c)(ii) that an IT user will not be able to use a delivery point that is subject to existing haulage agreements (EHAs) without the agreement of either the existing user or the service provider. This clause protects the rights of existing users under section 15.14.1 of the EHAs, and gives existing users some scope to restrict third party access to some delivery points.

The *Final Decision* indicates that the Commission believes that section 15.14.1 is an exclusivity right, and as such may be overridden by the terms of the access arrangement. However, the Commission will allow clause 4.3(c)(ii) to remain in the access arrangement. The Commission believes that users whose access to a delivery point has been restricted under clause 4.3(c)(ii) may seek redress under Part IV of the *Trade Practices Act*, as well as s. 13 of the *Gas Pipelines (South Australia) Access Law*.

Final decision

Pursuant to section 2.16(b)(ii) of the Code, the Commission does not approve in its present form Epic's proposed access arrangement for the Moomba to Adelaide Pipeline System.

Pursuant to section 2.16(b)(ii) of the Code, the Commission requires Epic to resubmit a revised access arrangement by 30 November 2001.

The amendments (or, as appropriate, the nature of amendments) that would have to be made in order for the Commission to approve the proposed access arrangement are recorded in this *Final Decision*.

This document sets out the Commission's *Final Decision* on the revised access arrangement (version 29 June 2001). It does not address those provisions of the original access arrangement that have since been superseded or withdrawn.

Final Decision amendments

The Commission requires Epic to make the following amendments to its access arrangement. In formulating the amendments the Commission has considered Epic's most recent proposed access arrangement of 29 June 2001, and submissions by interested parties.

Amendment FDA2.1

For the access arrangement to be approved, the Commission requires the value of the initial capital base to be set to the value derived by the Commission, \$353.3 million at 30 June 2001.

Amendment FDA2.2

For the access arrangement to be approved, the Commission requires that the working capital component not be included in the value of the capital base for the purpose of calculating Epic's capital charge (return on capital assets).

Amendment FDA2.3

For the access arrangement to be approved, the Commission requires:

- the WACC estimates and associated parameters forming part of the access arrangement to be amended to reflect the current financial market settings, by adopting the parameters set out by the Commission in Table 2.13 and Table 2.14; and
- the target revenues and forecast revenues to be based on these new parameters.

Amendment FDA2.4

For the access arrangement to be approved, the Commission requires Epic to amend the reference tariff proposed in Schedule 4 of the access arrangement. The amendment must have the effect that the FT tariff:

- is initially derived by applying the system primary capacity (as amended in Amendment FDA3.2) to the revenue figure set out in Table 2.18 in the 'COS revenue ACCC *Final Decision*' column. Subsequent tariffs must be calculated by applying the approved escalator of 95 per cent of CPI;
- comprises a capacity charge and a commodity charge set to the same proportion used in Epic's Access Arrangement Information of 11 September 2000.

Amendment FDA2.5

For the access arrangement to be approved, the Commission requires Epic to set the IT tariff to the FT tariff multiplied by 1.15. The resultant IT tariff will not include any capacity charge.

Amendment FDA3.1

For the access arrangement to be approved, the Commission requires Epic to insert the following wording into clause 24:

Where an FT Service is curtailed, interrupted or discontinued pursuant to clause 24.1 the Service Provider will forfeit the proportion of any Capacity Charge for that Day equal to the amount of haulage service curtailed, interrupted or discontinued.

Amendment FDA3.2

For the access arrangement to be approved, the Commission requires Epic to include the National Power (now Pelican Point Power) expansion in the access arrangement.

The Commission requires Epic to amend clause 2.1 to include the Pelican Point Power expansion.

The Commission also requires Epic to amend clause 2.2 such that the System Primary Capacity of the Pipeline System includes the capacity of the Pelican Point Power expansion, that is 348 TJ per day. The Commission also requires clause 2 to be amended to take into account the eighth compressor at Wasleys.

The Commission also requires Epic to amend Schedule 1 to the access arrangement to take account of the Pelican Point Power expansion in the capacity of the Pipeline System. The Commission also requires Schedule 1 to be amended to take into account the eighth compressor at Wasleys.

The Commission also requires Epic to amend the Access Arrangement Information to take account of the Pelican Point Power expansion in the capacity of the Pipeline System. The Commission also requires the Access Arrangement Information to be amended to take into account the eighth compressor at Wasleys.

Amendment FDA3.3

For the access arrangement to be approved, the Commission requires that clause 6.7(b)(i) of the access arrangement be amended to read:

it would not be technically or commercially reasonable for it to do so;

in order for clause 6.7(b)(i) to reflect the wording of section 3.10 of the Code.

Amendment FDA3.4

For the access arrangement to be approved, the Commission requires that the access arrangement be amended such that Epic is required to post its reasonable and prudent estimate of the following information on the EBB each day subject to a similar proviso to that in clause 18.5(c):

- daily forecast for following month of number of compressor units likely to be available on the MAPS; and
- daily forecast for following seven days of Net Available Capacity of the pipeline system.

Amendment FDA3.5

For the access arrangement to be approved, the Commission requires that Epic insert a provision into the access arrangement to provide that the service provider may, at its discretion, require a user to demonstrate that it has adequate insurance.

Amendment FDA3.6

For the access arrangement to be approved, the Commission requires that Epic amend clause (a)(i) of Schedule 2 to read as follows:

- (i) 110 per cent of 1/24th of the User's Scheduled Receipt Quantity at that Receipt Point.

Amendment FDA3.7

For the access arrangement to be approved, the Commission requires Epic to amend clause (a)(ii) of Schedule 2 to the access arrangement to read:

Such greater proportion of the Scheduled Receipt Quantity at the Receipt Point as the Service Provider may, in its absolute discretion, approve.

Amendment FDA3.8

For the access arrangement to be approved, the Commission requires that clause 15.2 be amended to include the following provisions:

If at any time during the Term uniform gas specifications for transmission pipelines are required by law, the Service Provider will adopt the uniform gas specifications, and they will apply in lieu of the Gas Specification.

If at any time during the Term voluntary uniform gas specifications for transmission pipelines are introduced into the Australian Gas industry, the Service Provider may adopt the uniform gas specifications, in which case they will apply in lieu of the Gas Specification.

Amendment FDA3.9

For the access arrangement to be approved, the Commission requires that Epic amend clause 15.3(d) by adding the following provision:

Provided that the service provider will not be indemnified to the extent that such losses, costs, damages and expenses result from its own negligence or default in complying with its obligations under the Agreement.

Amendment FDA3.10

For the access arrangement to be approved, the Commission requires Epic to insert the following provision into clause 15.3(b)(i) of the access arrangement:

and will, as soon as it becomes aware that a User has introduced Non-Specification Gas into the Pipeline System, post a notice on the EBB notifying all Users of that fact.

Amendment FDA3.11

For the access arrangement to be approved, the Commission requires Epic to insert the following provision into clause 15 of the access arrangement:

Where the Service Provider receives gas complying with the Gas Specification at the Receipt Point from all Users on a day but then supplies Non-Specification Gas at one or more Delivery Points, the Service Provider will indemnify the User from and against all losses, costs, damages or expenses that the Service Provider may suffer or incur as a result of the Non-Specification Gas entering the Pipeline System.

Amendment FDA3.12

For the access arrangement to be approved, the Commission requires Epic to insert the following provision into clause 17.3 of the access arrangement:

The Service Provider will, on request by a User, provide on a monthly basis such information as is reasonably required to justify Epic's calculation of the figure indicated in clause 17.3(c)(i).

Amendment FDA3.13

For the access arrangement to be approved, the Commission requires Epic to insert the following provision into the access arrangement:

The Service Provider will calculate on a daily basis any discrepancy between the Total System Use Gas Quantity from the previous day and the amount of System Use Gas actually consumed (**System Use Gas Discrepancy**). The Service Provider will, as soon as practicable, balance its calculation of the Total System Use Gas Quantity to minimise the System Use Gas Discrepancy.

Amendment FDA3.14

For the access arrangement to be approved, the Commission requires Epic to amend clause 18 of the access arrangement by removing clause 18.4(e) and replacing it with a new provision detailing the procedures to be followed when written confirmation is not received. These procedures must include:

- provision for FT Users to confirm by telephone, facsimile, e-mail or in writing at a time later than 1730 hours;
- provision for Epic to accept such requests if it is reasonable and prudent to do so;
- provision that FT Service for which confirmation is given after 1730 hours be given a priority below FT Service, IT Service and Non-specified Services on the day; and
- provision for such Service to be provided on an interruptible basis.

Amendment FDA3.15

For the access arrangement to be approved, the Commission requires that Epic amend clause 19.1 by deleting the term 'best endeavours' and substituting the term 'reasonable and prudent efforts'.

Amendment FDA3.16

For the access arrangement to be approved, the Commission requires Epic to amend the access arrangement to provide that if the Service Provider does not notify the User of

an Imbalance by 0900 hours on any day, then the service provider may not levy the Excess Imbalance Charge for that day.

Amendment FDA3.17

For the access arrangement to be approved, the Commission requires that Epic amend clause 19.4 by deleting the phrase ‘and if it is of such a nature’ and replacing it with ‘and if the conditions in clause 25.1(a)(i) are met’.

Amendment FDA3.18

For the access arrangement to be approved, the Commission requires Epic to amend clause 19.3(c) to provide that a User will not be held responsible and penalised for any Imbalance to the extent caused by the Service Provider.

Amendment FDA3.19

For the access arrangement to be approved, the Commission requires Epic to amend the final sentence of clause 19.4 to read:

The Service Provider will not be liable for any losses, costs, damages or expenses that the User may suffer or incur as a result of curtailment, suspension, interruption, cessation or confiscation under this clause 19.4 unless, and to the extent which:

- (A) those losses, costs, damages or expenses resulted from measures taken by the Service Provider under clause 19.4 to correct an imbalance caused by the Service Provider; or
- (B) those losses, costs, damages or expenses resulted from the negligence of the Service Provider; or
- (C) those losses resulted from the Service Provider’s failure to comply with its obligations under the Agreement.

Amendment FDA3.20

For the access arrangement to be approved, the Commission requires that Epic amend clause 19.5 such that the User does not indemnify the Service Provider in respect of losses, costs, damages or expenses incurred due to Epic’s negligence or by Epic’s default in complying with its obligations under the Agreement.

Amendment FDA3.21

For the access arrangement to be approved, the Commission requires Epic to amend clause 19.7 of the access arrangement such that Epic will not charge for variations caused by Epic breaching its access contract with the User.

Amendment FDA3.22

For the access arrangement to be approved, the Commission requires Epic to insert a provision to provide for an alternative allocation procedure where parties taking delivery of gas at a Delivery Point agree to the allocation procedure. The parties will

provide the service provider with a copy of the agreement. If an agreement is not reached, Epic is to allocate deliveries to the parties at the Delivery Point pro rata, based on their respective nominations at the Delivery Point.

Amendment FDA3.23

For the access arrangement to be approved, the Commission requires Epic to insert a provision into the access arrangement requiring that where the Service Provider reduces a User's nomination under clause 23, the Service Provider must provide, on a reasonable request by a User, such information as is reasonably required to justify Epic's calculation of the reduction.

Amendment FDA3.24

For the access arrangement to be approved, the Commission requires Epic to replace the words 'the User' in clause 23.2(a) with the words 'all Users'.

Amendment FDA3.25

For the access arrangement to be approved, the Commission requires Epic to:

- Amend clause 24.3(a) by deleting after the word 'greater' the words 'or less'.
- Amend clause 24.6 as follows:

The Service Provider will only be liable for any losses, costs, damages or expenses that the User may suffer or incur as a result of:

- (a) any curtailment, interruption or discontinuation invoked by the Service Provider under clause 24.1;
- (b) the User complying or failing to comply with a curtailment notice invoked by the Service Provider which was issued negligently or in breach of the Service Providers obligations under the Agreement;
- (c) any curtailment, interruption or discontinuation invoked by the Service Provider under clause 24.5 where the Service Provider has been negligent or has failed to comply with its obligations under the Agreement.

- Add to clause 24.2 the following clause:

The Service Provider will, on reasonable request by a User, provide such information as is reasonably required to justify the issue of a curtailment notice.

Amendment FDA3.26

For the access arrangement to be approved, the Commission requires Epic to:

- Add to clause 27.1(b) the following:

The Service Provider may amend the format and/or content of any forms from time to time as it considers appropriate as long as the obligations of the Service Provider are not significantly decreased or the obligations of the User are not significantly increased.

Amendment FDA3.27

For the access arrangement to be approved, the Commission requires that Epic delete from clause 28.1(a)(i) and 28.2(a)(i) the words ‘as if it were its property’.

Amendment FDA3.28

For the access arrangement to be approved, the Commission requires that Epic must:

- Amend clause 34.1(a) as follows:

For the purposes of this Agreement, ‘Force Majeure’ means any event or circumstance not within the control of a Party and which, by the exercise of due diligence, that Party is not reasonably able to prevent or overcome including (but not limited to) ...

Amendment FDA3.29

For the access arrangement to be approved, the Commission requires that Epic:

- Amend clause 36.4 as follows:

The User may terminate the agreement and/or suspend its obligations under the agreement if the Service Provider...

- Add, after clause 36(b) the following clause:

(c) fails to pay any amount due to the User and that amount, plus interest accrued at the Interest Rate plus 2 per cent per annum, is still outstanding 7 Days after the date of a notice of demand from the Service Provider.

Amendment FDA3.30

For the access arrangement to be approved, the Commission requires that Epic:

- Amend clause 37.2(h) as follows:

The Independent Expert will make a determination on the Dispute within a reasonable period and will determine what, if any, adjustments may be necessary between the Parties. The determination of Independent Expert will be final and binding upon the parties.

- Amend the second sentence in clause 37.2(h) as follows:

The determination of the Independent Expert will, in the absence of manifest error, be final and binding upon the parties.

- Add, after clause 37.1(d), the following sentence:

A party must take part in a dispute resolution process that has been initiated by another Party on reasonable grounds.

Amendment FDA3.31

For the access arrangement to be approved, the Commission requires that Epic:

- Amend clause 40.1 as follows:
 - Subject to this agreement, a Party will have no right to be provided with any information that relates in any way to ...
- Amend clause 40 by replacing the words 'User' and 'Service Provider' with the words 'a Party'.

Amendment FDA3.32

For the access arrangement to be approved, the Commission requires Epic to remove clause 26.6(a)(vi).

Amendment FDA3.33

For the access arrangement to be approved, the Commission requires that Epic amend clause 10.4(b) to the following:

At the time it comes into operation, any New Facility, except for an extension to the Pipeline, is to be considered part of the Covered Pipeline, unless at that time the Regulator agrees that the New Facility should not be covered. Extensions will be part of the Covered Pipeline, unless the Service Provider, by notice to the Regulator (given before those facilities come into service) elects otherwise.

Amendment FDA3.34

For the access arrangement to be approved, the Commission requires Epic to replace clauses 10.1 – 10.3 of its 29 June 2001 access arrangements with clauses 10.1 to 10.7 of its proposal of 29 August 2001.

Amendment FDA3.35

Amendments to Epic's proposal of 29 August 2001

Notification of other disputes

For the access arrangement to be approved, the Commission requires Epic to add the following into clause 10.5:

If a Prospective User notifies a dispute in relation to the Spare Capacity which was the subject of an Open Season before the negotiation and conciliation processes have been completed, the Relevant Regulator may consider, in accordance with section 6.3 of the Code, whether an alternative dispute resolution process would be appropriate.

Epic not to agree to allocate spare capacity outside of the queuing policy

For the access arrangement to be approved, the Commission requires Epic to add the following at the start of clause 10.1:

Before the Service Provider agrees to allocate Spare Capacity it must undertake the Open Season process described in clause 10.3.

Qualification of clause 10.4(f)

For the access arrangement to be approved, the Commission requires Epic to add the following to clause 10.4(f) after the words (“Original Requests”):

and only if the conditions in 10.4(d) have been satisfied.

Qualification of clause 10.5(c)

For the access arrangement to be approved, the Commission requires Epic to add the following to clause 10.5(c) after the words ‘clause 8.1 will apply’:

at the close of the period referred to in 10.5(d).

Clarification of clause 10.5(f)

For the access arrangement to be approved, the Commission requires Epic to add the following to clause 10.5(f) after the words ‘Spare Capacity’:

pursuant to the alternative dispute resolution process

Clarification of clause 10.5(h)

For the access arrangement to be approved, the Commission requires Epic to add the following to clause 10.5(h) after the words ‘Spare Capacity’:

pursuant to the arbitration process

Amendment FDA3.36

For the access arrangement to be approved, the Commission requires Epic to add the following after clause 10.4(e) of Epic’s proposal of 29 August 2001:

Notwithstanding the above, the Service Provider must allocate capacity in accordance with a dispute resolution process undertaken under the *National Gas Pipelines Access Act (South Australia) 1995* and is not required to conduct an open season before contracting for that capacity.

Amendment FDA4.1

For the access arrangement to be approved, the Commission requires Epic to revise the access arrangement information so that it is consistent with the latest revised access arrangement (version 29 June 2001) and the amendments specified in this *Final Decision*.