

Draft Decision

Access Arrangement proposed by Epic Energy Queensland Pty Ltd for the Ballera to Wallumbilla Pipeline System

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Abbreviations and glossary of terms

ACCC	Australian Competition and Consumer Commission
Access Arrangement	An arrangement for third party access to a pipeline, that a pipeline owner/operator submits to the relevant regulator for approval in accordance with the Code.
Access Arrangement Information	Information a service provider provides to the relevant regulator pursuant to section 2 of the Code.
Bare Transfer	When a transfer or assignment of capacity rights does not result in an alteration to the terms of a contract with the service provider.
Code	<i>National Third Party Access Code for Natural Gas Pipeline Systems</i>
Contract carriage pipeline	A system of managing third party access whereby: <ul style="list-style-type: none">☞ the service provider normally manages its ability to provide services by requiring users to use no more than the quantity of service specified in a contract;☞ users normally are required to enter into a contract that specifies a quantity of service;☞ service charges are normally based at least in part upon the quantity of service specified in a contract; and☞ a user normally has the right to trade its right to obtain a service to another User.
Commission	Australian Competition and Consumer Commission
Covered Pipeline	Pipeline to which the provisions of the code apply
Derogation	A legislative exemption from compliance with specified obligations set out in the Code.
Epic	Epic Energy Queensland Pty Ltd
GJ	GigaJoule
GPAL	<i>Gas Pipelines Access (Queensland) Law</i>
KPI	key performance indicator
Law	<i>Gas Pipelines Access (Queensland) Law</i>
MDQ	maximum daily quantity
NCC	National Competition Council
p.a.	per annum
PJ	PetaJoule (equal to 1 000 000 GJ)
Prospective User	A person who seeks or who is reasonably likely to seek to enter into a contract for a service and includes a user who seeks or may seek to enter into a contract for an additional service.

Queuing Policy	A policy for determining the priority that a prospective user has, as against any other prospective user, to obtain access to spare capacity.
Reference Service	A service for which the service and its tariff are specified in an access arrangement.
Reference Tariff	A tariff specified in the Access Arrangement as corresponding to a Reference Service and which has the operation that is described in sections 6.13 and 6.12 of the Code.
Reference Tariff Policy	A policy describing the principles that are to be used to determine a Reference tariff.
Revisions Commencement Date	The date upon which the next revisions to the Access Arrangement are intended to commence.
Revisions Submission Date	The date upon which submissions to the revision of the Access Arrangement are due.
Service	<p>A Service provided by the means of a Covered Pipeline including:</p> <ul style="list-style-type: none"> /// haulage services (such as firm haulage, interruptible haulage, spot haulage and backhaul); /// the right to inter connect with a Covered Pipeline; /// services ancillary to the provisions of such services, <p>but does not include the production, sale or purchasing of Natural Gas.</p>
Services Policy	A policy detailing the Service or Services to be offered.
Service Provider	The person who is the owner or operator of the whole or any part of the pipeline or proposed pipeline.
SWQP	South West Queensland Pipeline (Ballera to Wallumbilla pipeline)
TJ	Terajoule (equal to 1 000 GJ)

Executive summary

Introduction

On 17 August 2000 Epic Energy applied to the Australian Competition and Consumer Commission for approval of its proposed access arrangement for the Ballera to Wallumbilla pipeline system. The application was made under section 2.2 of the *National Third Party Access Code for Natural Gas Pipeline Systems* (the Code).

This pipeline supplies gas from the Cooper Basin in south-west Queensland; it is also known as the South West Queensland Pipeline (SWQP). The pipeline is 756 kilometres long, with a diameter of 406mm and operating pressure of 15Mpa. It was constructed in 1996 by Tenneco Gas Australia and is now operated by Epic Energy (Queensland) Pty Ltd.

The shareholders in Epic are El Paso Energy (30 per cent), Consolidated Natural Gas Company Inc (30 per cent), AMP Asset Management Australia Limited (10 per cent), Axiom Funds Management Limited (10 per cent), Hastings Funds Management Limited (10 per cent) and Allgas Energy Ltd (10 per cent).

The Commission invites submissions on this draft decision from the applicant and interested parties by 13 July 2001 to assist it in reaching a final decision.

The draft decision at a glance

The SWQP is the subject of a Queensland Government derogation, which prevents the Commission from reviewing the reference tariffs and related parts of the access arrangement until the revisions submission date (2016). Therefore, the majority of the typically contentious aspects of an access arrangement are not for Commission consideration. In particular, this draft decision contains no assessment of reference tariffs or reference tariff policy.

Only one submission was made in response to the proposed access arrangement¹. This submission raised a number of concerns, but only one of these related to a non-derogated aspect of the arrangement. This was a concern that Epic's proposed capacity trading policy appears to leave it to the service provider's sole discretion as to what constitutes 'reasonable commercial and technical grounds' for withholding consent to a capacity trade.

Santos suggested a set of objective criteria to clarify what 'reasonable' meant and Epic agreed to include these criteria in an attachment to the access arrangement. The Commission believes that the inclusion of criteria to address this uncertainty is desirable and should lower the likelihood of future disputes.

The Commission has proposed an amendment to include as reference services all of the services outlined by the Queensland Government in the derogation, rather than offering

¹ The submission is from Santos – which is the shippers' representative for the South West Queensland Gas Producers under a long term gas transportation contract with Epic. The Producers' agreement is the pipeline's only firm forward haul agreement and represents over 95% of pipeline revenue.

only a single full forward haul reference service and providing the other derogated reference services as ‘non-reference services’. The Commission requires Epic to reduce the minimum term for a contract for full forward haul service from five years to one or two years.

The Commission requires Epic to consult with users in the event that it wishes to cease backhaul services and to consult with the Commission if it wishes to amend the Gas Transportation Agreement terms and conditions. The reason for the latter amendment is to prevent Epic from changing the agreement in a way that will affect the terms and conditions of access without first consulting with the Commission.

The proposed queuing policy does not make it clear how Epic will determine priority in the queue. Although Epic has described its policy in conversation with the Commission, the Commission does not consider that its intention is clearly specified in the proposed access arrangement and recommends that Epic develop its policy further. Epic also failed to state the amount of the prescribed fee for an application for service, despite referring to it in the access arrangement. Epic should state this fee in the proposed access arrangement.

The extensions/expansions policy in the proposed access arrangement does not provide sufficient detail for users to clearly understand Epic’s intentions. The Commission requires that Epic amend its extensions/expansions policy to specify:

- ?? the test it will use to determine whether or not to enhance or expand capacity;
- ?? how it will determine tariffs for any extensions/expansions; and
- ?? how it will determine whether or not to apply to have any extensions/expansions treated as part of the covered pipeline.

Epic also did not acknowledge that, with respect to decisions about whether to roll extensions/expansions into the current access arrangement, the Commission is the relevant regulator and its approval must be sought.

Epic specified submission and commencement dates for revisions that are inconsistent with the derogation. The Commission requires Epic to change the access arrangement so that the dates reflect those determined in the derogation.

Epic’s revisions commencement date is fixed in the derogation. However, s3.17 of the code allows review of the non-tariff elements of the code if a specific major event occurs. The Commission requires Epic to identify specific major events that will trigger such a review.

Proposed amendments

Proposed amendment A3.1

The Commission requires Epic to include all of the reference services established in the Queensland Government’s derogation as reference services in the access arrangement.

Proposed amendment A3.2

The Commission requires Epic to reduce the minimum term for a contract for FH1 service to one or two years.

Proposed amendment A3.3

The Commission requires amendments to the limitation on upstream deliveries. Epic must propose a more specific test that involves consultation with affected users before it elects to cease backhaul services.

Proposed amendment A3.4

Epic must amend section 10 of the access arrangement so that it undertakes to submit proposed changes to the gas transportation agreement terms and conditions to the Commission for approval. The Commission may, pursuant to section 2.33 of the code, approve the proposed revisions without wider consultation if the revisions are not material and will not affect reference tariffs or reference services.

Proposed amendment A3.5

Epic must amend the access arrangement to clarify how priority in the queue will be determined with respect to:

- ~~the~~ the priority of requests for reference and non-reference services, for example whether a request for a reference service with some additional features, for which the prospective user is prepared to pay, will affect the prospective user's priority in the queue; and
- ~~what~~ what test Epic proposes to use to determine whether a user is 'ultimately disadvantaged'.

Proposed amendment A3.6

Epic must state in the access arrangement the amount of the prescribed fee that must be paid when a gas transportation request is made. The Commission will consider whether or not this fee is reasonable in its final decision.

Proposed amendment A3.7

Epic must specify the test it will use to determine whether to enhance or expand capacity on the pipeline, and describe how it will determine tariffs for any extensions/expansions.

Proposed amendment A3.8

Epic must describe the method it will apply to determine whether or not extensions or expansions will be treated as part of the covered pipeline, and include a commitment to submit such a proposal to the Commission for approval.

Proposed amendment A3.9

The Commission requires that Epic amend its proposed revisions dates to be consistent with the dates set out in the derogation.

Proposed amendment A3.10

The Commission requires Epic to include in the access arrangement a list of specific major events that will trigger a review of the non-tariff elements of the access

arrangement, such as the interconnection of another pipeline with the SWQP, and the introduction of a significant new gas supply source to one of the SWQP's markets.

1. Introduction

1.1 Invitation to make submissions

Epic submitted an access arrangement for the Ballera to Wallumbilla pipeline to the Commission on 17 August 2000. The application was submitted under section 2.2 of the *National Third Party Access Code for Natural Gas Pipeline Systems* (the code). The Commission is required to assess this arrangement for compliance with the code and approve or reject the arrangement on this basis.

The access arrangement describes the terms and conditions upon which Epic proposes to make access to the SWQP's services available. The Commission has made a draft determination based on information supplied by Epic, submissions from interested parties and its own analysis. The Commission invites submissions in response to this draft decision.

Pursuant to section 2.13 of the code, this draft decision states the amendments (or nature of the amendments) that would have to be made to the proposed access arrangement in order for the Commission to approve it. The draft decision identifies, for the benefit of the applicant and third parties, the issues that need to be resolved before the Commission makes a final decision whether to approve the access arrangement proposed by the applicant.

The Commission will consider carefully responses by the applicant and third parties, and may seek to follow up particular issues with the applicant and other interested parties during the remaining public consultation period. Contact details for enquiries to the Commission are given overleaf.

This document includes:

- ~~///~~ a description of the current assessment process and of the steps to final approval of an access arrangement for SWQP;
- ~~///~~ a description of the regulatory framework for the Queensland gas industry;
- ~~///~~ a summary of the criteria for assessing an access arrangement under the code;
- ~~///~~ an outline of Epic's access arrangement; and
- ~~///~~ the Commission's draft decision.

How to make submissions

Please forward submissions to the Commission by close of business on 13 July 2001. To ensure that the Commission, Epic and interested parties have an adequate opportunity to consider the submissions only nominal extensions of time will be granted.

Please forward submissions in electronic and paper form to:

File reference: **C2000/1161**

Ms Kanwaljit Kaur
Acting General Manager
Regulatory Affairs – Gas
Australian Competition and Consumer Commission
P O Box 1199
DICKSON ACT 2602

e-mail submissions to: david.hatfield@acc.gov.au

Enquiries: Mr David Hatfield

Tel: 02 6243 1266

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ACCC website: <http://www.accc.gov.au/gas>

Public submissions will be e-mailed to the applicant, Epic, for response. Submissions will be available on public register files maintained by the Code Registrar and the Commission. Once all submissions are received, public submissions will be available on the Commission's web-site.

If you include information that is **confidential** or **commercially sensitive** in your submission, it should be clearly marked as such. Under the code (section 7.12), the regulator (the Commission) must not disclose such information to any person nor to the Code Registrar. However, information may be disclosed if the regulator is of the opinion that disclosure would not be unduly harmful to the legitimate business interests of the service provider, a user or a prospective user. Therefore if you wish to claim confidentiality or commercial sensitivity, please explain your reasons and identify the legitimate business interests that would be harmed by public disclosure of the information.

If you claim confidentiality for part of a submission, please provide separate hard copies and electronic versions of the submission in 'public' and 'confidential' formats.

To name electronic documents a useful convention to follow would be:

Public [or Confid] company name [year month date].

For example: 'Public Gasgen 010316.doc'.

To avoid potential confusion over the date of electronic versions of submissions and covering letters, please avoid using fields that update automatically each time the document is opened.

1.2 Consultative process and relevant documents

The code sets out a public consultation process that applies to the Commission as regulator. The Commission is required to:

☞ inform interested parties that it has received the access arrangement from Epic;

- publish a notice in a national daily paper which at least describes the covered pipeline to which the access arrangement relates; states how copies of the document may be obtained, and requests submissions by a date specified in the notice;
- after considering submissions received, issue a draft decision which either proposes to approve the access arrangement or not to approve the access arrangement and states the amendments (or nature of the amendments) which have to be made to the access arrangement in order for the Commission to approve it. Submissions will be sought again following release of the Commission's draft decision;
- after considering any additional submissions, issue a final decision that either approves or does not approve the access arrangement (or revised access arrangement) and states the amendments (or nature of the amendments) which have to be made to the access arrangement (or revised access arrangement) in order for the Commission to approve it; and
- if the amendments are satisfactorily incorporated in a revised access arrangement, issue a final approval. If not, the Commission must draft and approve its own access arrangement.

It is important to note that under s.58 of the *Gas Pipelines Access (Queensland) Act 1998*, the Reference Tariffs and Reference Tariff Policy for this access arrangement have been determined by the Queensland Minister and cannot be reviewed in this process. This is discussed in more detail below.

In September 2000 the Commission published an advertisement in the *Australian Financial Review* to advise that it had received Epic's proposed access arrangement.

The advertisement invited submissions from interested parties in response to an issues paper that it released at that time. Only one submission was received, from Santos. Santos is a major supplier of gas into the pipeline through its interests in the SWQ gas producing joint venture.

Santos' submission included the following concerns:

- whilst in practice Epic's approach is to encourage trading Santos submits that its formal policy, and specifically the provision of additional receipt and delivery points, requires further development;
- to allow a service provider to withhold consent to the use of additional receipt and delivery points based solely on its own determination of reasonable commercial grounds may be inappropriate and creates a potential conflict of interest. Santos has proposed alternative wording of this section of the access arrangement;
- the impact of the additional capital surcharge requirements under the extensions/expansions policy is unclear. Santos queries how a capital surcharge that includes a return on investment component will be treated with regard to the revenue sharing mechanism; and
- the SWQ producers have committed to regular price reviews. In these circumstances, Santos submits that regular reviews of the reference tariff and non-tariff elements of the access arrangement are appropriate.

Some of these concerns relate to matters that have been derogated by the Queensland Government, therefore the Commission does not have jurisdiction to require amendments to address those concerns. However, the issues that Santos has identified

that are within the scope of the Commission's assessment are discussed in the relevant sections below.

The Commission met with Epic to discuss Santos' submission and other issues that were identified in the proposed access arrangement. This meeting took place in December 2000 and Epic undertook to respond to the issues by early February 2001. Epic provided its response in April and upon receipt of this information the Commission was able to proceed with this draft decision.

1.3 Regulatory framework

The main legislation regulating access to gas transmission services in Queensland is outlined below.

Gas Pipelines Access (Queensland) Act 1998

This Act is referred to as the Gas Pipelines Access Law (GPAL). The GPAL governs the conduct of pipeline service providers and other interested parties in respect of access issues and regulatory, dispute resolution and administrative processes. In addition, the GPAL amends the *Petroleum Act 1923 (Queensland)* and the *Gas Act 1965 (Queensland)* in an attempt to create a regulatory regime consistent with the code.

Gas Pipelines Access (Queensland) Act 1998 – derogations

The GPAL derogates a number of issues from the code. In particular, section 58 of the Act provides that the Reference Tariffs for several transmission pipelines were to be approved and gazetted by the Queensland Minister for Mines and Energy rather than complying with the access pricing principles – and related regulatory process – in the code. As a result the Reference Tariffs are non-reviewable for an extended period of time.

The National Third Party Access Code for Natural Gas Pipeline Systems

The code, among other things, requires transmission service providers to submit access arrangements to the Commission for approval. Pipelines that were covered by the code when it was implemented are obliged to lodge access arrangements. The SWQP is a covered pipeline.

Gas Pipelines Access (South Australia) Act 1997

In accordance with the Natural Gas Pipelines Access Agreement, South Australia was the lead legislator in implementing the national gas access legislation. The GPA (Qld) Act applies the South Australian Act as a law in Queensland. Changes to the code are effected by amending the South Australian legislation. These changes then flow automatically through to the other jurisdictions' legislation.

Regulatory institutions

The regulatory institutions that administer the Queensland legislation with respect to transmission pipelines are:

~~the~~ the National Competition Council – coverage advisory body;

~~the~~ the Commonwealth Minister – coverage decision maker;

~~the~~ the Commission – relevant regulator and relevant arbitrator;²

~~the~~ the Australian Competition Tribunal – merits review body; and

~~the~~ the Federal Court – judicial review body.

The Queensland Competition Authority³ (QCA) is regulator and arbitrator in Queensland with respect to distribution (reticulation) pipelines.

1.3.1 Certification of the Queensland Gas Access Regime

On 25 September 1998, the Queensland Premier applied to the National Competition Council (NCC) to certify the ‘effectiveness’ of the Queensland Third Party Access Regime for Natural Gas Pipelines (the Queensland Regime). If a regime is certified as effective, it cannot be declared for access under Part IIIA of the *Trade Practices Act 1974*.

National Competition Council Process

The Competition Principles Agreement lays down principles against which the NCC must assess the effectiveness of an access regime. Following extensive consultation, the NCC recommends whether the access regime should be certified as effective to the relevant Commonwealth Minister. The Commonwealth Minister is the decision maker.

With respect to the Queensland Government’s application for certification of the Queensland regime, the NCC made its recommendation to the Commonwealth Minister in February 2001 but has not revealed the content of that recommendation publicly. The Commission understands that the Commonwealth Minister is still considering the recommendation.

If the Commonwealth Minister does not certify the regime as effective it would not affect the Commission’s consideration of the derogated pipelines’ access arrangements. However, such a decision would expose those pipelines to the possibility of declaration under Part IIIA of the TPA. Were this to occur, unsatisfied access seekers may notify access disputes to the Commission for binding arbitration. In arbitrating such an access dispute, the Commission would not be bound by the Reference Tariffs established by the Queensland Minister in the derogations. The Commission would operate under Part IIIA rather than the code to determine a tariff in these circumstances.

1.4 Period of SWQP access arrangement

As established in the Queensland Minister’s Approved Tariff Arrangement (the derogation) and discussed below at 3.7, the submission date for review of Epic’s access arrangement is:

~~for~~ for revisions relating to AFT services, 11 June 2004; and

~~for~~ for all other revisions to the access arrangement, 30 June 2016.

² The Commission is also regulator and arbitrator with respect to transmission pipelines in the other States and Territories with the exception of Western Australia.

³ *Queensland Competition Authority Act 1997*

In either case the Service Provider and the Commission may agree to an earlier review submission date.

1.5 Criteria for assessing an access arrangement

The Commission may only approve a proposed access arrangement if it is satisfied that it is consistent with the principles set out in sections 3.1 to 3.20 of the code. Those principles are summarised below. The Commission cannot reject a proposed access arrangement on the basis that the arrangement does not address a matter that section three of the code does not require it to address. Otherwise, the Commission has broad discretion within the terms of the code to assess an access arrangement.

An access arrangement must include a policy on the service or services to be offered, which includes a description of the service(s) to be offered. The policy must include one or more services that are likely to be sought by a significant part of the market and any service(s) that, in the Commission's opinion, should be included in the policy. To the extent practicable and reasonable, users and prospective users must be able to obtain those portions of the service(s) that they require, and the policy must allow for a separate tariff for an element of a service if so requested.

An access arrangement must contain one or more reference tariffs. A reference tariff is a benchmark for the negotiation of terms of supply for a particular service and provides users with a right of access to the specific service at that tariff. If an access dispute goes to arbitration, the reference tariff will apply.

An access arrangement must include the following elements:

- ~~///~~ the service provider's terms and conditions for the supply of each reference service;
- ~~///~~ a capacity management policy to state whether the covered pipeline is a contract carriage or market carriage pipeline;
- ~~///~~ in the case of a contract carriage pipeline, a trading policy which refers to the trading of capacity;
- ~~///~~ a queuing policy to determine users' priorities in obtaining access to spare and developable capacity on a pipeline;
- ~~///~~ an extensions/expansions policy to determine the treatment under the code of an extension or expansion of a pipeline;
- ~~///~~ a date by which revisions to the arrangement must be submitted; and
- ~~///~~ a date by which the revisions are intended to commence.

In assessing a proposed access arrangement, section 2.24 of the code requires the Commission to take the following into account:

- ~~///~~ the service provider's legitimate business interests and investment in the pipeline;
- ~~///~~ the binding contractual obligations of the service provider or other persons (or both) already using the covered pipeline;

- ~~the~~ the operational and technical requirements necessary for the safe and reliable operation of the covered pipeline;
- ~~the~~ the economically efficient operation of the covered pipeline;
- ~~the~~ the public interest, including the public interest in having competition in markets (whether or not in Australia);
- ~~the~~ the interests of users and prospective users; and
- ~~any~~ any other matters that the Commission considers are relevant.

1.6 Draft decision

The Commission proposes not to approve the access arrangement for the SWQP.

Pursuant to section 2.13, the proposed amendments are set out in the relevant sections of this draft decision and are brought together in the Executive Summary.

Chapter 2 describes the reference tariffs as determined by the Queensland Minister.

Chapters 3 and 4 set out the Commission's analysis of:

- ~~the~~ the non-tariff elements of service, that is, the service provider's proposed access policies, terms and conditions of service and arrangements for review of the access arrangement (chapter 3); and
- ~~information~~ information provision and performance indicators (chapter 4).

Chapter 5 re-states the Commission's draft determination on the basis of the analysis preceding that chapter.

2. Reference tariff elements

The Queensland Government has derogated the reference tariffs for this pipeline. The derogated reference tariffs are included as Annexure A to the access arrangement, and summarised in this chapter. However, of the reference services in the derogation, Epic proposed to only offer one of those services as a reference service. This service is the Firm Forward Haul Service.

Epic proposes to provide the other services established in the derogation as non-reference services. For a discussion of this proposal see 3.1.4 below.

As outlined earlier, these tariffs are not subject to review by the Commission in its consideration of this access arrangement.

Full forward haul service (FH1)

The service, described in section 3.1 of the Access Principles, is comprised as follows:

- (a) the receipt by the service provider at the receipt point(s) at Ballera of quantities of gas nominated by the user in an amount not exceeding the aggregate of the receipt point MDQs plus any system use gas;
- (b) the transportation of the gas on a firm basis and without interruption except as is expressly excused under any access arrangement; and
- (c) delivery at Wallumbilla by the service provider, to the user or to another person for the user's account, of the quantities of gas (in GJs) in aggregate equivalent to the quantity of gas (in GJs) that the service provider received for the user's account at the receipt point(s), less any system use gas, in an amount not exceeding the aggregate of the delivery point MDQs.

Section 6.2(b) of the access arrangement states that, unless Epic in its absolute discretion allows otherwise, prospective shippers must nominate a minimum term of five years as the gas transportation agreement period, when applying for full forward haul service. This requirement is discussed below at 3.1.4.

The FH1 service tariff consists of:

- a) a monthly reservation charge equal to the monthly reservation rate multiplied by the user's MDQ multiplied by 30.42; and
- b) a throughput charge equal to the throughput rate multiplied by each GJ transported to or for the account of the user.

The throughput rate for an individual user will be adjusted based on the user's load factor, and shall equal the throughput rate multiplied by the user's load factor divided by 1.2.

The monthly reservation rate at 1 July 1997 was \$0.5092 per GJ and the throughput rate was \$0.1513 per GJ. These rates are indexed as follows.

In the derogation the relevant rates are expressed in 1 January 1995 terms and vary quarterly in accordance with the CPI on the following basis:

- a) from 1 January 1995 – 1 January 1997, 100% of the relevant rate varies with the movement in the CPI; and
- b) from 1 January 1997 until the earlier of the expiration of the Licence or the Revisions Commencement Date, 75% of the relevant rate determined by (a) varies with the movement in the CPI.

Further details on the authorised overrun rate and the daily variance rate are at section nine of Annexure A to the access arrangement.

Back Haul Service (BH1)

The monthly reservation rate for the BH1 service is derived by:

- a) dividing the throughput rate by 1.2 (load factor adjustment); and
- b) adding the throughput rate to the monthly reservation rate, then halving this amount.

All other relevant rates are 50% of the FH1 rates.

Interruptible Transportation Service (IT1)

The IT1 service is only available to the extent that Epic determines it can receive, transport and deliver gas for the user without causing any interruption of service to users under firm gas transportation agreements.

The tariffs for IT1 are derived as follows:

- a) the throughput rate is derived by adding the monthly reservation and throughput rates for FH1 service;
- b) the authorised overrun rate is equal to the BH1 rate (ie. 50% of the FH1 rate);
- c) other relevant rates are the same as for FH1 service (see section nine of Annexure A to the access arrangement).

Forward Part Haul Service (Zonal) (FZ1)

The forward part haul service (zonal) provides for the transportation of gas through fewer than eight zones, without interruption except as is expressly excused under any access arrangement.

The tariffs for this service are derived by dividing the reference tariffs for FH1 service by 8 then multiplying by 1.1.

Back Part Haul Service (Zonal) (BZ1)

This service is identical to the FZ1 service, except that is it only available on a firm basis to the extent that sufficient forward haul transportation services are being performed on that day to permit a back haul transportation service.

The tariffs for FZ1 service are derived by dividing the relevant BH1 tariff by 8 and multiplying by 1.1.

Interruptible Part Haul Service (Zonal) (IZ1)

The interruptible part haul service (zonal) provides for the transportation of gas through fewer than eight zones without interruption, except as is expressly excused under any access arrangement. The service is only available to the extent that Epic determines it can receive, transport and deliver gas for the user without causing any interruption of service to users under firm gas transportation agreements.

The throughput rate for this service is derived by adding the monthly reservation rate to the throughput rate for FH1 service, dividing the result by 8 and multiplying by 1.1.

Other rates for this service are derived by dividing the rates for FH1 service by 8 and multiplying by 1.1.

3. Access policies, terms and conditions and review of arrangement

In this chapter the mandatory non-tariff elements of the proposed access arrangement for the SWQP are assessed for compliance with the code. The code requirements are outlined for each element followed by a summary of the service provider's proposal. Where relevant this is followed by a summary of submissions received in respect of that element and any amendments that the Commission proposes be made for the access arrangement to be approved. All amendments are replicated in the executive summary.

Section 3 of the code establishes the minimum content of an access arrangement, which includes the following non-tariff mandatory elements:

- ~~///~~ a services policy that must contain at least one service that is likely to be sought by a significant part of the market;
- ~~///~~ the service provider's terms and conditions for the supply of each reference service;
- ~~///~~ a capacity management policy to state whether the covered pipeline is a contract carriage or market carriage pipeline;
- ~~///~~ in the case of a contract carriage pipeline, a policy on the trading of capacity;
- ~~///~~ a queuing policy which defines the priority that users and prospective users have to negotiate capacity where there is insufficient capacity on the pipeline;
- ~~///~~ an extensions/expansions policy which sets out a method for determining whether or not an extension or expansion of a covered pipeline will be treated as part of the covered pipeline for the purposes of the code; and
- ~~///~~ a review date by which revisions to the access arrangement must be submitted and a date on which the revisions are intended to commence.

3.1 Services policy

3.1.1 Code requirements

Sections 3.1 and 3.2 of the code require an access arrangement to include a services policy, which must include a description of one or more services that the service provider will make available to users and prospective users. The policy must describe any services likely to be sought by a significant part of the market, and any that in the Commission's opinion should be included.

When practicable and reasonable, a service provider should make available those elements of a service required by users and prospective users and, if requested, apply a separate tariff to each.

3.1.2 Epic's proposal

Epic proposes one reference service, a forward haul service. The derogation for the SWQP sets out a number of other reference services, which Epic proposes to offer as non-reference services. These are:

- ~~///~~ Class BH1 - Back Haul Service
- ~~///~~ Class IT1 - Interruptible Transportation Service
- ~~///~~ Class FZ1 - Forward Part Haul Service (Zonal)
- ~~///~~ Class BZ1 - Back Part Haul Service (Zonal)
- ~~///~~ Class IZ1 - Interruptible Part Haul Service (Zonal)

3.1.3 Submissions by interested parties

Santos made the following submission with respect to Epic's services policy:

Santos understands the firm forward service is the only arrangement which has been developed as a reference service. This service accounts for over 95% of pipeline revenue. In this instance, Santos accepts that the other non-reference services are not sought by a significant part of the market. Any ancillary service which is not gazetted as a reference service under the Gas Pipelines Access (Queensland) Act 1998 can be reviewed by the ACCC, if either participant elects to refer the matter to the ACCC for authorisation. Under this circumstance, Santos considers Epic's approach to be appropriate.

3.1.4 Commission's considerations

Reference and non-reference services

Section 58 of the *Gas Pipelines Access (Queensland) Act 1998*, provides that the Minister may approve a tariff arrangement and that the approved tariff arrangement is taken to be approved under the Gas Pipelines Access Law as the reference tariff and reference tariff policy. Section 3 of Annexure A of Epic's proposed access arrangement lists the reference services described above. However, Epic has only proposed to offer the full forward haul service as a reference service, classifying the remainder of the services listed in the tariff arrangement as non-reference services. Epic does not consider that section 58 of the GPAL requires it to include as reference services all services approved under previous legislation.

Epic wrote to the Commission as follows on 9 April 2001:

The only service that meets the criteria for inclusion as a Reference Service under the Code is the Full Forward Haul Service. This service provides in excess of 90% of the Epic Energy transportation market on the SWQP. Section 3.3 of the Code quite clearly intends that services that do not constitute a "significant part of the market" are not required to be included as a Reference Service and that a Reference Tariff need only apply to "at least one Service" that does. As with other Access Arrangement approvals by the ACCC, the Epic Energy Access Arrangement for the SWQP would clearly not normally be required to establish all or any of the AFT Services as Reference Services.

Additionally, the definition of Reference Tariffs prior to the imposition of the Code as the national access regime and after its establishment are quite different and cannot be linked. The derogated version of Reference Tariffs, prior to the inception of the Code is a descriptive term without intended legal substance. No opportunity was offered to Epic Energy to revise the tariff arrangement made under the *Petroleum Act 1923*, given that it be subjected retrospectively to a different regime under

the *Gas Pipelines Access (Queensland) Act 1998* and the legislation does not obligate Epic Energy to include them. Hence, as these services are not Reference Services, it is not necessary to include any reference to them and if not done the review date is irrelevant. It should also be made clear that the Code does not require the listing of all services that might be available, but simply provides for the relevant benchmarks around which negotiation could be conducted.

However, the Commission believes that under the derogation these services are as a matter of law reference services for the purposes of the code.

This issue is important in terms of determining tariffs for these services in the event of an access dispute. In a dispute over access to a reference service, the arbitrator is bound to apply the relevant reference tariff. For non-reference services, however, the arbitrator is not so bound. Therefore, if the Commission is to be bound by the tariffs that the Queensland Government set for these services in the derogation, the services must be reference services.

Therefore, the Commission requires Epic to define the services as described in the derogation as reference, rather than non-reference, services.

Five year minimum term for full forward haul service

As outlined in Chapter 2, Epic requires that prospective users nominate a minimum contract term of five years for FH1 service. The Commission queries Epic's reasons for this requirement, since other transmission pipelines typically have minimum terms of one or two years.

The Commission considers that an five year minimum term is potentially onerous on users and is not suitable for the market particularly as it develops. The Commission considers that the requirement is an unreasonable addition to the conditions already in the derogation and requires that Epic reduce this minimum to one or two years.

Limitation on Upstream Delivery Points

The Commission recognises the merit in providing for the cessation of backhaul services, on days when forward haul services are insufficient to maintain this service without reversing the flow of gas in the pipeline. However, the Commission queries whether this term may be more suitably incorporated into the terms and conditions for backhaul service. The Commission suggests that Epic review the clause with a view to incorporating it into the terms and conditions for the relevant service.

The Commission considers that Epic's reservation of the right to restrict upstream deliveries 'in its absolute discretion without liability to the shipper' is too broad. The Commission requires Epic to amend this test so that services can only be restricted following consultation with the user and after giving reasonable notice of its intention to restrict the service, so that the user may make alternative arrangements.

Proposed amendment A3.1

The Commission requires Epic to include all of the reference services established in the Queensland Government's derogation as reference services in the access arrangement.

Proposed amendment A3.2

The Commission requires Epic to reduce the minimum term for a contract for FH1 service to one or two years.

Proposed amendment A3.3

The Commission requires amendments to the limitation on upstream deliveries. Epic must propose a more specific test that involves consultation with affected users before it elects to cease backhaul services.

3.2 Terms and conditions of service

3.2.1 Code requirements

Section 3.6 of the code requires that an access arrangement include the terms and conditions on which a service provider will supply each reference service. These terms and conditions must be reasonable according to the Commission's assessment.

3.2.2 Epic's proposal

The terms and conditions upon which Epic will provide full forward haul service are set out in the gas transportation agreement terms and conditions. Epic proposes that it may vary the gas transportation agreement terms and conditions without the consent of the user or the Commission (except for those terms set out in section 10.3 of Epic's proposed access arrangement), if the amendment does not in aggregate detract from the value of the reference service to the user.

3.2.3 Commission's considerations

The Commission considers that section 10 of the access arrangement grants too broad a discretion to Epic. The Commission understands that the gas transportation agreement is a basic guide that sets out forms such as the service request form and may currently not be viewed as relevant to access per se. However, the Commission considers it is inappropriate for Epic to be able to make unilateral determinations as to whether the aggregate effect of changes to the terms and conditions is to increase or decrease the value of a service to a user. To protect the integrity of the access arrangement process, the Commission proposes that Epic make an amendment to the effect that it will seek the approval of the Commission for proposed revisions to the agreement.

Proposed amendment A3.4

Epic must amend section 10 of the access arrangement so that it undertakes to submit proposed changes to the gas transportation agreement terms and conditions to the Commission for approval. The Commission may, pursuant to section 2.33 of the code, approve the proposed revisions without wider consultation if the revisions are not material and will not affect reference tariffs or reference services.

3.3 Capacity management policy

3.3.1 Code requirements

Section 3.7 of the code requires that an access arrangement include a statement that the covered pipeline is either a contract carriage pipeline or a market carriage pipeline.

3.3.2 Epic's proposal

Clause 14 of the proposed arrangement states that the pipeline is a contract carriage pipeline.

3.3.3 Commission's considerations

As the proposed access arrangement includes a statement that SWQP is a contract carriage pipeline, it satisfies the requirements of section 3.7 of the code.

3.4 Trading policy

Sections 3.9 to 3.11 of the code set out the requirements for a trading policy. If a pipeline is a contract carriage pipeline, the access arrangement must include a trading policy that explains the rights of a user to trade its right to obtain a service to another person. The trading policy must, among other things, allow a user to transfer capacity:

~~and~~ without the service provider's consent, if the obligations and terms under the contract between the user and the service provider remain unaltered by the transfer; and

~~and~~ with the service provider's consent, in any other case.

Consent may be withheld only on reasonable commercial or technical grounds and the trading policy may specify conditions under which consent will be granted and any conditions attached to that consent.

Section 3.10(c) provides that, where technically and commercially reasonable, a user must be permitted to change the delivery or receipt point from that specified in a contract of service, with the prior written consent of the service provider.

3.4.1 Epic's proposal

Epic permits a bare transfer without its consent provided the transferee notifies Epic of the portion of contracted capacity subject to the bare transfer and of the nature of the contracted capacity subject to the bare transfer. For any other form of transfer the user is required to seek Epic's consent. Epic may withhold consent on reasonable commercial or technical grounds.

3.4.2 Submissions from interested parties

Santos made the following submission:

'A flexible trading environment should provide mechanisms for shippers to utilise additional receipt and delivery points. To allow the Service Provider to withhold consent based solely on its own determination of reasonable commercial grounds may be inappropriate, and creates a potential conflict of interest for the Service Provider. In making this comment Santos believes that, to date, Epic has approached all requests on a reasonable basis.

Nevertheless, Santos proposes the following mechanism to provide an equitable basis for determining what are “reasonable commercial or technical grounds,” rather than the judgement being at the sole discretion of the Service Provider.

The Service Provider shall provide access to an additional receipt or delivery point without consent being required where the shipper satisfies the following conditions:

- (i) The aggregate of the varied receipt or delivery point maximum daily quantities (MDQs) does not exceed the aggregate of the shipper’s receipt or delivery point MDQs prior to the inclusion of the additional receipt or delivery point.
- (ii) It is technically feasible, within the constraints of the Service Provider’s contractual obligations to receive or deliver the varied MDQs at the specified receipt/delivery points.
- (iii) The shipper makes all appropriate arrangements with its customers as a result of the variation nominated.
- (iv) The Service Provider will not, as a result of such a variation, incur any additional capital cost which it would not otherwise have incurred, or will be required to advance the time at which capital costs would otherwise have been required. In the event that a new receipt or delivery point is required, an agreement by the requesting party to indemnify the service provider for the additional costs (both capital and operating) will suffice to ensure that the service provider will not incur any additional capital costs.
- (v) As a result of the variation, and where the transportation distance is equal to or less than previously provided under the shipper’s transportation contract, the shipper will pay the same amount of revenue to the Service Provider. Where the transportation distance is increased, the shipper will provide additional revenue in accordance with the Service Provider’s Access Arrangement to satisfy the incremental transportation distance.

In the circumstances where the shipper does not satisfy all of the above requirements, then consent will be required by the Service Provider based on reasonable commercial and technical grounds. The ACCC should adjudicate any situation where the user believes the Service Provider has rejected its request on unreasonable grounds.

3.4.3 Commission’s considerations

Provision of additional receipt and delivery points

The Commission discussed Santos’ proposal with Epic. Subsequently, Epic made an additional submission on 9 April 2001 in which it proposed to incorporate Santos’ submission in Annexure B to the access arrangement.

The Commission welcomes this proposal and further suggests that, for clarity, section (iv) of Santos’ proposal should be expressed as follows:

- (iv) The service provider will not, as a result of such a variation, incur any additional capital cost which it would not otherwise have incurred, *nor* will it be required to advance the time at which capital costs would otherwise have been required. [emphasis added]

Arbitration under the code

The Commission is concerned that there is some misunderstanding of its powers under the code to arbitrate disputes. Section 6.1 of the code provides that:

If a prospective user and a service provider are unable to agree on one or more aspects of access to a service, the prospective user or service provider may notify the relevant regulator in writing that a dispute exists. A prospective user or service provider may not give a notice to the relevant

regulator under this section unless an access arrangement has been accepted by the relevant regulator (or the relevant regulator has drafted and approved its own access arrangement) with respect to the covered pipeline concerned.

Part Four of the GPAL sets out procedures for the conduct of an arbitration that is notified under the code. Section 6.1 is the only provision of the code that enables parties to notify a dispute to an arbitrator.

Under section 6.1 of the code, only prospective users have the power to notify a dispute under the code. In the context of Santos' proposals for arbitration, this means that a dispute could only be notified where a prospective user was unable to obtain access to a pipeline on terms and conditions that include those terms and conditions set out in the trading policy. A user of a pipeline under a contract will not be able to notify a dispute under section 6 of the code where the dispute relates to an alleged breach of that contract. Rather, the user would be able to seek remedies through the normal avenues for breach of contract.

Therefore, the Commission recommends that in adopting Santos' proposal, the last sentence referring to arbitration by the Commission be omitted.

This issue highlights that it is important for users to ensure that their contracts for access to services contain all of the necessary terms and conditions, including those provisions of the access arrangement relating to their rights to trade capacity. While the access arrangement sets out the minimum terms and conditions upon which prospective users are entitled to access, it is up to the user to ensure that the relevant provisions of the access arrangement are incorporated into their contract and are therefore enforceable through the usual legal avenues.

3.5 Queuing policy

3.5.1 Code requirements

Sections 3.12 to 3.15 set out the code's requirements for a queuing policy. An access arrangement must include a queuing policy for determining the priority that a prospective user has, as against any other prospective user, to obtain access to spare capacity and developable capacity where the provision of the service sought by the prospective user may impede the ability of the service provider to provide a service that is sought or which may be sought by another prospective user.

A queuing policy must be set out in sufficient detail to enable users and prospective users to understand in advance how it will operate. It must also, to the extent reasonably possible, accommodate the legitimate business interests of the service provider, users and prospective users, and must generate economically efficient outcomes.

3.5.2 Epic's proposal

Epic proposes that for a prospective user to obtain access it must follow the procedures set out in the gas transportation guide. The gas transportation guide was not provided with the access arrangement; the Commission understands that Epic is still developing the guide and will release it shortly. A prescribed fee must be paid when a gas transportation request is made.

Epic will ascribe priority to gas transportation requests in the order in which they are received, however a request for a reference service will always rank ahead of a request

for a non-reference service. Epic also proposes that it may deal with requests out of order provided that the requests which were first in time are not ultimately disadvantaged.

If a gas transportation request is rejected, that request's priority is lost.

3.5.3 Commission's considerations

The Commission requested that Epic clarify its queuing policy because it did not consider that it explained how priority would be determined. Epic stated that the policy was essentially 'first come, first served', however, Epic reserved the right to move requests up the queue, for instance in response to an order under the state's emergency powers. Epic stated that in this situation it would consult with users and make arrangements so that they were not 'ultimately disadvantaged.' If a user thought it had been disadvantaged it could appeal the decision under this clause. The Commission requires that Epic write this consultation process into the queuing policy.

Secondly, the policy is not 'first in, first served' because section 5.3(b) states that requests for reference services will always have priority over requests for non-reference services. The Commission questions the rationale underlying this restriction, especially if the request is for a negotiated service with additional features or flexibility for which the user will pay more than the reference tariff for the most similar reference service. Furthermore, the wording of this section of the policy is not clear and the Commission recommends that it be reworded.

The Commission does not consider that this policy is adequately explained in the access arrangement, and requires that Epic amend the access arrangement to clarify its position regarding priority in the queue.

The Commission also requires Epic to state in the access arrangement the amount of the prescribed fee that must be paid when a gas transportation request is made. Obviously the Commission has not had the opportunity yet to assess whether the proposed prescribed fee is reasonable.

Proposed amendment A3.5

Epic must amend the access arrangement to clarify how priority in the queue will be determined with respect to:

- ~~the~~ the priority of requests for reference and non-reference services, for example whether a request for a reference service with some additional features, for which the prospective user is prepared to pay, will affect the prospective user's priority in the queue; and
- ~~what~~ what test Epic proposes to use to determine whether a user is 'ultimately disadvantaged'.

Proposed amendment A3.6

Epic must state in the access arrangement the amount of the prescribed fee that must be paid when a gas transportation request is made. The Commission will consider whether or not this fee is reasonable in its final decision.

3.6 Extensions and expansions policy

3.6.1 Code requirements

The code requires an access arrangement to have an extensions/expansions policy (section 3.16). The policy must 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. A service provider is required to specify the impact on reference tariffs of treating an extension or expansion as part of the covered pipeline.⁴ In addition, an extensions and expansions policy must outline the conditions upon which the service provider will fund new facilities and provide a description of those new facilities.

3.6.2 Epic's proposal

Epic proposes that if it elects to enhance or expand the capacity of the SWQP, the reference tariffs for existing delivery points will not be affected before the next revision commencement date - 2016 or 2004 (see section 3.7).

Epic proposes that, unless it elects otherwise, any extension or expansion of the SWQP will become part of the covered pipeline.

From time to time, Epic may seek surcharges or capital contributions from prospective users in respect of new facilities investment.

3.6.3 Submissions from interested parties

Santos made the following submission:

Santos understands any extension or expansion of pipeline capacity will not affect the Reference Tariff established prior to the upgrade. It is reasonable for the Service Provider to receive an acceptable rate of return on investment associated with the capacity expansion. This may require the user to pay for a capital contribution or additional surcharge. However, it seems the minimum charge payable by a new user is equal to the current Reference Tariff which may alter the overall return on investment of the pipeline. It is assumed that any overly positive impact on the rate of return is partially returned to the shippers via the revenue sharing mechanism. The exact impact of the additional capital surcharge payments on the revenue sharing mechanism is unclear. In particular, if a capital contribution or surcharge payment includes a return on investment component, how is this revenue treated with regards to the revenue sharing mechanism? Alternatively, how is the split between capital contribution and revised Reference Tariff determined and what are the implications on the sharing mechanism? It would be helpful if Epic could provide further detail on this issue.

3.6.4 Commission's considerations

The Commission considers that Epic has not adequately described the method it will apply to decide whether to extend or expand the pipeline. Epic has defined its policy with reference to section 6.22 of the code but notwithstanding sub-sections (b) and (c), this section does not contain a specific test. If a dispute arises in this area, the Commission must be able to determine pursuant to section 6.22(e) whether the service provider is required to fund part or all of the expansion as a result of the conditions specified in the extensions/expansions policy having been met. In order for the Commission to be able to carry out this test, Epic is required to specify its own criteria

⁴ For example, reference tariffs may remain unchanged, but a surcharge may be levied on incremental users.

for the test and write them into the access arrangement. Epic must also describe how it proposes to determine tariffs for any extensions or expansions.

The Commission considers that Epic has not described adequately a test to determine whether or not extensions or expansions will be treated as part of the covered pipeline. Furthermore, Epic has failed to acknowledge that it must submit an application to treat an extension or expansion as part of the covered pipeline to the Commission for approval.

The Commission requires amendments to address these two omissions.

Proposed amendment A3.7

Epic must specify the test it will use to determine whether to enhance or expand capacity on the pipeline, and describe how it will determine tariffs for any extensions/expansions.

Proposed amendment A3.8

Epic must describe the method it will apply to determine whether or not extensions or expansions will be treated as part of the covered pipeline, and include a commitment to submit such a proposal to the Commission for approval.

3.7 Review and expiry of the access arrangement

3.7.1 Code requirements

Section 3.17 of the code requires an access arrangement to include a date upon which the service provider must submit a revised access arrangement to the regulator (revisions submission date) and a date upon which the revisions are intended to commence (revisions commencement date).

In deciding whether these two dates are appropriate, the regulator must have regard to the objectives contained in section 8.1 of the code. The regulator may require an amendment to the proposed access arrangement to include earlier or later dates. The regulator may also require that specific major events be defined as a trigger that would oblige the service provider to submit revisions before the revisions submission date (section 3.17(ii)).

An access arrangement period may be of any duration. However, if the period is greater than five years the regulator must consider whether mechanisms should be included to address the potential risk that forecasts on which terms of the proposed access arrangement are based, subsequently prove to be incorrect (section 3.18 of the code). The code provides examples of such mechanisms for guidance. Thus a regulator could consider triggers for early submission of revisions based on:

~~the~~ divergence of the service provider's profitability or the value of services reserved in contracts from a specified range; or

~~the~~ changes to the type or mix of services provided.

The regulator could require a service provider to return to users some or all revenue or profits in excess of a certain amount.

Finally, the revisions commencement date is not a fixed date. The date is subject to variation at the time the regulator approves the revisions pursuant to section 2.48 of the code. This section states in part:

Subject to the Gas Pipelines Access Law, revisions to an access arrangement come into effect on the date specified by the relevant regulator in its decision to approve the revisions (which date must not be earlier than either a date 14 days after the day the decision was made or ... the revisions commencement date).

3.7.2 Epic's proposal

Section 3.17 of the code states that an access arrangement must include a revisions submission date and a revisions commencement date. Epic proposes:

~~the~~ the Revisions Submission Date is 30 June 2016; and

~~the~~ the Revisions Commencement date is 30 December 2016

However, the Approved Tariff Agreement that forms part of the access arrangement states that for AFT Services (an alternative form of transportation service to a full forward reference service) the revisions submission date is 11 June 2004. For all other revisions, the revisions submission date is 30 June 2016. The corresponding revisions commencement dates are 6 months after the revisions submission dates.

3.7.3 Submissions by interested parties

Santos made the following submission with respect to the duration of the access arrangement:

Under its access arrangements, Epic has proposed an effective reference tariff review date of February 2017. It is understood this date has been established through legislation in Queensland. Although Epic has questioned the legitimacy of the ACCC to review non-tariff elements every five years... , Santos is supportive of this proposed shorter review time. Substantial changes to the gas industry are anticipated in the coming years, which are likely to affect elements of Epic's non-tariff access arrangement. For example, the market requirements for queuing and trading policies are likely to change over time, and a shorter review time of non-tariff elements would be advantageous to reflect market developments.

It should be noted that the Producers have committed to regular price reviews (in some cases for periods shorter than five years) under a number of gas sales agreements. This ensures gas pricing continues to be reflective of market conditions. It is also appropriate for the industry to be reactive to changing market conditions, and we are not convinced that this should not regularly include reviewing reference tariff pricing or non-tariff elements.

3.7.4 Commission's considerations

Derogated Submission Dates

The Commission has received legal advice that the effect of s58(4) of the GPAL is that the Revisions Submission Date and the Revisions Commencement Date for the access arrangement are the dates contained in the tariff arrangement approved by the Queensland Minister. This means that the Commission is unable to review these dates under the code.

The relevant dates are set out in section one, the definitions section, of the derogations:

“Revisions Submission Date” means:

- (a) for revisions relating to AFT services:
 - (i) 11 June 2004; or
 - (ii) such earlier date as is agreed to by the service provider and the relevant regulator;
- (b) for all other revisions to the access arrangement:
 - (i) 30 June 2016; or
 - (ii) such earlier date as is agreed to by the service provider and the relevant regulator.

The revisions commencement dates are six months after the relevant revisions submission dates. The Commission requires that Epic amend its proposed revisions dates consistently with this provision of the derogation.

Major Event Triggers

Section 3.18 provides for review of the access arrangement, if the forecasts on which terms of the proposed access arrangement are based subsequently prove to be incorrect.

In an additional submission dated 9 April 2001, Epic claimed that the Commission was not, as per section 3.17 ‘... approving the revisions submission date and revisions commencement date’ since these dates were determined in s58 of the GPAL to be part of the reference tariff policy and are therefore derogated. Epic made a similar argument with respect to section 3.18, that the access arrangement period was specified in s58 of the GPAL and therefore conferred by law, not by agreement with or acceptance by the Commission.

Epic further argued that section 3.18, in requiring the Commission to consider whether mechanisms should be included to address the risk of forecasts on which the terms of the access arrangement were based and approved proving incorrect, relates to the forecasts used in determining reference tariffs. Because the reference tariffs form part of the derogation, Epic argues that the Commission has no authority to require trigger mechanisms under section 3.18.

Consistent with Epic’s additional submission of 9 April 2001, the Commission has received legal advice that since the ACCC’s approval will not be based on any forecasts, section 3.18 does not apply. In any case, amendments to the derogations appear not to be the type of trigger which would come within the scope of section 3.18.

However, section 2.28 of the code makes provision for revisions to be lodged in other circumstances. Therefore, if the access arrangement provides for submissions to be submitted in relation to non-tariff matters at an earlier date, section 2.28 requires those revisions to be submitted. Section 3.17(ii) contains such a provision, whereby the Commission can require a service provider to specify in the access arrangement events that will trigger a review of the non-tariff elements prior to the revision submission date.

The Commission believes it is appropriate to use this provision for early review of the non-tariff elements because of the uncertainty associated with the extended regulatory period. If the current non-tariff elements are operating effectively when a major event triggers a review, Epic may re-submit its current access arrangement to the Commission. However, the Commission reserves the option to review the non-tariff elements if a trigger event occurs, in case modifications to the arrangement are appropriate.

The Commission requires Epic to include in the access arrangement a list of specific major events that it considers should trigger a revision of the non-tariff elements. The Commission proposes that this list include the interconnection of another pipeline with the SWQP, and the introduction of a significant new gas supply source to one of the SWQP's markets.

Proposed amendment A3.9

The Commission requires that Epic amend its proposed revisions dates to be consistent with the dates set out in the derogation.

Proposed amendment A3.10

The Commission requires Epic to include in the access arrangement a list of specific major events that will trigger a review of the non-tariff elements of the access arrangement, such as the interconnection of another pipeline with the SWQP, and the introduction of a significant new gas supply source to one of the SWQP's markets.

4. Information provision and performance indicators

4.1 Information provision

4.1.1 Code requirements

In conjunction with its proposed access arrangement, a service provider is required to submit access arrangement information in accordance with the criteria established in Attachment A of the Code. The service provider's access arrangement information must contain information that, in the opinion of the Commission, is sufficient to enable users and prospective users to:

- ~~☞~~ understand the derivation of the elements in the proposed access arrangement described in sections 3.1 to 3.20 of the code; and
- ~~☞~~ form an opinion as to the compliance of the access arrangement with the provisions of the code (section 2.6).

4.1.2 Epic's Proposal

The following extract from Epic's additional submission of 9 April 2001 describes Epic's view with respect to the provision of access arrangement information:

Epic Energy has a responsibility under the code for the provision of an access arrangement, supported by an access arrangement information. In accordance with the introductory words of section 2 and subsequently section 2.6 of the code, the access arrangement information "...should enable users...to understand the derivation of the elements of the proposed access arrangement and form an opinion as to the compliance of the access arrangement with the code." Section 2.7, specifying the information required, must be read under section 2.6.

In relation to the SWQP, the access arrangement has been determined in accordance with the derogations embodied in section 58 of the Qld Act and the supporting access arrangement information need only constitute information relevant to the SWQP access arrangement in order to comply with the code, ie. in the case of the reference tariff, where that tariff was derived from. Epic Energy has provided all pertinent information to allow the ACCC to exercise its regulatory oversight, as varied by the derogations.

4.1.3 Commission's considerations

The Commission considers that Epic is under an obligation to provide certain categories of access arrangement information. Unlike the other three covered pipelines in Queensland, Epic does not have an exemption from the obligation to provide access arrangement information. Epic has provided some access arrangement information, but the Commission considers that the information provided may not be sufficient to meet Epic's obligations under the Code.

However, given that there have been no requests from interested parties for additional access arrangement information, the Commission proposes to not require Epic to release additional information until the AFT service tariffs are reviewed in 2004. In 2004 the Commission expects Epic to submit detailed information in support of the proposed AFT reference tariffs.

5. Draft decision

Pursuant to section 2.13(b) of the code, the Commission proposes not to approve Epic's proposed access arrangement in its present form.

The amendments or 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 draft decision.