8 August, 2001

Ms Kanwaljit Kaur
General Manager
Regulatory Affairs – Gas
Australian Competition & Consumer Commission
PO Box 1199
Dickson ACT 2602

Dear Kanwaljit,

RE: REVISED ACCESS ARRANGEMENT FOR MOOMBA TO ADELAIDE PIPELINE SYSTEM (MAPS)

I refer to the proposals outlined in the Attachment to your letter dated 1 August 2001, and wish to restate the general points made in the Energy SA submission dated 29 June 2001.

I am concerned that a "first in first served" policy for developable capacity will not necessarily facilitate new investment. A process whereby new interests were registered, and which allows optimised investment proposals from a number of parties to be considered and aggregated, is an alternative that warrants consideration.

With existing capacity, whilst it is recognised that provision for arbitration is essential, and is, in any event, provided for in *the Natural Gas Pipelines Access Act 1995* and the Code, I consider that under the proposal, arbitration is triggered too readily. It is used as a very first resort, rather than as a last resort. The form of arbitration itself would also need to be carefully thought out, as a multiparty arbitration is very complex and administratively difficult and costly to run in an environment where transparency to all parties is essential.

Provision is required for intermediate steps prior to the arbitration. This could include negotiation between the Service Providers and Prospective User(s).

Arbitration is almost inevitably a costly and time-consuming process. Commercial conciliation would be a useful prerequisite step to arbitration.

I propose that if arbitration under section 6 of the Code were to arise, it would be strongly preferable for the relevant Regulator to opt not to take up the role of arbitrator. The focus in arbitrations should be on achieving outcomes commercially acceptable to the parties.

Under the proposal Users and Prospective Users would be entering contracts less “certain” than the existing contracts. It is possible that the value of such new contracts will decline.

One option which warrants consideration is that of adopting an auction of spare capacity under certain circumstances. Another avenue to help maximise existing capacity is to permit assigning contracted but unused capacity to Prospective Users for a fixed time. This is as per the *Natural Gas Pipelines Access Act 1995,* and the TPA, and has been previously suggested by South Australia to the developers of the Code. This measure is seen as a stronger anti-hoarding instrument than currently contained in the Code.

With respect to your request for my views on the factors that an Arbitrator should be required to take into account when arbitrating a dispute, I emphasise again that the public interest should be taken into account, when settling a dispute. Energy SA’s above-mentioned submission outlined the legal basis that would make this possible.

I consider that the problem underlying the formulation of a Queuing Policy for the MAPS is the limited capacity of the MAPS. In the longer term, this is best addressed by promoting investment in natural gas pipeline development.

Yours sincerely,

Dr C W Fong
REGULATOR
Natural Gas Pipelines Access Act 1995