



Australian
Competition &
Consumer
Commission

Draft Decision

Revised access arrangement
by Epic Energy Queensland Pty Ltd
for the
Ballera to Wallumbilla Natural Gas Pipeline
(South West Queensland Pipeline)

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Commissioners:

Samuel
Sylvan
King
Martin
McNeill
Smith

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Abbreviations and glossary

ACCC	Australian Competition and Consumer Commission
access arrangement	Arrangement for third party access to a pipeline provided by a pipeline owner/operator and approved by the relevant regulator in accordance with the code
access arrangement information	Information provided by a service provider to the relevant regulator pursuant to section 2 of the code
access arrangement period	The period from when an access arrangement or revisions to an access arrangement takes effect (by virtue of a decision pursuant to section 2) until the next revisions commencement date
AER	Australian Energy Regulator
AFT service	An alternative form of transport service to the full forward haul service (comprising back haul, interruptible, forward part haul, back part haul and interruptible part haul services)
Ballera to Wallumbilla Natural Gas Pipeline	Also known as the South West Queensland Pipeline (SWQP)
code	National Third Party Access Code for Natural Gas Pipeline Systems
covered pipeline	Pipeline to which the provisions of the code apply
CSM	coal seam methane
derogation	A legislative exemption from compliance with specified obligations set out in the code
Epic	Epic Energy Queensland Pty Ltd and Epic Energy Corporate Shared Services Pty Limited
FH1	Full forward haul service
GJ	Gigajoule
GPAL	Gas Pipelines Access (Queensland) Law
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 which is specified in an access arrangement and in respect of which a reference tariff has been specified in that access arrangement
reference tariff	A tariff specified in an access arrangement as corresponding to a reference service
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 submissions date	The date upon which the service provider must submit revisions to the access arrangement
service	<p>(a) a service provided by means of a covered pipeline including:</p> <ul style="list-style-type: none"> (i) haulage services (such as firm haulage, interruptible haulage, spot haulage and back haul); and (ii) the right to interconnect with the covered pipeline; and <p>(b) services ancillary to the provisions of such services, but does not include the production, sale or purchasing of natural gas</p>
service policy	A policy detailing the service or services to be offered
service provider	The owner or operator of the whole, or any part, of the pipeline or proposed pipeline
SWQP	South West Queensland Pipeline – also known as the Ballera to Wallumbilla Natural Gas Pipeline
TJ	Terajoule (equal to 1 000 GJ)

Summary

Introduction

On 3 July 2006, Epic Energy Corporate Shared Services Pty Limited submitted to the Australian Competition and Consumer Commission (ACCC) proposed revisions to the access arrangement for the Ballera to Wallumbilla Natural Gas Pipeline (also known as the South West Queensland Pipeline (SWQP)) on behalf of Epic Energy Queensland Pty Ltd. The relevant access arrangement information was also provided.

The access arrangement describes the terms and conditions upon which Epic makes access to its pipeline available to third parties. The access arrangement information provides supporting information to assist users and prospective users in their understanding of the access arrangement.

The ACCC invites submissions on this draft decision from the applicant and interested parties by Friday 6 October 2006 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 precludes the ACCC from reviewing the reference tariff and reference tariff policy for the full forward haul service (the only reference service available on the SWQP) until 30 June 2016. The current review is restricted to revisions relating to AFT services.¹

For this current review Epic has not proposed any material changes to the access arrangement and access arrangement information. The majority of changes are of an administrative nature. Epic's current access arrangement period is of two years duration for the AFT services and it has proposed the same length of time for the forthcoming access arrangement period.

The ACCC has considered the current proposed revisions. It has concluded that each of the proposed changes to the access arrangement and access arrangement information is appropriate at this time for the SWQP. Given the nature of the proposed revisions, and in light of the current operating environment for the pipeline, the ACCC is satisfied that these revisions are not contrary to the provisions and principles of the code, and that the access arrangement as revised would satisfy those provisions and principles. Accordingly, the ACCC has proposed to approve the proposed revisions to the SWQP access arrangement without any amendment.

¹ See the glossary for a description of the AFT services.

1. Introduction

1.1 Access arrangement revisions

On 3 July 2006, Epic Energy Corporate Shared Services Pty Limited submitted to the Australian Competition and Consumer Commission (ACCC) proposed revisions to the access arrangement for the Ballera to Wallumbilla Natural Gas Pipeline on behalf of Epic Energy Queensland Pty Ltd as required under the terms of the access arrangement.² This was accompanied by the applicable access arrangement information.

This pipeline supplies gas from the Cooper Basin in south-west Queensland and is also known as the South West Queensland Pipeline (SWQP). The pipeline is 756 km long, with a diameter of 406 mm and maximum allowable operating pressure of 15 MPa. It was constructed in 1996 by Tenneco Gas Australia and is now owned by Epic Energy Queensland Pty Ltd and operated by Epic Energy Corporate Shared Services Pty Limited (which are owned by Hastings Diversified Utilities Fund).³ The SWQP interconnects with the Ballera to Mt Isa Pipeline at Ballera and with the Roma to Brisbane Pipeline and Wallumbilla to Gladstone Pipeline at Wallumbilla (see Appendix B for a map).

The access arrangement describes the terms and conditions on which Epic makes access to its pipeline available to third parties.

In general, the regulator is required to assess the access arrangement and access arrangement information against the principles and requirements of the *National Third Party Access Code for Natural Gas Pipeline Systems* (code). However, as provisions relating to the reference service are not scheduled for review until 2016 in accordance with the legislative exemptions contained in the Queensland Gas Pipelines Access Law, the current review is of revisions of the non-tariff elements that relate to ‘AFT services’. This means that the reference tariff and reference tariff policy for the full forward haul service have not been reviewed at this time.

The ACCC has made a draft decision based on information supplied by Epic, a consultant’s report and its own analysis. Pursuant to section 2.35(a) of the code, this draft decision proposes to approve the proposed revisions to the SWQP access arrangement without amendment.

1.2 Criteria for assessing revisions to an access arrangement

A regulator may approve proposed revisions to an access arrangement only if it is satisfied that the access arrangement as revised contains the elements and satisfies the principles set out in sections 3.1 to 3.20 of the code. These are summarised below.

² Revisions were due to be submitted by 1 July 2006.

³ Epic Energy Queensland Pty Ltd and Epic Energy Corporate Shared Services Pty Limited are referred to in this draft decision as Epic.

Revisions to an access arrangement cannot be opposed solely on the basis that the access arrangement as revised would not address a matter that section 3 of the code does not require it to address.⁴ Subject to this, a regulator has a broad discretion in accepting or opposing a revised access arrangement.

An access arrangement, or a revised access arrangement, must include the following elements:

- a policy on the service or services to be offered which includes a description of the service(s) to be offered, including one or more services that are likely to be sought by a significant part of the market (a reference service)
- a reference tariff policy and one or more reference tariff⁵
- terms and conditions on which the service provider will supply each reference service
- a statement of whether a contract carriage or market carriage capacity management policy is applicable
- for a contract carriage pipeline, a trading policy that enables a user to trade its right to obtain a service to another person
- a queuing policy to determine prospective users' priorities in obtaining access to spare and developable capacity on a pipeline
- an extensions/expansions policy to determine the treatment of an extension or expansion of a pipeline under the code
- a date by which revisions to the access arrangement must be submitted, and
- a date by which the revisions are intended to commence.

In considering proposed revisions to the access arrangement, a regulator must take into account the provisions of the access arrangement and, pursuant to section 2.46, the factors set out in section 2.24 of the code:

- the service provider's legitimate business interests and investment in the covered pipeline
- firm and binding contractual obligations of the service provider or other persons (or both) already using the covered pipeline
- the operational and technical requirements necessary for the safe and reliable operation of the covered pipeline
- the economically efficient operation of the covered pipeline

⁴ See section 2.46 of the code.

⁵ A reference tariff operates as a benchmark tariff for a particular service and provides users with a right of access to the specific service at the specific tariff. Reference tariffs are normally assessed against the reference tariff principles in section 8 of the code. In this instance, however, the reference tariff and reference tariff policy for the full forward haul service have been derogated from the operation of the code by Queensland legislation until 2016. Reference tariffs and a reference tariff policy for AFT services are required only if they are reference services.

- the public interest, including the public interest in having competition in markets (whether or not in Australia)
- the interests of users and prospective users, and
- any other matters that the regulator considers relevant.

1.2.1 Scope of the review

The review dates presented in clause 13 of Epic's access arrangement are an essential element required by section 3.17 of the code. Pursuant to this clause of the access arrangement, this review is a scheduled review of revisions relating to the AFT services and associated non-tariff elements of the access arrangement. As established by the Queensland Government derogation, the reference tariff and reference tariff policy for the full forward haul reference service is not reviewable until 2016. That is, it is not open for the ACCC to review all aspects of the SWQP access arrangement at this time.

1.3 The assessment process

The proposed revised access arrangement (in conjunction with the access arrangement information, and other associated documentation)⁶ describes the terms and conditions on which Epic will make access available to third parties during the forthcoming access arrangement period. As a result of the derogation, the current assessment process is limited to aspects of the access arrangement relating to the AFT services (defined in the derogation as an alternative form of transportation service to the full forward haul service) and non-tariff elements.

Under the code, the ACCC is required to:

- inform interested parties that it has received the proposed revisions to the SWQP access arrangement from Epic (interested parties were notified by letter on 13 July 2006)
- publish a notice in a national daily paper which at least describes the covered pipeline to which the proposed revisions to the access arrangement relates; states how copies of the documents may be obtained; and requests submissions by a date specified in the notice (the notice was published in the *Australian Financial Review* and *The Courier-Mail* on 12 July 2006)
- after considering submissions received, issue a draft decision which either proposes to approve the revisions or not to approve the proposed revisions and states the amendments (or nature of the amendments) which have to be made to the revisions in order for the ACCC to approve them⁷

⁶ Associated documentation includes the annexures to the access arrangement; A – access principles, B – additional terms and conditions, and C – definitions; as well as a gas transportation guide.

⁷ Where revisions are proposed by a service provider that are not part of a scheduled access arrangement review, the ACCC is not required to propose amendments that would be necessary for regulatory approval to be granted. Likewise, there is no further final decision (the final approval) as such for revisions proposed outside of a scheduled access arrangement review.

- after considering additional submissions, issue a final decision that either approves or does not approve the proposed revisions (or amended revisions) and states the amendments (or nature of the amendments) which have to be made to the revisions in order for the ACCC to approve them, and
- if the amendments are satisfactorily incorporated in amended revisions, issue a final approval. If not, the ACCC may draft and approve its own revisions to the access arrangement. See sections 2.31 to 2.48 of the code for further detail on the assessment process.

It is important to note that under s. 58 of the *Gas Pipelines Access (Queensland) Act 1998*, the reference tariff and reference tariff policy for the full forward haul reference service have been approved by the Queensland Minister and cannot currently be reviewed in this process. This is discussed in more detail in section 1.4 and chapter 2 below.

1.4 Regulatory framework

Relevant legislation

The main legislation and relevant documents regulating access to the Queensland gas transmission industry are:

- the code, under which transmission service providers are required to submit access arrangements and revised access arrangements to the ACCC for approval
- the Gas Pipelines Access (Queensland) Act 1998
- the Gas Pipelines Access (Queensland) Act 1998—Derogations
- the 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.

Regulatory institutions

Code bodies and appeals bodies for Queensland gas transmission pipelines are:

- the ACCC—regulator and arbitrator
- the National Competition Council—code advisory body
- the Commonwealth Minister—coverage decision maker
- the Federal Court—judicial review
- the Australian Competition Tribunal—administrative appeal.

Queensland derogations

In 1997 the Queensland Government was a signatory to the Natural Gas Pipelines Access Agreement – a Council of Australian Governments (COAG) intergovernmental agreement to implement the code. In accordance with this agreement, the Queensland Government passed the Gas Pipelines Access (Queensland) Act, which came into effect on 19 May 2000.

The Gas Pipelines Access (Queensland) Act established a number of derogations from the code. In particular, s. 58 of the Act provides that the initial reference tariffs for several transmission pipelines were to be approved and gazetted by the Queensland Minister for Mines and Energy rather than established pursuant to the access pricing principles – and related regulatory process – in the code. As a result, the reference tariff for Epic’s SWQP full forward haul service is not reviewable until 2016, and the reference tariffs for AFT services were not reviewable until 2004.⁸

Certification of the Queensland Gas Access Regime

Following advice from the National Competition Council, the Parliamentary Secretary to the Treasurer determined on 17 July 2006 that the Queensland gas access regime is not an effective access regime under the National Access Regime (Part IIIA of the *Trade Practices Act 1974*).

The Minister’s decision to not certify the Queensland gas access regime as effective does not affect the ACCC’s considerations of the proposed SWQP revised access arrangement. Queensland pipelines are, however, still subject to potential declaration under Part IIIA of the Trade Practices Act which provides for dispute resolution by the ACCC.

The role of the Australian Energy Regulator

The ACCC has prepared this draft decision in consultation with the Australian Energy Regulator (AER). The ACCC is currently the regulator of natural gas transmission pipelines under the code. However, governments have agreed that this function will be undertaken by the AER, along with regulation of natural gas distribution pipelines, in the future.

1.5 Draft decision

The ACCC proposes to approve the revised access arrangement for the SWQP.

Chapter 2 describes the previous reference tariffs for AFT services which were determined by the Queensland Minister and sets out the analysis of whether these services should remain non-reference services.

Chapters 3 and 4 set out the ACCC’s analysis of:

- non-tariff elements of Epic’s access arrangement, that is, terms and conditions of service, extensions and expansions policy, revision dates for review of the access arrangement, and other non-tariff access arrangement elements, and
- information provision.

Chapter 5 re-states the ACCC’s draft decision on the basis of the analysis preceding that chapter.

⁸ In its 2004 Final Decision the ACCC accepted Epic’s proposal that the AFT services be reclassified as non-reference services.

1.6 Public consultation

Interested parties are invited to make written submissions to the ACCC on this draft decision by Friday 6 October 2006. After considering submissions, the ACCC will issue its final decision.

All public submissions received will be placed on the AER website and the public register held by the code registrar. Any information considered to be confidential should be clearly marked as such and the reasons for seeking confidentiality provided. Under the terms of the code the regulator must not disclose such information unless it is of the opinion that disclosure would not be unduly harmful to the legitimate business interests of the service provider, a user or prospective user.

Submissions should be supplied in electronic format compatible with Microsoft Word to the email address swqp2006@acc.gov.au. One original signed document should also be mailed to the postal address:

Mike Buckley
General Manager
Network Regulation North
Australian Competition and Consumer Commission
GPO Box 3648
Sydney NSW 2001

Copies of the revisions applications and associated documents are available from the AER website. Copies of this draft decision may also be obtained by contacting Stacey Breen on (02) 6243 1233; fax (02) 6243 1205; or email swqp2006@acc.gov.au.

2. Services and reference tariff policies

The services and reference tariff policies are assessed in this chapter with the view to considering whether one or more of the AFT services should be included in the access arrangement as reference services.⁹ The code requirements are outlined for both elements followed by a summary of the service provider's proposal. This is followed by a summary of submissions received in respect of these elements and the ACCC's assessment of Epic's proposal against the code.

2.1 Code requirements

Sections 3.1 to 3.5 of the code set out the general requirements for an access arrangement with respect to services policy, reference tariffs and reference tariff policy.

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 regulator'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.

An access arrangement is to include a reference tariff for at least one service that is likely to be sought by a significant part of the market (section 3.3 of the code). It is also to include a reference tariff for each service that is likely to be sought by a significant part of the market and for which the regulator considers a reference tariff should be included.¹⁰

Section 3.4 of the code requires all reference tariffs in an access arrangement to comply with the reference tariff principles in section 8 of the code. In addition, an access arrangement is to include a policy describing the principles that are to be used to determine a reference tariff (the reference tariff policy). There are no provisions in the code that specifically relate to non-reference tariffs other than those dealing with rebates and equivalent tariffs (sections 8.40 and 8.43 of the code).

Ordinarily, the reference tariff policy must, in the regulator's opinion, comply with the reference tariff principles set out in section 8 of the code. However, the Queensland Government derogated the reference tariff and reference tariff policy for the SWQP full forward haul service until 2016. A derogation for the services collectively known as AFT services ceased to have effect following the scheduled 2004 access arrangement review. Accordingly, any reference tariffs in the access arrangement for AFT services must comply with section 8 of the code.

⁹ The remaining elements of the access arrangement are assessed in chapter 3 of this draft decision.

¹⁰ Reference Service is defined in section 10.8 of the code as a service which is specified in an access arrangement and in respect of which a reference tariff has been specified in that access arrangement.

2.2 Current access arrangement provisions

Epic's current services policy (clause 6 of the access arrangement) describes one reference service and five non-reference services. The full forward haul reference service is in accordance with the Tariff Arrangement approved by the Queensland Minister pursuant to s. 58 of the Gas Pipelines Access (Queensland) Act. The non-reference services consist of five services which are generally known as AFT services.¹¹ Each of the six services is described in detail in section 3 of Annexure A (Access Principles) to the access arrangement.

The previous derogated reference tariffs applying to AFT services are summarised in the box below. As outlined earlier, the reference tariff for the full forward haul service which remains subject to derogation will not be reviewable by the regulator until 2016.

¹¹ The services policy as outlined in clause 6 of the access arrangement does not actually use the term AFT services. However, 'AFT service' is defined in the Access Principles as an alternative form of transportation service to a full forward haul service.

Figure 1: Previous reference tariffs for AFT services

Back Haul Service (BH1)

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

- a) dividing the throughput rate for FH1 service by 1.2 (load factor adjustment), and
- b) adding the throughput rate to the monthly reservation rate for FH1 service, 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 and authorised overrun rate is derived by adding the monthly reservation and throughput rates for FH1 service, and
- b) other relevant rates are the same as for FH1 service.

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 it is 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 relevant rates for FH1 service by 8 and multiplying by 1.1.

Note: Reference rates for the full forward haul service (FH1) in 1997 dollars are set out in the Access Principles, Schedule 2.

Source: Epic, *Access Principles*, 8 February 2002, pp. 6-8.

2.3 Proposed revisions

In the 2004 access arrangement review Epic proposed that the AFT services included in its access arrangement should become non-reference services with terms and conditions to be negotiated. Epic proposed to remove the reference tariffs for all services other than full forward haul from its access arrangement. In making the AFT services available to users, Epic provided the undertaking that it would not charge tariffs for these services that are higher than those approved by the Queensland Minister pursuant to s. 58 of the Gas Pipelines Access (Queensland) Act.¹² Accordingly, the only reference service would be the full forward haul service (FH1). The ACCC approved this revision. The access arrangement (as revised) continued to include a clause indicating the service provider's willingness to negotiate other non-reference services with prospective users.

For this current access arrangement review Epic has not proposed any material changes to the services and reference tariff policies. The only changes are of an editorial nature reflecting typographical errors.

2.4 Submissions by interested parties

The only submission the ACCC received for this current access arrangement review was from Epic, which was in response to the ACCC requesting Epic's advice on matters relating to flow reversal on the SWQP.¹³ In its submission Epic provided a description of the likely demand and supply factors for western haul services.

For the demand for western haul services, Epic stated that even though there are no contracts yet in place, it has had discussions with interested parties regarding establishing a delivery point at Ballera for the transportation of coal seam methane (CSM) between Wallumbilla and Ballera. Despite these discussions, it is difficult for Epic to predict whether these parties will commit to any firm quantities for western haul services and from what date these services will be required. Furthermore, the parties have made it clear to Epic that there are a number of alternative options available for the use of their gas other than flowing the gas through the SWQP in a westerly direction. These options include:

- a potential Wallumbilla to Newcastle pipeline
- alternative routes to market
- utilisation of other gas assets
- power generation in Queensland, and
- other Queensland demand (existing and new).

¹² Epic, SWQP Access Arrangement, 2004, clause 6.1(d), p. 9.

¹³ The ACCC's query related to Epic's letter invitation for expressions of interest for the purchase of line pack on the SWQP. Epic, letter to public, 18 July 2006.

As a result of this uncertainty Epic has concluded that it is difficult to predict the likely demand for western haul services.¹⁴

In addition, Epic identified a number of matters that will limit its ability to provide material western haul services in the short term. These include new delivery points and other work required to allow for flow reversal such as the reduction of line pack. This would result in a lower receipt point pressure at Wallumbilla. Further, Epic has stated that without additional compression the capacity of the SWQP to deliver gas in a westerly direction is limited. Epic has estimated that the lead time to provide this needed compression is approximately two years due to the current high world demand for compression equipment in the oil and gas industry.

Epic also noted that it is considering constructing an interconnect pipeline between Ballera and Moomba.¹⁵ Epic has indicated that if construction of the pipeline was to proceed it would be likely to be completed in 2008.

Considering the above, Epic has concluded that the demand and additional revenue from western haul services in the period to 31 December 2008 will not be material. Epic has proposed to defer a review of non-reference services for a further two years, when the outcome of developments impacting on the SWQP will become clearer enabling a more accurate forecast of the demand for such services.

In the meantime, Epic will be quoting a tariff for enquires received for firm western haul services that is no greater than the previous back haul reference service tariff (that is, \$0.38/GJ).¹⁶

2.5 ACCC's considerations

Should AFT services be reference services?

In the draft decision of the 2004 access arrangement review, the ACCC concluded that AFT services should not be required to be included as reference services for the second access arrangement period. This conclusion was made after the ACCC had considered submissions¹⁷ on Epic's proposed changes, and was based on the following reasons:¹⁸

- no interested party had been able to demonstrate to the ACCC's satisfaction (under section 3.3(b) of the code) that a significant part of the market was likely to seek an AFT service before the end of 2006
- the ACCC was satisfied that the objectives of the code would not be substantially furthered by requiring any of the AFT services to be reference services at that time, and

¹⁴ Epic submission, 22 August 2006, p. 2

¹⁵ Hastings Funds Management Limited, *Epic Energy to undertake study on gas pipeline interconnect*, ASX announcement, 24 August 2006.

¹⁶ Epic submission, 22 August 2006, p. 2

¹⁷ Submissions were against Epic's proposal to reclassify AFT services as non-reference services.

¹⁸ ACCC, *Draft Decision: Epic Energy Queensland Pty Ltd access arrangement for the Ballera to Wallumbilla Natural Gas Pipeline (South West Queensland Pipeline)*, 6 October 2004, pp. 20-22.

- the ACCC considered that it may be adverse to Epic's legitimate business interests (see section 2.24(a) of the code) to go through the process of establishing reference tariffs for AFT services under the code at that time. Such a process would have required further resources from Epic in establishing an initial capital base and other information that would be required under the code. In addition, in the ACCC's opinion, there were substantial practical difficulties in establishing reference tariffs for services when the likely extent of demand for those services was not known with any certainty.

In addition, Epic proposed and subsequently agreed to undertake not to charge more than the tariff that would have applied if the AFT derogation was still in force.¹⁹ The ACCC accepted Epic's proposal to reclassify the AFT services as non-reference services. As a result, the SWQP has one reference service – firm full forward haul. The tariff for this service is subject to a Queensland Government derogation until 2016. The AFT services are now 'non-reference services' and are available by negotiation, with the undertaking having the effect that the derogated tariffs act as a cap.

It can be concluded from information provided by Epic that the demand for non-reference services (particularly back haul (western haul))²⁰ is likely to be greater now than it was at the time of the previous access arrangement review. In particular, it is noted that Epic has called for expressions of interest in purchasing line pack in relation to its plan to enable the reverse flow of gas on the SWQP from November 2006.²¹

In this context, the ACCC has considered whether any non-reference services (in particular, back haul) should be reclassified as reference services. Factors considered by the ACCC include:

- no interested party has requested additional reference services be included in the access arrangement during the current approval process
- the likelihood of back haul being required may have increased compared to 2004 but the ability of Epic to provide the service is limited by the physical characteristics of the SWQP in the short term (approximately two years)
- the demand for back haul is very uncertain, and
- the tariff used by Epic in responding to any enquiries for back haul is at most approximately \$0.38/GJ and so accords with clause 6.1 of the access arrangement

The ACCC accepts that, in the current climate, it is difficult to forecast demand for back haul services (or for that matter other AFT services) with any degree of accuracy. Without this data, the accuracy and efficiency of any back haul reference tariff calculated using the cost of service methodology would be subject to considerable doubt. In these circumstances, the ACCC does not believe the submission and determination of a reference tariff for such services is justified.

¹⁹ Epic, SWQP Access Arrangement, 2004, clause 6.1(d), p. 9.

²⁰ Western haul is equivalent to back haul so long as the principal gas flow direction is west to east.

²¹ Epic, letter to public, 18 July 2006.

Taking into account the factors described above, the ACCC considers that AFT services (including back haul) should remain as non-reference services for the forthcoming access arrangement period.

Proposed revisions

The ACCC has considered the current proposed revisions to the services and reference tariff policies. These proposed revisions are non-controversial minor editorial changes. The ACCC is satisfied that these revisions are not contrary to the provisions and principles of the code and that the policies remain consistent with the code. It proposes to approve the proposed revisions.

3. Other policies

This chapter presents an analysis of the following non-tariff access arrangement elements required by the code:

- the terms and conditions for the reference service
- a capacity management policy
- a policy on the trading of capacity
- a queuing policy
- an extensions/expansions policy, and
- a revisions submission date and a revisions commencement date.

3.1 Terms and conditions

3.1.1 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 regulator's assessment.

3.1.2 Current access arrangement provisions

The terms and conditions upon which Epic will provide the existing reference service of full forward haul are set out in the following documents annexed to the access arrangement:

- Annexure A – Access Principles
- Annexure B – Additional Terms and Conditions
- Annexure C – Definitions
- Gas Transportation Guide

3.1.3 Proposed revisions

Epic has proposed a number of minor changes, which are editorial in nature, to the various documents identified above. Of these, the most significant changes are in clause 6 of the Gas Transportation Guide in regard to delivery and receipt point relocations. Epic advised that these particular changes are designed to clarify that contracted delivery and receipt point capacities can be relocated, upon written notice to Epic, to another existing point if the contracted capacity remains in the same direction. An example would be if the 'new' delivery point is upstream of the contracted delivery point but remains downstream of the receipt point.²²

²² Epic email to ACCC, 11 August 2006.

3.1.4 Submissions

No submissions were received in relation to terms and conditions.

3.1.5 ACCC's considerations

The ACCC notes that section 3.6 of the code requires an access arrangement to contain terms and conditions for each reference service. Terms and conditions for non-reference services are not required to be included. As part of this assessment the ACCC has considered whether one or more of the AFT services should be a reference service. Accordingly, the ACCC has assessed the proposed revised terms and conditions for compliance with the code.

As part of the current assessment the ACCC commissioned its consultant Sleeman Consulting who has advised that the terms and conditions are reasonable for the reference service and, in most part, would be reasonable for the non-reference services. The report also notes that notwithstanding the changing environment of the Queensland CSM industry and the potential change in flow direction for the SWQP, the proposed revised terms and conditions are reasonable. In addition, Sleeman Consulting confirmed Epic's statement that the amendments to clause 6 of the Gas Transportation Guide were clarifying in nature and considers the amendments to be reasonable.²³

In 2004 the ACCC accepted Epic's proposal to insert a new clause 10.2 into the access arrangement. The effect of the revision was to state that the terms and conditions did not apply to the non-reference services. Interested parties did not comment on this issue and the ACCC's conclusion was that the proposed revisions were 'unlikely to disadvantage existing or prospective users'.²⁴

The implication of clause 10.2 is that the terms and conditions in the access arrangement cannot be relied upon to provide guidance as to the terms and conditions upon which Epic would provide a non-reference service. Such terms and conditions would be as negotiated between Epic and the prospective user. However, if a prospective user and Epic were in dispute over non-reference services then the terms and conditions of access could potentially be determined by the arbitrator.

The potential for different terms and conditions to apply to different types of services was not a significant concern to the ACCC in assessing the access arrangement in 2004.²⁵ At that time interested parties claimed that a variety of services could be sought from Epic in the future. However, no interested party was able to demonstrate that a significant part of the market would be likely to seek any of the AFT services during the proposed access arrangement period (of 2004 – 2006).²⁶ In addition, even if an AFT service were sought during the period, Epic had stated to the ACCC that it did not

²³ Sleeman Consulting, *South West Queensland Pipeline review of proposed terms and conditions*, 12 August 2006, p. 3.

²⁴ ACCC, Draft Decision: SWQP, 2004, pp. 24-25.

²⁵ Consistency in terms and conditions would be expected to reduce administration and other costs for parties using more than one service.

²⁶ ACCC, Draft Decision: SWQP, 2004, pp. 19-20.

possess market power in respect of these services.²⁷ This suggested that it would be in the interest of Epic to provide any AFT service reasonably sought and that a dispute over AFT services would not be very likely.

However, if non-reference services are more likely to be sought by the market in the foreseeable future, as now suggested by Epic, then it would be appropriate and reasonable to ensure that users and prospective users are provided with certainty and consistency in regard to the terms and conditions that may apply to these services. This could be achieved by including those services as reference services and their terms and conditions in the access arrangement. This would be more critical if the forthcoming access arrangement period was longer than two years. However, the proposed access arrangement period is two years and the demand for the current non-reference services remains uncertain. In addition, under clause 6.1(d) Epic has capped the tariffs for the AFT services at the level previously approved by the Queensland Minister.²⁸

Epic has also recently suggested that it has limited, if any, market power in the market for back haul services as prospective users have identified a number of alternatives to using the SWQP in a westerly direction.²⁹ The ACCC took this statement into account when considering whether one or more AFT services should be a reference service. As the ACCC has concluded that no AFT service should be required to be a reference service, AFT related terms and conditions do not need to be included in the SWQP access arrangement at this time.

The ACCC notes that Epic may need to revise some aspects of the terms and conditions contained in the access arrangement to accommodate any new reference services that it offers in the future.

In conclusion, the ACCC considers that the current proposed revised terms and conditions for the SWQP do comply with section 3.6 of the code.

3.2 Extensions and expansions policy

3.2.1 Code requirements

The code requires an access arrangement to include an extensions and expansions policy (section 3.16). This policy must set out the method to be applied to determine whether any extension to or expansion of the pipeline'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.³⁰ In addition, if the service provider agrees to fund new facilities upon certain conditions

²⁷ *ibid.*, pp. 20-21.

²⁸ Non-reference service tariffs are defined in relation to the reference tariff. This is expressed in 1 July 1997 dollars in the Access Principles, Schedule 2 and is escalated by 75% of CPI. See Figure 1 in this draft decision.

²⁹ Epic submission, 22 August 2006, p. 1.

³⁰ For example, reference tariffs may remain unchanged, but a surcharge may be levied on incremental users.

being met, an extensions and expansions policy must outline these conditions and provide a description of those new facilities.

3.2.2 Current access arrangement provisions

The policy states that if Epic extends or expands the SWQP then that augmentation will not become part of the covered pipeline unless Epic elects otherwise by providing a notice to the regulator.

Any expansion that does become part of the covered pipeline will not affect the reference tariff where:

- (a) in the case of an expansion of the Capacity of the SWQP by installation of compression facilities before 30 December 2016, before the Nominal Capacity of the SWQP is exceeded; or
- (b) otherwise, before 30 December 2016.³¹

Extensions would not affect the reference tariff without Epic lodging revisions to the access arrangement with the regulator.

The policy also states that Epic may, from time to time, seek surcharges or capital contributions from prospective users in regard to new facilities investment.

3.2.3 Proposed revisions

Epic has not proposed any revisions to this policy.

3.2.4 Submissions

No submissions have been received on this issue.

3.2.5 ACCC's considerations

The policy relating to extensions of the SWQP provides Epic with the discretion, upon providing a written notice to the regulator, of whether an extension will become part of the covered pipeline. The ACCC approved this policy, and the fact that an extension would not alter reference tariffs without a revision to the access arrangement, as part of its previous assessments of the access arrangement.

Epic has recently announced that it will undertake a front end engineering and design (FEED) study into the construction of its proposed Ballera to Moomba Interconnect (BMI). If built, the BMI could be operational in 2008 and would connect the SWQP to the Moomba to Adelaide Pipeline System and the Moomba to Sydney Pipeline.³²

If the BMI is constructed then it could potentially be considered an extension of the SWQP. Whether it would then be treated as part of the covered pipeline would be at the

³¹ Clause 12.3. The nominal capacity is defined in the Access Principles as the fully compressed capacity of 110 PJ per year with eight compressor stations operating.

³² Hastings Funds Management Limited, *Epic Energy to undertake study on gas pipeline interconnect*, ASX announcement, 24 August 2006.

discretion of Epic in accordance with the current extensions and expansions policy. The ACCC is of the view that this approach is appropriate in this particular circumstance and in general.

The current policy on expansions provides Epic with the discretion, upon providing a written notice to the regulator, as to whether expansions to the SWQP will become part of the covered pipeline. This is not consistent with the ACCC's preference for the discretion over coverage for an expansion to rest with the regulator, providing an effective and administratively simple means to ensure that the access arrangement can incorporate an expansion to the capacity of a pipeline if warranted. The alternative may provide a service provider with the opportunity to exert some market power over the expansion. It may also leave users and prospective users with only the coverage process set out in section 1 of the code to obtain coverage, and access, to an expansion.

However, the ACCC did accept Epic's policy in its 2004 assessment of the access arrangement revisions. It noted Epic's statement that an expansion would not be carried out without foundation contracts to make it economically viable and that if built, an expansion would not have any spare capacity.³³ Epic had also undertaken to not charge a tariff for the non-reference services above the tariffs approved by the Queensland Government. In the ACCC's view this undertaking, which was incorporated into the access arrangement, effectively limited Epic's ability to exert market power over an expansion.³⁴

In making its decision in 2004, the ACCC had noted that the SWQP was operating substantially below its capacity and was expected to do so for the duration of the two year access arrangement period.³⁵

In addition, as noted in 2001, Epic's ability to exert market power is significantly diminished due to the derogation. Under the derogation, the Queensland Government has pre-determined the reference tariff for all expansions of capacity on the SWQP up to the nominal capacity of 110 PJ per year.³⁶

While the SWQP currently has a firm capacity of 133 TJ/day available it has operated at a maximum daily delivered quantity of between approximately 62 and 93 TJ/day over the 12 month period to 31 December 2005. Epic has also advised that, based on current contracts and market estimates, it forecasts total demand to be 100 TJ/day for the duration of the proposed access arrangement period.³⁷

The actual and forecast demand data reflect the key contract for firm full forward haul held by Santos to supply end users in Brisbane and Gladstone.³⁸ However, it should be noted that the swap arrangement between Santos and Origin which was announced in

³³ ACCC, Draft Decision: SWQP, 2004, p. 33.

³⁴ *ibid.*, p. 34.

³⁵ *ibid.*, p. 35.

³⁶ ACCC, Final Decision: SWQP, 2001, p. 23.

³⁷ Epic, Proposed revised access arrangement information, p. 11.

³⁸ Epic submission 1 (public version), August 2004, p. 10.

May 2004 is still current.³⁹ The ACCC understands that this swap arrangement has had a substantial impact on the actual flow of gas on the SWQP and that this is expected to continue for at least the short term.

This information indicates that the SWQP has been operating with excess capacity and is likely to continue to operate in this manner for the next two years. In such circumstances it seems unlikely that any expansion of the pipeline will be required and Epic does not expect it. Accordingly, the ACCC has concluded that it will not seek an amendment to the extensions and expansions policy of the SWQP access arrangement at this time. However, this view will be reconsidered at future reviews if the operating circumstances of the SWQP.

3.3 Revisions dates

3.3.1 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. In addition, the regulator may 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(b)(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).

3.3.2 Current access arrangement provisions

The current revisions submission date is 1 July 2006 for AFT services with a revisions commencement date of 1 January 2007. For all other revisions to the access arrangement, the revisions submission date is 30 June 2016 and the revisions commencement date is 30 December 2016.

Epic is also required to submit revisions to the access arrangement within one month of receiving written notice from the ACCC that one of two events has occurred. These events are the interconnection of another pipeline with the SWQP or the introduction of a significant new source of supply to one of the SWQP's markets. In either case, the event must have the effect of substantially changing the type of services that are likely

³⁹ *ibid.*, pp. 12-13.

to be sought by the market or have a substantial effect on the direction of flow of gas on all or part of the SWQP.

3.3.3 Proposed revisions

Epic has proposed a revisions submission date of 1 July 2008 for AFT services and a revisions commencement date of 1 January 2009 for AFT services.

3.3.4 Submissions

No submissions from interested parties have been received on this issue.

Epic has stated:

... Epic does not anticipate that the demand and additional revenue from Western Haul services in the period to 31 December 2008 will be material. The outcome of the developments identified above will become clearer over the next 12–24 months, after which time Epic will be more able to accurately forecast the demand for services on the SWQP. It is for this reason that Epic has sought to simply defer the review of non-reference services for a further two years.⁴⁰

As indicated by Epic's submission, there are market developments emerging in the Queensland gas sector that may impact on the operation of the SWQP. Epic has noted that while it is in discussions with prospective users for back haul (that is, western haul) services on the SWQP, no contracts have been put in place to date. It also noted that prospective users of the western haul service have indicated that there are alternatives to the service.⁴¹ As a result, demand estimates for western haul services on the SWQP have been difficult to forecast and are currently uncertain (even for the proposed two year period).

Epic has also indicated that its ability to offer western haul services is limited by the technical capabilities of the pipeline in the short term. Substantial capital expenditure, such as for new delivery points, compression and the proposed Ballera to Moomba Interconnect, will be required to enhance Epic's capability to offer western haul services.⁴²

3.3.5 ACCC's considerations

In accepting a two year access arrangement period in 2004 the ACCC stated that there was limited potential for significant relevant market development to occur in the short term. In addition, in light of the fact that the AFT services were to become non-reference services, a short access arrangement period was considered to provide some protection to users who no longer had reference tariffs for the services.⁴³

It is evident from Epic's submission that the Queensland gas market is changing. It has become less reliant on gas from the Cooper Basin as Queensland CSM reserves

⁴⁰ Epic submission, 22 August 2006, p. 2.

⁴¹ *ibid.*, p. 1.

⁴² *ibid.*, p. 2.

⁴³ ACCC, Draft Decision: SWQP, 2004, p. 39.

continue to be developed. It is now estimated that for the period to 2025 Queensland CSM reserves will total 5 594 PJ while Cooper Basin reserves will total 2 612 PJ.⁴⁴

In terms of demand, large industrial users and power generators have been, and are expected to remain, the most significant consumers of gas in Queensland. With expectations that sectors open to the world economy will grow at a faster rate than domestically focused sectors of the economy, Queensland is likely to grow at a rate faster than most other states. For example, Econtech has forecast the Queensland economy to grow by 4.1 per cent per year to 2011 compared to an average growth rate of 3.8 per cent per year for Australian GDP.⁴⁵

Despite the growth in CSM reserves and the economic growth expectations, the impact on the SWQP is uncertain. In this environment the ACCC concurs with Epic – it would be prudent to continue with a two year access arrangement period for the AFT services at present. Accordingly, the ACCC does not propose to amend the proposed revisions dates for the SWQP access arrangement in relation to the AFT services.

3.4 Other policies

3.4.1 Code requirements

The code requires that an access arrangement include:

- a statement that the pipeline is either managed as a contract carriage pipeline or a market carriage pipeline (section 3.7)
- a trading policy (if the pipeline is a contract carriage pipeline) that sets out the rights of a user to trade capacity if certain conditions are met (sections 3.9 – 3.11), and
- a queuing policy for determining the priority that a prospective user has to obtain access to spare capacity and developable capacity (sections 3.12 – 3.15).

3.4.2 Proposed revisions

Epic did not propose any revisions to the capacity management, trading or queuing policies for the SWQP.

3.4.3 ACCC's considerations

Each of these policies was found to comply with the code requirements at the 2004 review of the access arrangement. There have been no submissions to indicate that users are concerned about the operation of the policies or their compliance with the code. In addition, the ACCC considers that the environment in which the SWQP operates has not altered in such a manner that these policies are no longer appropriate or consistent with the code. Accordingly, the ACCC has concluded that no amendments

⁴⁴ MMA, *Roma-Brisbane Pipeline throughput and capacity requirement forecasts*, 7 February 2006, p. 22.

⁴⁵ *ibid.*, p. 16.

to the capacity management, trading or queuing policies are required at this time as these polices meet the relevant code requirements.

4. Information provision

4.1 Code requirements

In conjunction with its proposed revisions to its access arrangement, a service provider is required (under section 2.28) 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 regulator, is sufficient to enable users and prospective users to understand the derivation of the elements in the proposed access arrangement and to form an opinion as to the compliance of the access arrangement with the provisions of the code (section 2.6).

4.2 Epic's proposal

Epic provided information regarding system capacity and volume assumptions as specified in category 5 of the information listed in Attachment A to the code and required by section 2.7 of the code.

4.3 ACCC's considerations

The ACCC considers that Epic, like any other service provider, is under an obligation to provide access arrangement information. The information provided is appropriate given the nature of the SWQP access arrangement and is considered to satisfy the requirements of the code.

In forming this view, the ACCC notes that as the AFT services are non-reference services, no reference tariffs are to be established for these services. Further, the full forward haul tariff has been approved by the Queensland Minister and is not currently subject to review by the ACCC. Accordingly, the majority of the information listed in Attachment A to the code is not required for the current assessment of the proposed revisions to the access arrangement.

In addition, there have been no requests from interested parties for additional access arrangement information.

The ACCC is satisfied that no change to the proposed access arrangement information is required under section 2.30 of the code.

If in future access arrangement revisions, Epic proposes to include any of the AFT services as reference services, it will need to submit more detailed access arrangement information to enable interested parties to understand the derivation of proposed reference tariffs. In any event, the access arrangement information for the SWQP will need to provide details relating to the firm full forward haul reference service at the 2016 scheduled review as the Queensland government derogation ends.

5. Draft decision

Pursuant to section 2.35(a) of the code, the ACCC proposes to approve the proposed revisions to the Ballera to Wallumbilla Natural Gas Pipeline (South West Queensland Pipeline) access arrangement in their current form for the reasons set out in this draft decision document.

Appendix A: Submissions and reports

The following submissions were received:

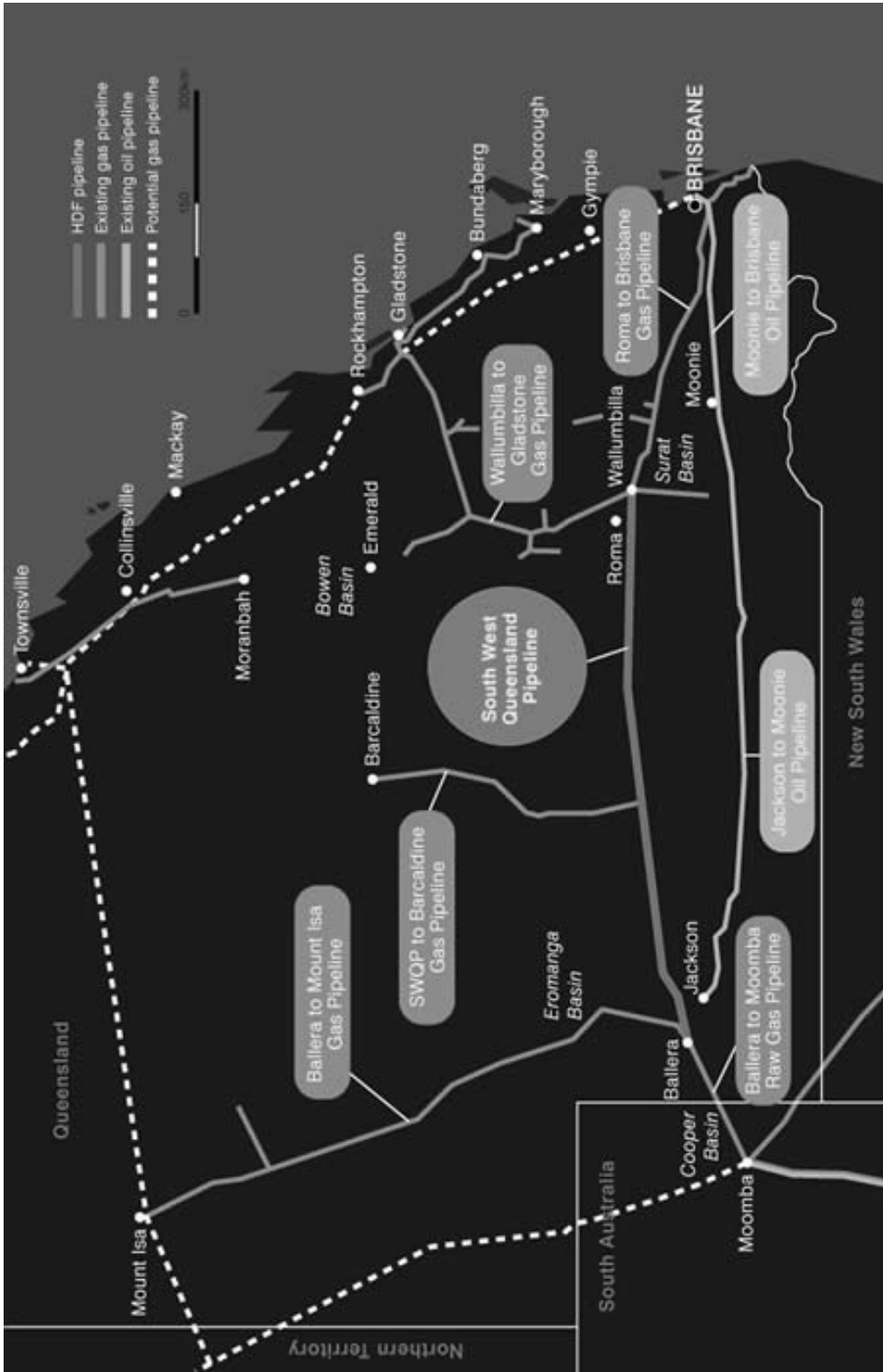
Epic Energy <i>SWQP access arrangement revisions – planned flow reversal</i> (confidential)	17 August 2006
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Epic Energy <i>SWQP access arrangement revisions – planned flow reversal</i> (public)	22 August 2006
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The following consultant's report was commissioned:

Sleeman Consulting <i>South West Queensland Pipeline review of proposed terms and conditions</i>	12 August 2006
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Appendix B: Map of the SWQP



Source: Epic.