



**BALLERA TO WALLUMBILLA NATURAL GAS PIPELINE
("SWQP")**

**PROPOSED ACCESS ARRANGEMENT
UNDER THE NATIONAL ACCESS CODE**

**Public Submission
13 July 2001**

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1. Introduction

- 1.1 Following a meeting with the ACCC in November 2000, Epic Energy was asked to provide a paper encompassing those views expressed at that and other meetings in relation to the Access Arrangement for the Ballera to Wallumbilla Pipeline (SWQP).
- 1.2 As this paper, provided on 9 April 2001, addresses a number of areas outlined by the ACCC in its Draft Decision and, although referred to in the Draft Decision has not yet been made public by the ACCC, it has been attached as an annexure to this submission.
- 1.3 Epic Energy contends that the ACCC has not given due regard to this previous paper and therefore a public restatement of the submission is warranted.
- 1.4 Epic Energy has also had further discussions with the ACCC and notes the opportunity to consider the public submissions prior to the submission of its revised Access Arrangement.

2. Reference Services

- 2.1 The Draft Decision does not fully address the circumstances that led to the Services Policy derived in the proposed Access Arrangement. As outlined in the Epic Energy paper of 9 April¹:

The tariff setting principles applied to the SWQP were laid down in accordance with the Amended Access Principles² granted by the Queensland Department of Minerals and Energy to Tenneco Energy Queensland Pty Ltd³ in 1996. This states inter alia; "The indicative tariff schedule shall...encompass all charges of any nature to be made to customers for transportation of gas through the pipeline". As a direct consequence of this, Epic Energy was required to submit all possible transportation services that may have been conducted through the SWQP to the Queensland government for approval.

Subsequently, Epic Energy submitted its proposed Access Arrangement for the SWQP for approval under the Code. The services listed within the access principles originally approved, are for Full Forward Haul and a number of AFT Services. The tariffs for the former service are derogated until 2016 and the tariffs for AFT Services until 2004.

Section 3.2 of the Code lays down the requirements for a Services Policy and the services proposed by Epic Energy would appear to be in compliance with this section. However, whilst Section 58 of the Qld Act derogates reference tariff policy, it does not obligate Epic Energy to include all services approved under previous legislation.

- 2.2 Epic Energy has no intention at this point to test the assertion of the ACCC that the AFT Services "...under the derogation...are as a matter of law reference services for the purposes of the code"⁴. It should be noted that the AFT Services are not sought by a significant part of the market and that they will expire under the derogation in 2004. Epic Energy has no intention of offering these services as reference services in future, in accordance with Section 3.3(b) of the code, but may offer similar services as non reference services in subsequent access periods.

¹ Epic Energy Additional Submission 9 April, 2001, paras 6.1, 6.2, 6.3

² Pipeline Licence No. 24 – Amended Access Principles dated 12 Jan 96

³ A forerunner company to Epic Energy.

⁴ Draft Decision Access Arrangement Proposed by Epic Energy Queensland Pty Ltd for the Ballera to Wallumbilla Pipeline System, P13.

2.3 Therefore, Epic Energy does not accept that there is any need to provide “...detailed information in support of the proposed AFT reference tariffs (in 2004)”⁵.

2.4 In regard to the minimum contract term of one year, Epic Energy has seen no evidence produced by the regulator substantiating that a minimum term of one or two years is “typically” used in contracts available on other transmission pipelines, beyond the decision making of the regulator itself.

3. Queuing Policy

3.1 Epic Energy intends to further clarify the priority of requests for reference and non reference services in the queue. However, a “...reference service with some additional features”⁶ referred to by the ACCC is by definition a non reference service.

4. Major Event Triggers

4.1 Epic Energy is seriously concerned at the effort by the ACCC to undo the access arrangement by recourse to section 2.28 and section 3.17(ii). Section 2.28 bears no relevance to “major event triggers” and provides only for the submission of a subsequent access arrangement by the Revisions Submission Date, accepted by the ACCC as derogated.

4.2 Section 3.17(ii) of the code simply cannot be read in isolation or out of context of the sentence of which it is a part. Therefore, the meaning of 3.17(ii) is quite specific:

*In **approving** (bolding added) the Revisions Submission Date and Revisions Commencement Date, the Relevant Regulator...may in making its decision on an Access Arrangement...*

(ii) require that specific major events be defined that trigger an obligation on the Service Provider to submit revisions prior to the Revisions Submission Date.

4.3 The ACCC has already acknowledged in its Draft Decision that it does not have the power to approve a Revisions Submission Date or a Revisions Commencement Date, as this is derogated as part of reference tariff policy by s58 of the Queensland Gas Pipelines Access Law. Therefore, as the ACCC is not approving these dates, it is inconceivable that 3.17(ii) can be applied to overturn the derogations, regardless of whether it is a tariff or non tariff event.

⁵ Ibid, P24.

⁶ Ibid, P18.

Annexure



**BALLERA TO WALLUMBILLA NATURAL GAS PIPELINE
("SWQP")**

**PROPOSED ACCESS ARRANGEMENT
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**ADDITIONAL SUBMISSION
9 April 2001**

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1. Introduction

- 1.1 Epic Energy met with the ACCC in November 2000 regarding the Access Arrangement for the Ballera to Wallumbilla pipeline (“SWQP”), following a series of discussions and meetings related to its drafting and approval. The ACCC asked for the views of Epic Energy on a number of issues prior to considering the approval of the Access Arrangement. These included:
- The provision of Access Arrangement Information,
 - The inclusion of review triggers in the Access Arrangement,
 - Whether AFT (Alternative Form of Transportation) services should be considered Reference services, and
 - Issues arising from the Santos submission.
- 1.2 In order to more fully examine these issues, Epic Energy has agreed to make a further submission on specific topics to underpin its position on the scope of the Access Arrangement and Access Arrangement Information that should be approved by the Regulator. This paper sets out the comments of Epic Energy.

2. Background

- 2.1 The Queensland Government has passed legislation to establish its gas access regime in alignment with the uniform gas access regime envisaged by the Natural Gas Pipelines Access Agreement of 1997 (“IGA”). The *Gas Pipelines Access (Queensland) Act 1998* (“Qld Act”) was passed in 1998 and includes the National Third Party Access Code for Natural Gas Pipelines (“the Code”) and, in Section 58, the transitional provisions granted to the Queensland Government by the IGA embodying the right of derogation for reference tariffs and reference tariff policy. Epic Energy has duly submitted an Access Arrangement⁷ in accordance with the Code to the Australian Competition and Consumer Commission, as the Relevant Regulator (the Regulator or ACCC), as varied by the derogations.
- 2.2 Epic Energy is looking to have the Access Arrangement approved in accordance with the Qld Act. This is the only legislation that the ACCC should consider in approving the Access Arrangement for the SWQP and must act pursuant to it. Epic Energy is firmly of the view that the certification of the ‘effectiveness’ of the *Queensland Third Party Access Regime for Natural Gas Pipelines* being conducted by the National Competition Council (“NCC”) is an unrelated matter that might become relevant only if the Queensland Government agreed to amend its derogations.

3. Review Triggers

- 3.1 The ACCC Issues paper of September 2000⁸ queried whether “specific major events be defined that trigger an obligation on the Service Provider to submit revisions (of the Access Arrangement) prior to the Revisions Submission Date”. However, the same paper also declared that the “derogation (of the

⁷ Ballera to Wallumbilla Natural Gas Pipeline (SWQP) Proposed Access Arrangement Under the National Access Code. Submission Version 17 August 2000.

⁸ Access Arrangements by *Duke Energy* for the Wallumbilla to Gladstone Via Rockhampton Pipeline and *Epic Energy* for the Ballera to Wallumbilla Pipeline – September 2000.

Queensland Government) sets the length of the Access Arrangement Period". Epic Energy believes that this period expires on 30 June 2016⁹.

- 3.2 The Code specifies in Section 3.17 that an Access Arrangement must include a Revisions Submission Date and a Revisions Commencement Date. However, approval of these dates is not within the remit of ACCC as they have been determined in Section 58 of the Qld Act to be part of the reference tariff policy and are therefore derogated. Thus the ACCC is not, as per Section 3.17 "...approving the Revisions Submissions Date and Revisions Commencement Date".
- 3.3 Additionally, Section 3.18 of the Code pertains to "An Access Arrangement Period accepted by the Relevant Regulator". Clearly, the Access Arrangement Period has not been accepted by the ACCC in this instance, as the Access Arrangement Period has been specified pursuant to Section 58 of the Qld Act and thereby conferred by law, not by agreement with or acceptance by the ACCC.
- 3.4 The ACCC claims that Section 3.18 of the Code provides that the Regulator in considering an Access Arrangement greater than five years in length, "...must not approve the Access Arrangement without first considering whether mechanisms should be included to address the risk on which the terms of the Access Arrangement were based and approved proving incorrect". In fact, the Code states "...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". Clearly, Section 3.18 in addressing "risk of forecasts" is relating to information used in determining Reference Tariffs - a part of the Access Arrangement derogated from the authority of the ACCC.
- 3.5 Epic Energy considers that a mechanism inserted to prompt the resubmission of the Access Arrangement, particularly those parts pertaining to aspects of the Access Arrangement derogated by the Queensland Government i.e. *the Reference Tariff(s)*, would not meet the requirements of Section 3.18 and therefore have no validity.
- 3.6 Thus, Epic Energy has established that the ACCC does not have the appropriate power to define "trigger events" nor is it relevant to construct a mechanism to reopen the Access Arrangement to review within the derogated Access Arrangement Period. Therefore the Access Arrangement, as varied by the derogations remains extant for this period.

4. Trading Policy

- 4.1 Epic Energy notes the trading policy mechanism proposed by Santos in its submission dated 20 October 2000. Epic Energy intends to incorporate the intent of this proposal in Annexure B to the Access Arrangement. The Santos proposal is as follows:

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

⁹ See Section "Reference Services" in this paper.

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- (a) *The aggregate of the varied receipt or delivery point MDQ does not exceed the aggregate of the Shipper's receipt or delivery point MDQ prior to the inclusion of the additional receipt or delivery point.*
 - (b) *It is technically feasible within the constraints of the Service Provider's contractual obligations to receive or deliver the varied MDQ at the specified receipt or delivery points.*
 - (c) *The Shipper makes all appropriate arrangements with its customers as a result of the nominated variation.*
 - (d) *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 Point 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.*
 - (e) *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."*

5. Access Arrangement Information

- 5.1 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.
- 5.2 In 1997, the IGA was constructed with numerous transitional arrangements and derogations, specified in Annex I of the IGA. The respective jurisdictions clearly had good reason to agree to these arrangements and derogations and without these, the IGA, and probably the Code, would simply not have been created in its present form. With regard to Queensland, Annex I states, *inter alia*, "...reference tariffs (and reference tariff policy) will be those taken from existing access principles and will be included in the deeming provisions of the Queensland Access Legislation. These will not be subject to public and

ACCC scrutiny until the nominated review date in the individual access arrangements”.

- 5.3 Thus the IGA very specifically contemplated that the matter of reference tariffs and reference tariff policy remain free of “public and ACCC scrutiny”. By including all categories of information in the Access Arrangement Information, Epic Energy would be inconsistently with this agreement. Similarly, it is not to the point that Sections 5.1 and 5.2 of the Code refer to the inclusion of the Access Arrangement Information in the Information Package. It must accept that the Access Arrangement and the Access Arrangement Information are in compliance with the Code and “provide rights of access...that are fair and reasonable for both Service Providers and Users”.
- 5.4 The NCC has further reinforced the Epic Energy position on the matter of Access Arrangement Information in an earlier issues paper¹⁰, stating;
- “The Queensland Regime derogates, for a period, the application of the National Code’s¹¹ pricing principles (including the regulatory approval process) with respect to five transmission pipelines¹². In effect, the access pricing principles in the National Code do not apply to these pipelines for several years”.*
- 5.5 The ACCC has sought information to be included in the Access Arrangement Information which would be necessary for a full derivation of the Reference Tariff in accordance with Section 8 of the Code, relying on a literal and narrow application of Section 2.7 of the Code. The derivation of Reference Tariffs to be included in the Access Arrangement Information on the basis of section 2.6 of the Code to “...enable Users or 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”.
- 5.6 Epic Energy does not dispute the requirement to submit Access Arrangement Information and Epic Energy is in compliance with Section 2.6 of the Code, as all information relevant to understanding the derivation of the elements in the proposed Access Arrangement has been included. The tenants of Section 2.7 of the Code requiring information described in Attachment A of the Code are also varied by the derogations and must be read in conjunction with Section 2.6. Simply put, the decision on Reference tariffs and Reference Tariff Policy has already been made, therefore there is no requirement for public consultation. Further, the Reference Tariff and the Reference Tariff Policy are effectively deemed by the derogation to comply with the Code. The information sought by the ACCC to be included would therefore not “enable Users or Prospective Users...to form an opinion as to the compliance of the Access Arrangement with the Code”. Thus, the Access Arrangement Information provided by Epic Energy in support of its Access Arrangement fully complies with the law.

¹⁰ Queensland Access Regime for Gas Pipeline Services – Issues Paper April 1999.

¹¹ Referred to in this paper as The Code.

¹² This includes the Ballera to Wallumbilla pipeline.

6. Reference Services

- 6.1 The tariff setting principles applied to the SWQP were laid down in accordance with the Amended Access Principles¹³ granted by the Queensland Department of Minerals and Energy to Tenneco Energy Queensland Pty Ltd¹⁴ in 1996. This states *inter alia*; “The indicative tariff schedule shall...encompass all charges of any nature to be made to customers for transportation of gas through the pipeline”. As a direct consequence of this, Epic Energy was required to submit all possible transportation services that may have been conducted through the SWQP to the Queensland government for approval.
- 6.2 Subsequently, Epic Energy submitted its proposed Access Arrangement¹⁵ for the SWQP for approval under the Code. The services listed within the access principles originally approved, are for Full Forward Haul and a number of AFT Services. The tariffs for the former service are derogated until 2016 and the tariffs for AFT Services until 2004.
- 6.3 Section 3.2 of the Code lays down the requirements for a Services Policy and the services proposed by Epic Energy would appear to be in compliance with this section. However, whilst Section 58 of the Qld Act derogates reference tariff policy, it does not obligate Epic Energy to include all services approved under previous legislation.
- 6.4 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.
- 6.5 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.

¹³ Pipeline Licence No. 24 – Amended Access Principles dated 12 Jan 96

¹⁴ A forerunner company to Epic Energy.

¹⁵ See Footnote 1.