REVISED ACCESS ARRANGEMENT BY EPIC ENERGY
FOR THE MOOMBA TO ADELAIDE PIPELINE SYSTEM

Submission by AGL Energy Sales & Marketing

The ACCC has published the revised access arrangement lodged by Epic, along with an issues paper, for a further round of consultation. The access arrangement has been modified in response to the ACCC's draft decision and submissions from interested parties; further submissions are now sought on those changes. In addition, the ACCC notes that certain of the modifications required in its draft decision have not been made, and it is also now seeking submissions on how it should respond to Epic's failure to comply (it has to choose between the options available to it under the Code).

Issues that the ACCC has specifically identified for comment are:

Queuing and extensions/expansions policy

Clause 10 has been substantially modified, with a combined queuing and extensions/ expansions policy:

- requests for service will be dealt with on a first come first served basis
- new facilities will be included in the covered pipeline unless Epic elects otherwise
- reference tariff will not be changed during the term of this access arrangement

ACCC also notes that Epic has not included provision for rolling new investment into the capital base. ACCC expresses concern about possible multiple tariffs for users of incremental capacity. A possible approach is to have a suite of reference tariffs to apply as demand expands, based on projections of future capital expenditure (that would still need to be shown to satisfy Code requirements before it is formally approved). ACCC seeks comment on such an approach.

There is a significant problem here – how to structure the tariffs to cope with the highly uncertain future. It would be difficult enough to allow for different options for future expansions to cater for possible increases in demand in SA, but the prospect of an alternative pipeline bringing gas from Victoria compounds the difficulty even further. The approach proposed in the access arrangement in its present form is essentially to ignore the problem and offer reference tariffs only for existing capacity (plus, by implication, any additional capacity that can be provided at little cost). The approach canvassed by the ACCC would require cost estimates for a range of possible future scenarios – but with no assurance for Epic that those costs would eventually be approved. This approach would likely result in further delay in finalisation of the access arrangement.

A middle course might be to proceed on the basis proposed by Epic (which caters best for a future in which the pipeline from Victoria proceeds) but with allowance for a major review if the alternative pipeline has not been confirmed within a defined period or if it leaves the market still under-supplied with pipeline capacity.

The question then becomes one of trigger mechanisms, which we address below.

Incentive mechanisms

Clause 5.3 now includes differential rebates to existing users according to whether they agree to provide spare capacity to a new IT user.

This looks quite complicated, but the concept of an incentive to existing users for entering into sub-access agreements with potential new users is acceptable in principle. We note that the incentive is not offered to new FT users. There seems to be an inconsistency, however, because 4.3(c) requires that a new IT user must enter into an access agreement with the existing user or FT user.

In any case, we believe that this question is subordinate to that of existing users' rights under their existing contracts, addressed below.

Extensions to Agreements

Clause 11.3 now provides for extensions to access agreements to be negotiated. Extensions not specifically provided for in the original agreement to be subject to the queuing policy.

This does not seem unreasonable. We note also that a minimum term of two years applies to Agreements, with provision for 'reasonable' shorter periods for IT service. This is an improvement over the original access arrangement, but may still be too restrictive in the wholesale gas markets of the not-too-distant future.

Liability for Fraud and Wilful Disregard

A new clause 35.3 has been included to make both the Service Provider and the User liable for consequential loss arising from fraud or wilful disregard.

As a general rule AGL ES&M would seek to disclaim liability for anything beyond direct loss, but where restricted to events caused by fraud or wilful disregard, and particularly so long as the provision operates equally for both parties, it is acceptable.

Trigger mechanisms, Part haul and Back haul

ACCC note that Epic has declined to include trigger mechanisms to allow changes to the access arrangement in the event that an alternative pipeline into SA is to be built. Nor has part haul or back haul been included as a reference or other service. The possibility of a reference tariff, statement of principles or trigger mechanism being required by ACCC is canvassed.

In light of the comments made above, we do not believe that it is tenable simply to ignore the question of tariffs for additional capacity. Equally, though, we do not believe that is appropriate to take a prescriptive approach to alternative growth scenarios. We do not believe that sufficiently reliable cost projections are possible to give Epic the necessary confidence about the conditions under which the requirements of section 8.16 of the Code would be met.

Nevertheless, given the clear possibility that existing capacity may continue to be a limiting factor on market growth, we do believe that future capacity expansions should be canvassed in the access arrangement. Under section 3.17 of the Code the ACCC can require trigger points to be defined whereby an early revision of the access arrangement is required. We believe this to be a suitable way forward.

To this end it needs to be made clear what assumptions are built into the access arrangement regarding the alternative pipeline. Then the access arrangement needs to be subject to review if those assumptions prove to be incorrect.

Other matters on which AGL ES&M wishes to comment are:

<u>Qualification of services offered</u>

The description of FT service, clause 4.2(a), now specifies that it does not include delivery of gas to 'delivery points the subject of the existing transportation agreements' – ie the agreements with Origin Energy and Terra Gas Trader.

The effect of this is similar to that of clause 4.4 in the original draft access arrangement. It appears to derive from the provision, outlined by the ACCC in its paper Disclosure of Confidential Information dated October 2000, that those delivery points are reserved for the exclusive use of the existing users even if they don't need the full capacity at those points.

AGL ES&M concurs with the view expressed by the ACCC that such a provision is an exclusivity right. It puts an impediment in the way of a potential user who might otherwise be prepared to pay a surcharge for looping or compressors to provide additional pipeline capacity. We appreciate the commercial rationale for the provision, but observe that a similar effect could be achieved if an obligation were placed on Epic to rebate revenue from third parties to the existing users.

The ACCC's draft decision of last August tends to downplay the significance of these exclusivity rights on the basis that other rights constrain Epic's ability to offer services to other users. That may be so in respect of existing capacity, but consideration must also be given to future additional capacity where those other constraints should be less restrictive. AGL ES&M contends that it is important to remove inappropriate impediments for potential users now, and to require a rebate of revenue to protect existing users' commercial interests.

The description of IT service, clause 4.3(c), stipulates that it will only be available if an access agreement has been entered into with the existing user where 'existing delivery facilities are to be utilised'. This reference is to laterals and delivery points the capacity of which has been

contracted to the existing users, and also to laterals and delivery points that may be contracted in future to FT users.

AGL ES&M accepts that there is a need for new users who wish to share use of an existing delivery point to reach agreement with the existing users as to the allocation of metered flows through the delivery point. If necessary that should be resolved through the service provider. Beyond that, requirement to contract with the existing user seems quite unreasonable.

This requirement, in relation to existing contracts, also seems to derive from the exclusivity provision in the existing agreements. It should therefore not be allowed to act as a constraint on the terms of the new access arrangement. AGL ES&M contends that it, too, should be discarded and existing users' commercial interests restored through a rebate of revenue by Epic.

In relation to new FT contracts we can see no justification for such a requirement. It implies an extension of the exclusivity rights beyond the termination of existing contracts which is surely not appropriate.

Where a new user contracts for IT service and pays a surcharge or a capital contribution for a delivery point or receipt point, then under clause 10.5 that point is not available to other users for IT service.

The effect of this requirement appears to be similar to the 'exclusivity clause' in the existing contracts that we object to above. Again, we believe that the reasonable commercial interests of the user paying the surcharge can be protected by a rebate obligation on Epic supported, if necessary, by a requirement that no more favourable terms and conditions be offered to other users.

Spare capacity and available capacity

'Spare capacity' in the system is the difference between the capacity available for firm service ('system primary capacity') and the aggregate of quantities contracted to existing users or FT users at each delivery point ('primary capacity quantities') and any other firm contracted capacity. 'Available capacity' at a delivery point is the lesser of spare capacity and the uncontracted delivery point capacity.

We understand the present position to be that the system's capacity (which is shown in schedule 1 to the original draft access arrangement to be 323 TJ/day) is fully contracted to existing users, which would mean that the available capacity at all delivery points is by definition zero. The absurdity of this is highlighted in the same schedule which shows the aggregate of all delivery point capacities to be over 830 TJ/day.

We express concern that the current access arrangement does not comply with the ACCC's requirement for amendments to the definitions of spare capacity and available capacity in its draft decision, second point of #3.1.

The 'net available capacity' on a day at a delivery point is the delivery point capacity ('maximum quantity') less nominations by existing or FT users to use their contracted

capacity at the delivery point ('primary capacity quantity'). FT users are permitted to nominate more than their contracted quantity at a delivery point on a day (although not more than their aggregate MDQ). Under clause 18.5(d) Epic is required to determine the capacity available for IT service based on nominations for higher ranking services. While this reference to nominations does not specifically refer to the defined terms in clause 18.3 for FT service, the timing suggests that in practice Epic would use the confirmed nominations ('final nominated delivery quantities') (at least for FT service – timing under the existing agreements is unknown).

This offers scope for FT or existing users to over-nominate for the purpose of denying capacity to IT users. There is an excess imbalance charge where receipts and deliveries vary by more than 8% on a day in aggregate, and – for FT service only – where deliveries and nominations vary by more than 8% within a zone. This leaves considerable scope for manipulation of nominations at delivery points within zones, particularly for existing users. We reiterate the concern expressed above that definitions of available capacity and spare capacity need to be brought into line with section 10.8 of the Code as required by the ACCC's draft decision.

Other proposed amendments

The current access arrangement does not comply with the amendments to provide for forced transfer to the new supplier where a customer switches supplier, as required in the ACCC's draft decision, #3.4.

The new clause 1.4 makes the access arrangement subject to Code provisions dealing with exclusivity rights, but this is not an adequate alternative to the amendments required in the ACCC's draft decision, #3.5, #3.6 and #3.7.

The definition of existing delivery facilities includes laterals, contrary to the ACCC's draft decision #3.8.

AGL ES&M is disappointed that no progress is evident towards resolution of the disagreement between Epic and the ACCC on these important points.

Forecasting, nomination and scheduling

Section 18 of the access arrangement sets out the complete forecasting, nomination and scheduling provisions to apply to FT and IT service contracts.

There are a number of details in these provisions on which AGL ES&M wishes to comment, as follows. In addition, having reviewed section 18 and come to grips with the level of detail involved, we question whether it is appropriate to include these provisions in the access arrangement at all. If (as seems likely) changes are needed from time to time the process for effecting amendments to the access arrangement may prove too cumbersome.

In 18.1(b) and (c), given that these are forecasts, the wording "User will nominate" should be replaced with "User expects to nominate".

In 18.2(a) the warranty on behalf of the producers is unreasonable, as is the requirement for a notice from the producers as to the quantity delivered. We do not believe this requirement to apply at present, nor to be necessary. An undertaking that similar nominations are made both to Epic and to the producers should be sufficient. The change in time post 1 January 2006 would need to be confirmed with the producers, and the consequence of non-compliance is draconian.

In 18.3(b) we would normally expect to see provision for the service provider to accept nominations well in advance, and to accept changes up until the deadline. While this is not precluded by the clause, it needs to be explicitly included.

In 18.3(c) we believe that the allocation methodology may drive users to over-nominate at congested delivery points in order to ensure the maximum allocation (the zonal balancing arrangements mean that users with multiple delivery points could do this without penalty). The priority allocation to FT users who do not hold a Primary Capacity Quantity at a particular delivery point appears to discriminate against IT users.

The requirements in 18.4 and 18.5(h) for formal confirmation of deliveries to be made by the producers goes beyond existing arrangements that we are aware of, and appears to be unreasonable and unnecessary. Again, an undertaking that similar nominations are made both to Epic and to the producers should be sufficient. In that case there is no need for the draconian measures consequent upon any apparent discrepancy.

In 18.5(f) there appears to be an incentive for users to over-nominate in cases of potential congestion.

The effect of 18.7(b) may be to encourage initial over-nomination by holders of firm capacity to the detriment of IT users.

In 19.4, given the severe nature of actions to be taken by Epic, we believe that a specific time for action by users should be specified.