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Ms Kanwaljit Kaur
General Manager
Regulatory Affairs – Gas
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

Dear Ms Kaur

Moomba – Adelaide Pipeline System ("MAPS") Access Arrangement: Uncontracted Capacity Allocation Policy

1. Introduction

TXU makes the following submission in response to the Australian Competition and Consumer Commission (the "Commission") comments on the "queuing" policy which will apply to the MAPS Access Arrangement, as provided to Mr Len Gill on 1 August 2001 and discussed in a meeting with Peter Fennessy and Michael Sweeney on 6 August 2001.

2. Summary

The Commission has indicated that the "first in first served" queuing policy does not satisfy the requirements of the Code in the particular circumstances of MAPS in South Australia in the 2006 period. TXU fully concurs with this.

TXU considers that the alternative "queuing" policy for MAPS proposed by the Commission is a very positive advance which has the potential to provide benefits both to participants in the South Australian gas market and ultimately to consumers of both gas and electricity in South Australia.

The proposed policy raises some issues which are described below. TXU considers that these issues may be overcome in order to arrive at a satisfactory position.

3. Developable Capacity and Existing Capacity

The Commission's proposal suggests there will be two queues: one for developable capacity and another for existing capacity.

The Commission's proposal sets out a process which will determine how *existing uncontracted capacity* is allocated when there is an excess of bona fide requests. It is correct

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that this is a process and not a "queue". Thus, for *existing uncontracted capacity*, the concept of a "queue" should be dispensed with.

In respect of developable capacity, a "first in first served" queue is suggested by the Commission. However, TXU believes that there is little need to regulate the situation for "developable" capacity.

When there is no available uncontracted existing capacity to meet demand, proponents would need to negotiate with the operator the costs of augmentation and agree the appropriate tariff. No queue would be required as an operator would presumably be prepared to provide required augmentation (within certain building blocks of new capacity) to meet the new demand.

Thus, for *developable capacity*, the concept of a queue can also be dispensed with. Indeed there may be no need to address the concept of "developable capacity" at all in the capacity allocation process.

4. Service Requests

(a) TXU submits that in order for the uncontracted capacity allocation process/policy to operate efficiently and effectively, the access arrangement must require that service requests be made in good faith, reflect a proponent's reasonable commercial requirements and be one to which the proponent is prepared to immediately commit to by entering a contract.

(b) With respect to the Commission's statement in paragraph 3(i) that Epic must allow a "reasonable period" for the submission of requests for service, TXU submits that this period should be expressly stated in the access arrangement. Due to the differing objectives of each of the participants in the process, it can be difficult to determine what length of period is "reasonable". (We suggest 60 days).

5. Process for Reaching Agreement

The following comments relate to the second paragraph in section 3(ii) of the Commission's proposal.

TXU submits that the following two steps should be taken once an access dispute arises, but prior to that dispute being submitted for arbitration:

(a) all of the prospective users and the service provider should be required to negotiate in good faith to attempt to reach agreement in relation to the use of the pipeline; and

(b) the access arrangement should allow for the access dispute to be referred to conciliation (as is the case under the *Natural Gas Pipelines Access Act 1995* (SA)) prior to arbitration being commenced. This ought to be at the parties' option and not compulsory.

6. Matters Which the Arbitrator May Take into Account

TXU agrees with most of the matters which the Commission has proposed the arbitrator may have regard to when arbitrating an access dispute as set out in item 4 of the Commission's proposal.

We note the Commission's point that the arbitrator should have regard to "the feasibility of pro rating demand". It not so much a matter as to whether it is or isn't feasible to pro rate, but rather a consideration of fairness and equity. We suggest therefore that the point be redrafted to require that the arbitrator consider whether in all the circumstances it is equitable to pro rate available uncontracted existing capacity between proponents. In so doing, the arbitrator should give due weight to proponents who have underpinned the development of the pipeline, by previously contracting for capacity.

TXU understands from the ACCC that the concept of pro rating is intended to address what has been termed the "roll in" concept. That is, if pro rating is determined to be equitable in given circumstances, proponents will receive the benefit of a lower tariff for the proportion of existing uncontracted capacity allocated to them, and pay a different tariff for the rest of the capacity that is made available through augmentation.

We also submit that the arbitrator should have regard to matters set out in section 22 of the 1995 Act and that these need to be specified.

In addition, TXU submits that the following should be incorporated as matters to which the arbitrator should have regard:

- The likely implications for future capital expenditure in pipelines as a result of the arbitrator's decision; and
- Whether the access requests are made by end-users of the gas, or by intermediaries who propose to on-sell their gas or their haulage rights.

If you would like to discuss this submission, please do not hesitate to contact Michael Sweeney or Peter Fennessy on (03) 8628 1535.

Yours sincerely,

Len Gill
General Manager Trading