

Our Ref: L107/06.021/JWM;jm

18 September 2000

Mr Warwick Anderson
Director Mergers & Asset Sales
Australian Competition & Consumer Commission
PO Box 1199
DIXON ACT 2602

Dear Sir

Epic Access Arrangement on the Moomba to Adelaide Pipeline System (MAPS)

We refer to your draft decision on the above dated 16 August 2000 and comment as follows:

1. Market Competitiveness

It appears that improvements in the Access Arrangement to enable new users to access the pipeline and existing users to access expanded capacity are being resisted by Epic. The purpose of regulation is to make access competitive and affordable with all users and prospective users requiring the services of MAPS being treated equitably. This is not the case under the access arrangements offered by Epic and the draft decision from the Commission.

All capacity of the MAPS was contracted to Terra Gas Trader (TGT) and Origin before the time of regulation and this, as pointed out in our submission of 15 October 1999, has the effect of preventing any firm capacity being offered until 1 January 2006. Our analysis of the effect of these actions, as set out under number 1 of our abovementioned submission, stands.

2. Capacity Expansion

Santos supports the amendments to the Expansion Policy required by the Commission with the following exceptions:

- ?? The queue should be cleared at least every three months, particularly in this first access period to 31 December 2005. Where no new facilities are required (clauses 10.4(b) and (c)) such requests should not be delayed for more than three months before being responded to. Where new facilities are required (clause 10.4(e) and following) we await a response from Epic as required in the fifth point of Amendment 3.34.
- ?? In the fifth dot point of Proposed Amendment 3.31, the Commission has suggested that the order of receipt of firm (FT) requests will determine allocation of spare capacity and capacity enhancements from different construction projects. Santos disagrees that the first in the queue is allocated capacity first and recommends that there should be equal treatment within a queuing period.
- ?? Clause 10.4(L)(ii) of the Access Arrangement indicates that new users will get no credit for the present value of mainline capacity charges if the new facilities are a new delivery point or a new lateral. This is inequitable as the new users should share in such credits as they have, in effect, created them, and such new facilities should be treated in the same way as other facilities (see EAPL arrangement 16.4).
- ?? In calculating the present value of future revenue, the timing of the revenue is not stated. Santos recommends that discounting of revenue should be based at mid year to make it consistent with cash flow receipts. This protocol should be included in the access arrangement. The toll stream should be in nominal, not real dollars, to be consistent with the nominal WACC.
- This treatment will increase the credit given to a new user for toll receipts and therefore lower their capital contribution. The aim of the National Code is to provide competitive access to pipelines covered by it . The amendments proposed by the Commission in Amendment 3.34 bring the Access Arrangements closer to such an aim.
- ?? Santos refers to its submission dated 15 October 1999 and reiterates its comments on the difficulty and risk of building new capacity. The amendments offer no comfort to prospective users of expanded capacity. The risk of late delivery of new facilities will be borne by new users; the original costs offered by Epic may not be the most competitive; and the risk of an increased final cost will be borne by the new users with no risk to Epic. These are all in addition to the commercial risks of the relevant project. The control of the timing of contributions by Epic is unacceptable. If the capital contribution is required by Epic to be paid prior to commencement of construction, the new users have to bear substantial opportunity cost of that capital. A prospective user may prefer staged payment.
- ?? Santos supports the Commission in its requirement contained in the first dot point under Proposed Amendment 3.31. It is imperative that on 1 January 2006 all users of the pipeline be placed in the same queue and have an equal opportunity to access capacity. To allow the current duopoly to continue when it is patently anti-competitive would be unconscionable

and contrary to the National Code. Santos supports the balance of the amendments contained in the proposed Amendments 3.31 and 3.32.

3. Trigger Mechanism

Santos supports the Commission's suggestion that part of the required trigger mechanism for revision of the access arrangement during the first access period to 31 December 2005, should be the possibility of a new supply of gas being piped into South Australia. Santos refers to its submission of 15 October 1999 where it pointed to the difficulty of obtaining capacity in the secondary market from TGT and Origin (see below). Santos assumes that TGT and Origin have significant reservation charges or haulage contracts with Epic. If a new pipeline were to enter South Australia, TGT and Origin may lose customers and have spare pipeline capacity available. There should be provision in any amended access arrangement for that capacity to be available to the market at reasonable rates to prevent the hoarding thereof.

4. The 1995 and 1998 Agreements with TGT and Origin

Santos emphasises its comments above with regard to the dangers of extending the contracts of TGT and Origin beyond 1 January 2006 without entering the queue with other prospective users. It also refers to its comments on the queuing policy. In addition to these expressions of concern it would be unacceptable for any exclusivity rights contained in the 1995 and 1998 agreements made after 30 March 1995 which persisted in the access arrangement. It is difficult to take this matter further as the current agreements are confidential. The comments of the Commission on page 120 of the draft decision are noted. More specifically, Santos notes that the Commission will not pursue the matter in this access period unless a significant event were to occur, such as a new pipeline system entering the State. We refer the Commission to Santos' comments on page 2 under 2.1 of the submission dated 15 October 1999.

5. Dispute Resolution and Independent Experts Clause 37

This clause is unstructured if the two senior managers referred to in clause 37.1(a) have failed to resolve the dispute. If this occurs the process should be as follows:

- (1) compulsory arbitration for all parties. Santos notes that clause 37 describes the presiding officer as an Independent Expert but gives that person the power to request materials not provided to him/or her by the parties (37.2(d)(iii)); the power to independently inform himself or herself as to the facts of the dispute (37.2(g)); and broad powers to make a determination to resolve a dispute (37.2(h)). These powers are more in the nature of arbitration and should be so named.
- (2) the provisions for choosing the arbitrator are inadequate and should include a requirement that he or she is fitted for the position by qualification and experience of the matters to be decided. The description "suitably qualified" (clause 37.2(b)) is not sufficiently definitive.
- (3) the time limits in clause 37 should include a reasonable time (say 60 days) within which the arbitrator must come to a decision, failing which the parties should be able to replace him.

(4) the balance of the provisions of clause 37 are acceptable.

6. Proposed National Gas Specification

It is of great concern to Santos that Epic will not be obliged to accept the National Gas Specification if it is introduced in Australia. The Gas Act 1997 (South Australia) has been amended in 2000 to enable the Minister to require Epic and others to accept off specification gas (eg CO₂ level equal to or in excess of 3%) in emergency situations. The South Australian Government has therefore clearly determined, after taking extensive advice, that National Gas Specification gas can be transported through MAPS without harm to MAPS and should be so transported. For the Access Arrangement to specify anything less would be entirely inappropriate.

7. Pipeline Throughput

On page 81 of the Commission's decision, it is noted that Epic calculated its tariff using 1998 throughput even though they forecast market growth of 4% by 2003. Santos notes that actual growth in throughput in 1999 was 6% with growth forecast to be 6-7% in 2000. The Commission indicated on P69 that it had throughput figures for 1999 which confirmed the 6% growth. Santos estimates pipeline input quantities for 2000 to be 92 PJ against a forecast of 79 PJ by Epic. Greater actual throughput than has been used in the tariff calculations would have the effect of reducing revenue and returns. The Commission is requested to explain why larger throughput has not been taken into account in tariff calculations

8. Incentive Mechanism

The incentive mechanism appears to be aimed at increasing the availability of interruptible (IT) capacity by establishing an arrangement between Epic and the existing shippers. It enables utilisation of interruptible capacity in MAPS and shares increased toll revenue between existing users and EPIC. This appears to comply with the Code. However, it is likely to be of little value during this access period as the existing shippers would obtain a higher return by contracting directly with a new user rather than taking a share of the revenue through Epic.

Santos believes that this proposal has missed the point of the incentive concept; the pipeline owner should be able to contract unutilised capacity, including that capacity unused by existing firm users. There should not be a need to deal with an existing shipper, on whom there are no access regulations and who might withhold capacity for monopolistic reasons. This is also applicable to access periods subsequent to the current period.

The purpose of the incentive mechanism is to achieve an equitable balance between rewarding the pipeline owner for facilitating additional flow or reducing costs, providing reasonable tariffs to a new user, and lowering the cost of gas transport to existing consumers.

9. Optimised Replacement Cost

Santos notes the exclusion of provision for native title costs from the calculation. Costs such as these should be included in notional costs of replacement facilities. It is concerning that there appears to be selective inclusion of certain

costs. All costs that would be incurred in the replacement facilities should be included.

Santos looks forward to the outstanding items from Epic, an opportunity to comment on those items when provided and to further comment from the Commission.

Yours faithfully

J.H. Anderson

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