RESPONSE TO ISSUES PAPER

BY THE

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION ("ACCC")

ON

EPIC ENERGY SOUTH AUSTRALIA PTY LTD'S REVISED ACCESS ARRANGEMENT

FOR

MOOMBA TO ADELAIDE PIPELINE SYSTEM (MAPS)

SUBMITTED BY

TERRA GAS TRADER PTY LTD ("TGT")

July 2001

SUBMISSION TO ACCC ON REVISED ACCESS ARRANGEMENT

In this submission Terra Gas Trader (TGT) comments on the following matters:

(1) The four key amendments identified by the ACCC;

(2) Roll-in tariff; and

(3) Part haul and back haul service.

(1) Four key amendments

(i) Queuing policy and extensions/expansions policy (clause 10)

Clause 10.4 (b) should be amended so that New Facilities shall be part of the Covered Pipeline unless the Regulator consents to a request that the New Facilities shall not form part of the Covered Pipeline.

Clause 10 is otherwise acceptable.

(ii) Incentive mechanism (clause 5.3)

The incentive mechanism is acceptable. However, TGT is concerned that the FT Capacity Charge Rate and the IT Commodity Charge Rate are set fairly and logically. TGT addressed this matter in its response to the draft decision, in September 2000.

In summary, if it is assumed that use of IT Services will be minor and therefore the FT Services will provide Epic's allowable Total Revenue it is not appropriate for the IT Commodity Charge Rate to include a capital component. However, it is also inappropriate to assume that the IT Service will not be utilised where System Primary Capacity only accounts for 80% of the existing capacity.

(iii) Extension of term (clause 11.3)

The proposed amendment is acceptable to TGT.

(iv) Liability for fraud or wilful disregard (clause 35.3)

The proposed amendment is acceptable to TGT.

(2) Roll-in Tariff

In Section 4.1 of the Issues Paper, the ACCC express concern re *"multiple tariffs for haulage on the MAPS"*. In TGT's view there is nothing inappropriate about multiple tariffs.

Different tariffs applied or negotiated at different times is in fact the norm, as will be the case post 2005 on the MAPS because of at least two existing contracts for haulage in this period. TGT endorses the views of the Productivity Commission in their recent "Review of the National Access Regime" (at Page xiii) – *"The regime is not intended to replace commercial negotiations between service providers and access seekers. Rather, it seeks to enhance the incentives for negotiation and provide a means of access if negotiations fail"*. Such negotiations are likely to lead to different terms and conditions for different Shippers.

In fact, different tariffs reflecting the different cost of expanding existing pipeline capacity leads to cost transparency and more appropriate pricing signals. A roll in tariff entails a cross subsidy by users, who have already contracted capacity, of subsequent users of the pipeline and violates the principle of the sanctity of contract. The resultant uncertainty in long term MAPS haulage costs would make commercial arrangements involving MAPS haulage very difficult to finalise.

It is also particularly inappropriate to have a roll in tariff on MAPS where incremental expansion of the MAPS is competing against a new greenfields pipeline. In this situation MAPS may have an unfair advantage over the new pipeline if the true cost of incremental capacity was not reflected in the market.

TGT does not support a general provision for rolling in incremental investment in the MAPS to the Capital Base of the pipeline, thereby imposing a uniform tariff for contracted capacity as well as new capacity. Such a provision is inconsistent with a contract based haulage service, leads to uncertainty and clouds market signals.

A shipper that has contracted capacity at the Reference Service tariff or at a negotiated tariff should not be exposed to an increase in its tariff. A subsequent user who requires an incremental investment receives benefits it is not entitled to receive unless that user pays for such incremental investment. In practice, Epic will aggregate and bundle requests for New Facilities and accordingly, such requests will be handled in an appropriate manner.

A roll-in provision is unnecessary in the Access Arrangement for MAPS. Currently, most of the capacity in the MAPS post 2005 is uncontracted. However, access proposals exceeding the capacity of MAPS have been lodged with the Service Provider. An access dispute has arisen and, pursuant to the Natural Gas Pipelines Access Act 1995 (SA), the Regulator has been asked to refer that access dispute to arbitration. It is thus likely that access to the MAPS post 2005 will be resolved by arbitration pursuant to the terms of the SA legislation.

In summary, it is highly likely, and appropriate, that access to MAPS capacity post 2005 will be determined by arbitration pursuant to the SA legislation. In this circumstance, the Access Arrangement for MAPS will arguably be of limited relevance for several access periods except to the extent that the arbitrator has regard to the final determination of the ACCC in relation to the Access Arrangement.

(3) Part haul and back haul service

It is increasingly likely that gas transported through MAPS will be delivered to off-takers prior to Adelaide. It is also very likely that gas will be delivered to Adelaide via a pipeline from Victoria during the first access period. In these circumstances, TGT submits:

(a) The Service Provider should provide a Reference Service for a back haul service pursuant to Section 3.3 (b) of the Code. A distance based haulage service or tariff should also be provided;

(b) Failing the provision of a new Reference Service, the ACCC should require a statement of principles to apply to the calculation of tariffs for back haul service pursuant to section 3.5 of the Code;

(c) At least, the ACCC should require the inclusion in the Access Arrangements of a trigger mechanism for an early review in the event of the construction of a Victorian to Adelaide pipeline or an off-taker, or supplier, seeking part haul.