Australian Competition and Consumer Commission

Pre-decision Consultation Paper

Access Arrangement proposed by Epic Energy South Australia Pty Ltd for the Moomba to Adelaide Pipeline System

13 October 2000

Commission File No: CR99/53; C2000/269

Commission and Code Registrar Application No: GR9902

INTRODUCTION

On 16 August 2000 the Commission released its Draft Decision on Epic Energy's proposed access arrangement for the Moomba to Adelaide Pipeline System (MAPS). The Draft Decision contained a number of proposed amendments, which, in the Commission's view would provide for greater third party access to the MAPS whilst providing Epic with a commercial rate of return on its investment. Attachment A contains a list of all amendments proposed by the Commission in the Draft Decision. The Commission's reasons for requiring these amendments are set out in detail in the Draft Decision.

Following the release of the Draft Decision, the Commission sought submissions from interested parties. Submissions have been received from the interested parties and Epic.

To assist the Commission in reaching a final decision, a pre-decision public consultation forum will be held in Adelaide on 2 November 2000. The purpose of the consultation forum is to provide interested parties with the opportunity to discuss issues arising from submissions and the Draft Decision.

This consultation document is intended to provide a framework for the discussion of key issues at the consultation forum.

To assist the Commission in making arrangements for the day, it would be appreciated if parties wishing to attend the consultation forum could complete the enclosed registration form and return it to the ACCC no later than **30 October 2000**. There is no charge for attendance at the forum.

RELEVANT DOCUMENTS

The Draft Decision relates to the revised version (at 16 April 1999), of Epic's proposed access arrangement. However, in drafting the amendments to the access arrangement the Commission took into consideration and discussed in the Draft Decision Epic's proposed revisions of 2 March 2000.

On 29 August 2000 Epic submitted a consolidated version of its access arrangement and access arrangement information. This incorporates the original lodgement of April 1999, the substantial revisions proposed in March 2000, and identifies corrections and all revisions proposed since March 2000. The consolidated access arrangement and access arrangement information can be found on the Commission's web-site.

It should be noted that the consolidated document does not address the amendments proposed by the Commission in the Draft Decision. Rather, it represents the consolidated state of Epic's proposals addressed by the Commission in the Draft Decision.

All public submissions to the Commission's Draft Decision can be found on the ACCC website, www.accc.gov.au under the Gas and Access Arrangements sub folders.

ACCC PRE-DECISION

CONSULTATION FORUM

MOOMBA-ADELAIDE PIPELINE SYSTEM

ACCESS ARRANGEMENT

2 November 2000

8:30am – 1:00pm

Adelaide Town Hall: Meeting Hall

128 King William St, Adelaide

AGENDA

8:00am **Registration and Coffee**

8:30am **SESSION 1**

Exclusivity rights / release of confidential information

Initial Capital Base

Rate of return

Trigger mechanism / back-haul tariff

10:30am **MORNING TEA**

10:45am **SESSION 2**

Extensions / expansions / queuing policy

Proposed transfer mechanism

Metering at Delivery Points

Other issues

1.00pm **CLOSE**

KEY ISSUES FOR DISCUSSION

1. Exclusivity rights / Release of confidential information

1.1 Draft Decision

Section 2.25 of the Code prohibits the regulator from approving an Access Arrangement, any provision of which would, if applied, deprive any person of a contractual right in existence prior to the date the proposed Access Arrangement was submitted (or required to be submitted), other than an Exclusivity Right which arose on or after 30 March 1995.

The Commission proposed a series of amendments (A3.5-3.7) to the access arrangement to ensure that existing contractual rights, which, in the Commission's view, constitute exclusivity rights, would not be given effect by the proposed access arrangement.

1.2 Submissions

The South Australian Government expressed its concern that the Commission's reasoning for formulating the above amendments were based on existing contractual clauses, contained only in Confidential Annexure 4 to the Draft Decision.

Since the release of the Draft Decision, the Commission, pursuant to section 42 of the Gas Pipelines Access Law, has released a summary of the confidential clauses, that, in the Commission's view constitute exclusivity rights. This is contained in the Commission's *Disclosure of confidential information – Proposed Access Arrangement lodged by Epic Energy South Australia Pty Ltd for the Moomba Adelaide Pipeline System*. The Commission is seeking public submissions on this paper by 30 October 2000.

1.3 *Epic's response*

In response to the Commission's proposed amendments A3.5-3.7, Epic proposes that a section be included at the start of its access arrangement stating that the access arrangement is subject to the Code. Epic will otherwise amend the consolidated access arrangement to reflect the proposed amendments.

2. Initial Capital Base

2.1 Draft Decision

The Code requires the regulator to approve a value for an existing pipeline (an initial capital base) as part of the first access arrangement for that pipeline. The principles for establishing the ICB of a pipeline system are set out in section 8.10 – 8.14 of the Code.

The Commission proposed an amendment in the Draft Decision (A2.1) that determined an initial capital base (ICB) of $310 million. This was calculated using the DORC asset valuation methodology, adjusted for Epic's deferred tax liability. Epic had proposed an ICB of $354 million.

2.2 Submissions

The SA Government submitted that the Commission's adjustment to the ICB for Epic's deferred tax liability is counter to generally accepted accounting practice and potentially contrary to the Code. The Australian Gas Users Group (AGUG) suggested that the ICB should be based on historical cost, rather than DORC.

2.3 Epic's response

Epic has revised its original ORC valuation for the MAPS upward from $572 million to $600 million (at December 1998), or $620 million (at June 2000). Appendix 1 to Epic's submission contains submissions from Venton & Associates and Worley Limited in support of Epic's ORC calculations. Further, Epic is of the view that the decline in the exchange rate that has occurred since Epic made its original proposal would potentially add at least a further $55 million to the ORC and $33 million to the DORC. Epic's resulting DORC range, inclusive of exchange rate variations is $387 - $405 million.

Epic remains opposed to the Commission's asset class approach to depreciating the ORC to arrive at a DORC valuation, and has provided a worked example (Appendix II to Epic's submission) in support of its view that a one year change in asset life assumption can significantly vary the DORC.

Epic is opposed to the Commission's adjustment to the ICB to account for Epic's deferred tax liability. Epic's arguments against the Commission's adjustment are set out in Appendix IV to its submission.

3 Rate of return

3.1 Draft Decision

The Code (section 8.30 and 8.31) states that the rate of return should provide a return that is commensurate with prevailing conditions in the market for funds and with the commercial risk associated with providing the reference service

The Commission proposed a number of changes (A2.3) to the WACC and associated parameters forming part of the access arrangement, to deliver a rate of return to Epic that is commensurate with prevailing market conditions and the risk involved in delivering gas transmission services.

3.2 Submissions

The South Australian Government suggested that the WACC should include a higher risk premium to reflect the increasing competitive risks faced by the gas transmission industry. It also expressed concern that a low WACC might adversely impact on new investment in pipelines in South Australia, and prevent future augmentation of the MAPS. The AGUG was supportive of the Commission's proposed WACC and supporting analysis.

3.3 Epic's response

Epic submitted that the rate of return proposed by the Commission (6.7% pre-tax real WACC) presents a major disincentive for development, and should at the very least exceed the rates handed down by SAIPAR for Envestra's distribution network (8.1%) and IPART for AGL's distribution network (7.75%). Epic considers that the risk facing the MAPS is significantly greater than that facing distribution networks.

Epic had a number of comments to make in respect of individual WACC parameters. These are set out on pages 10-14 of Epic's submission. Appendix III to Epic's submission is a submission by Hastings Fund Management Limited (HFML) criticising the Commission's rate of return calculations.

4. Transfer mechanism

4.1 Draft Decision

The Commission proposed an amendment to Epic's access arrangement (A3.4) to include a provision to transfer capacity from one supplier to another, where a customer changes its supplier. It was intended that such a provision in the access arrangement would be based on clause 15.3 of the existing haulage agreements, which gives Epic the discretion to re-allocate capacity between suppliers, where a customer changes its supplier. Any such provision should be subject to the provisions of the relevant existing haulage agreement other than any exclusivity rights that arose on or after 30 March 1995.

The Commission, pursuant to section 42 of the Gas Pipelines Access Law, has released a summary of clause 15.3 of the existing haulage agreements. This is contained in the Commission's *Disclosure of Confidential Information – Proposed Access Arrangement lodged by Epic Energy South Australia Pty Ltd for the Moomba Adelaide Pipeline System.*

4.2 Submissions

TGT & Origin both stated that it is incorrect to assume that an existing shipper who loses a customer no longer requires the capacity (of that customer), particularly in peak times. The South Australian Electricity and Gas Users Group (SAEGUG) supported the proposed mechanism as a means of promoting competition at the retail level. The SA Government suggested, as an alternative, retaining s.36 (2) of the *Natural Gas Pipelines Access Act 1995* for the duration of the access arrangement period. This prevents the hoarding of capacity via binding arbitration. The Government considers that this provision, along with Epic's proposed incentive mechanism is likely to provide the means for a secondary market in contracted but unused capacity. Application of s. 36(2) of the Act could be achieved by amending the *Gas Pipelines Access (SA) Act 1997*.

4.3 Epic's response

Epic does not accept the Commission's proposal to include a capacity transfer mechanism in the access arrangement. Epic is of the view that the Code prohibits the Commission from requiring Epic to amend its access arrangement in a manner

inconsistent with existing contractual rights, or to exercise a discretionary provision in its existing haulage agreements.

Epic stated that it is not Epic's intention to replicate the provisions relating to surrender of capacity in the existing haulage agreements in future contracts. Notwithstanding this, Epic considers that the potential disputes that could arise between Epic and users as a result of such a mechanism would negate its usefulness.

5. Extensions / Expansions Policy, Queuing Policy

5.1 Draft Decision

Section 3.16 of the Code requires an access arrangement to have an extensions/expansions policy. The policy is to set out the method to be applied to determine whether any extension to or expansion of the system's capacity will be treated as part of the covered pipeline.

Sections 3.12 to 3.15 set out the Codes requirements for a queuing policy. An access arrangement must include a queuing policy for determining the priority given to users and prospective users for obtaining access to a covered pipeline and for seeking dispute resolution (under section 6 of the Code)

The Commission proposed a number of amendments (A3.31-A3.34) to Epic's proposed extensions/expansions and queuing policies. These amendments focused on priority of service, frequency of queue clearance, the IT service application fee and the capital contribution threshold and formulae.

5.2 Submissions

Several submissions supported the Commission's proposed amendments to the queuing policy, particularly increasing the frequency of queue clearance. The SAGEUG expressed its concern about the potential for a first-come, first-served based queuing policy to allow existing shippers to tie up all spare capacity. Origin submitted that the amendments to the queuing policy could result in over-booking and a loss of aggregation benefits that could artificially increase requirements for capacity.

Submissions on the extensions/expansions policy focused on the very low level of construction and commercial risk faced by Epic. Origin and AGL SA both raised the need for a 'grace period', in which a user whose notified capital contribution is less than the estimated capital has a chance to agree to the estimated capital contribution, instead of being immediately returned to the queue. The SAEGUG questioned the need for a cap, or threshold on investment. Providing the queue calls for investment, and that investment meets sound investment criteria, then it should proceed. The SAEGUG also stated that the $5000 application fee for IT services is excessive.

5.3 Epic's response

Epic has undertaken to amend the consolidated access arrangement information to make changes that are generally consistent with the changes proposed by the Commission.

Epic proposes that a single queuing process apply for all services, rather than separate queuing processes applying to each class of service. Epic proposes to deal with capacity expansion proposals as they arise in the queue ie. in the order they are submitted.

Epic does not agree with the Commission's proposed amendment (A3.34) on queue clearance and the capital contribution formula. Rather Epic proposed to replace the existing expansions and extensions policy (clauses 10.2-10.8) with a simplified clause. This can be found on pages 30-31 of Epic's submission – Part A.

6. Trigger mechanism / Back-haul tariff

6.1 Draft Decision

Section 3.17(b) of the Code allows the regulator, having had regard to the objectives in section 8.1 of the Code, to require that 'specific major events' be defined that trigger an early review of the access arrangement.

The Commission required (A3.36) Epic to amend the access arrangement by defining, in response to the further process of public consultation, specific major events (if any) that would trigger an obligation on the service provider to submit revisions prior to the revisions submission date.

6.2 Submissions

Submissions by Santos, WMC Ltd and the SAEGUG supported the idea of including a trigger mechanism in the access arrangement, with WMC proposing that an appropriate trigger would be the approval by the State government of an alternate supply of gas into South Australia. SAEGUG suggested that a mid-term review could cover tariffs, capital contributions, queuing and back-haul tariffs. The South Australian Government suggested that a preferable alternative to a trigger mechanism would be for Epic to be in a position to respond to new entry in a competitive manner.

6.3 Epic's response

Epic submitted that in developing the Code, the intention was not to enable third parties to arbitrarily re-open access arrangements. To do so would go against the objectives of the Code as it was agreed by all jurisdictions, and would potentially expose the service provider to considerable risk.

Epic does not believe that an event can be defined with sufficient timeliness or certainty for such a provision to be useful. Rather, a trigger mechanism would place a significant risk and unnecessary cost burden on Epic.

ATTACHMENT A:

LIST OF AMENDMENTS PROPOSED IN THE DRAFT DECISION

Proposed amendment A2.1

In order for Epic's access arrangement for MAPS to be approved, the value of the initial capital base must be adjusted to the value derived by the Commission, **$310** million.

Proposed amendment A2.2

In order for Epic's access arrangement for MAPS to be approved, for the purpose of calculating Epic's capital charge (return on capital assets) the working capital component must not be included in the value of the capital base.

Proposed amendment A2.3

In order for Epic's access arrangement for MAPS to be approved:

- *the WACC estimates and associated parameters forming part of the access arrangement must be amended to reflect the current financial market settings, by adopting the parameters set out by the Commission in Tables 2.9 and 2.10 above; and*
- *the target revenues and forecast revenues must be based on these new parameters.*

Proposed amendment A2.4

In order for the access arrangement for MAPS to be approved, Epic must:

- *incorporate the new clauses 30.4 and 30.5 proposed by Epic in its letter of 15 June 2000 in place of clause 30.4 of the original access arrangement;*
- *incorporate the new definition of 'imposts' proposed by Epic in its letter of 15 June 2000 in place of the original definition in clause 43.1(b); and*
- *replace the words 'GST Recipient' and 'GST Supplier' in the new clause 30.4(b) with the words 'Recipient' and 'Supplier' respectively.*

Further, in the CPI-X revenue adjustment that occurs in the year following the introduction of GST, Epic must incorporate the measure of CPI that is exclusive of GST impacts, as stated by the Commission at that time.

Proposed amendment A2.5

For the access arrangement to be approved, Epic must amend the reference tariff proposed in Schedule 4 of the access arrangement. The amendment must have the effect that the reference tariff is derived by applying, to the system primary capacity:

- *to derive the initial tariff, the cost-of-service revenue resulting from the amendments proposed by the Commission in this Draft Decision;*

- *in each subsequent year, the smoothed cost-of-service revenue resulting from the amendments proposed by the Commission in this Draft Decision.*

Proposed amendment A2.6

In order for Epic's access arrangement to be approved, the Commission requires that Epic delete clause 30.2 of the access arrangement (that clause being entitled 'CPI Adjustment') and amend clause 5.2(a)(xii) of the access arrangement to read as follows:

> The initial Reference Tariff (including the Whyalla Lateral Surcharge) is set out in Schedule 4. The Total Revenue Requirement and the resulting Reference Tariff will thereafter vary on 1 January in each year of the initial Access Arrangement period in accordance with the formula CPI – 1.6%. Charges in respect of other services are also shown in Schedule 4. These charges will remain unchanged during the initial Access Arrangement period.

Proposed amendment A2.7

In order for Epic's access arrangement to be approved, the Commission requires that Epic incorporate in the access arrangement the incentive and risk-sharing mechanism proposed by Epic set out in clause 5.3 of the revised access arrangement of 2 March 2000.

Proposed amendment A2.8

In order for the access arrangement to be approved, the Commission requires that Epic amend clause 5.2(a)(vi) of the original lodgement (renumbered as '5.2(a)(v)' in the lodgement of 2 March 2000) so that it reads as follows:

> The Capital Base is to be adjusted annually on 1 January by the Capital Cost Revaluation, which will be equal to the CPI for the 12-month period ending on the previous 30 September.

Proposed amendment A3.1

For Epic's access arrangement for MAPS to be approved, the Commission requires:

- *that the access arrangement be amended to provide for the FT, IT and non-specified services set out in Epic's lodgement of 2 March 2000, subject to the proposed amendments in the remainder of this Draft Decision; and*

- *that clause 43.1 be amended to make the definition of 'Available Capacity' and 'Spare Capacity' consistent with the definition of 'Spare Capacity' in section 10.8 of the code.*

Proposed amendment A3.2

For the access arrangement to be approved, the Commission requires that Epic incorporate the proposed amendment providing for Epic to post on the EBB each day:

- *forecast maximum capacity for each delivery point, based on the gas specification and the conditions prevailing on the previous day; and*
- *the forecast net available capacity, based on monthly forecasts that are provided by the FT users (under clause 18.1(c)).*

as described in Epic's response to submissions of 1 February 2000 (section 2.2.7, page 24 of public response) and in section 3.1.4 in this Draft Decision.

Proposed amendment A3.3

For the access arrangement to be approved, the Commission requires that it be amended to provide that capacity that is released or surrendered by a user be dealt with as proposed by Epic in its letter dated 15 June 2000, as quoted in section 3.1.4, to the effect that:

> capacity that is released by a user:
>
> (a) otherwise than under the trading policy clause 26.2,
>
> (b) for reason that a consumer or aggregator has changed suppliers
>
> may be contracted by another user, or a prospective user:
>
> (i) who is (directly or indirectly) supplying that consumer (or aggregator); and
>
> (ii) without following the queuing process set out in clause 10.

Proposed amendment A3.4

For the access arrangement to be approved, the Commission requires that it be amended to make provision for the service provider to require that capacity be transferred in specified circumstances. The circumstances are where:

- *in consequence of losing a customer to another supplier, an existing user no longer requires the volume of capacity attributable to that customer; and*
- *the capacity is not released by the existing user;*

it must be transferred to the other supplier.

Any such provision should be subject to the provisions of the relevant existing haulage agreement other than any exclusivity rights that arose on or after 30 March 1995.

Proposed amendment A3.5

For the access arrangement to be approved, the Commission requires that it be amended to contain a provision in the following terms:

> This access arrangement takes effect subject to any contractual rights in existence prior to the date of lodgement of the proposed access arrangement, 1 April 1999, with the exception of Exclusivity Rights (within the meaning of the Code) that arose on or after 30 March 1995.

Proposed amendment A3.6

For the access arrangement to be approved, the Commission requires that clause 4.3, other than clause 4.3(g)(ii), as proposed in Epic's lodgement of 2 March 2000 be

incorporated in the access arrangement, subject to adding the following to clause 4.3(c):

> For the avoidance of doubt, nothing in the Agreement requires or permits the Service Provider or User to observe or give effect to the terms of any Exclusivity Rights (within the meaning of the Code) that arose on or after 30 March 1995.

Proposed amendment A3.7

For the access arrangement to be approved, the Commission requires that the definition, in clause 43.1, of 'Existing User Rights' proposed in Epic's lodgement of 2 March 2000 be incorporated in the access arrangement, subject to adding the following:

> The term 'Existing User Rights' does not include any Exclusivity Right (within the meaning of the Code) that arose on or after 30 March 1995.

Proposed amendment A3.8

For the access arrangement to be approved, the Commission requires that the definition, in clause 43.1, of 'Existing Delivery Facilities' proposed in Epic's lodgement of 2 March 2000 be incorporated in the access arrangement, subject to the deletion of references to laterals.

Proposed amendment A3.9

For the access arrangement to be approved, the Commission requires that clauses 9.1 and 9.2 be modified so that:

- *they read as proposed by Epic in its letter dated 15 June 2000 to the Commission as follows:*

  > 9.1 The Service Provider will not be required to commence the Specified Service for a Prospective User or to continue to provide the Specified Service to the User if the Prospective User/User is not able to satisfy the Service Provider of the ability of the Prospective User/User to fulfil its obligations under the Agreement.
  >
  > 9.2 If the Service Provider is not satisfied that the Prospective User/User will fulfil its obligations or continue to fulfil its obligations under the Agreement, the Service Provider may require, and the Prospective User/User will provide, security for those obligations to the Service Provider's reasonable satisfaction.

- *they are cross-referenced to Schedule 2, Form 3, of the access arrangement so as to clearly indicate the credit and financial information that the service provider can reasonably request of the user or prospective user.*

Proposed amendment A3.10

For the access arrangement to be approved, the Commission requires that clauses 6.3, 11.1 and 11.2 be amended in the manner proposed in the lodgement of 2 March 2000, subject to adding to clause 11.2 a provision to the following effect:

> The Service Provider will accept reasonable requests for a shorter Term of Agreement for IT service. `

The Commission also requires that clause 11.3 be amended to read as follows:

11.3(a) Providing the User is not in default at the date of notice, the User may extend the Term for FT service by minimum periods of 2 years at a time:

(i) by giving written notice to the Service Provider not less than 3 months prior to the Termination Date; or

(ii) by giving notice at a time and in a manner previously arranged with the Service Provider.

(b) Where the Agreement is for IT Service, the Term will automatically extend on a year by year basis from the Termination Date unless:

(i) the User has given written notice of termination to the Service Provider under clause 36.5;

(ii) the User is in default under the Agreement at the Termination Date.

Proposed amendment A3.11

For the access arrangement to be approved, the Commission requires that Epic amend clause 12.4 by replacing the term '60°C' with the following:

> 71°C, or such lesser temperature as may be agreed at a future date with all users of the pipeline system at that time or as may be agreed as part of a future national gas code.

Proposed amendment A3.12

For the access arrangement to be approved, the Commission requires that clause 13.3 be amended as proposed by Epic in its lodgement of 2 March 2000 and as modified by its letter dated 15 June 2000.

Proposed amendment A3.13

For the access arrangement to be approved, the Commission requires that clause 15 be amended as proposed by Epic in its lodgement of 2 March 2000, subject to:

- *Epic amending clause 15.3(b)(ii) by replacing the word 'may' with 'will' and by adding after the word 'System' in that clause words to the following effect:*

  > … and for that purpose will communicate directly with the operator of the Moomba processing plant or other originator of the non-specification gas (if known) to bring about a termination of the supply of that gas as soon as it becomes aware of the problem;

- *Epic describing the steps it will take to ensure that users are not adversely affected by the proposed change in gas specification.*

Proposed amendment A3.14

For the access arrangement to be approved, the Commission requires that, in addition to making its other proposed revisions of 2 March 2000 to clause 17, Epic change its proposed revision to clause 17.1(c) to adopt the following standard:

17.1 (c) The Service Provider will use its best endeavours to minimise the quantity of System Use Gas that is required for the operation of the Pipeline System.

ATTACHMENT A:

Proposed amendment A3.15

For the access arrangement to be approved, the Commission requires that clause 18 be amended in the manner proposed in the revised lodgement of 2 March 2000.

Proposed amendment A3.16

For the access arrangement to be approved, the Commission requires that, in addition to making its other proposed revisions of 2 March 2000 to clause 19, Epic amend its proposed revision to clause 19.2(c) to read as follows:

> 19.2(c) If, at the date of expiration or termination of the Agreement there is an Imbalance, then despite the expiration or termination of the Agreement, the User must:
>
> (i) if the Imbalance is negative, pay to the Service Provider (within 10 Days after receipt of an invoice) an amount equal to the number of GJs of the Imbalance multiplied by the Excess Imbalance Charge Rate; and
>
> (ii) if the Imbalance is positive, make arrangements to sell the amount of the Imbalance to another user. The Service Provider will assist the User (for instance, by providing access to the EBB) so that the user has the opportunity to realise from the sale the full market value that would be achieved in the normal course of trading.

Proposed amendment A3.17

For the access arrangement to be approved, clause 20.2(b) must be amended so that it is clear that the charge applies to the outstanding excess imbalance, i.e., to that imbalance outstanding after any and all exchanges or trades have been made.

Proposed amendment A3.18

For the access arrangement to be approved, the Commission requires that clause 21 be amended as proposed in the revisions to the access arrangement of 2 March 2000.

Proposed amendment A3.19

For the access arrangement to be approved, the Commission requires that Epic incorporate in it the revision to clause 22.3(a)(ii) proposed in Epic's letter to the Commission of 15 June 2000, that is, the words 'if any' be added after the words 'Metered Facilities' in the parentheses.

Proposed amendment A3.20

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

- *adopt the revisions to clauses 24 and 25 set out in its lodgement of 2 March 2000 and in its letter dated 15 June 2000; and*
- *amend clause 41.1(c) by deleting after the words 'telephone and' the word '/or'.*

Proposed amendment A3.21

For the Commission to approve the access arrangement, Epic must amend clause 27.4(d) to read as follows:

> The Service Provider will not be responsible for any losses, costs, damages and expenses suffered or incurred by any person in relation to the use of the EBB or any communications related to the EBB, unless such losses are due to the negligence of the Service Provider or default by the Service Provider in complying with its obligations under the Agreement.

Epic must amend clause 4.2 of the EBB System Agreement in Schedule 5 of the access arrangement to reflect the above amendment to clause 27.4(d) and Epic's proposed revisions of 2 March 2000 to clause 27.3(b) of the access arrangement.

Proposed amendment A3.22

For the access arrangement to be approved, the Commission requires Epic to amend clauses 28 and 29 and Schedules 8 and 9 to establish, in consultation with users and prospective users:

- *threshold values at which, and circumstances in which, it is reasonable for the service provider to require the installation of measuring equipment and adherence to procedures set out in Schedules 8 and 9.*

Proposed amendment A3.23

For the access arrangement to be approved the Commission requires that clause 32.1 be amended to read as follows:

> The User will pay each invoice by direct payment to a bank account nominated by the Service Provider by the later of the 14th day of the month or 10 business days after receipt of the invoice from the Service Provider.

The Commission also requires that Epic revise clause 32.2(a) as proposed in its lodgement of 2 March 2000.

Proposed amendment A3.24

For the access arrangement to be approved, Epic must amend clause 34.4(b) in accordance with the proposal in Epic's lodgement of 2 March 2000.

Proposed amendment A3.25

For the access arrangement to be approved, the Commission requires that Epic incorporate in clause 35 the revisions proposed in its lodgement of 2 March 2000, subject to changing the word 'lesser' in clause 35.3 to 'greater'.

Proposed amendment A3.26

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

- *adopt the proposed revisions to clause 37.2(a)(i) set out in its letter dated 15 June 2000, that is, Epic is to add after the word 'practice' the following words:*

and includes the grounds on which the Service Provider has issued a Curtailment Notice or an OFO

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

  The Service Provider is bound to take part in a Dispute resolution process initiated by another Party.

Proposed amendment A3.27

For the access arrangement to be approved, the Commission requires Epic to make the revisions to clause 38 proposed in Epic's lodgement of 2 March 2000, subject to clause 38(2)(c) being amended to read as follows:

38.2(c) An assignment by the User will be conditional upon, and will not be binding until, the assignee has:

(i) executed a deed of covenant in favour of the Service Provider agreeing to be bound by the Agreement. The Service Provider may prescribe a reasonable form of covenant but the User may make its own arrangements to draw up the deed and submit it to the Service Provider; and

(ii) reimbursed the Service Provider's costs, within the limits of the Application Fee, that have been reasonably incurred in assessing whether the assignee meets the Creditworthiness Criteria.

Proposed amendment A3.28

For the access arrangement to be approved, Epic must not incorporate in its proposed revisions of 2 March 2000 to clause 39 its proposed amendment to clause 39.1(d)(vi).

Proposed amendment A3.29

For the access arrangement to be approved, the Commission requires that Epic add the following to clause 43.6:

If there is any conflict or discrepancy between the clauses of the Access Arrangement and the Schedules to the Access Arrangement, then unless otherwise provided in a clause of the Access Arrangement, the clauses and Schedules will rank in order of interpretive precedence as follows:

(a) clauses of the Access Arrangement; and

(b) the Schedules.

Proposed amendment A3.30

For the access arrangement to be approved, Epic must amend clause 26 as proposed in its lodgement of 2 March 2000 and letter dated 26 March 2000.

Proposed amendment A3.31

For the access arrangement to be approved, the Commission requires that, except in the following respects, the arrangement incorporate Epic's proposed amendments of 2 March 2000 to clause 6.

- *First, Epic is required to amend clause 6 so that it also applies to requests for non-specified services, in replacement or continuation of capacity reservations under the Existing Transportation Agreements or extensions thereof, by the Existing Users as defined in respect of those Agreements.*
- *Second, Epic is required to amend clauses 6.2(b) and (c) as proposed in Epic's revisions of 2 March 2000 to limit the information required from a 'User' as indicated in 3.5.5 above, that is, to limit the information to:*

  that required to assess whether there is capacity to supply the requested service; and

  that required to update clause 9.2 (creditworthiness) information since it was first lodged.
- *Third, Epic is to amend revised clause 6.2(c) so that a request to increase MDQ is not to be treated as a request for a separate, new contract when sufficient spare capacity is available to meet that request (subject to queuing). Such a request is to be treated as a request to vary service under clause 6.9;*
- *Fourth, Epic is to amend revised clause 6.2 by adding after clause 6.2(c) the following:*

  Where the Service Provider reasonably believes that the service requested pursuant to clause 6.2(a) or clause 6.2(c) could only be provided with an extension to or expansion of the system, an Application Fee is not required until the Prospective User or User has consented to join the queue for FT Service.
- *Fifth, Epic is to amend revised clause 6.7(a) to read as follows:*

  All FT Requests will be placed in a queue and will be satisfied in the order in which they are received. Where the Service Provider reasonably believes that satisfaction of the Request for Service will require the construction of New Facilities, an FT Request will not be accorded any priority over any other FT Request falling in the same construction task. However, the priority of FT requests ranked in order of receipt will determine the order in which they are satisfied for all other purposes, including:

  (i) any construction associated with capacity enhancement for another party or parties, whether or not the construction is carried out under the terms of the access arrangement; and

  (ii) any allocation of spare capacity.
- *Sixth, Epic is to amend revised clause 6.9(a) to include a request by a User to increase MDQ except:*

  (i) where the Service Provider reasonably believes that assessment of the Request for Service will involve an assessment of the cost of constructing new facilities; and

  (ii) the User is informed of that fact before the Request for Service is accepted.

Proposed amendment A3.32

For the access arrangement to be approved, the Commission requires that clause 10 be amended to make the queuing policy applicable to requests for non-specified services.

ATTACHMENT A:

Proposed amendment A3.33

For the proposed access arrangement to be approved, the Commission requires that Epic incorporate the revised clause 7 as proposed in its lodgement of 2 March 2000, subject to:

- *Epic deleting from clause 7.2 all words after 'Month,';*
- *Epic deleting the amount '$5,000' in respect of 'Application Fee – IT Service' in Schedule 4 Tariff Schedule; and*
- *Epic modifying its proposed revision to clause 7.5(a) so that, in the phrase 'in the order or priority', the words 'or priority' are deleted.*

Proposed amendment A3.34

For the access arrangement to be approved, the Commission requires that Epic revise clause 10 as proposed in its lodgement of 2 March 2000, except as indicated in the following points:

- *First, revise the procedures for clearance of the queue in accordance with the indications given above, following public consultation on relevant threshold values for determining when applications for access would be reviewed and cleared from the queue;*
- *Second, amend the definition of 'I' in clause 10.4(l)(iii) so that it reads as follows:*

  'I' = the present value calculation (using as the discount rate the nominal post-tax vanilla WACC assessed by the Regulator) over the term of the FT Service Contract of the Capacity Charge revenue ('CCR');

- *Third, incorporate further revisions in the access arrangement to reflect the intentions stated in its letter dated 15 June 2000 (clause 10.5(a) expenditure limit; queue clearance in association with capacity enhancement for a party or parties);*
- *Fourth, incorporate provisions establishing the minimum parameters that would apply in respect of commercial negotiations over timetable and allocation of construction risks for enhancements to capacity, taking into consideration the issues raised by Santos;*
- *Fifth, subject to further public consultation as indicated above, provide for clearance of the queue at more frequent intervals than annually;*
- *Sixth, delete clause 10.5(a)(ii); and*
- *Seventh, amend clause 10.6 as proposed in Epic's lodgement of 2 March 2000 by replacing 'I' with 'the lesser of "A" and "I" '.*

Proposed amendment A3.35

For the access arrangement to be approved, the Commission requires that Epic amend the access arrangement to provide for the revisions submission date and revisions commencement date proposed in clauses 1.2 and 1.3 of its lodgement of 2 March 2000.

ATTACHMENT A:

Proposed amendment A3.36

For the access arrangement to be approved, the Commission requires that Epic amend the access arrangement by defining, in response to the further process of public consultation, specific major events (if any) that would trigger an obligation on the service provider to submit revisions prior to the revisions submission date.