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# Regulatory issues

## Gas

Over the past two months the Commission has continued to work on various gas matters. The Commission has also been working on some other gas-related projects, including the greenfields guideline, ring fencing and the Loddon Murray gas tender approval request.

Submissions and draft and final decision documents for pipeline access arrangements are available on the Commission's website at <<http://www.accc.gov.au>>.

## Access arrangements

### Moomba to Adelaide pipeline system

On 1 April 1999 Epic Energy submitted to the Commission an access arrangement for the Moomba to Adelaide Pipeline System (MAPS).

The MAPS connects the Cooper Basin production and processing facilities at Moomba to markets for natural gas in Adelaide and in regional centres.

On 12 September 2001 the Commission issued its final decision on the proposal. It is made under the National Third Party Access Code for Natural Gas Pipeline Systems.

The arrangement describes the terms and conditions under which Epic proposes to market its natural gas haulage services on the MAPS, and the maximum price (reference tariff) that customers would be charged for these services for the period to 31 December 2005.

Natural gas hauled on the MAPS is used for electricity generation, other industrial purposes and to meet domestic energy requirements. Consequently, the access arrangement affects a range of residential and commercial energy users. It is therefore important for the access arrangement to adequately balance the interests of pipeline users and Epic.

While the Commission's final decision provides for tariffs to be reduced by about 10 per cent, the revenue stream that the Commission has established

would provide a post-tax return on equity to Epic of 12.6 per cent. Under the gas code, Epic could achieve a return on equity of more than 12.6 per cent through lower-than-forecast operations and maintenance expenditure and the sale of non-reference services. This return is consistent with previous decisions made by the Commission and is a reasonable return when compared with other return benchmarks.

The analysis in the final decision suggests that if the access arrangement were approved in its current form, consumers and industry would face excessive energy charges in years to come. Epic's proposed terms and conditions could potentially make third party access to the MAPS difficult. The combination of these factors could discourage investment and harm the South Australian economy in the absence of the Commission's final decision.

Under the gas code, existing haulage agreements and revenues are preserved as the pipeline is fully contracted. The existing gas haulage contracts expire in 2006 at which time the terms of the access arrangement will form an important input to the negotiation of new gas haulage contracts.

Epic submitted a revised access arrangement and accompanying submissions on 22 January 2002. The revised access arrangement does not incorporate several significant amendments that were required by the Commission's final decision. In its submissions Epic provided responses to some of the amendments contained in the final decision.

The Commission is in the process of considering the revised access arrangement and the submissions made by Epic.

### Roma to Brisbane and Carpentaria gas pipelines

In November 2000 the Commission received proposed access arrangements for approval from:

- the Carpentaria Gas Pipeline Joint Venture (CGPJV) for the Ballera to Mt Isa pipeline, commonly known as the Carpentaria gas pipeline (CGP); and

- APT Petroleum Pipelines Limited for the Wallumbilla to Brisbane pipeline, commonly known as the Roma to Brisbane pipeline (RBP).

The proposed access arrangements were submitted under the National Third Party Access Code for Natural Gas Pipeline Systems (the gas code). An access arrangement describes the terms and conditions, including the price of transportation services (the tariff), on which the service provider transports gas via the pipeline on behalf of third parties. Other elements of an access arrangement include a services policy, queuing policy, trading policy, and extensions and expansions policy.

The CGP transports gas from the fields in Ballera in south-west Queensland to Mount Isa in north-west Queensland. It was constructed in 1998 through a then AGL subsidiary, Roverton Pty Limited, and is now owned by the CGPJV, of which the Australian Pipeline Trust (APT) is a member.

The RBP transports gas from the gas hub at Wallumbilla, near Roma, in south-east Queensland to markets along the pipeline route and to markets in Brisbane. APT Petroleum Pipelines Limited, a subsidiary of the APT, owns and operates the RBP.

Because of the involvement of the APT in both pipelines, the two access arrangements have many similarities.

In the normal course of its assessment of an access arrangement the Commission would be required to review the tariffs proposed by the service provider. This would involve an assessment of the valuation of the pipeline assets, a reasonable rate of return on those assets, the depreciation methodology and operating costs.

In 1998 the Queensland Government, however, passed legislation enabling it to approve the prices of transportation services for the four Queensland gas transmission pipelines. This means the service providers of those pipelines do not need to submit prices to the Commission for approval. The dates for the first review of the access arrangements are also determined by the Queensland Government. For the CGP the first review is not due until May 2023. Hence the Commission has the power to review only those elements of the access arrangements that have not been determined by the Queensland Government.

The Commission made its final decisions on the CGP and RBP access arrangements on 16 January 2002. The Commission did not agree with all of the provisions of the access arrangements as submitted

by the service providers and the final decision documents set out the amendments that would need to be made to the access arrangements for the Commission to approve them.

The Commission gave the service providers until 28 February 2002 to submit revised access arrangements that incorporate the amendments contained in the final decisions. After receiving requests from the service providers this period was extended to 31 March 2002.

### **Wallumbilla to Gladstone via Rockhampton pipeline**

Duke Energy International (Duke) submitted its proposed access arrangement for the Wallumbilla to Gladstone via Rockhampton pipeline (also known as the Queensland gas pipeline) to the Commission on 17 August 2000. The Commission released its draft decision on 12 April 2001 and its final decision on 1 August 2001. Duke submitted its revised access arrangement on 7 September 2001.

The revised access arrangement did not incorporate all the amendments outlined in the final decision. Therefore the Commission was required under the gas code to draft and approve its own access arrangement. The Commission did this in its final approval document, which was released on 1 November 2001. Duke has since lodged an appeal with the Australian Competition Tribunal seeking to overturn the Commission's decision to include in the access arrangement a list of specific major events that would trigger a review of non-tariff elements of the access arrangement.

Under the Queensland Gas Pipelines Access Law the tariffs and access arrangement review date have been approved by the Queensland Government. Consequently, the Commission has no power to review these aspects of Duke Energy's proposed access arrangement. However, because of the uncertainty associated with the extended regulatory period — the access arrangement is not due for review until the year 2016 — in accordance with s. 3.17(ii) of the gas code, the Commission included in the access arrangement a list of major events that would trigger an early review of the non-tariff elements of the access arrangement. Duke Energy is arguing that under the Queensland Gas Pipelines Access Law the Commission does not have the power to include these major event triggers.

Furthermore, of contention is whether the Commission had occasion to refer to the objectives

in s. 8.1 of the code when it inserted a major events trigger into the access arrangement. Section 8.1 of the code deals with the objectives of reference tariff and reference tariff policy setting. Duke is arguing that the objectives enumerated in s. 8.1 are applicable to reference tariffs only, while the Commission is putting forward the view that these objectives can also apply to the non-tariff elements of an access arrangement.

This matter is set down for hearing before the Tribunal on 8 and 9 April 2002. Duke filed evidence from an expert witness with the Tribunal on 15 February 2002. In a subsequent letter to the Tribunal, however, Duke advised the Tribunal that it did not propose to adduce any additional evidence and therefore it did not propose to read or rely upon the statement of its expert witness. Had Duke proceeded with its expert evidence, the issue would have arisen as to whether the evidence would have been admissible under s. 39 of the Gas Pipelines Access Law (GPAL). Section 39(5) of the GPAL limits the matters which the Tribunal can consider to the material before the Commission in reaching its decision.

The Commission required the inclusion of a similar review trigger in its final decisions on two other Queensland pipelines, Ballera to Wallumbilla and Ballera to Mt Isa pipelines.

### **Ballera to Wallumbilla pipeline**

On 17 August 2000 Epic Energy applied to the Commission for approval of its proposed access arrangement for the Ballera to Wallumbilla pipeline system, also known as the south-west Queensland pipeline (SWQP). The SWQP was constructed between Ballera and Wallumbilla in 1996 by Epic Energy Queensland Pty Ltd, formerly Tenneco Gas Australia and Tenneco Energy Australia.

The Commission made its final decision on 28 November 2002. It did not agree with all of the provisions of the access arrangement as submitted by Epic Energy and the final decision document sets out eight amendments that would need to be made to the access arrangement for the Commission to approve it.

The Commission gave Epic Energy until 18 January 2002 to submit a revised access arrangement that incorporates the amendments contained in the final

decision. This period was extended to 8 February 2002 at the request of Epic Energy which submitted its revised access arrangement on this date. This did not incorporate all the amendments proposed by the Commission. In some cases Epic Energy submitted alternative amendments. At the same time Epic Energy foreshadowed that it wished to lodge a further submission in support of its revised access arrangement.

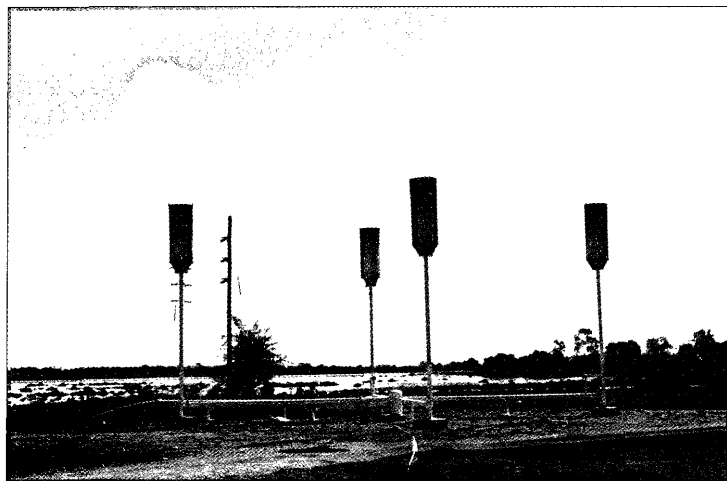
The Commission is required under s. 2.19 of the gas code to determine whether the revised access arrangement either incorporates the amendments specified in the final decision, substantially incorporates the amendments, or otherwise addresses to the Commission's satisfaction the matters identified by the Commission as being the reasons for the amendments. If the Commission, however, does not approve the revised access arrangement it must then draft and approve its own access arrangement.

### **Moomba to Sydney pipeline**

On 19 December 2000 the Commission released its draft decision on the proposed access arrangement for the Moomba to Sydney pipeline system (MSP).

On 18 June 2001 East Australian Pipeline Limited (EAPL) applied to the National Competition Council (NCC) to revoke coverage under the gas code of significant sections of MSP. Revoking coverage would mean that EAPL would not be required to submit a proposed access arrangement for those sections of the MSP.

EAPL's application for revocation was in response to the Australian Competition Tribunal's decision of 4 May 2001 that the Eastern Gas pipeline (EGP) is not to be a covered pipeline under the gas code. The



EGP serves some of the markets that are also served by the MSP. A significant reason for the Tribunal's decision on the EGP was its finding that Duke Energy, the owner of the EGP, did not have enough market power to hinder competition in any related market.

After EAPL lodged its application with the NCC to revoke coverage, the Commission agreed on 3 July 2001 to a request from EAPL to postpone release of the Commission's final decision on the proposed access arrangement. The Commission's consent was subject to a six-monthly review.

On 18 December 2001 the NCC released its draft recommendation on EAPL's application for revocation of coverage. The NCC's draft recommendation is that coverage should not be revoked. In reaching this conclusion, the NCC relied in part on the Commission's draft decision of EAPL's access arrangement for the MSP, which proposed substantially lower tariffs to those currently charged by EAPL. The NCC reasoned that the difference between the tariffs proposed by the Commission and those charged by EAPL is evidence that EAPL holds market power in the market for the transportation of gas from Moomba to Sydney. The NCC has indicated its intention to submit its final recommendation to the relevant minister by 8 April 2001.

After the NCC's draft recommendation was released, APT, on behalf of EAPL, wrote to the Commission on 19 December 2001 asking for the Commission's final decision to be further postponed pending resolution of the NCC matter. The Commission decided, however, not to agree to APT's request. Given the references in the NCC's draft recommendation to findings in the Commission's draft decision, the Commission considers it appropriate to proceed to final decision stage.

## Other regulatory issues

### Greenfields guideline

Greenfields risk in the gas sector is an issue the Commission is currently addressing. The Commission recognises that prospective investors in new pipelines need to understand how the regulatory regime will apply to their investment. To assist pipeliners in this process the Commission is drafting a guideline document on greenfields pipelines to provide a roadmap of the options available under the regulatory frameworks available under the gas code and Part IIIA.

Its aim is to help achieve greater certainty, through greater transparency, and to resolve some of the reasonable concerns raised about the difficulties of developing new pipelines. A draft of the guideline is expected to be available in the first half of 2002. Submissions on the draft guideline will be sought. The Commission also expects to host a consultative forum before the greenfields guideline is finalised.

### Loddon Murray gas tender

On 30 August 2001 the Loddon Murray Gas Supply Group (LMGSG) submitted a proposal to conduct a tender for the construction of a new gas pipeline system to the Loddon-Murray area in north-west Victoria. It includes a new transmission and distribution system that would serve, at a minimum, Swan Hill and Kerang.

Under s. 3.21 of the gas code any person wanting to conduct a tender for a pipeline that has not been built can apply to the relevant regulator to approve the use of a tender process to determine reference tariffs and other specified items to be included in an access arrangement.

The Commission is the relevant regulator for transmission pipelines while state bodies regulate distribution. In this case the relevant state body is the Essential Services Commission of Victoria (ESC). The tender is to be a single process comprising both transmission and distribution functions. As a result both the Commission and the ESC had to assess and approve the tender approval request.

The Commission released an issues paper in September and together with the ESC called for submissions from interested parties. No submissions were received.

On 1 November the Commission approved the request to conduct a competitive tender. The LMGSG has now called for tenders, advising that all bids must be lodged by the 15 March 2002. After all conforming tenders have been assessed and a successful tender selected, the LMGSG can apply to the Commission and the ESC for final approval. Once the regulators issue a decision to grant the request for final approval the pipeline becomes a covered pipeline under the gas code. The winning tenderer would then be obliged to submit separate access arrangements to the Commission for the transmission pipeline and to the ESC for the distribution networks.

**Ring fencing**

Ring fencing is designed to assist the introduction of effective competition into markets traditionally supplied by monopolies. It prevents flows of information and personnel within an integrated utility and between related businesses. The gas code places obligations on service providers of covered transmission pipelines to report on ring fencing to the Commission as required. In July 2001 the Commission sent letters to service providers asking that compliance reports for the year ending 30 June 2001 be submitted. Companies were to describe the measures taken to ensure compliance with the obligations in s. 4.1 and provide an accurate assessment of the effect of those measures.

Overall, the Commission was satisfied that service providers were complying with the minimum ring fencing obligations. One exception was NT Gas Pty Ltd, service provider of the Amadeus Basin to Darwin pipeline. NT Gas' report noted that the company provided marketing services to its subsidiary, NT Gas Distribution Pty Ltd, a company involved in the related business of selling natural gas. NT Gas has since submitted an application to the Commission to have its obligations under ss. 4.1(h) and (i) waived so it can continue to provide marketing, management and commercial services to NT Gas Distribution. The Commission released a draft decision proposing to grant the waiver on 8 February 2002. The final decision is due to be released on 15 March 2002.

Using the 2001 reports as a guide, a proforma ring fencing compliance report has been developed. Companies are to base their reports on this. This should ensure that the information provided fulfils the reporting requirements of the gas code without creating an unreasonable regulatory burden on companies. The Commission also intends to place the compliance reports on its website. Although this is not a requirement of the gas code, it will help the compliance process by increasing transparency. The Commission has decided to request ring fencing compliance reports annually. This year's reports are due by 31 July 2002.