

Ms Kanwaljit Kaur
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Australian Competition and Consumer Commission
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Dear Ms Kaur

Submission about Draft Decision on Access Arrangement for Ballera to Wallumbilla Gas Pipeline

I refer to your invitation for submissions in relation to the Draft Decision issued by the Australian Competition and Consumer Commission (“the Commission”) on the access arrangement submitted by Epic Energy Pty Ltd for the Ballera to Wallumbilla gas pipeline and in response thereto, make this submission regarding proposed Amendment A3.10 of the Draft Decision.

The proposed amendment requires Epic Energy to include in the access arrangement a list of major events that will trigger a review of the non-tariff elements of the access arrangement. The Commission quotes section 3.17 of the National Third Party Access Code for Natural Gas Pipeline Systems (“the National Gas Access Code”) as the section giving effect to the Commission’s directive. This proposed amendment gives rise to concerns similar to those expressed by the Treasurer of Queensland in relation to the Commission’s draft decision about the access arrangement for the Duke Energy pipeline. I understand the Commission is seeking legal advice on the matter. In this regard, it is beneficial to provide further explanation regarding this matter.

Queensland Treasury does not agree with the proposed amendment and considers the Commission is acting inappropriately as a result of a wrong interpretation of section 3.17. It is Queensland Treasury’s view that the existing derogation for the Ballera to Wallumbilla gas pipeline renders the provisions of section 3.17 inoperative. In any case, if major events could be included under subsection (ii) of this section, they must be strictly related to the tariff

objectives of section 8.1 of the National Gas Access Code and must not address any other matter.

It is Queensland Treasury's view that section 3.17 (Review and Expiry of the Access Arrangement) of the National Gas Access Code deals only with the approval of the revision dates when the relevant regulator is approving an Access Arrangement. Because of the derogation, these dates are not approved by the Commission and therefore the Commission is not able to take action under this section. The second part of section 3.17 makes this point clear where it states "*In approving the Revisions Submissions Date and the Revisions Commencement Date...*".

Thus, the Commission may only make a decision requiring the matters in subsections (i) and (ii) when it is in the process of "approving" the Revisions Submission Date and the Revisions Commencement Date. As the Commission is not in the process of "approving" the dates, it may not require any of the matters in subsections (i) and (ii).

In addition to the above, a further aspect of section 3.17 which indicates the ACCC is not able to act under the section, in this case, is the obligation on the Relevant Regulator to "*have regard to the objectives in section 8.1*" when approving the Revisions Submission Date and the Revisions Commencement Date.

Section 8.1 (General principles of reference tariffs and reference tariff policy) sets out the objectives which are to be met in designing reference tariffs and reference tariff policies. It can be argued that, except for the revision dates, section 3.17 does not deal with anything but tariff related matters. It is Queensland Treasury's contention that, having derogated the reference tariff and the reference tariff policy for the access arrangement, the objectives of section 8.1 have no relevance to the access arrangement. In this instance and in the context of section 3.17, the objectives set out in section 8.1 are not a functional part of the National Gas Access Code because of the derogation for the pipeline.

Since section 3.17 can only function after having regard to the objectives of section 8.1, the non-application of section 8.1 to the current situation further strengthens the position that section 3.17 is not able to be applied in this case.

In summary, the Revisions Submission Date and the Revisions Commencement Date for the access arrangement do not rely on section 3.17 to give them effect. They have been determined by the derogation. Further, the option to require the matters in sections 3.17(i) and 3.17(ii) can only be exercised after having had regard to the objectives in section 8.1, but if those objectives cannot be considered because they are made redundant because of the derogation, then a decision on the requirements in subsections (i) and (ii) cannot be made.

Queensland Treasury, therefore, considers it inappropriate for the Commission to require Proposed Amendment A3.10 to the access arrangement based on section 3.17 of the National Gas Access Code.

If the situation was such that section 8.1 did apply to some degree, then the central focal point for making any decision or requiring any matter under section 3.17 is the phrase “*must have regard to the objectives in section 8.1*”. A decision under section 3.17 must have relevance to the objectives of section 8.1 and any requirement under subsections (i) or (ii) must also have relevance to the objectives of section 8.1 – that is, the decision and the requirement must have clear reference tariff and reference tariff policy objectives.

A further point that Queensland Treasury raises for consideration relates to the specific major events which the Commission states should be included in the access arrangement as triggers for a review of the non-tariff elements, namely, the interconnection of another pipeline with the Ballera to Wallumbilla pipeline and the introduction of a significant new gas supply source to one of the pipeline’s markets.

The prospect of additional new gas supplies into the Ballera to Wallumbilla pipeline’s market would raise the question of whether lesser regulatory requirements and revocation of coverage would be appropriate. This potential outcome would need to be considered in view of the recent decision by the Australian Competition Tribunal in relation to the Eastern Gas Pipeline (EGP). In this decision, the Tribunal considered National Gas Access Code coverage of the EGP was not necessary given the level of competition the owners faced from alternative gas supplies and pipelines.

In conclusion, Queensland Treasury is unable to support Proposed Amendment A3.10 on the basis that section 3.17 does not empower the ACCC to require a list of major events to be included in the access arrangement that would trigger a review of the non-tariff elements of the access arrangement.

Should you wish to discuss this matter further, please contact Mr Garnet Shirra of Queensland Treasury by telephone on (07) 3235 4166 or facsimile (07) 3237 1227.

Yours sincerely

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Office of Energy