21/9/00

ORIGIN ENERGY RETAIL LTD

RESPONSE TO ACCC DRAFT DECISION IN RESPECT OF THE ACCESS ARRANGEMENT FOR THE MOOMBA - ADELAIDE PIPELINE

TABLE OF CONTENTS

GLOSSARY

Access Code	National Third Party Access Code for Natural Gas Pipeline Systems
Access Law	Schedule 1 to the *Gas Pipelines Access (South Australia) Act 1997*
Commission	Australian Competition and Consumer Commission
customer	An ultimate gas consumer.
Epic/Service Provider	Epic Energy South Australia Pty Ltd
Haulage Agreement	Gas Company 1995 Moomba Gas Haulage Agreement
Origin Energy	Origin Energy Retail Limited
Pipeline System	Moomba-Adelaide Pipeline
TGT	Terra Gas trader Pty Ltd

1 General Comments.

1.1 The Access Code sets overall objectives. Compatible with those objectives, Origin Energy has used the following principles to guide its comments on the Draft Decision:

1.1.1 The document should represent a balance between the interests of the Service Provider and the Users.

1.1.2 The Access Arrangement should avoid unnecessary actions and unnecessary risks.

1.1.3 The arrangement must be compatible with the existing haulage agreements as it will work alongside them for the entire period of this arrangement.

1.1.4 Penalties & liabilities should be directed from the party causing the problem to the party suffering harm.

1.1.5 Risks should, wherever possible, be borne by the party best able to manage that risk.

1.1.6 Drivers for action should be economic or liability based.

1.2 The Access Arrangement is far too heavily biased towards the Service Provider's interests. This position needs to be changed.

1.2.1 As set out in more detail in the comments below, Origin Energy has significant concerns that the Access Arrangement will not provide Users with sufficient flexibility to enable them to manage customer demand. The impact of this lack of flexibility is likely to be borne by South Australian gas and electricity consumers, through higher costs or insufficient supplies of gas to satisfy their requirements. Origin Energy notes that the arrangements proposed by Epic are considerably less flexible than those currently used in relation to the Pipeline System.

1.2.2 Further, the Access Arrangement has been designed in such a manner that almost all risk associated with the operation of the Pipeline System is transferred to Users. This risk is likely to be passed through to customers either directly or through higher gas prices (to compensate Users for the increased risks (as compared to current arrangements) associated with the transportation of gas.

1.2.3 Areas in which the Access Arrangement provides insufficient flexibility include the imbalance provisions, curtailment procedure, OFO Notices, the definition of MDQ and MHQ, the technical requirements for Receipt and Delivery Points, procedures applicable to Non-Specification Gas and the nomination procedure.

1.2.4 Origin Energy appreciates that there may be operational objectives that Epic is seeking to achieve through the provisions which it has included in the Access Arrangement. However an assessment needs to be made as to the importance of these operational objectives and whether the benefits of meeting them are outweighed by the effect of the Access Arrangement on gas prices and the ability of Users to meet customer demand. (Further an inflexible Access Arrangement is likely to discourage new Users from

seeking access to the Pipeline System and consequently is a barrier to entry).

1.3 Acceptable Terms & Conditions need to be negotiated through a working group.

1.3.1 This submission does not purport to be a detailed critique of every issue in the proposed Access Arrangement. Origin has commented on many areas it believes need correction to be fair, reasonable and workable.

1.3.2 The only manner in which the assessment of relative interests can be effectively made is through the establishment of a small working group to negotiate appropriate terms (in which working group the Commission would principally act as a meditator). In this group Epic can explain the logic behind the provisions that Users have identified as objectionable and Users can make representations as to the effect of these provisions on their operations. Through participation in this working group, the Commission should be in a position to make a more informed assessment as to the appropriate allocation of risk between Epic and Users.

1.3.3 As the existing Users of the Pipeline System, Origin Energy and TGT are well equipped to make constructive contributions to such a working group.

1.3.4 Many of the matters dealt with in this submission are complex. Origin Energy does not consider that written submissions alone will provide an effective means to consider these complexities.

1.4 The drafting of the Terms & Conditions should not be left until the next revision of the Access Arrangement.

1.4.1 Origin Energy appreciates that, due to the likelihood that a limited number of new Users will use the Moomba-Adelaide Pipeline on a firm basis prior to 1 January 2006, the Commission may consider it preferable to leave a detailed discussion of the terms of the Access Arrangement to the next Revisions Submission Date. However Origin Energy considers that these issues should be resolved at the present time, if possible. The terms of the Access Arrangement will form the basis on which Epic will negotiate all future haulage agreements, including those operating post 1 January 2006 (when firm Capacity becomes available in the Moomba-Adelaide Pipeline) as well as those relating to any new capacity created. If the terms of the Access Arrangement are inappropriate or commercially inequitable the more difficult it will be for Users to negotiate new workable haulage arrangements.

2 Commencement and Review (Clause 1).

2.1 The Revisions Submission Date should be brought forward to 1 January 2004.

2.1.1 The Revisions Submission Date and Revisions Finalisation Date occur too late. Origin Energy suggests, having considered this matter further since its original submission, that the Revisions Submission Date should be 1 January 2004 with the revisions to be finalised by 1January 2005. The revisions should not commence to operate until 1 January 2006.

2.1.2 The Access Arrangement that has been submitted is designed for a Pipeline System in which there is minimal Capacity which can be made available on

a firm basis and in which the majority of the services are to be provided on an interruptible basis. This will no longer be the case from 1 January 2006. The Access Arrangement which will operate from 1 January 2006 will therefore be of a significantly different nature to that currently proposed by Epic.

2.1.3 The current Revisions Commencement Date seems to be predicated on the assumption that Users will negotiate the haulage agreements which will be used to supply customers from 1 January 2006, on or after 1 January 2006. In practice this is unlikely. Users are likely to wish to negotiate haulage agreements to operate from 1 January 2006 in the years 2004 and 2005. It is inappropriate that these haulage agreements be negotiated against an Access Arrangement which is likely to be replaced by a revised access regime which may be substantially different.

2.1.4 The Revisions Submission Date should therefore be brought forward so that when, in 2004 and 2005, Users wish to negotiate haulage agreements with Epic to utilise Capacity post 2006, those Users are aware of the terms of the Access Arrangement that will apply from 1 January 2006.

3 Capacity of Pipeline System (Clause 2).

3.1 The Service Provider should be under an obligation to maximise the available Capacity of the Pipeline System (Clause 2.2).

3.1.1 The System Primary Capacity of the Moomba-Adelaide Pipeline has been defined in the Access Arrangement as 323 TJs per day. Users only have firm rights to this volume of Capacity. Whether Users can access Capacity above 323 TJ/day depends on the Capacity of the Pipeline System on a day.

3.1.2 However there is no obligation in the Access Arrangement for Epic to operate the Moomba-Adelaide Pipeline so as to maximise its Capacity. An express obligation to this effect should be included. The factors which affect the Capacity of the Pipeline System are partly within, and partly outside of, Epic's control. To the extent that those factors are within Epic's control, Epic should be required, consistent with accepted pipeline operating practices, to maximise Capacity whenever this is likely to be required by the Users.

3.1.3 Further Epic should, on reasonable request, be obliged to provide any User who requests it with:

(a) such information as necessary to demonstrate how Epic has calculated the Capacity of the Pipeline System in respect of a day; and

(b) such information as reasonably required to demonstrate that Epic has complied with its obligation to maximise the Capacity of the Pipeline System.

3.1.4 Only if Users have a right to this information do they have any means of assessing whether Epic is operating the Moomba-Adelaide Pipeline in an efficient, reasonable and prudent manner and whether Epic is maximising available Capacity.

3.2 If a concept of Net Available Capacity is to be used in the Access Arrangement, then Net Available Capacity should be allocated between FT Users pro-rata based on their MDQ (Clause 2.2).

3.2.1 Under the nomination procedure in the Access Arrangement, any Capacity in the Moomba-Adelaide Pipeline above 323 TJ/day is pro-rated across Users based on their nominations. Consequently a User has no means of knowing until the day before deliveries are to be made, what proportion of any Net Available Capacity it will be able to access. Further, all Users will have an incentive to over-nominate so as to maximise their ability to access Net Available Capacity.

3.2.2 The Access Arrangement as designed by Epic will make it difficult for Users to provide customers with gas supply on a firm basis (which is the basis on which most customers wish to take delivery of gas). Not until nominations for Net Available Capacity have been pro-rated does a User have any idea what proportion of Net Available Capacity it can access and on-supply. On Monday, it may be User "X" who accesses the Net Available Capacity and is therefore in a position to supply those customers who need to access the Capacity, but on Tuesday Users "X" and "Y" may share the Net Available Capacity. This situation makes it extremely difficult for either User X or User Y to enter into contracts sufficient to satisfy customer needs. Generally customers do not wish to be placed in a situation where each day they are required to buy gas from different suppliers and do not know in advance who their supplier is.

For this reason, Net Available Capacity should be pro-rated based on User's MDQ. At least in this circumstance, Users will have some idea what proportion of Net Available Capacity they can access on a day. Also pro-rating on MDQ reduces gaming opportunities.

3.3 A forecast of the total Capacity of the Pipeline System should be provided 7 days in advance.

3.3.1 To assist Users with their planning, Epic should have an obligation to post on the EBB, a seven day ahead forecast of the Net Available Capacity of the Pipeline System and update this forecast daily. The Commission's Proposed Amendment 3.2 requires Epic to post, on a daily basis, forecast available Capacity. However more detailed forecasts will be required to enable Users to effectively plan downstream deliveries.

3.4 The Maximum Capacity of the Pipeline System should be allocated to FT Users (Clause 2.2).

3.4.1 Epic has defined the System Primary Capacity as 323 TJ/day. However this is the Capacity of the Pipeline System when factors determining that Capacity are generally unfavourable. The Maximum Capacity of the Pipeline System under favourable conditions is 393 TJ/day.

3.4.2 323 TJ/day is insufficient to satisfy South Australian customer demand. In the 12 months to 30 June 1999 demand exceeded 323 TJ on 29 days.

3.4.3 The Access Arrangement should provide that the Capacity of the Pipeline System is 393 TJ/day and the aggregate of User's MDQs should equal 393 TJ/day. Where, on a day, Capacity of less than 393 TJ/day is available, then the shortfall should be pro-rated across Users on the basis of their MDQs.

3.4.4 Essentially the issue of the Capacity of the Moomba-Adelaide Pipeline can be dealt with in two ways:

(a) Capacity could be defined as 393 TJ/day and Epic would be required to supply that Capacity unless it can show, on a day, that the actual Capacity is less than 393 TJ/day; or

(b) reflecting the current proposal in the Access Arrangement, the Capacity could be defined as 323 TJ/day, with Users being entitled to any Capacity above 323 TJ/day which Epic determines is available.

3.4.5 Epic is far more likely to make Capacity above 323 TJ/day available in circumstance (a) than in circumstance (b) (and therefore increase the likelihood of South Australian demand being satisfied). That is, where Epic has to justify why actual Capacity is below 393 TJ/day, it will have a greater incentive to make adequate Capacity available.

3.4.6 Also defining the Capacity of the Moomba-Adelaide Pipeline as 393 TJ/day allows FT Users to reserve a portion of the Capacity of the Pipeline System above 323 TJ/day, consequently making it easier for Users to manage their customer contracts.

3.5 The Existing Haulage Agreements give users rights to use the total indicative capacity of the pipeline of 393 TJ/day (Clause 2.2 is incorrect).

3.5.1 Clause 2.2 states that the main transmission facilities have Capacity to provide services to the Existing Users of 323 TJ/day. This is incorrect. The main transmission facilities provide services up to 393 TJ/day to Existing Users. References to services under the Existing Transportation Agreement should be removed from lines 3 and 7. A new penultimate sentence should be added to read "The Existing Users under the Existing Transportation Agreements have rights to use the total Capacity of the pipeline of 393 TJ/day".

4 MDQ (Definition of).

4.1 The MDQ should be defined by reference to the Capacity a User has reserved in the Pipeline System, as opposed to the aggregate of the Capacity reserved by a User at each Delivery Point.

4.1.1 MDQ is defined in the Access Arrangement as the sum of a User's Primary Capacity Quantities.

4.1.2 Primary Capacity Quantity means, in respect of an FT User, the amount of the Capacity of a Delivery Point to deliver Gas on that day as is specified in that FT User's FT Service Contract.

4.1.3 Consequently, if a User has contracted three Delivery Points each with a Primary Capacity Quantity of 5 TJ/day, then its MDQ is 15 TJ/day.

4.1.4 This definition of MDQ ignores the manner in which market aggregators operate.

4.1.5 To supply customers with an MDQ of 15 TJ/day, a market aggregator would not necessarily need to reserve an MDQ of 15 TJ/day in the Pipeline System.

It may be sufficient for the aggregator to only reserve 13 TJ/day (given the unlikelihood that all customers will take MDQ at the same time). That is, a market aggregator will reserve 13 TJ/day of Capacity in the Pipeline System (rather than at Delivery Points) and will allocate that gas across its Delivery Points reflecting demand on the relevant day. However if Capacity is defined by MDQ at Delivery Points, then the aggregator in this example must reserve 15 TJ/day.

4.1.6 By defining MDQ as the quantity reserved at a Delivery Point, Epic will deprive the market of some of the benefits of aggregation. Users will be forced to reserve surplus Capacity to ensure that they have sufficient Capacity at each Delivery Point to satisfy the potential demand at that point. This will lead to an inefficient use of the Pipeline System. It will also result in the Service Provider increasing its ability to offer interruptible services using Capacity funded by FT Users.

4.1.7 MDQ should be defined by reference to the Capacity of the entire Pipeline System which a User has reserved, rather than by reference to Delivery Points. Consequently, if the Pipeline System Capacity is 393 TJ/day, then a User who has reserved one-third of that Capacity has an MDQ of 131 TJ/day. (Further defining Capacity by reference to capacity at Delivery Points is illogical, as the Maximum Capacity of the Delivery Points is more than twice the Maximum Capacity of the mainline).

4.1.8 The only relevance of Capacity at Delivery Points is that Users should not be allowed to exceed the Maximum Capacity of Delivery Points. That is, if a Delivery Point's Maximum Capacity to take delivery of gas is 30 TJ/day, then the Users utilising that Delivery Point must not, in aggregate, take delivery of more than 30 TJs/day. This can be expressly provided for in the Access Arrangement.

4.2 The current definition of MDQ is inconsistent with the nomination procedure

4.2.1 Even under the proposed terms of the Access Arrangement, the relationship between the nomination procedure and a User's MDQ is unclear.

4.2.2 MDQ is defined in the Access Arrangement as the sum of a User's Primary Capacity Quantities.

4.2.3 Primary Capacity Quantity means, in respect of an FT User, the amount of the Capacity of a Delivery Point to deliver Gas on that day as is specified in that FT User's FT Service Contract.

4.2.4 Consequently, if a User has contracted three delivery points each with a Primary Capacity of 5 TJs, then its MDQ is 15 TJs.

4.2.5 Under Clause 18.3(b) a User cannot nominate more than its MDQ.

4.2.6 Under Clause 18.3(c)(ii) where an FT User nominates greater than its Primary Capacity Quantity at a Delivery Point, then any nomination by the FT User above that Primary Capacity Quantity is treated as a nomination to utilise the "Net Available Capacity" of the Delivery Point. "Net Available Capacity" is defined as the Maximum Capacity of a Delivery Point less the sum of all nominations to utilise Primary Capacity Quantities on a day at that Delivery Point.

4.2.7 Clause 18.3(c)(ii) clearly contemplates that a User can nominate above its Primary Capacity Quantity at a Delivery Point. Suppose that the User referred to in paragraph 4.1.5 wishes to nominate 7 TJs at one delivery point (i.e. above its Primary Capacity Quantity). Because the User cannot exceed its MDQ, the User could only do this by nominating less than its Primary Capacity Quantities at the remaining two Delivery Points. That is, there is no means for a User to access Capacity in excess of its Primary Capacity at a Delivery Point unless it takes less than its Primary Capacity at another Delivery Point. There is no apparent rationale for this limitation.

4.2.8 Origin Energy understands that the Primary Capacity Quantities at Delivery Points aggregate to the System Primary Capacity of 323 TJs (which in turn equals the sum of all User's MDQs). However the Capacity of the Pipeline on a day can range up to 393 TJs. As Users cannot nominate above their MDQ, there is no means in the Access Arrangement for FT Users to access any Capacity in the Pipeline System above 323 TJs. That is, the definition of MDQ in the Access Arrangement does not permit Users to access Net Available Capacity. Having regard to the fact that Clause 18.3(c)(ii) contemplates that FT Users can access Net Available Capacity, this consequence must be unintended.

4.2.9 For the Access Arrangement to be internally consistent, the MDQ of a User should be defined as, on a day:

(a) the sum of the User's Primary Capacity Quantities; and

(b) that portion of the Net Available Capacity allocated to the User on a day under Clause 18.3(c).

4.2.10 However, as argued above, Origin Energy's position is that MDQ be defined in the manner set out in section 4.1 above.

5 Services Policy (Clause 4).

5.1 Epic should have an obligation to negotiate in "good faith" "reasonable terms" for the provision of any Non-Specified Services requested by a Prospective User (Clause 4.1(b)).

5.1.1 Such a requirement is consistent with the Access Code's objective of facilitating access to Covered Pipelines. Without these requirements, there are no mechanisms to control Epic's use of its monopoly power in negotiations for Non-Specified Services.

5.1.2 This is particularly important as Epic's proposed Access Arrangement is unworkable in its present form without a User purchasing additional services (for example, a park and loan service).

5.2 Revenue from some Non-Specified Services should be allowed for in setting the allowed revenue from reference services (Clause 4.1(b)).

5.2.1 Where it can be shown that some Non-Specified Services are required by Users to allow them to provide normal services to customers, the revenue from such services should be taken into account in setting the Reference Tariffs.

5.3 The Priority for IT Capacity referenced in Clause 4.3(b) needs to be cross referenced to Clause 23.

5.3.1 Clause 4.3(b) refers to IT Service ranking behind "persons with contracts for Non-Specified Service which rank in priority ahead of IT Service." However Clause 4.3(b) does not set out how it is determined when a Non-Specified Service ranks in priority to an IT Service. Clause 4.3(b) needs to be cross-referenced to Clause 23 so as to make this matter clear.

5.4 Epic's right to refuse to vary a service should be limited to physical or other Users contract requirements (Clause 6.9).

5.4.1 Clause 6.9(b) provides:

"A request to vary service will only be considered by the Service Provider if the User has sufficient Capacity in the Pipeline System to enable the relevant Delivery Point to be utilised for FT Service, and, if the User does have such access, will be accepted by the Service Provider unless (in the Service Provider's reasonable opinion):

(i) it would not be technically or economically prudent for it to do so;

(ii) it would prejudice the rights of another FT User for it to do so; or

(iii) the Delivery Point is an Excluded Point and there is no agreement or Release by the relevant IT User to permit use of that Delivery Point."

5.4.2 Paragraphs (i) and (ii) are extremely wide and will, in practice, give Epic a complete discretion as to whether it accepts requests to vary service. How would a User ever establish that Epic had wrongly rejected a request? What does the phrase "not economically prudent" mean? Can Epic reject a request because it will not generate as much profit as Epic requires?

5.4.3 The purpose of an Access Arrangement is to enable Users to gain access to Covered Pipelines on non-discriminatory terms. Clauses like 6.9(b), which effectively give Epic a complete discretion as to whether it provides a service, may frustrate this purpose.

5.4.4 If a User has sufficient Capacity in the Moomba-Adelaide Pipeline to enable a request to vary service to be met, then it should be entitled to have that request satisfied. Paragraphs (i) and (ii) should be deleted. If this submission is not accepted, then Origin Energy submits that:

(a) paragraph (i) should be deleted; and

(b) paragraph (ii) should read "*the Service Provider would be unable to satisfy the contracted requirements of another FT User*."

6 IT Service Rebate (Cluase 5.3)

6.1 The presence of "Spare Capacity" (as defined by the Commission) in a lateral should not prevent an Existing User from receiving the rebate

6.1.1 Clause 5.3(b)(iii) provides that the rebate does not apply to the utilisation of "Spare Capacity". Currently "Spare Capacity" is defined as:

6.1.2 "*the difference between the System Primary Capacity and the sum of*:

(a) the aggregate of the Primary Capacity Quantities at that point in time; and

(b) Capacity that is contracted on a firm basis for any Non-Specified Services."

6.1.3 Epic also states that, at the lodgement date, there is no Spare Capacity. Consequently under the current definition of Spare Capacity, whenever a lateral is used to provide a service, as there is no Spare Capacity, a rebate would be payable to the Existing Users (subject to retention of lateral rebates).

6.1.4 In Proposed Amendment A3.1, the Commission has required that the definition of "Spare Capacity" be amended to be made consistent with that in the Access Code. That is, the definition of "Spare Capacity" is to be amended to also incorporate the concept of reserved but unutilised Capacity in the mainline or a lateral.

6.1.5 The effect on Clause 5.3(b)(ii) of changing the definition of "Spare Capacity" is that the rebate set out in Clause 5.3 will never apply. If Spare Capacity also extends to reserved but unutilised Capacity, then by definition when IT Service is provided it will always be provided using Spare Capacity.

6.1.6 Consequently, Clause 5.3(b)(iii) should be amended to delete the reference to Spare Capacity and replace it with a reference to Capacity that has not been reserved by an Existing User or an FT User.

6.2 Clause 5.3(c) is expressed too widely.

6.2.1 Clause 5.3(c) should provide that no rebate is payable in respect of facilities used by any Other User who has contracted to use those facilities prior to the Commencement Date. If a User, who has contracted to use a part of the Pipeline System prior to the Commencement Date, subsequently contracts to use another part of the Pipeline System ("**second contract**"), then the rebate should apply to facilities used under that second contract.

6.3 Epic should be required to enter into agreements with Existing Users obliging Epic to pay rebates.

6.3.1 Origin Energy is concerned that the mere inclusion of Clause 5.3 in the Access Arrangement does not of itself give Existing Users any contractual right to enforce payment of the rebate. Clause 5.3 should require Epic, at an Existing User's request, to enter into an agreement embodying the terms of Clause 5.3. Entry into such an agreement will give Existing Users a contractual right to enforce the Clause 5.3 rebate.

7 Queuing Policy for FT Service (Clause 6.7)

7.1 Competition between retailers and disaggregation of customer MDQ will lead to over-booking of capacity and inefficient expansion of the pipeline.

7.1.1 Under the proposed queuing policy, retailers would forecast load and enter the queue with that capacity. However, especially in the early years following 2005, a number of new retailers will be entering the market with the intention of capturing market share. There will be a tendency for

several retailers to effectively book the same capacity so as to ensure access to market.

7.1.2 Additionally, as the market is disaggregated, the real aggregation effects will be lost in the Queuing allocation, artificially increasing the apparent requirement for capacity.

7.1.3 These two effects are expected to have a very significant effect on pipeline over-construction and will result in significantly higher costs to customers. Origin Energy would expect the State Government would have significant concerns if the cost of supply of gas to South Australia were increased artificially as a result of undesired inefficiencies deriving from the queuing policy.

7.2 FT Users and Existing Users should have identical queue bypass rights.

7.2.1 The proposed queuing policy provides that FT Users shall have certain rights to bypass the queue (i.e. under Clause 6.8(a) of the Access Arrangement, an FT User who is extending their FT Service Contract is not required to follow the queuing procedure). Existing Users provide similar functions to FT Users and should not be discriminated against in the queuing policy.

8 Contracting For IT Service Where New Facilities Are Not Required (Clause 8).

8.1 Execution times allowed for contracts should run from the date of confirmed receipt.

8.1.1 Clause 8 requires a Prospective User to execute an IT Service Contract within 10 days of it having been sent to the Prospective IT User, otherwise the IT Request lapses. However there should be a procedure for the Prospective User to notify the Service Provider of any errors in the IT Service Contract sent to the User. Where errors are notified to the Service Provider, then the Service Provider should have an obligation to correct them (if they are in fact errors) and reissue the contract.

8.1.2 The 10 day period in which an Applicable Contract must be executed should run from the time it is confirmed as received by the Prospective User. A contract is too important to risk being misplaced in delivery such that the 10 days expires and the Prospective User loses its rights to service

8.1.3 These comments are equally applicable to Applicable Contracts for FT Service (eg Clause 10.3(d) and (e))

9 Creditworthiness Requirements (Clause 9).

9.1 Both Users and the Service Provider should be required to carry adequate insurance.

9.1.1 To satisfy the creditworthiness criteria a Prospective User should be able to demonstrate that it is able to:

(a) pay all charges which will be levied upon it; and

(b) meet any liability it may incur to Epic under the Agreement.

9.1.2 To ensure that all Users are able to meet their liability obligations to Epic, all Users should be required to take out insurance as a pre-condition to

obtaining service. Such a provision is in the interests of all Users. If one User ("**Defaulting User**") causes substantial damage to the Pipeline System, then all Users will potentially suffer loss if the Defaulting User is not in a position to pay for that damage. Even a very small User could, for example by introducing Non-Specification Gas into the Pipeline System, cause substantial damage.

9.1.3 In short, all Users should have the comfort of knowing that if the Defaulting User damages the Pipeline System (or otherwise does something to prevent the delivery of gas to Users) that funds to make good the damage caused are readily available.

9.1.4 Origin Energy suggests that Users be required to take out $100 million (any one event) of general liability insurance.

9.1.5 Similarly Epic should, by the Access Arrangement, be required to take out insurance. Users should have the comfort of knowing that if damage is caused to the Pipeline System (whether by Epic's default, a User's default or by Force Majeure) that Epic has sufficient insurance cover to ensure it will have the funds to make good that damage. Almost the entire South Australian economy depends on the Moomba-Adelaide Pipeline and Users should have a contractual right to require that the Pipeline be adequately insured.

9.1.6 Epic should be required to take out $100 million (any one event) of general liability insurance and of insurance cover for damage to the Pipeline System.

10 Queuing Policy and Extensions/Expansions Policy (Clause 10).

10.1 Epic should bear some part of the Construction Risks (Clause 10).

10.1.1 Essentially all of the risk inherent in the construction of New Facilities is placed on Prospective Users.

10.1.2 Consequently Epic has no incentive to:

(a) minimise the cost of the construction of New Facilities;

(b) ensure that New Facilities are constructed as quickly as practicable.

10.1.3 It is Epic that carries out the construction of New Facilities. Consequently it is Epic that is best placed to manage the risks involved. Prospective Users are not well-placed to manage this risk, as they have no control over the construction process.

10.1.4 To the extent that the actual costs of New Facilities exceed the actual costs that Epic would have incurred had it managed the construction of the New Facilities as a reasonable and prudent pipeline operator, Epic should be solely responsible for those costs.

10.1.5 Epic should also be required to specify a date by which the New Facilities are to be completed (which date must be reasonable). Epic must use all reasonable endeavours to ensure that the construction of the New Facilities is completed by this date. If construction is not completed by this date, then unless the delay was caused by Force Majeure, Epic must demonstrate

that it used all reasonable endeavours and, to the extent that this was not so, Epic will be in breach of contract and liable for any loss caused.

10.1.6 Epic should have an express obligation to ensure New Facilities are constructed in accordance with and at the lowest cost consistent with accepted pipeline operating practice.

10.1.7 Prospective Users for whom New Facilities are being constructed should have audit rights enabling them to inspect such records as reasonably required to confirm that the Estimated Capital Contribution is a reasonable figure and that Epic managed the construction of the New Facilities as a reasonable and prudent pipeline operator.

10.2 Where a Prospective User's Notified Capital Contribution is less than the Estimated Capital Contribution, the Prospective User should be given the opportunity to agree to pay the Estimated Capital Contribution.

10.2.1 Under Clause 10.4(h), where a Prospective User's Notified Capital Contribution is less than the Estimated Capital Contribution, the Prospective User loses their right to have facilities constructed and is placed back in the queue. This is unfair, as the Prospective User must provide their Notified Capital Contribution at a time when they do not know what the Estimated Capital Contribution is. The Prospective User should have the opportunity to agree to pay the Estimated Capital Contribution.

11 Principal Receipt and Delivery Obligations of User (Clause 12 & Schedule 2).

11.1 As the User does not exercise complete control over the flow of gas at the Receipt Point, Users should have no more than a "reasonable endeavours" obligation to achieve a uniform rate of flow. Further, there should be no penalty charge imposed on a User where gas is not delivered at a uniform rate. (Schedule 2 (a) and Clause 12.3).

11.1.1 Paragraph (a) of Schedule 2 does not have regard to the fact that the hourly rate of flow of gas at Receipt Points, while it may be influenced by the User (and the User's suppliers), is also significantly impacted by the manner in which the Service Provider operates the Pipeline System.

11.1.2 The imposition of a penalty charge for failure to achieve a uniform rate of flow is impractical, due to the difficulty of identifying whether a fluctuation in flow rates was caused by Epic or Users.

11.2 The hourly rate of flow should only be changed by agreement between all Users of a Receipt Point (Schedule 2).

11.2.1 It is unreasonable that the Service Provider have an absolute discretion to alter the required hourly rate of flow at the Receipt Point and then be entitled, under Clause 12.2, to impose an Excess Imbalance Charge on Users who cannot comply with this hourly flow rate. It is highly unlikely that those Users would have a contractual entitlement to require their suppliers to comply with any hourly rate unilaterally imposed by Epic.

11.3 As Users do not have the facilities to monitor their take of gas at meters on an hourly basis, they should not be required to pay a penalty charge where they exceed 1/24th of a Delivery Point's Maximum Capacity during an hour (Clause 12.3).

11.3.1 It is not possible for multiple Users of a Delivery Point to monitor their hourly take in the manner required by paragraphs (b), (c) or (d) of Schedule 2. To apportion blame for exceeding MHQ (and hence allocate penalty charges) would be an arbitrary procedure and would not be equitable as between Users.

11.4 Hourly limitations on Scheduled Delivery Quantities should be a proportion of the Capacity of the Pipeline System reserved by a User as opposed to a proportion of their Scheduled Delivery Quantities (Schedule 2).

11.4.1 A User's hourly MHQ should be 6% of their MDQ, which is believed to be sufficient to maintain the integrity of the Pipeline System. The 6% limit should be on the basis of a total capacity of 393 TJ/day rather than the new capacity of 323 TJ/day. To reflect this the figures of 144 and 126 in paragraph (c) of Schedule 2 should be replaced with 175% and 153%.

11.4.2 The difficulty with defining MHQs by reference to Scheduled Delivery Quantities (as compared to MDQ) is demonstrated by the following example:

Suppose a User had only one customer (an industrial customer) whose plant commenced operating at 5:00 am every Monday. The customer would therefore consume gas for one hour of the Sunday gas day (6:00 am to 6:00 am). The User supplying this customer would be required to pay an Excess Imbalance Charge for 94% of this customer's load taken on the Sunday gas day.

Scheduled Delivery Quantities are not a practical basis to determine MHQ limitations. Schedule 2 assumes that all customers have a flat demand, which is not the case.

11.5 No penalty should apply for minor excursions of the limitations (Schedule 2 and Clause 12.3).

11.5.1 Minor excursions over the MHQ levels set out in paragraph (c) and (d) of Schedule 2 will not pose a material threat to the operation of the Pipeline System. Consequently it is not appropriate for a penalty charge to be imposed merely because a User is unable to comply with these limits. Penalty charges should only apply to Users who engage in serious and persistent abuses of the MHQ limits. The integrity of the Pipeline System will be sufficiently protected if Epic has the right to curtail deliveries of gas to a User who is violating the MHQ limitations in circumstances where that violation is a material threat to the operational efficiency of the Pipeline System.

11.5.2 In Origin Energy's view it is not necessary to include each of the four separate limitations in paragraphs (c)(i), (ii), (iii) and (iv) to preserve the operational integrity of the Pipeline System. The limitations in paragraphs (i) and (iv) are sufficient and are more in accordance with current operational procedure.

11.5.3 The proposed limitations in paragraph (c) relate only to the Mainline and Angaston Zones. However as all delivery points in these zones are located in the last quarter of the Pipeline System, it is appropriate that the hourly limitations be based on total deliveries from the Pipeline System rather than deliveries into two separate zones. What is important, to preserve the integrity of the Pipeline System, is that there is control over the total amount of gas taken out of the bottom of the Pipeline System.

11.6 The MHQ limitations in Schedule 2 (d) are too strict and will not provide sufficient flexibility to manage customer demand in the Iron Triangle Zone.

11.6.1 Origin Energy suggests that paragraph (d) be replaced by the following:

"*The User must not take delivery of gas in aggregate at all Delivery Points in the Iron Triangle Zone in excess of:*

(i) 115% of 1/24th of the User's MDQ for that Zone in any 1 hour period;

(ii) 105% of 12/24^{ths} of the User's MDQ for that Zone in any period of 12 consecutive hours,

if to do so would prevent the Service Provider from supplying another User that User's Scheduled Delivery Quantities for a Day."

No specific charge should apply if the User breaches this provision. However the Service Provider should be entitled to curtail deliveries of gas to the User if the User fails to correct a material breach, which threatens the integrity of the Pipeline System, within a reasonable period after notice of the breach is received by the User.

11.7 The temperature, pressure or gas quality should not be changed unless all Users, Prospective Users, relevant Producers and Epic agree to vary their existing contracts (Clauses 12.2, 12.4 and 15.2).

11.7.1 Epic should not be entitled to unilaterally change the gas specification, gas temperature or gas pressure (including in response to the development of a national gas code). Changes to specifications should only occur if required by law or if all Users, Prospective Users, relevant Producers and Epic agree to vary their existing contracts.

11.7.2 Users have supply contracts which provide for gas to be delivered at specific gas qualities, pressures and temperatures which may not comply with any proposed changes including the national gas code. Any unilateral change by Epic will effectively prevent those Users from accessing the Pipeline System (Clause 12.4).

11.7.3 Epic should be obliged to operate the Pipeline System in a manner consistent with User's current gas supply contracts (which contracts were developed to be consistent with the current Moomba specifications). .

11.8 Clause 12.4 assumes that it is only Users who have control over the Receipt Point Pressure. This is not correct. Epic exercises substantial control over pressure at the Receipt Point.

11.8.1 Clause 12.4 should also oblige Epic to operate the Pipeline System in a way such that the Users ability to comply with their obligations under paragraphs (a) to (c) of clause 12.4 is not impaired or prevented.

12 Principal Receipt and Delivery Obligations of Service Provider (Clause 13).

12.1 Delivery pressures should only be changed with the consent of all Users taking delivery of gas at the relevant point (Clause 13.3).

12.1.1 Clause 13.3 allows Epic to unilaterally change the delivery pressures. This is inappropriate as any change in delivery pressures affects Users' ability to take delivery of gas and may place Users in breach of their obligations to Envestra or their obligations to customers.

13 Rights of Service Provider (Clause 14).

13.1 Clause 14.3 should provide that Epic has the right to decide the manner in which it will operate the Pipeline System subject to:

(a) an overriding obligation to operate the Pipeline System as a reasonable and prudent pipeline operator; and

(b) comply with the terms of the Access Arrangement.

13.2 The Access Arrangement should contain a warranty from Epic that:

(a) it has all necessary rights to provide the Specified Services;

(b) the Pipeline System will be operated and maintained in accordance with the technical standards generally accepted from time to time by reasonable and prudent persons experienced in gas pipeline operation and maintenance;

(c) all Specified Services will be provided with due care and skill;

(d) it will comply with all laws applicable to the provision of the Specified Services.

14 Gas Quality (Clause 15 & Schedule 3).

14.1 Schedule 3 should be modified so that it complies with the Moomba Gas Specification.

14.1.1 The Gas Specification in Schedule 3 of the Access Arrangement does not comply with the current Moomba Gas Specification. The effect of Schedule 3 is that the parties to the principal gas contracts providing for the delivery of gas from Moomba to the Moomba-Adelaide Pipeline would not be able to have that gas delivered into the Moomba-Adelaide Pipeline. This is clearly unworkable. In this respect Origin Energy notes pages 16-17 of the TGT submission of October 1999. Origin Energy agrees with the comments in that submission.

14.1.2 The current Moomba Gas Specification has been in place for 11 years. Origin Energy sees no legitimate reason why this specification should be changed by Epic without the consent of South Australia's major producers and retailers.

14.2 The Gas Specification under the Access Arrangement should only be changed with the consent of all then current Users of the Moomba-Adelaide Pipeline and all Prospective Users (Clause 15.2).

14.2.1 Clause 15.2 allows Epic to change the Gas Specification set out in the Access Arrangement if uniform Gas Specifications for transmission pipelines are adopted.

14.2.2 Any such unilateral change in Gas Specification may place Users in a position where they are no longer able to deliver their gas into the

Moomba-Adelaide Pipeline (because that gas is supplied under contracts whose specifications do not comply with the uniform gas specification).

14.3 Epic should have a "reasonable endeavours" obligation to manage Non Specification Gas (Clause 15.3).

14.3.1 Where, on a day, Non-Specification Gas is being delivered by all Users into the Moomba-Adelaide Pipeline (which currently would be the case as all gas delivered into the Moomba-Adelaide Pipeline comes from the same source) then Epic should have an obligation to accept delivery of that gas if requested by all Users, unless the acceptance of the gas may reasonably be expected to cause material damage to the Moomba-Adelaide Pipeline or downstream equipment. Similarly if Epic can accept Non-Specification Gas from a User in circumstances where that gas will not be delivered to Users delivering Specification Gas into the Moomba-Adelaide Pipeline, then Epic should have an obligation to accept delivery of that gas.

14.3.2 The Access Arrangement should set out certain tolerances from the Gas Specification within which gas will still be accepted by Epic (providing that the total time for which gas exceeds these tolerances does not exceed specified limits). This flexibility is necessary to ensure that there is no curtailment in gas supplies where there are minor deviations from the Gas Specification. The probable result of not including such flexibility in the Access Arrangement is more frequent curtailments of the supply of gas to customers.

14.3.3 Clause 15.3(b)(iv) provides that if Epic takes steps to prevent or terminate the delivery of Non-Specification Gas into the Moomba-Adelaide Pipeline, it "*will incur no liability whatsoever to the User for any financial or other consequences arising from any of the actions referred to in paragraphs (i), (ii) and (iii) above*." This broad exclusion of liability is inappropriate. Epic should not be released from liability to the User where Epic performs any of the actions in Clause 15.3(b)(i) to (iii) negligently or where Epic has not complied with the procedures in Clauses 15.3(b)(ii) and (iii). For example, if Epic flares or vents gas in circumstances where there were other practicable means to deal with the Non-Specification Gas, it should not be relieved of liability.

14.3.4 Under clause 15.3(c)(iii) Epic should be required to pay for or supply replacement gas for gas which Epic has vented or flared in circumstances where a reasonable and prudent pipeline operator would not have vented or flared that gas or where there were other practicable means to deal with the Non-Specification Gas.

14.4 Epic should have an obligation under the Access Arrangement to monitor the specifications of gas received into the Moomba-Adelaide Pipeline (Clause 15.3).

14.4.1 Where Non-Specification Gas is delivered into the Moomba-Adelaide Pipeline, Epic should have an obligation to notify the relevant Users immediately. Users do not have access to the requisite equipment to monitor the specifications of gas being delivered into the Moomba-Adelaide Pipeline. Only Epic has access to this equipment.

14.4.2 A User should not be liable to Epic for any loss which Epic would not have suffered had Epic complied with this obligation.

14.5 Clause 15 should allow for directions made under the *Gas Act 1997* altering gas quality.

14.5.1 Under section 37 of the South Australian *Gas Act 1997*, the Minister administering the *Gas Act* (or the Minister's delegate) has the power, where there is a gas shortfall, to issue directions altering the specifications of gas being delivered into the Moomba-Adelaide Pipeline. These directions may be issued to the Producers, Users and Epic.

14.5.2 Clause 15 should be expressly subject to the *Gas Act* and provide:

(a) that the User and Epic will comply with all orders given under the *Gas Act;*

(b) that neither party will incur any liability under the Access Arrangement in respect of any act or omission of that party in compliance with a direction given under the *Gas Act*.

14.6 Epic should indemnify Users if its supplies Non-Specification Gas

14.6.1 Where Epic receives gas complying with the Gas Specification at the Receipt Point from all Users on a day but then supplies Non-Specification Gas at one or more Delivery Points, Epic should be required to indemnify all Users to which it has delivered the Non-Specification Gas. There is no reason why Users should be required to indemnify Epic in respect of Non-Specification Gas but Epic not be required to indemnify Users where it is Epic which is responsible for supplying the Non-Specification Gas.

15 Retention Allowance (Clause 17).

15.1 Epic to pay for System Use Gas (Clause 17.2(a)).

15.1.1 Currently the proposed Access Arrangement allows the Service Provider to take System Use Gas free of charge. This is inappropriate. If the Service Provider is acquiring System Use Gas at no cost there is no incentive on the Service Provider to use that gas efficiently. While Clause 17.1(c) requires Epic to use its best endeavours to minimise the use of System Use Gas, it will, in practice, be extremely difficult for a User to establish that Epic has not complied with this obligation. This is particularly the case having regard to the complexity of the operation of a Pipeline System with 7 sets of compressors and variable loads with different patterns of use between Users. Nor does the Access Arrangement contain any clear remedy for a User where Epic has not complied with its obligation to minimise the use of System Use Gas.[1] Origin Energy also refers to the comments in its confidential submission.

---

[1] In considering this issue it is also relevant to note the following matters:

(a) expansion of Pipeline Capacity can be accommodated either by looping the Pipeline System or additional compression or a combination of the two. In assessing the relative economics of looping versus compression, the cost of compressor fuel is an important factor. If that fuel is being provided at no cost, partly by the then existing Users, the economic assessment process is distorted and the best solution not necessarily achieved.

(b) Origin Energy would expect that in the future the Service Provider will offer a range of additional services such as park and loan and backhaul services. A park and loan service will have a significant effect on compressor fuel requirements. If the Service Provider is not paying for compressor fuel, the costs of providing park and loan services will be

15.1.2 The Access Arrangement should compel Epic to pay for System Use Gas, at a price which approximates the prevailing Moomba ex-field price. This is the only manner in which to ensure that Epic will use that gas efficiently. (Ideally Epic should purchase its System Use Gas requirements directly from the Producers or from specific Users who are willing to enter into a gas sale contract with Epic. This will alleviate the excessive complexity involved in rationing System Use Gas requirements which is likely to arise once there are a large number of Users).

15.2 Epic should have an obligation to provide, on request, such information to Users as is reasonably required to justify Epic's calculation of the Retention Allowance in respect of a day.

15.2.1 Only if this information is provided to Users do they have any means of assessing whether Epic is complying with its obligation to "*reasonably and prudently estimate the total quantity of System Use Gas required for the provisions of all Services*." (Clause 17.3(c)(i)).

15.3 System Use Gas should be returned to Users.

15.3.1 The Access Arrangement only requires Users to provide System Use Gas to Epic. It contains no mechanism for System Use Gas to be returned to Epic. To be consistent with the operational requirements of Users, the Access Arrangement should contain a mechanism for System Use Gas to be returned to Users.

15.3.2 Where, on a day, the Moomba-Adelaide Pipeline contains too much System Use Gas, then it will be unable to take delivery of gas from Users at the Receipt Point (i.e. the Pipeline is too "full" to take delivery of further gas.) Under the Access Arrangement, the only manner in which to reduce the level of linepack in the Moomba-Adelaide Pipeline and create Capacity for the delivery of further gas, is to wait until the pipeline compressors have used sufficient gas to reduce the linepack to the requisite level. This could take a number of days. Where there is provision for the release of System Use Gas, these operational requirements can be better managed.

15.3.3 The Pipeline System containing too great a level of System Use Gas to take delivery of gas creates a significant risk for Users and customers, as they may be unable to take delivery of sufficient supplies of gas. To adequately meet the needs of South Australian customers, the Access Arrangement should be amended to address this matter.

15.4 System Use Gas should be split into two categories: Pipeline Gas (including unaccounted for gas and compressor gas) and linepack management gas.

15.4.1 System Use Gas, as defined in the proposed Access Arrangement, covers three separate gas requirements of the Service Provider: compressor fuel, unaccounted for gas (metering discrepancies) and linepack management gas. The first two (collectively '**Pipeline Gas**") are effectively consumed by Epic and should be treated as operating expenses to Epic and charged

---

borne by the then current Users which is clearly not equitable. Conversely, if a new entrant seeks a backhaul service, the price for the service will be higher than it need be as the fuel cost savings from the provision of the backhaul service will not be allowed for (since they will accrue to the existing Users rather than the Service Provider).

to Epic at commercial rates. Linepack management gas is not consumed by Epic, but is borrowed from Users in order to optimise pipeline operations and is best returned to Users when no longer required.

15.4.2 The Pipeline System's requirements for Pipeline Gas are significantly different to those for linepack management gas. Linepack management gas is taken by Epic over the weekend and then returned to Users during the course of the week. In contrast, demand for Pipeline Gas is flatter (over the course of a week).

15.4.3 Linepack Management Gas should be returned to the User it was borrowed from in order to avoid transferring gas and capacity from one User to another.

15.5 The reference in Clause 17.3(d) should be to gas scheduled to be supplied by a User rather than gas supplied by a User.

16 Forecasting, Nominating and Scheduling of Service (Clause 18).

16.1 FT User's nominations should be made by 1500 hours –(Clause 18.3(b

16.1.1 Clause 18.3(b) requires FT Nominations to be given by 11:00 am. This is too early in the day for Users to make accurate nominations (particular Users serving as market aggregators). For Users to make accurate daily nominations they need as much information as possible on:

(a) weather conditions;

(b) demand conditions; and

(c) gas take on the day on which the nominations are being made.

Operational experience suggests that sufficient information concerning these three conditions will not be available by 11.00 am (particularly in the case of sub-paragraph (c) as only 5 hours of the relevant day have passed by 11.00 am).

16.1.2 The effect of requiring nominations at 11.00 am is that it will be more difficult for Users to make accurate nominations sufficient for them to satisfy South Australian demand. The persons which will principally suffer will be customers whose demand may not be met.

16.1.3 The amount of Capacity available for IT Service is not posted on the EBB until 1530 hours. Having regard to this, it is unclear why FT Users nominations need to be finalised by 1200 hours.

16.1.4 Origin Energy suggests that it discusses this issue with the Commission to assist the Commission in gaining a greater understanding of the operational needs of Users.

16.1.5 If the FT User's nomination times move back, so should the time at which Imbalance Trades may be made under Clause 20.1(a). Currently this time is 1030. Origin Energy submits this time should also be moved back to 1500 hours.

16.1.6 Epic may argue that FT nominations need to be finalised by 1500 hours so that IT nominations can then occur in the afternoon. However there is no

reason why IT nominations cannot be made at the same time as FT nominations and IT Users notified shortly after FT Users whether their nominations have been successful. Currently the Access Arrangement provides for IT Users to be notified of available Capacity after FT Users nominations have been accepted or rejected. However this is not necessary. IT Users do not need to know the Capacity available for them at the time they make their nominations. The nominations made by IT Users will be driven by their requirements for the relevant day, rather than the net Capacity of the Pipeline System.

16.1.7 The rationale behind the early nomination times appears to be to lower Epic's risk by providing Epic with more time to schedule receipts and deliveries. No assessment seems to have been made as to the effect of these early nominations times on the needs of the market.

16.2 It is not necessary to provide a written confirmation (Clause 18.4(e)).

16.2.1 A User's entitlement to take gas should not depend upon whether it has been able to obtain a written confirmation. The Access Arrangement should provide that the User will, unless it has notified Epic to the contrary, be deemed to have warranted to Epic that it can supply to Epic its nominated quantities for the following day. Any confirmation is unnecessary. The consequences of not providing a written confirmation (as set out in clause 18.4(e)) are Draconian. There is no logic for imposing these consequences simply because no confirmation is received. They are only appropriate where, despite having made a nomination, no gas is delivered to the Receipt Point.

16.3 The comments in relation to the nomination procedure for FT Service are generally applicable to the nomination procedure for IT Service (Clause 18.5).

16.4 The FT Users should have a right to request "Authorised Variations" up to 20% of MDQ by up to 9:00 am on a day (Clause 18.7).

16.4.1 The ability to vary nominated quantities is fundamental to any User fulfilling the role of a market aggregator. It is simply not possible to predict demand with precision and to make nominations at 1100 hours (or 1500 hours) which will necessarily accord with demand requirements on the following day. If Users fulfilling the role of an aggregator (even to a relatively limited number of customers) do not have the right to vary their nominations, they may be unable to effectively meet demand. The consequence of not having an effective authorised variation procedure is that FT Users will over-nominate to ensure demand can be met.

16.4.2 FT Users should have a right to request "Authorised Variations" not exceeding 20% of their MDQ. This nomination right should be capable of exercise up to 9:00 am on a day. This right should prevail over the rights of IT Users. This is because:

(a) it is FT Users who have paid a Capacity Charge to reserve the Capacity of the Pipeline System; and

(b) it is FT Users who are likely to be fulfilling the role of market aggregators and suppliers to customers who have firm needs. IT Users are more likely to be serving interruptible Users or those with alternative fuel sources. This factor suggests that depriving FT

Users of the ability to utilise Capacity is likely to have a greater social impact than depriving IT Users of Capacity.

16.4.3 The only circumstances in which the Service Provider should be permitted to refuse to accept Authorised Variations are where:

(a) this will prevent the Service Provider supplying the nominations of other FT Users; or

(b) there is insufficient Capacity available in the Pipeline System (where the available Capacity is the total Capacity of the Pipeline System less the requirements of FT Users and Existing Users **but not** IT Users).

16.4.4 Irrespective of whether the above arguments are accepted, it is submitted that the following changes to Clause 18.7 should be made:

(a) Clause 18.7(d) does not require the Service Provider to accept a variation if this would "*adversely affect the quantities of Gas already scheduled*" for delivery to other Users. The words "adversely affect" are ambiguous and without practical meaning. Their effect is to give the Service Provider an absolute discretion as to whether it accepts variations. Indeed, there is no obligation at all (not even a reasonable endeavours obligation) on the Service Provider under clause 18.7 to accept an Authorised Variation. Clause 18.7(d) should read:

"*The Service Provider shall be obliged to authorise an increase in the Final Nominated Receipt Quantity for a day unless, to do so, would prevent the Service Provider being able to deliver the quantities of Gas already scheduled for receipt from and delivery to Other Users on that day.*"

(b) For the reasons discussed in paragraph 16.2 above, the confirmation referred to in Clause 18.7(e)(ii) is unnecessary. It should be sufficient that the User warrants to Epic that the additional gas can be supplied.

(c) Clause 18.7(g) provides that where a User, with consent, takes over their MDQ, then "***in addition*** *to all other amounts payable under the Agreement*" the User must pay an amount "*equal to the number of GJs taken in excess of the MDQ multiplied by the IT Commodity Charge Rate.*" The effect of this drafting is that, for quantities above MDQ, the User would have to pay the FT Commodity Charge Rate and the IT Commodity Charge Rate. This is clearly inequitable. In no circumstances should both rates apply in respect of the same GJ. Having made substantial payments to reserve Capacity in the Pipeline System, FT Users should only pay FT rates.

17 Imbalance and Zone Variation (Clause 19).

17.1 The imbalance provisions in the Access Arrangement are excessively restrictive and will not provide Users with sufficient flexibility to meet customer demand.

17.1.1 The imbalance provisions will cause additional costs to be incurred by Users. These additional costs will ultimately impact on the price paid by consumers.

17.2 It is submitted that, to manage variations in South Australian demand, the Access Arrangement should provide:

17.2.1 that Users must use their best endeavours to ensure that there is not an Imbalance;

17.2.2 that Users will incur an Imbalance Charge if they have an Imbalance of greater than 15% of MDQ on more than two consecutive days.

17.2.3 where Epic, reasonably and prudently, forms the opinion that a User's Imbalance will:

(a) materially impede the ongoing efficient and reliable operation of the Pipeline System; or

(a) prevent Epic fulfilling its obligations to Other Users,

then it may require the User to curtail deliveries of gas to Receipt/Delivery Points to the extent necessary to correct the Imbalance so that it no longer has the effects described in (a) and (b) above.

The User will need a period of time to allow it to comply with any requirement of Epic. This should be approximately 2 hours where deliveries at a Receipt Point are to be curtailed and 4 hours where deliveries at a Delivery Point are required to be curtailed.

17.3 Epic's Right to correct imbalance immediately must be restricted to critical situations (Clause 19.4).

17.3.1 Clause 19.4 gives Epic rights to require a User to immediately correct any Excess Imbalance. Epic should only be entitled to exercise its rights under Clause 19.4 if the exercise of those rights is necessary to:

(a) preserve the operational integrity of the Pipeline System; or

(b) prevent Epic from defaulting on its contractual requirements to Other Users.

17.3.2 Further Clause 19.4 should provide that Epic is only entitled to take the actions referred to in that Clause to the extent necessary to ensure that any Imbalance does not have the consequences referred to in paragraphs (a) and (b) above.

17.4 Liability and Indemnity provisions should be changed to make them more equitable.

17.4.1 The rider to clause 19.4 provides that Epic is not liable for any losses suffered by a User where Epic takes any of the actions referred to in clause 19.4. This rider is drawn too widely. If Epic carries out any of the actions in clause 19.4 negligently, then it should be liable for the loss caused by its negligence. Clause 19.4 should not give Epic a licence to carry out any action which it desires, no matter how negligently that action is carried out.

17.4.2 Consequently clause 19.4 should read:

"*The Service Provider will not be liable for any losses, costs, damages or expenses that the User may suffer or incur as a result of curtailment,*

suspension, cessation or confiscation under this clause 19.4, except to the extent those losses, costs, damages or expenses are caused by the Service Provider's unnecessary actions or negligence."

17.4.3 The indemnity should be modified as follows:

(a) the words "third party" should be replaced with "User";

(b) the indemnity should not extend to losses incurred due to Epic's negligence;

(c) the indemnity should not extend to losses which would not have been incurred by Epic had it used reasonable endeavours to mitigate its loss; and

(d) Epic should not be indemnified where it has purported to take action pursuant to clause 19.4 in circumstances where clause 19.4 does not permit Epic to take such action.

17.5 A User should not be held responsible and penalised for Imbalance caused by Epic or other users (Clause 19).

17.5.1 Clause 19 is written on the erroneous assumption that an Imbalance will always be caused by a User's actions.

17.5.2 Examples of circumstances in which an Imbalance will be caused by Epic include where:

(a) Epic has over-filled the Pipeline System with System Use Gas thereby restricting User's ability to deliver gas into the Pipeline (this is the most common example);

(b) Epic has issued a curtailment notice; and

(c) the pressure of gas at the Moomba Receipt Point is too high (due to Epic not transferring gas from the Receipt Point quickly enough).

17.5.3 Clause 19 should be amended to provide that the Excess Imbalance Charge and the indemnity (in Clause 19.5) do not apply unless Epic can prove that a User's Imbalance is not caused by Epic's actions.

17.5.4 The onus should be on Epic to prove that it was not the cause of an Imbalance (since it is Epic which has access to all relevant information concerning the operation of the Pipeline System).

17.5.5 A User's Imbalance may also be created by the actions of Other Users but due to the restrictive nature of the imbalance provisions the User will nevertheless be penalised. This is a further reason for allowing Users greater flexibility in managing their Imbalance than that set out in Epic's proposed Clause 19.

17.6 Unless additional imbalance tolerance is provided, the Access Arrangement should include a Park and Loan Reference Tariff.

17.6.1 If Clause 19 of the Access Arrangement remains in its present form then the only manner in which Users will be able to acquire sufficient flexibility to meet customer demand is to enter into a Park and Loan Service with Epic.

17.6.2 Under Clause 3.2 of the Access Code an Access Arrangement must include "*one or more Services that are likely to be sought by a significant part of the market.*"

17.6.3 If a Park and Loan Service is not a Reference Service, there will be no constraint on the price that Epic may charge for that service. Any monopoly rents extracted by Epic to provide a Park and Loan Service will presumably be passed through to customers with consequent increases in gas prices.

17.6.4 If there are no changes to Clause 19, then Epic should also be required to make available, under the Access Arrangement, a Park and Loan Service. A Reference Tariff for this Park and Loan Service should be established.

17.7 For the purposes of the Zone variation charge, there should be only one zone covering the Iron Triangle, the Barossa and Adelaide (Clause 19.7).

17.7.1 Origin Energy agrees with the objective of the Zone Variation Charge (ie to impose a discipline on Users to ensure that their actual deliveries match their nominated deliveries). However, due to the narrow size of the Iron Triangle Zone and the Barossa Zone, it is not justified that the charge is levied by zone. Virtually all of the Delivery Points are located in the last quarter of the Pipeline System and after the second to last compressor. Also, as the last compressor is not used on a regular basis, it can be said that all of the demand is south of the last regularly used compressor station. Further, charging for variations by zone reduces aggregation efficiencies.

17.7.2 What is important, to preserve the operational integrity of the Pipeline System, is that there is control over the total amount of gas taken out of the bottom of the Pipeline System. This aim would be achieved if the Zone Variation Charge was replaced by a Variation Charge which applied where the aggregate of deliveries to a User varied by more than 10% from the scheduled delivered quantities of that User.

17.8 Variations caused by Epic should not be charged to a User (Clause 19.7).

17.8.1 The Variation Charge should not apply to the extent that a Variation is caused by the act or omission of Epic (for example, Epic issuing a curtailment notice).

17.9 If System Use Gas is to be provided by Users at no charge, then Variation and Imbalance charges should not be paid to Epic (Clause 19.7).

17.9.1 If System Use Gas is to be provided free by the Users (as currently proposed by Epic) then the main effect of any (Zone) Variation is to increase the quantity of System Use Gas that may be required from Users (ie where actual deliveries exceed scheduled deliveries, Epic will need more System Use Gas to fuel additional compressor requirements). Therefore it is the Users rather than Epic which bear the cost of any (Zone) Variation. For this reason, (Zone) Variation Charges should not be paid to Epic. Instead the total (Zone) Variation Charges for a month should be pro-rated across Users as a partial compensation for the System Use Gas they are required to provide.

18 Imbalance Trading (Clause 20).

18.1 Origin Energy agrees with the Commission's proposed amendment A3.17.

19 Allocation of Receipt Point Quantities (Clause 21).

19.1 Gas received at the Receipt Point is equal to the Confirmed Quantity.

19.1.1 It is unclear why the quantity of gas measured as having been supplied at the Receipt Point would be different from the sum of the Confirmed Quantities (which are the quantities of gas which the Producers would have measured as having been delivered to the Receipt Point). These quantities should be the same. They would only be different if the Producers and Epic were using different measuring procedures at the same point. However this should not occur. It would create considerable operational difficulties for Users if their suppliers and Epic were using different measurement procedures at the same Receipt Point. The quantity of gas delivered to a User at a Receipt Point should be the quantity as notified by its Supplier (or where no such quantity is notified, as determined by Epic and subject to agreement with the supplier).

20 Allocation of Delivery Point Quantities (Clause 22).

20.1 The procedure for allocation of quantities at Delivery Points is unworkable.

20.1.1 The proposed allocation is based on daily apportionment based on meter readings downstream of the delivery point. However:

(a) many of the downstream meters (for instance residential meters) are not compatible with daily measurement and cannot be made to be read daily at a reasonable cost;

(b) downstream meters do not and should not be required to conform with Schedule 8; and

(c) unaccounted for gas in downstream systems must be considered in the allocation of flows and is not determined daily.

20.2 Users should not be obliged to provide Epic with customer's metering data as this is confidential.

20.3 The allocation procedure at a Delivery Point should be that advised by the relevant Users to Epic.

20.3.1 All that should concern Epic is that 100% of the quantity of gas delivered to a Delivery Point is allocated to Users.

20.4 Any dispute as to apportionment procedure should be referred to an independent expert.

20.4.1 Origin Energy appreciates that the Commission may have concerns that existing Users could frustrate a new User's access to the Pipeline System by refusing to agree to an apportionment procedure (see pages 123 and 125 of the Commission's draft determination). However such conduct would constitute conduct hindering or preventing access and breach section 13 of the Access Law.

20.4.2 If Users cannot agree on an apportionment procedure, then Epic should not have any right to impose an apportionment procedure on Users. Epic cannot be expected to act impartially in such instances. It will impose whatever apportionment procedure best suits its commercial interest. Any dispute as to apportionment procedure should be referred to an independent expert. The only parties to the dispute before the expert should be the Users in dispute.

21 Priority of Service (Clause 23).

21.1 Epic to provide information to justify the quantity of nominations accepted.

21.1.1 Where Epic reduces the nomination of a User pursuant to Clause 23, it should be obliged, on request, to provide to that User all details reasonably required for the User to establish that it was necessary for the User's nomination to be reduced.

22 Curtailment, Interruption and Operational Flow Orders (Clauses 24 and 25).

22.1 The curtailment provisions provide Epic with too great a discretion in respect of the issue of Curtailment Notices.

22.1.1 The issue of a Curtailment Notice should be a last resort and notices should be issued only when necessary to protect the operational integrity of the Pipeline System. Curtailment Notices should apply for no longer than necessary to restore the operational integrity of the Pipeline System and should be revoked as soon as the relevant circumstance justifying the issue of the notice has ceased. Clause 24 should be amended to expressly provide for this.

22.1.2 Further the requirements of Curtailment Notices should be reasonable. Epic should not be entitled to issue a Curtailment Notice which, having regard to the realities of the gas market, cannot practicably be complied with and then be entitled to collect a default charge of $7.50/GJ because of a User's inability to comply with that notice.

22.1.3 These comments apply to both Clauses 24.1 and 24.5 and are also equally applicable to OFO Notices. Further, in the case of OFO Notices, Clause 25.2 should be clarified to provide that the mere fact that one of the circumstances listed in that Clause occurs does not of itself justify the issue of an OFO Notice. Even if those circumstances arise, an OFO Notice should only be issued as a last resort.

22.1.4 The Emergency provisions of Clause 24.5 are too wide. "or may" should be deleted from 24.5(a) and "efficiency or" should be deleted from Clause 24.5(a)(ii)

22.1.5 Paragraph 24.(5)(b) should read:

(b) "in order to comply with the requirements of the Gas Act, the State Emergency Service Act, the State Disaster Act or the Essential Services Act."

22.1.6 This is the principal South Australian emergency legislation which may be used to allocate a gas shortfall and Clause 24 should be limited in its application to this legislation.

22.2 Epic should have an obligation to notify the Office of Energy Policy if it intends to materially curtail supplies of gas to Users under FT Service or Existing Transportation Agreements, so that the OEP can assess whether orders under the *Gas Act 1997* should be made. Curtailment notices should only be issued to Users under FT Service or Existing Transportation Agreements in response to orders under the Gas Act 1997.

22.2.1 The *Gas Act 1997* sets out a procedure for the allocation of gas supplies where there is a gas shortfall. This allocation is made by the Minister administering the *Gas Act 1997*. The Minister, in administering the Act, will attempt to ensure that, in a shortfall, gas is allocated so as to cause minimal disruption to the South Australian economy and customers. For example, the Minister would wish to ensure that hospitals and aged-care homes receive all gas they require. In contrast Clauses 23 and 24 allocate available supplies in accordance with a formula which takes no account of the uses to which gas is put. Nothing in the Access Arrangement guarantees that, in the circumstances of a shortfall, available gas supplies are allocated where they are most needed.

22.3 Epic to provide information to justify curtailments.

22.3.1 Whenever Epic curtails supplies of gas under Clause 24 or 25 it should have an obligation to provide a User, on request, with all information reasonably requested:

(a) as to the cause of the curtailment; and

(b) to demonstrate that Epic did not curtail supplies of gas to a greater extent than was necessary.

22.3.2 Only if Users are provided with this information can they assess whether Epic is properly exercising its discretion in respect of curtailments and properly operating the Pipeline System.

22.4 The interrelationship between Curtailment and OFO Notices should be clarified.

22.4.1 It appears from the drafting of clauses 24 and 25 that:

(a) OFO Notices are intended to be issued to control the actions of defaulting Users, where those actions threaten the delivery of gas to Other Users;

(b) Curtailment Notices are intended to be issued to Users generally where, for any reason, insufficient supplies of haulage services are available to meet demand.

22.4.2 Where, due to the actions of a User ("**Defaulting User**"), Epic may be unable to deliver gas to all Users, then Epic should be obliged to issue an OFO Notice to that Defaulting User before Epic issues any Curtailment Notice. Only if the OFO Notice will not be sufficient to remedy the problem created by the Defaulting User should Epic be entitled to issue a Curtailment Notice.

22.5 Time to comply of 1 hour is insufficient in many cases (Clauses 24.3 & 24.5).

22.5.1 Clause 24.3(a) allows a User only one hour to comply with a notice. This period will often be too short, particularly in the case of a serious curtailment. In the case of a User with a large number of customers, it is simply impossible for that User to notify all those customers within one hour that they must cease taking delivery of gas.

22.5.2 Clause 24.5 enables the Service Provider to require that a User cease receipts or deliveries of gas immediately. This is impossible.

22.5.3 Further there are certain types of customers who are not able to stop taking delivery of gas within such a short time as one hour without substantial damage being caused to their own plant. For example, a glass manufacturing plant where molten glass could solidify within the plant and could only be removed at great cost if the gas supply was cut off immediately.

22.5.4 To be consistent with the reality of how the gas market functions, Clause 24.3(a) should provide that a User must, as soon as reasonably practicable after receipt of a Curtailment Notice, commence the steps necessary to comply with that notice and must use all reasonable endeavours to comply with that notice. Provided that a User has done all that is reasonably practicable to comply with the notice, the User should not be penalised if, due to the practicalities of the gas market, it cannot strictly comply with the notice.

22.5.5 Consistent with the above, paragraphs 24.3(b), 24.4, 25.5 and 25.6 should only apply where a User is not taking all steps reasonably practicable to comply with a Curtailment Notice.

22.5.6 The comments above apply equally in the case of OFO Notices

23 Operational Flow Orders

23.1 Any Default Charges collected by Epic under Clauses 24 and 25 should not be retained by Epic (Clause 25.5).

23.1.1 If they are retained by Epic, then it will have an incentive to issue Curtailment Notices and OFO Notices as a revenue raising mechanism.

23.1.2 The principal parties who will be affected where a User fails to comply with a Curtailment Notice or an OFO Notice are Other Users. It is these Other Users who may not receive their gas entitlements, thereby suffering a loss of revenue due to lost sales and potentially incurring liability to their customers. They should be the parties who receive the benefit of the Default Charge.

23.1.3 All Default Charges collected for a month should be pro-rated amongst Users, excluding those Users who have been required to pay a Default Charge for the relevant month.

23.1.4 Further, to the extent that a User cannot comply with a Curtailment Notice or an OFO Notice due to the actions of Epic, the User should not be required to pay a Default Charge.

23.2 The indemnity in Clause 25.6 should be limited as follows:

23.2.1 the indemnity should not apply to any loss which the Service Provider would not have suffered had it used reasonable endeavours to mitigate its loss and acted as a reasonable and prudent pipeline operator;

23.2.2 if the Default Charge is paid to the Service Provider (as opposed to pro-rated amongst Users) then the amount payable by the User under the indemnity should be reduced by the quantum of the Default Charges paid by the User to the Service Provider;

23.2.3 the indemnity should not apply where an OFO Notice was issued in circumstances where Clause 25 did not allow the issue of the notice;

23.2.4 the indemnity should not apply to the extent that the User's inability to comply with an OFO Notice was caused by the act or omission of the Service Provider;

23.2.5 the indemnity should not extend to loss of profits suffered by the Service Provider (since the Service Provider is not in any circumstances liable for loss of profits suffered by the User); and

23.2.6 paragraph (a) of the indemnity (providing that a User is required to indemnify the Service Provider in respect of any loss suffered by the Service Provider as a result of the issue of an OFO Notice) should be deleted. As it is the Service Provider which determines the content of an OFO Notice, the User should not be liable for complying with the notice. A User has no control over what is in an OFO Notice. Further if a User complies with an OFO Notice, what can be the Service Provider's complaint? A User should only be liable for the original breach which led to the necessity to issue the OFO Notice and not for complying with the notice.

24 Trading Policy (Clause 26).

24.1 Clause 26.6(a)(vi) should be deleted.

24.1.1 Clause 26.6(a)(vi) requires a User to notify the Service Provider why it wishes to transfer Capacity from one Delivery Point to another. This information is unnecessary and will be commercially confidential to the User (since it will relate to the User's trading strategies).

24.2 Origin Energy agrees with the Commission's Proposed Amendment A3.3 but suggests that the following matters should also be made clear:

24.2.1 that the User ("surrendering User") who has lost a customer to another User or Prospective User ("acquiring User") has an absolute right to surrender the Capacity represented by that customer to Epic;

24.2.2 that upon the surrender of that Capacity, the surrendering User will have no further obligation to pay any charges in respect of that Capacity; and

24.2.3 the acquiring User has an absolute right (without any obligation to queue) to acquire the surrendered Capacity from Epic.

24.2.4 Notwithstanding the above, Origin Energy is concerned that aggregation efficiencies will and should impact on the quantity of any surrendered Capacity, thus making the quantity to be surrendered unclear and subject to dispute.

25 Electronic Bulletin Board (Clause 27).

25.1 Changes to the EBB should only be made with the consent of all current Users of the Pipeline System.

25.1.1 Clause 27 enables the Service Provider to make various amendments related to the EBB at the Service Provider's absolute discretion (for example amendments to the format of the Schedule 5 forms and developing and amending the EBB rules). Such a wide discretion is inappropriate as the amendments could be of commercial detriment to one or more Users

25.2 Epic to retain records for 7 years and make available to Users upon request.

25.2.1 Clause 27.4(b) provides that records relating to the EBB are to be retained for 2 years. Records should be retained for 7 years. If a User wishes to bring a court action against the Service Provider for breach of the Access Arrangement, the User has six years from the time of the relevant breach to bring that action. Records which may be relevant to any such court action should not be destroyed until the time for bringing the action has clearly expired.

25.2.2 Clause 27.4(c) provides that the Service Provider does not have to provide to a User any back-up data (previously stored on the EBB) *"which is, or which the Service Provider considers to be, confidential or commercially sensitive*." The Service Provider may use these words as a basis for refusing to disclose to a User information unfavourable to the Service Provider. Clause 27.4(c) should provide that a User is entitled to access any information relating to the User but is not entitled to access any confidential data relating to an Other User.

25.2.3 In respect of the EBB Public Data Charge and the EBB Proprietary Data Charge, Origin Energy considers it unreasonable that a User must pay a charge for inspecting this data. Generally in agreements of this nature, parties are entitled to inspect the books and records of the other, relating to the agreement, free of charge. Provision of electronic copies of such data is inexpensive and charges are inappropriate.

26 Receipt and Delivery Points (Clause 28).

26.1 Meters should not be treated by Epic as if they were Epic's property. (Clauses 28.1 and 28.2).

26.1.1 It will not always be possible for a User to make equipment at a Receipt Point or Delivery Point, which is not owned by the Service Provider, available to the Service Provider in the manner contemplated by Clauses 28.1(a)(ii) and 28.2(a)(ii). The equipment may be operated by Producers, the operator of an interconnected pipeline or of a distribution system, each of whom will also wish to operate and maintain the equipment

26.1.2 To better reflect operational practice, Clauses 28.1(a) and 28.2(a) should be replaced with the following requirements:

(a) the User must use its reasonable endeavours to provide such access to equipment at a Receipt Point or Delivery Point as is reasonably required by the Service Provider to ensure that it is able to provide the Services and operate the Pipeline System in a reasonable and prudent manner;

(b) to the extent that it is reasonably able, the User must allow the Service Provider to operate equipment at a Receipt Point or Delivery Point. Where the Service Provider does so operate the equipment it must do so in accordance with accepted pipeline practice;

(c) to the extent that a person other than the User or the Service Provider operates equipment at a Receipt Point or Delivery Point, the User must use its reasonable endeavours to ensure that person operates the equipment in accordance with accepted pipeline practice; and

(d) any reference to making equipment available to the Service Provider as if it were its property should be deleted. The words "as if it were its property" are ambiguous. Does making a Receipt/Delivery Point available to the Service Provider as if it were the Service Provider's property mean that the Service Provider has no liability for any damage that it causes to the relevant point (since a person cannot be liable to itself for damaging its own property)? Does it mean that the Service Provider can charge or encumber the equipment comprising the Receipt or Delivery Point?

27 Receipt Point and Delivery Points (Schedule 8).

27.1 The requirements in Schedule 8 should only apply to substantial new Receipt and Delivery Points

27.1.1 Origin Energy's understanding is that existing Receipt and Delivery Points may not conform to the requirements in schedule 8. Since Users do not own existing equipment or have any contractual rights to ensure that existing equipment is brought into line with the standards in Schedule 8, they will be unable to comply with the requirements of Clause 28.

27.1.2 Small delivery points (often called Farm taps) should not be required to comply with schedule 8.

27.1.3 Users should not be under an obligation to provide equipment at existing Delivery and Receipts Points additional to that required to satisfy the current standards of equipment at those points. If Epic wishes to increase the standards of equipment at existing Receipt and Delivery Points, then it should negotiate this matter with the owner of the relevant adjoining infrastructure at those points.

27.1.4 Further, Schedule 8 (and Clauses 28.1 and 28.2) gives the Service Provider a complete discretion to determine the specifications that equipment at Receipt and Delivery Points must meet. For example, paragraph 1 of that Schedule provides that measuring equipment "*must comply with the specifications and other technical requirements published from time to time by the Service Provider*." At the very least, there should be an overriding requirement that:

(a) the Service Provider must reasonably exercise its discretion to determine the technical specifications for Receipt and Delivery Point equipment; and

(b) at no time can the Service Provider impose requirements in respect of Receipt and Delivery Point equipment which exceed what is necessary to comply with accepted pipeline practice.

27.1.5 The prescriptive requirements set out in, and the absolute discretions given to the Service Provider by, Schedule 8 should be replaced by a requirement that any equipment installed at Receipt and Delivery Points must be of such standard as:

(a) is reasonably required to allow the Service Provider to provide the Services; and

(b) complies with accepted pipeline practice.

28 Payment (Clause 32).

28.1 Origin Energy agrees with the Commission's Proposed Amendment A3.23.

29 Force Majeure (Clause 34).

29.1 Parties should not have to act in an unreasonable manner to avoid Force Majeure events.

29.1.1 The reference in Clause 34.1 to "control" should read "reasonable control".

29.2 It is unclear why the events listed in Clause 34.1(b) (apart from "lack of funds") have been excluded from the definition of "Force Majeure".

29.2.1 More specifically:

(a) the phrase "commercial failure" is ambiguous. It does not seem to have any readily identifiable meaning;

(b) it is unclear why, in a gas transportation contract, "failure of water supply" is excluded from the definition of Force Majeure;

(c) it is extremely unusual for "strikes or industrial disputes" to be excluded from the definition of Force Majeure. They are classic Force Majeure events (particularly strikes and industrial disputes involving employees of persons who are not parties to the agreement).

29.3 Any event that is beyond the reasonable control of a party should be a Force Majeure Event.

29.3.1 There seems no commercial logic or fairness in a party being made liable for events that it cannot control. Clause 34.2(b) (apart from the reference to "lack of funds") should be deleted.

30 Liability and Indemnity (Clause 35).

30.1 Clause 35.3 should be amended to provide that no Capacity Charge is payable in respect of a day on which Epic has failed to provide FT Service due to its breach of contract or negligence.

30.1.1 The final sentence in Clause 35.3 provides "*this Clause 35.3 does not remove or reduce the User's obligation to pay the Capacity Charge in respect of the Gas Shortfall*." That is, where Epic defaults and fails to provide the User with its gas entitlements, the User must still pay the Capacity Charge. This is inequitable. There is no credible commercial justification for a party being required to continue to pay a Capacity Charge

to Epic where it does not receive services due to Epic's breach of contract or negligence.

30.2 Clause 35 should be amended to provide that clause 35.1 applies to limit User's liability and clause 35.2 applies to limit the Service Provider's liability.

30.2.1 If clause 35.1 were construed as applying to the Service Provider, then the Commission's Proposed Amendment A3.25 would not be effective (since under clause 35.1 the maximum liability of the Service Provider would be a User's direct losses).

30.3 The various indemnities in the Access Arrangement from Users to Epic should not extend to:

(a) loss incurred by Epic due to Epic's negligence or default;

(b) loss which Epic would not have incurred had it used reasonable endeavours to mitigate its loss;

(c) loss which Epic would not have suffered had it acted as a reasonable and prudent pipeline operator;

(d) loss of profits suffered by Epic. The effect of the definition of "Direct Losses" in the Access Arrangement is that Epic is not liable for any loss of profits suffered by a User. If Epic is not liable for loss of profits suffered by Users, then Users should not be liable for loss of profit suffered by Epic. There is no justification in the Access Arrangement as to why there should be a disparity between Epic's liability to Users and User's liability to Epic. Further it is more efficient for Epic to insure against its own loss of profits than for a User to be required to take out insurance protecting it from liability it may incur to Epic for loss of profits. Users, unlike Epic, will not be in a position to make an informed assessment of the loss of profits which Epic will suffer if the User breaches the Access Arrangement. Epic is the only party in a position to accurately assess this matter and to take out appropriate levels of insurance against this risk; and

(e) circumstances where Epic has purported to take action pursuant to the Access Arrangement (for example to vent off-specification gas or to correct an imbalance) where the Access Arrangement did not in fact permit Epic to take such action.

30.4 Epic should not be relieved of liability under the Access Arrangement where it has acted negligently

30.4.1 In various places the Access Arrangement provides that Epic may take certain actions if a User is in breach of the Access Arrangement or has failed to comply with a requirement of Epic. The Access Arrangement also provides that Epic incurs no liability where it takes these actions. For example, clause 15.3(b)(iv) (dealing with the supply of Non-Specification Gas) and clause 19.4 (dealing with actions taken by Epic to correct an Excess Imbalance).

30.4.2 These broad exclusions of liability are inappropriate. Epic should not be relieved of liability under the Access Arrangement where it has acted negligently. If Epic is relieved of liability for its negligence, then the effect of clauses such as 15.3(b)(iv) and 19.4 is that Epic will be entitled to carry

out any action which it desires, no matter how negligently that action is carried out.

31 Default and Termination

31.1 Clause 36 needs to be adjusted to provide more balance.

31.1.1 In respect of clause 36.1(b), where an Event of Default is not capable of being remedied but the User nevertheless compensates the Service Provider to the extent required by the Access Arrangement, then the Event of Default should be deemed to have been cured (with the result that Epic cannot terminate the Agreement).

31.1.2 Clause 36.1(c) should not apply to amounts which remain unpaid solely because they are subject to a genuine unresolved dispute.

31.1.3 Clause 36.4 should include a sub-paragraph corresponding to clause 36.1(c). There are circumstances in which the Service Provider is required to pay amounts to the User under the Access Arrangement (eg where it has to pay damages or reimburse the User where the User has overpaid an amount).

31.1.4 Clause 36.4 should also provide that the User may terminate the Agreement if the Service Provider is subject to an insolvency event and thereby not providing Services. The User should not be obliged to continue to pay amounts to an insolvent Service Provider who is not providing Services.

31.1.5 Clause 36.4 should give the User the option of either suspending payment of Charges until the Service Provider remedies the default or of terminating the Agreement. Merely having the power to terminate is an insufficient remedy for a User, since if the User terminates the Agreement, it loses its rights to Capacity.

31.1.6 In short, clause 36.1 and 36.2 give the Service Provider greater rights where the User defaults than the rights the User has when the Service Provider defaults. This imbalance should be corrected.

32 Dispute Resolution (Clause 37).

32.1 Origin Energy agrees with the Commission's Proposed Amendment A3.26 as it relates to Clause 37.1(d) and to the definition of Technical Matter.

32.1.1 Further, Origin Energy suggests that the following also be defined as "Technical Matters":

(a) whether Epic has minimised its requirements for System Use Gas;

(b) whether Epic has maximised the Capacity of the Pipeline System; and

(c) whether Epic was responsible for the existence of an Imbalance or a Zone Variation.

32.2 The parties should not be denied access to appeal to a court if an expert makes a decision without a proper basis.

32.2.1 Clause 37.2(h) provides that the determination of the Independent Expert will be "*final and binding upon the Parties*". This is inappropriate. The Clause should provide that the determination of the Independent Expert is final except in the case of bias or manifest error of fact or law.

33 Assignment (Clause 38)

33.1 The Assignment provisions need modification.

33.1.1 Clause 38.1(a) allows the Service Provider to assign part of its rights under an Agreement. Practically this does not work. The Access Arrangement contemplates one Service Provider will provide Specified Services, not multiple Service Providers. There are no "parts" to the Access Arrangement which can be broken up and assigned to separate Service Providers. Consequently the Service Provider should only be able to assign the whole of its rights under an Agreement.

33.1.2 Clause 38.1(a) allows the Service Provider to assign its rights under an Agreement to anyone with an interest in the Pipeline System. Legally "interest" has a wide meaning and would extend, for example, to a financial institution with a charge over the Moomba-Adelaide Pipeline. Consequently the use of the word interest is inappropriate.

33.1.3 The Service Provider should only be entitled to assign its rights under an Agreement without a User's consent where:

(a) the assignee is the owner of the Moomba-Adelaide Pipeline; and

(b) the assignee is the holder of a licence under the *Petroleum Act 1940 (SA)* allowing it to operate the Moomba-Adelaide Pipeline; and

(c) the assignee is reputable and solvent and has the technical and financial expertise to perform its obligations under the Access Arrangement.

Unless Epic intends to assign the Access Arrangement to persons who are not reputable and solvent, there is no basis for Epic to object to paragraph (c).

33.1.4 Clause 38.2(a) should provide that Epic cannot withhold its consent to an assignment where the proposed assignee is reputable and solvent and has the technical and financial expertise to perform the assigned obligations. Further consent should not be unreasonably withheld or delayed.

34 Access to Information (Clause 40).

34.1 Clause 40.1 should be amended to provide that nothing in that Clause relieves the Service Provider of its obligations under Clause 34.3.

34.1.1 Origin Energy is concerned that Clause 40.1 could be used by the Service Provider as a basis for not providing adequate information to Users concerning the causes of Force Majeure events. Epic may claim that a Force Majeure event has been caused by the acts of its contractors or suppliers and then, relying on Clause 40.1, fail to provide Users with any information concerning that event. This will make it difficult for Users to assess whether Epic's claim of Force Majeure was valid.

34.1.2 In any event, Clause 40.1 should apply to the User in the same manner as it applies to Epic. That is, a User should not be required to provide any information to Epic concerning its contractors or suppliers in any wider circumstances than those in which Epic is required to provide information to the User concerning Epic's contractors or suppliers.

35 Notices (Clause 41).

35.1 As a general principle:

(a) notices which require a User to take immediate action (such as OFO Notices and Curtailment Notices) should, in addition to being put on the EBB, be provided by telephone or electronic pager;

(b) irregular notices which do not require immediate action (such as a request for confirmation from a User that they wish to remain in the queue or notification of a change in the Service Provider's address for service of notices) should be given in writing.

36 Epic's proposed GST Clause & Impost Clause (Commission Draft Determination Annexure 3).

36.1 Tax invoices should be issued at the same time as invoices are issued to a User. This is in line with current commercial practices, since invoices are generally drafted so as to be tax invoices.