

South Australian Office of Energy Policy

SUBMISSION TO THE ACCC RE. CR99/53 AND GR9902 ACCC Disclosure of Confidential Information – “Moomba to Adelaide Pipeline System – proposed access arrangement”.

This submission addresses the following issue emanating from the ACCC “Disclosure of Confidential Information”;

- Does this “Disclosure of Confidential Information” provide sufficient information to meet Code requirements as to disclosure of reasons for decision;

as well as other issues arising from the ACCC draft decision on the – “Moomba to Adelaide Pipeline System – proposed access arrangement”;

- The use of a trigger mechanism and its impact on regulatory uncertainty;
- Provision for the inclusion of a backhaul reference tariff in the Access Arrangement;
- Means to ensure capacity released is re-allocated;
- Amount of firm capacity that is available;

1. Whether information provided by the ACCC “Disclosure of Confidential Information” is adequate to meet Code requirements as to disclosure of reasons for decision.

The ACCC has released a document *Disclosure of Confidential Information* which it states sets out the material specified in the section 42 notices which it issued to Epic Energy, Origin and Terra Gas Trader (TGT) (the parties to the notices) on 28 September 2000, and which it wished to disclose. This disclosure follows expiry of the review period in section 43 of Schedule 1 after the parties to the notices did not seek a review

The decisive question is not whether documents are confidential, but whether reasons for decision have been fully disclosed.

The ACCC has not explicitly stated that the reasons for its decision have now been fully disclosed.

Furthermore, the status of the above-mentioned document is also not clear. It is not clear whether it is simply a discussion paper of the type that a Relevant Regulator may at any time prepare and release for public comment under section 2.1 of the Code, or an amendment to its draft decision. Even if it were accepted that the ACCC’s reasons for decision for matters discussed in Confidential Annexure 4 to its Draft Decision are now contained in the above-mentioned document, the ACCC should state explicitly that the above-mentioned document is a part of its draft decision (i.e. an appendix to its draft decision).

The ACCC should clearly identify all documents that contain any part of the reasons for decision as a part of the draft decision.

It appears that the ACCC has attempted to discuss issues arising from the haulage agreement, and to outline reasons for its decision, without disclosing the actual wording of the clauses. In effect it has attempted to balance the need to respect the commercial confidentiality of certain contractual provisions, while at the same time satisfying the requirements of the Code to disclose the reasons for its decisions.

This, however, leads to the question whether sufficient detail has been disclosed about the subject matter of the decision to enable meaningful submissions to be made. This is particularly relevant to the discussion of whether certain clauses of the Haulage Agreement constitute or contain exclusivity Rights. The ACCC has not disclosed the actual wording of the clauses in question. Instead it has provided an outline of what it considers the effect of the clauses to be. By doing this, however, it is not possible for persons making submissions to argue for interpretations of the clauses in question other than those suggested by the ACCC. In effect, it is still not possible to make an informed submission on the issue. The issue is also one of central importance to the Access Arrangement.

It appears, on balance, that the release of the ACCC document has not wholly overcome barriers to the making of an informed submission. There is a clear conflict between the confidentiality of certain information on the one hand, and the provision of sufficient information to enable an informed submission to be made, and for reasons for decision to be made openly, on the other.

2. Ability To Review The Access Arrangement Subject To An External Trigger: Increasing Regulatory Uncertainty.

The ACCC's draft decision is foreshadowing a mandatory section 3.17 trigger in the AA, if for example, the South Australian Government's recent RFS for a new pipeline actually led to the construction of such a pipeline in the time of the AA.

Such a trigger would increase:

- (a) deter future investors in new pipelines in SA through creating uncertainty about projected incomes from new investments, and
- (b) possibly deter future augmentation to the existing MAPS.

As noted in an earlier submission from the South Australian Government it is of the view that in immature markets such as exist in SA, especially where insufficient pipeline capacity currently exists to serve the requirements of the SA market, both for direct gas users and power generators, **that arbitrary ill defined triggers such as those proposed by the ACCC are detrimental to investor confidence, and potentially detrimental to end users in SA in that the security of energy supply is threatened.**

The trigger for early review is normally when there is a material change in circumstance and is at the Service Provider's request (as allowed for by

the Code). The draft decision allows for the ACCC or Epic to call for a review if another pipeline is built. A new transmission pipeline could have two effects on MAPS:

- There could be reduced loads due gas suppliers switching to such a pipeline but the existing contracts should prevent the loss of base income during this access period.
- There could be substantially increased income from back haul if a Minerva to Port Pirie via Wasleys pipeline is constructed.

It is particularly important the latter can occur, as there appears to be no specific back haul tariff for Wasleys to Port Pirie.

3. Provision of a reference tariff containing a backhaul service

The SA Government has previously stated in September 2000, that it opposed a trigger mechanism being used, even though an amended Access Arrangement could then include an appropriate backhaul tariff based on the new proposal that would cause such a triggering.

The current tariff appears to be simple postage stamp tariff without regard to the direction of travel of the gas. This implies that a User wanting to transport gas a short distance as backhaul has to pay the same amount as a User transporting gas the full distance from Moomba to Adelaide. Clearly this is not cost reflective, which is one of the Codes pricing principles. This Office is aware of at least one “complaint” regarding the application of a postage stamp tariff for forward haul initially being applied when the service required was less than half the distance of the full pipeline. This has subsequently been subject to negotiation, and this Office has not been further contacted regarding this issue. It should be noted that no formal notice was lodged with the Regulator under the *Natural Gas Pipelines Access Act (1995)* pertaining to this issue.

Both Epic Energy and the previous owner of the South Australian pipelines, Tenneco, had considered backhaul in their service brochures.

Using a trigger mechanism for an Access Arrangement review to create a backhaul tariff will impede future South Australian natural gas supplies from outside this state by increasing regulatory uncertainty.

A cost reflective backhaul tariff available at all appropriate locations needs to be incorporated into the current Access Arrangement. Epic’s response to concerns raised by the South Australian Government in its September 2000 submission regarding the lack of a backhaul tariff was not addressed. These concerns must be addressed before the Access Arrangement is approved. Given the certainty of new supplies being introduced into South Australia and the proposals received by the South Australian Government, a lack of a definitive supply decision cannot be used as a reason for not providing a backhaul tariff.

4. Means Of Allocating Released Capacity: ACCC's proposed amendment A3.4.

The ACCC's proposed amendment A3.4 to include a provision to transfer capacity from one supplier to another, where a customer changes supplier is a modification of clause 15.3 of the existing haulage agreements. The proposed change by the ACCC would require Epic as the service provider to re-allocate capacity between suppliers, where a customer changes supplier and certain other conditions are met.

Epic¹ appear to make three statements concerning the ACCC's proposed amendment A3.4 (surrender of transferred capacity):

- as the provisions in the existing haulage agreements dealing with the surrender of capacity (namely clause 15.13) are not Exclusivity Rights for the purposes of the Code, it would be a breach of the Code to amend its Access Arrangement in a manner inconsistent with the existing contractual rights (ie clause 15.13);
- the Code does not empower the ACCC to require a Service Provider to exercise a discretionary provision in its existing haulage agreements; and
- Epic does not intend to replicate clause 15.13 in future haulage agreements as it would be administratively unworkable.

The impact of the ACCC's proposed amendment A3.4 can be illustrated by 2 examples:

- If a shipper had a certain contracted Annual Maximum Quantity (AMQ), and a large and significant (ie in terms of proportion of AMQ) customer(s) were to be lost, then this particular proportion of AMQ should be made available to other shippers;
- Similarly if a shipper had a certain contracted Annual Maximum Quantity (AMQ), and a small and insignificant (ie in terms of proportion of AMQ) customer(s) were to be lost, then this particular proportion of AMQ may not be easily made available to other shippers as the volume of gas would be within the normal range of variability of Maximum Daily Quantities.

The first example should not require the proposed ACCC amendment A3.4, as a shipper unprepared to release that capacity would in all likelihood be acting contrary to section 13 of Schedule 1 of the *Gas Pipelines Access Act (SA) 1997* which deals with preventing or hindering access. The current haulage contracts permit re-allocation in these circumstances, and the proposed amendment by the ACCC is likely to be unworkable.

¹ Epic Energy, *Response to Draft Decision by ACCC, Part A – Response to Amendment Proposals*, 12/10/2000, p. 18

These ACCC state that any such capacity transfer provision as proposed in amendment A3.4 should be subject to the relevant existing haulage agreements, other than any Exclusivity Rights that arose on or after 30 March 1995. As it is contended that the existing haulage agreements do not contain any such Exclusivity Rights, the proposed amendment A3.4 would serve no purpose, as it would contravene the Code to affect existing contractual rights. Furthermore, it is likely that such a provision would be administratively unworkable in practice. Also as noted above, hindering provisions within the *Gas Pipelines Access Act 1997* should permit the transfer of released capacity in the case of significant customers without the need for the proposed amendment.

On this basis, amendment A3.4 should not be required in the revised Access Arrangement.

5. MAPS System Capacity: Amount of Firm Capacity

Epic has determined the FT capacity to be currently 323TJ/day, which equates with the gas sales capacity of the existing shippers (through their contracts with the Natural Gas Authority of SA).

Epic state that in order to achieve the indicative capacity of the MAPS (currently 393 TJ/day) requires that each of the compressor units operate simultaneously, which cannot be expected to occur 100% of the time. Therefore the indicative capacity cannot be “guaranteed” as firm capacity. This Office supports this particular argument.

However, the stated FT capacity has been consistently delivered to date when required by the existing users (subject to availability of gas from Moomba and any force majeure circumstances with the MAPS). If firm capacity was 323 in September 1996 when indicative was 353², then it follows that if indicative capacity was 393 when AA submitted, the firm capacity should be higher than 323.

² Indicative capacity from page 2, Tenneco Energy Natural Gas Pipeline Access Information Brochure for Moomba to Adelaide Pipeline and Katnook Pipeline.