

Issues Paper

**Australian Competition
and Consumer Commission**

**Access Arrangements by
Duke Energy for the
Wallumbilla to Gladstone
Via Rockhampton Pipeline
and *Epic Energy* for the
Ballera to Wallumbilla Pipeline**

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Preface

On 17 August 2000, Duke Australia Operations and Epic Energy submitted to the Australian Competition and Consumer Commission ('the Commission') proposed Access Arrangements and some Access Arrangement Information for the following pipelines:

- Wallumbilla to Gladstone via Rockhampton Pipeline (Queensland Gas Pipeline)
- Ballera to Wallumbilla Pipeline (South-West Queensland Pipeline)

The Access Arrangements and Access Arrangement Information describe the terms and conditions on which each company will make access to its pipeline available to third parties. The Commission will assess the Access Arrangements and Access Arrangement Information against the principles in the National Third Party Access Code for Natural Gas Pipeline Systems ('National Gas Code'). The Commission is significantly restricted in its assessment of these Access Arrangements by legislative exemptions contained in the Queensland Gas Pipelines Access Law. Principally, the Commission is prohibited from reviewing the Reference Tariffs, Reference Tariff Policies and review periods for these Access Arrangements.

Interested parties are invited to make submissions to the Commission on any issues relevant to these Access Arrangements by 19 October 2000. The issues identified in this Issues Paper are only indicative and are not meant to be exhaustive. Parties making submissions are free to identify other relevant issues for consideration by the Commission. All submissions must be in written form. Unless submissions are marked confidential, they will be placed on the public registers maintained by the Commission and the Code Registrar and made available to any person or organisation on request. If a submission contains confidential material it should be clearly marked and a non-confidential version should also be supplied. Under the National Gas Code, the Commission must not disclose confidential information except if it is of the opinion that disclosure would not be unduly harmful to the legitimate business interests of the service provider, a user or a prospective user.

It would assist the Commission if four hard copies of each submission could be provided and also one copy supplied in electronic format compatible with Microsoft Word 97 for Windows. Submissions should be addressed to:

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Copies of these Access Arrangements, Access Arrangement Information and this Issues Paper are available from the Commission's website at <http://www.acc.gov.au> (under 'Gas'). Copies in printed form or on computer disk may be obtained from the Commission by contacting Ms Hema Berry telephone (02) 6243 1274, fax (02) 6243 1205, e-mail: hema.berry@acc.gov.au

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Abbreviations and glossary of terms

Access Arrangement	Arrangement for third party access to a pipeline provided by a pipeline owner/operator and submitted to the relevant regulator for approval in accordance with the National Gas Code
Access Arrangement Information	Information provided by a Service Provider to the Relevant Regulator pursuant to section 2 of the National Gas Code
Access Arrangement Period	The period from when an Access Arrangement or revisions to an Access Arrangement takes effect (by virtue of a decision pursuant to section 2) until the next Revisions Commencement Date
Bare Transfer	When the terms of a contract with a Service Provider are not altered as a result of transfer or assignment of capacity rights
COAG	Council of Australian Governments
Commission	Australian Competition and Consumer Commission
Contract Carriage	A system of managing third party access whereby: <ul style="list-style-type: none">(a) The Service Provider normally manages its ability to provide Services primarily by requiring Users to use no more than the quantity of Service specified in a contract;(b) Users normally are required to enter into a contract that specifies a quantity of Service;(c) Charges for use of a Service normally are based at least in part upon the quantity of Service specified in a contract; and(d) A User normally has the right to trade its right to obtain a Service to another User.
Covered Pipeline	Pipeline to which the provisions of the National Gas Code apply
CPI	Consumer Price Index
Derogation	A legislative exemption from compliance with specified obligations set out in the National Gas Code
GPAL	Gas Pipelines Access Law
National Gas Code	National Third Party Access Code for Natural Gas Pipeline Systems
NCC	National Competition Council
PROSPECTIVE USER	A person who seeks or who is reasonably likely to seek to enter into a contract for a Service and includes a User who seeks or may seek to enter into a contract for an additional Service

QGP	Queensland Gas Pipeline
Queuing Policy	A policy for determining the priority that a Prospective User has, as against any other Prospective User, to obtain access to Spare Capacity
Reference Service	A Service which is specified in an Access Arrangement and in respect of which a Reference Tariff has been specified in that Access Arrangement
Reference Tariff	A Tariff specified in an Access Arrangement as corresponding to a Reference Service and which has the operation that is described in sections 6.13 and 6.18
Reference Tariff Policy	A policy describing the principles that are to be used to determine a Reference Tariff
Revisions Commencement Date	The date upon which the next revisions to the Access Arrangement are intended to commence
Revisions Submissions Date	The date upon which the Service Provider must submit revisions to the Access Arrangement
Service	A service provided by means of a Covered Pipeline including: <ul style="list-style-type: none"> (a) haulage services (such as firm haulage, interruptible haulage, spot haulage and backhaul); (b) the right to interconnect with a Covered Pipeline; and (c) services ancillary to the provisions of such services, but does not include the production, sale or purchasing of Natural Gas
Service Policy	A policy detailing the Service or Services to be offered
Service Provider	The person who is the owner or operator of the whole or any part of the pipeline or proposed pipeline
SWQP	South West Queensland Pipeline

1. Introduction

1.1 Purpose

Chapter 2 of the *National Third Party Access Code for Natural Gas Pipeline Systems* ('the National Gas Code') specifies that the Service Provider of a gas pipeline covered by the National Gas Code is required to establish an Access Arrangement and submit it to the regulator for approval. The Service Provider is defined as 'a person who owns (whether legally or equitably) or operates the whole or any part of a Pipeline'.

The purpose of this Issues Paper is to:

- list a number of issues that the Australian Competition and Consumer Commission ('the Commission') has identified as relevant to its role in assessing the Access Arrangement and Access Arrangement Information relating to the Wallumbilla to Gladstone via Rockhampton Pipeline (QGP) and the Ballera to Wallumbilla Pipeline (SWQP); and
- invite interested parties to make submissions on these and other relevant issues that they consider the Commission should examine in its assessment of these Access Arrangements.

1.2 The current assessment process

The proposed Access Arrangements and Access Arrangement Information describe the terms and conditions on which each Service Provider will make access available to third parties during the initial Access Arrangement period. As the derogations currently stand¹, the initial Access Arrangement Period for the QGP extends to 2016. For the SWQP the review date differs depending on the service. For the proposed Reference Service (Full Forward Haul) the initial Access Arrangement Period extends to 2016, while for AFT services (an alternative form of transportation Service to a Full Forward Haul Service - as defined in the derogation), Epic is required to submit proposed revisions in 2004.

Under the National Gas Code, Service Providers have the discretion to submit revisions earlier than the scheduled review.

Under the National Gas Code, the Commission is required to:

- inform interested parties that it has received the access arrangements from Duke Australia Operations Pty Limited (Duke) and Epic Energy Queensland Pty Limited (Epic);
- publish a notice in a national daily paper which at least describes the Covered pipeline to which the Access Arrangement relates; states how copies of the documents may be obtained; and requests submissions by a date specified in the notice;
- after considering submissions received, issue a *Draft Decision* which either proposes to approve the Access Arrangement or not to approve the Access Arrangement and states

¹ See Chapter 2 for a description of the derogations.

the amendments (or nature of the amendments) which have to be made to the Access Arrangement in order for the Commission to approve it. Submissions will be sought again following release of the Commission's draft decision;

- after considering any additional submissions, issue a final decision that either approves or does not approve the Access Arrangement (or revised access arrangement) and states the amendments (or nature of the amendments) which have to be made to the Access Arrangement (or revised access arrangement) in order for the Commission to approve it; and
- if the amendments are satisfactorily incorporated in a revised Access Arrangement, issue a final approval. If not, the Commission must draft and approve its own Access Arrangement.

It is important to note that under s.58 of the *Gas Pipelines Access (Queensland) Act 1998*, the Reference Tariffs and Reference Tariff Policy for these Access Arrangements have been determined by the Queensland Minister and cannot currently be reviewed in this process. This is discussed in more detail in Chapter 2 below.

1.3 Key issues

The Commission has identified a range of issues (refer to Chapter 4, in particular) which are likely to be relevant to its assessment of the proposed Access Arrangements and for which it invites comments. Key issues that the Commission will focus on during its assessment include:

- the impact of the derogated review period on the non-tariff elements of the proposed Access Arrangements;
- whether the limited provision of Access Arrangement Information is appropriate;
- terms and Conditions on which Reference Services are to be provided; and
- Revisions and Commencement dates;

2. Regulatory framework

2.1 Relevant legislation and regulatory bodies

The main legislation and relevant documents regulating access to the Queensland gas transmission industry are:

- the National Gas Code, under which transmission service providers are required to submit access arrangements to the Commission for approval;
- the *Gas Pipelines Access (South Australia) Act 1997*;² and
- the *Gas Pipelines Access (Queensland) Act 1998*.

Code Bodies and Appeals Bodies in QLD with respect to transmission pipelines are:

- the Commission – Regulator and Arbitrator;³
- the National Competition Council – Code Advisory Body;
- the Commonwealth Minister – Coverage Decision Maker;
- the Federal Court – judicial review; and
- the Australian Competition Tribunal – administrative appeal.

2.2 Queensland Derogations

In 1997 the Queensland Government was a signatory to the Natural Gas Pipelines Access Agreement – a COAG Intergovernmental Agreement to implement the National Third Party Access Code for Natural Gas Pipeline Systems. In accordance with this agreement, the Queensland Government passed the *Gas Pipelines Access Act (Queensland) 1998*, which came into effect on 19 May 2000.

The *Gas Pipelines Access Act (Queensland) 1998* applies the GPAL (comprising the National Gas Code and the legal framework for its operation) in Queensland, as well as regulations governing issues of specific relevance to Queensland such as the nomination of regulatory bodies. In addition, the *Gas Pipelines Access Act (Queensland) 1998*, makes a number of amendments to the *Petroleum Act (Queensland) 1923* and the *Gas Act (Queensland) 1965* in an attempt to create a regulatory framework consistent with the National Gas Code.

The *Gas Pipelines Access Act (Queensland) 1998* established a number of derogations from the National Gas Code. In particular, section 58 of the Act provides that the Reference Tariffs for several transmission pipelines were to be approved and gazetted by the Queensland Minister for Mines and Energy rather than complying with the access pricing principles – and related regulatory process – in the National Gas Code. This means that the Reference Tariffs are non-reviewable for extended periods of time – up to 20 years.

² South Australia acted as ‘lead legislator’ for the national gas access legislation.

³ The Commission is also Regulator and Arbitrator with respect to transmission pipelines in the other States and Territories with the exception of Western Australia.

As a result of these legislative arrangements, the Service Providers of the following four pipelines are obliged to submit Access Arrangements in accordance with the National Gas Code as varied by the derogations.

Pipeline	Service Provider
PPL2 Wallumbilla to Brisbane Pipeline	Australian Pipeline Trust
PPL24 Ballera to Wallumbilla Pipeline	Epic Energy
PPL 30 Wallumbilla to Gladstone via Rockhampton Pipeline	Duke Australia Operations
PPL41 Ballera to Mt Isa Pipeline	Australian Pipeline Trust

These Access Arrangements were due on Thursday 17 August 2000. In accordance with this obligation, Duke and Epic submitted Access Arrangements for the Wallumbilla to Gladstone via Rockhampton and the Ballera to Wallumbilla Pipelines respectively. With respect to the Wallumbilla to Brisbane Pipeline and the Ballera to Mt Isa Pipeline the Service Provider wrote to the Commission on 17 August 2000, indicating that the Access Arrangements will be lodged on or before 15 September 2000.

The Commission intends to release a subsequent *Issues Paper* with respect to those Access Arrangements once they have been lodged.

2.3 Certification of the Queensland Gas Access Regime

On 25 September 1998, the Queensland Premier applied to the National Competition Council (NCC) to certify the ‘effectiveness’ of the Queensland Third Party Access Regime for Natural Gas Pipelines (the Queensland Regime). If a service is certified as effective, it cannot be declared for access under Part IIIA of the *Trade Practices Act 1974*.

The Commission understands that the NCC is unlikely to recommend that the Queensland Regime, in its current state, be certified as effective. This is fundamentally because of the impact of the derogations.

2.3.1 National Competition Council Process

In considering the effectiveness of the Queensland Regime, the NCC must apply the relevant principles in the Competition Principles Agreement. The NCC will make a recommendation to the Commonwealth Minister. The Commonwealth Minister then decides whether or not to certify the Queensland Regime as effective.

If the Commonwealth Minister does not certify the Queensland Regime as effective this would not effect the Commission’s consideration of the Access Arrangements, but would expose these pipelines to the possibility of declaration under Part IIIA of the *Trade Practices Act 1974*. Were this to occur, unsatisfied access seekers may notify access disputes to the Commission for binding arbitration. In such circumstances, the Commission would not be bound by the Reference Tariffs established by the Queensland Minister in the derogations.

The Commission was asked by the NCC to advise it on whether the Queensland Gas Pipeline Access Regime as it applies to four pipelines, previously derogated by the Queensland Government, is broadly consistent with the National Gas Code. Specifically the NCC requested that the Commission assess the relevant tender processes undertaken by Queensland against those established in the National Gas Code. If they were inconsistent, the Commission was then asked to determine whether the Reference Tariffs in the respective Access Principles were broadly consistent with the pricing parameters set out in section 8 of the National Gas Code.

The Commission found that the tendering process conducted by the Queensland Government to determine Access Principles for the Wallumbilla to Gladstone via Rockhampton; Ballera to Mt Isa and Ballera to Wallumbilla pipelines were significantly inconsistent with the Competitive Tender provisions in the National Gas Code. Principally the Commission found:

- a fundamental conflict inherent in the tendering process for the Wallumbilla to Gladstone via Rockhampton pipeline – with this pipeline being privatised and the Access Principles determined simultaneously;
- there was not the same degree of separation between the party running the tender processes and the party providing independent oversight and assessment as is required under the National Gas Code;
- that the selection criteria for both the Ballera to Mt Isa and Ballera to Wallumbilla pipelines were designed to result in the successful tender being selected principally on the basis that it would deliver the lowest sustainable tariffs to users generally over the economic life of the proposed pipeline. Rather, the primary selection criteria set out by the Queensland Government was the delivered price of gas – incorporating a gas commodity price and transportation components.

The Commission then estimated the Return on Equity (RoE) for the derogated pipelines. For the Ballera to Wallumbilla and Ballera to Mt Isa pipelines the RoEs were estimated to fall within a reasonable range. In the case of the Wallumbilla to Gladstone via Rockhampton pipeline, the estimated RoE was at the high end of a reasonable range. Finally, for the Wallumbilla to Brisbane Pipeline the estimated RoE was higher than could reasonably be expected in the circumstances and may be inconsistent with the pricing principles of the National Gas Code.

In addition to these RoE issues the Commission also expressed concern at the lack of provision of Access Arrangement Information and the significant length of most non-review periods. The public version of the Commission's report to the NCC can be viewed at <http://www.ncc.gov.au> under 'Gas'.

The Commission understands that the NCC have identified a number of elements of the derogations that may need to be amended before it could recommend that the Queensland Gas Pipeline Access Regime be certified as effective. These include the exemptions from information disclosure (AAI), the derogated tariffs (which for some of the pipelines result in estimated rates of return that are inappropriate), the length of some of the review periods and revenue sharing mechanisms. If the derogations were to be amended, the Commission expects that some elements of the current Access Arrangements that are unable to be reviewed may become subject to review or amendment.

3. Criteria for assessing access arrangements

The Commission may approve an Access Arrangement only if it is satisfied that the Access Arrangement contains the elements and satisfies the principles set out in sections 3.1 to 3.20 of the National Gas Code, which are summarised below. An Access Arrangement cannot be opposed on the basis that it does not address a matter that section 3 of the National Gas Code does not require it to address. Notwithstanding, the Commission has a broad discretion in accepting or opposing an Access Arrangement.

An Access Arrangement must include the following elements:

- **Services Policy** which must include a description of one or more Services that the Service Provider will offer to Users and Prospective Users;
- **Reference Tariffs and Reference Tariff Policy**, including one or more Reference Tariffs. Tariffs are normally assessed against the Reference Tariff principles in section 8 of the National Gas Code. In this instance, however, the Reference Tariffs and Reference Tariff Policies have been derogated from the operation of the National Gas Code by Queensland legislation;
- **Terms and Conditions** on which the Service Provider will supply each Reference Service;
- a statement that the Covered Pipeline is either a Contract Carriage or Market Carriage pipeline (**Capacity Management Policy**);
- a **Trading Policy** that enables a User to trade its right to obtain a Service (on a Contract Carriage pipeline) to another person;
- a **Queuing Policy** to determine Users' priorities in obtaining access to spare and developable capacity on a pipeline;
- an **Extensions/Expansions Policy** to determine the treatment of an extension or expansion of a pipeline under the National Gas Code;
- a date by which revisions to the Access Arrangement must be submitted; and
- a date by which the revisions are intended to commence.

In considering whether an Access Arrangement complies with the National Gas Code, the Commission must take into account, pursuant to section 2 of the National Gas Code:

- the legitimate business interests of the Service Provider;
- firm and binding contractual obligations of the Service Provider or other persons (or both) already using the Covered Pipeline;
- the operational and technical requirements necessary for the safe and reliable operation of the Covered Pipeline;
- the economically efficient operation of the Covered Pipeline;
- the public interest, including the public interest in having competition in markets (whether or not in Australia);
- the interests of Users and Prospective Users; and
- any other matters that the Commission considers are relevant.

4. Wallumbilla to Gladstone via Rockhampton Pipeline

4.1 Ownership and organisational structure

The Wallumbilla to Gladstone Pipeline, or as it is more commonly referred to, the Queensland Gas Pipeline (QGP), supplies gas from several sources, including the Dennison Trough of the Surat Basin near Westgrove from older fields which are in decline; some coal seam methane near Rolleston and Moura; and from the south west Queensland fields via Epic's Ballera to Wallumbilla pipeline.

Inlet stations are located at Wallumbilla, Westgrove, Rolleston and Moura. Outlet stations are at Larcom Creek, the Gladstone and Rockhampton City gates, and QAL in Gladstone.

Duke Energy International Queensland Gas Pipeline Pty Ltd and Duke Queensland Pipeline Pty Ltd own the 627km QGP. Duke Australia Pty Ltd operates the pipeline as the agent for the owners and is the Service Provider for the purposes of the proposed Access Arrangement.

The Queensland Government in December 1989 commissioned the QGP, with the extension to Rockhampton included in 1991. The QGP was sold to Pacific Gas Transmission (PGT) Australia Pty Limited in July 1996. Duke Energy purchased the pipeline from PGT in 1998.

4.2 Compliance with the National Gas Code

4.2.1 The content of the access arrangement

The required contents of an Access Arrangement were listed in broad terms earlier in Chapter 3. The Commission must be satisfied that Duke's proposed Access Arrangement meets the content requirements of the National Gas Code before it can approve the Access Arrangement. It must also be satisfied of the reasonableness of the terms and conditions on which Services will be offered.

4.2.2 Information disclosure

The National Gas Code requires that a proposed Access Arrangement must be supported by Access Arrangement Information. Section 2.6 specifies that Access Arrangement Information must contain such information as in the opinion of the regulator would enable Users and Prospective Users to understand the derivation of the elements in the proposed Access Arrangement and to form an opinion as to the compliance of the Access Arrangement with the provisions of the National Gas Code. Section 2.7 states that the Access Arrangement Information may include any relevant information but must include at least the categories of information described in Attachment A to the National Gas Code (reproduced at to Attachment A to this *Issues Paper*).

Whilst ensuring that sufficient information is available to Users and Prospective Users, the Commission must also ensure that any information disclosed is not, in its opinion, unduly harmful to the legitimate business interests of the Service Provider, Users or Prospective Users.

Duke's Reference Tariffs are the subject of a derogation approved by the Queensland Minister for Mines and Energy. This derogation is set out in Schedule 5 of the Access Arrangement (the Reference Tariffs Schedule). Amongst other things, the derogation explicitly exempts Duke from the requirement to submit Access Arrangement Information as it relates to the Reference Tariffs and related provisions. Attachment A to the National Gas Code sets out 6 categories of information. Arguably, at least Category 5 information is not directed related to Reference Tariffs. Category 5 relates to information regarding System Capacity and Volume Assumptions including system capabilities and average daily and peak demand. While Duke has not explicitly provided Access Arrangement Information, some relevant information is provided throughout the Access Arrangement.

One of the fundamental differences between the approach taken by the Queensland Government to set Reference Tariffs and the process under the National Gas Code is the lack of detailed information provided by interested parties. The Commission believes that this is a significant issue for a number of reasons:

- the regulator was unable to take account of informed market responses to proposed Reference Tariffs and in particular comments on the justification for cost allocation across customer classes from potentially affected parties;
- future access seekers may be disadvantaged in negotiating for access, and the intended 'light-handed' approach of the National Gas Code may not be achieved – in the sense that access seekers may not be provided with sufficient information regarding the determination of Reference Tariffs to be able to negotiate acceptable tariffs without recourse to arbitration; and
- transparency – without access to the detailed information underlying the Access Arrangement, interested parties are unlikely to be able to have confidence in the regulatory process and Reference Tariffs that result from it.

Issues for Consideration

- (a) Is the information disclosed in the Access Arrangement and the Access Arrangement Information sufficient to enable Users and Prospective Users to understand the derivation of the elements in the proposed Access Arrangement and to form an opinion as to the compliance of the Access Arrangement with the provisions of the National Gas Code?
- (b) Should Duke be required to release any additional non-tariff related Access Arrangement Information?
- (c) If so, what additional information should be provided, and in what form?

4.2.3 Services Policy

Sections 3.1 and 3.2 of the National Gas Code require an Access Arrangement to include a Services Policy which must include a description of one or more Services that the Service Provider will make available to Users and Prospective Users. The policy must contain one or more Services which are likely to be sought by a significant part of the market, and any service or services that in the regulator's opinion should be included in the Services Policy.

To the extent that is practicable and reasonable, a Service Provider should make available only those elements of a Service required by Users and Prospective Users and apply a separate tariff for each element if this is requested.

Duke proposes to offer three Reference Services under its Access Arrangement:

- Firm Forward Haul Service
- Backhaul Service
- As Available Service

These Reference Services are defined in the Reference Tariffs Schedule.

Issues for consideration

- a) Are there any other Services that are likely to be sought by a significant segment of market participants that should be included in the Service Policy? If so, please specify.

4.2.4 Terms and conditions

Section 3.6 of the National Gas Code requires an Access Arrangement to include the terms and conditions on which a Service Provider will supply each Reference Service. To be approved, these terms and conditions must be considered reasonable by the regulator.

The terms and conditions upon which Duke will provide the Reference Services are set out in the following:

- Firm Forward Haul Service Access Agreement Terms Sheet (Schedule 1 of the Access Arrangement);
- Backhaul Service Access Agreement Terms Sheet (Schedule 2 of the Access Arrangement);
- As Available Service Access Agreement Terms Sheet (Schedule 3 of the Access Arrangement);
- Standard Terms and Conditions (Schedule 4 of the Access Arrangement); and
- the provisions of the Access Arrangement.

Issues for consideration

- a) Does the Access Arrangement clearly identify the relevant terms and conditions which enable a Prospective User to be sufficiently well informed before making a specific access request?
- b) Are the proposed terms and conditions reasonable?

4.2.5 Trading Policy

Sections 3.9 to 3.11 of the National Gas Code set out the requirements for a Trading Policy. If a pipeline is a Contract Carriage pipeline (as is proposed by Duke for this pipeline), the Access Arrangement must include a Trading Policy, which explains the rights of a User to trade its right to obtain a service to another person. The Trading Policy must also allow a user to transfer capacity.

Duke's Trading Policy (Section 9 of its proposed Access Arrangement) allows Users to trade or assign some or all of their rights to its contracted capacity under the Access Arrangement to another User or Prospective User.

Duke permits a Bare Transfer without its consent provided the User gives Duke prior notice that it intends to effect such a transfer. The User is required to seek Duke's consent before assigning its rights and obligations to some or all of its contracted capacity. Duke may withhold consent on reasonable commercial or technical grounds.

Issues for Consideration

- a) Does the proposed Trading Policy sufficiently explain the rights of the User to trade its rights to obtain a Service to another person?
- b) Should assignment be subject to Duke's consent on reasonable commercial grounds?
- c) How should 'on reasonable commercial grounds' be determined?

4.2.6 Queuing Policy

Sections 3.12 to 3.15 of the National Gas Code set out the requirements for a Queuing Policy. An Access Arrangement must include a Queuing Policy that determines the priority given to Users and Prospective Users for obtaining access to a Covered Pipeline and for seeking dispute resolution under section 6 of the National Gas Code.

The policy must set out sufficient detail to enable Users and Prospective Users to understand in advance how it will operate; to the extent reasonably possible, accommodate the legitimate business interests of the Service Provider, Users and Prospective Users; and to the extent reasonably possible, generate economically efficient outcomes.

Duke's proposed Queuing Policy is set out in sections 11.1 –11.8 of its Access Arrangement. If Duke is of the opinion that capacity will become, or is likely to become available, that capacity will be progressively offered, by written notice to each Prospective User in the queue in order of their place in the queue.

Available Capacity will be offered regardless of whether it is insufficient or surplus to the needs of the Prospective User. Duke must be notified within 14 days of the Prospective User's intent to either accept or reject the offer of Available Capacity. If Duke receives no response, the Prospective User's place in the queue will be lost unless a dispute has been notified in accordance with the Code. If a dispute is notified, the Service Request will retain its priority in the queue until a resolution has been reached as required by the National Gas Code.

Duke asserts it is under no obligation to provide a Service to a Prospective User unless, first, it has signed the Access Agreement for the Service. Second, the Prospective User has made provision for the delivery and receipt of natural gas. Third, the Prospective User must satisfy Duke's credit worthiness criteria in clause 21 of Duke's Standard Terms and Conditions of Service.

Issues for Consideration

- (a) Are there sufficient details in the proposed Queuing Policy to enable Users and Prospective Users to understand how the Queuing Policy will operate?
- (b) Does the proposed Queuing Policy accommodate the legitimate business interests of the Service Provider, Users and Prospective Users?

4.2.7 Extensions/Expansions Policy

Section 3.16 of the National Gas Code requires an Access Arrangement to include an extensions/expansions policy which sets out the method to determine which extensions and expansions will be treated as part of the Covered Pipeline and, if covered, how they will affect Reference Tariffs.

Under Duke's Access Arrangement, extensions to the pipeline (adding to the physical length of the pipeline system) will not be:

- (a) part of the pipeline for any purposes under the National Gas Code, or
- (b) covered by the Access Arrangement,

Unless Duke elects by written notice to the Commission to treat them in that way. If Duke makes such an election, the Reference Tariffs for the various Services will not change. Duke will levy an applicable surcharge for the extension on Users of the extension.

Expansions to the pipeline (increasing the capacity of the existing system) will be:

- (a) part of the pipeline for the purposes of the National Gas Code, and
- (b) covered by the Access Arrangement.

The Reference Tariffs will apply to the Reference Services as Duke expands the capacity of the Wallumbilla to Gladstone City Gate and Gladstone City Gate to Rockhampton branches of the pipeline up to the configurations of the pipeline specified in Schedule 1 of the Licence.

Issues for Consideration

- (a) Does the proposed Access Arrangement sufficiently specify how extensions and expansions will affect Reference Tariffs?
- (b) Are the proposals reasonable?

4.2.8 Term and Review

Section 3.17 of the National Gas Code states that an Access Arrangement must include a Revisions Submission Date and a Revisions Commencement Date. These terms and dates are defined in the Reference Tariffs Schedule as follows:

- Revisions Submission Date means the date by which revisions to this Access Arrangement must be submitted to the Commission, being the earlier of:
 - (i) 31 August 2016; or
 - (ii) the date being six months before the date when Duke reasonably expects the capacity of the pipeline will be greater than the nominal capacity of the pipeline when its configuration is as specified in Schedule 1 to the Licence.
- Revisions Commencement Date means the date by which the revisions, once approved by the Commission, are deemed to commence, being:
 - (i) in relation to revisions submitted on 31 August 2016 – the date on which the Commission approves the revisions; or
 - (ii) in relation to revisions submitted under subparagraph (b) of the definition of Revisions Submission Date – the date when the capacity of the pipeline is greater than the nominal capacity of the pipeline when its configuration is as specified in Schedule 1 to the Licence.

Section 3.17 also provides that the regulator may, in making its decision on an Access Arrangement require that specific major events be defined that trigger an obligation on the Service Provider to submit revisions prior to the Revisions Submissions Date.

Section 3.18 provides that the Regulator, when considering an Access Arrangement with an Access Arrangement Period greater than five years must not approve the Access Arrangement without first considering whether mechanisms should be included to address the risk on which the terms of the Access Arrangement were based and approved proving incorrect. These mechanisms may include:

- (a) requiring the Service Provider to submit revisions to the Access Arrangement prior to the Revisions Submission Date if certain events occur, for example:
 - (i) if a Service Provider's profits derived from a Covered Pipeline are outside a specified range or if the value of Services reserved in contracts with Users are outside a specified range;
 - (ii) if the type or mix of Services provided by means of a Covered Pipeline changes in a certain way; or
- (b) a Service Provider returning some or all revenue or profits in excess of a certain amount to Users, whether in the form of lower charges or some other form.

Issues for Consideration

The derogation fixes the review date as set out above and this is not currently reviewable by the Commission in its assessment of this Access Arrangement. The Commission understands however, that the extended duration of this Access Arrangement is one aspect of the derogation that the NCC is seeking to have the Queensland Government change.

An important subsidiary effect of having the non-review period determined in the derogation until 2016 is that once the Commission approves the non-tariff elements of the Access Arrangement, they also cannot be reviewed again before 2016 – unless the Service Provider applies to have them varied.

Normally, non-tariff elements are reviewed every five years – even where tariffs are fixed for longer periods.

- (a) Should the Commission require that specific major events be defined that trigger an obligation on the Service Provider to submit revisions prior to the Revisions Submissions Date? If so, what specific major events?
- (b) Should the Commission require a mechanism be included to address the risk of forecasts on which the terms of the Access Arrangement were based and approved proving incorrect? If so, what type of mechanism?

Ballera to Wallumbilla Pipeline

5.1 Ownership and organisational structure

The Ballera to Wallumbilla pipeline, located in south-west Queensland (the SWQP) was constructed in 1996 by Tenneco Gas Australia and is now operated by Epic Energy (Queensland) Pty Ltd.

The ultimate shareholders in Epic are: El Paso Energy (30 per cent), Consolidated Natural Gas Company Inc (30 per cent), AMP Asset Management Australia Limited (10 per cent), Axiom Funds Management Limited (10 per cent), Hastings Funds Management Limited (10 per cent) and Allgas Energy Ltd (10 per cent).

5.2 Compliance with the National Gas Code

5.2.1 The content of the Access Arrangement

The required contents of an Access Arrangement were listed in broad terms earlier in Chapter 3. The Commission must be satisfied that Epic's Access Arrangement meets the content requirements of the National Gas Code before it can approve the Access Arrangement. It must also be satisfied of the reasonableness of the terms and conditions on which services will be offered.

5.2.2 Information disclosure

The National Gas Code requires that a proposed Access Arrangement must be supported by Access Arrangement Information. Section 2.6 specifies that Access Arrangement Information must contain such information as in the opinion of the regulator would enable Users and Prospective Users to understand the derivation of the elements in the proposed Access Arrangement and to form an opinion as to the compliance of the Access Arrangement with the provisions of the National Gas Code. Section 2.7 states that the Access Arrangement Information may include any relevant information but must include at least the categories of information described in Attachment A to the National Gas Code (refer to Attachment A to this *Issues Paper*).

Whilst ensuring that sufficient information is available to Users and Prospective Users, the Commission must also ensure that any information disclosed is not, in its opinion, unduly harmful to the legitimate business interests of the Service Provider, Users or Prospective Users.

In support of its proposed Access Arrangement, Epic has only submitted substantive information in relation to Category 5 Access Arrangement Information. Epic claim that as the Reference Tariff is derogated from the National Gas Code, it is not required to submit the necessary information pertaining to its Reference Tariff and Reference Tariff Policy. Unlike the other derogated pipelines, however, Epic does not have an explicit exemption from submitting Access Arrangement Information set out in its derogation.

One of the fundamental differences between the approach taken by the Queensland Government to set Reference Tariffs and the process under the National Gas Code is the lack of detailed information provided by interested parties. The Commission believes that this is a significant issue for a number of reasons:

- the regulator was unable to take account of informed market responses to proposed Reference Tariffs and in particular comments on the justification for cost allocation across customer classes from potentially affected parties;
- future access seekers may be disadvantaged in negotiating for access, and the intended ‘light-handed’ approach of the National Gas Code may not be achieved – in the sense that access seekers may not be provided with sufficient information regarding the determination of Reference Tariffs to be able to negotiate acceptable tariffs without recourse to arbitration; and
- transparency – without access to the detailed information underlying the Access Arrangement, interested parties are unlikely to be able to have confidence in the regulatory process and Reference Tariffs that result from it.

Issues for Consideration

- (a) Is the information disclosed in the Access Arrangement and the Access Arrangement Information sufficient to enable Users and Prospective Users to understand the derivation of the elements in the proposed Access Arrangement and to form an opinion as to the compliance of the Access Arrangement with the provisions of the National Gas Code?
- (b) Is the justification not to submit the entire Access Arrangement Information reasonable? If not, what additional information should be provided, and why?
- (c) Are the items listed in Attachment A adequately addressed? If not, what additional information (including any relevant information in addition to Attachment A) should be provided, and in what form?

5.2.3 Services Policy

Sections 3.1 and 3.2 of the National Gas Code require an Access Arrangement to include a Services Policy which must include a description of one or more Services that the Service Provider will make available to Users and Prospective Users. The policy must contain one or more Services which are likely to be sought by a significant part of the market, and any Service or Services that in the regulator’s opinion should be included in the Services Policy.

To the extent that it is practicable and reasonable, a Service Provider should make available only those elements of a Service required by Users and Prospective Users and apply a separate tariff for each element if this is requested.

Epic proposes one Reference Service to apply under this Access Arrangement, a Forward Haul Service. The Derogation for the SWQP sets out a number of other Reference Services, which Epic proposes to offer as Non Reference Services. These include:

- (a) Class BH1 - Back Haul Service

- (b) Class IT1 - Interruptible Transportation Service
- (c) Class FZ1 - Forward Part Haul Service (Zonal)
- (d) Class BZ1 - Back Part Haul Service (Zonal)
- (e) Class IZ1 - Interruptible Part Haul Service (Zonal)

Section 58 of the *Gas Pipelines Access (Queensland) Act 1998*, provides that the Minister may approve a tariff arrangement and that the approved tariff arrangement is taken to be approved under the Gas Pipelines Access Law as the Reference Tariff and Reference Tariff Policy. Section 3 of Annexure A of Epic's proposed Access Arrangement lists the Reference Services described above.

Although Epic's proposed Access Arrangement describes (a) through (e) above as Non Reference Services, it appears that for the purposes of the National Gas Code these Services are in fact Reference Services as a result of the derogation.

This issue is important in terms of determining tariffs for these services in the event of an access dispute. In a dispute over access to a Reference Service, the Arbitrator is bound to apply the relevant Reference Tariff. For non-reference services, however, the Arbitrator is not so bound.

Issues for Consideration

- a) Is it appropriate for Epic to have only one Reference Service? Is this an accurate reflection of the derogation?
- b) Are there any other Services that should be included in the Services policy? If so, please specify.

5.2.4 Terms and Conditions

Section 3.6 of the National Gas Code requires an Access Arrangement to include the terms and conditions on which a Service Provider will supply each Reference Service. To be approved, these terms and conditions must be considered reasonable by the regulator.

The terms and conditions upon which Epic will provide Full Forward Haul Service are set out in the Gas Transportation Agreement Terms and Conditions. The Gas Transportation Agreement Terms and Conditions are set out in Annexure A & B of the proposed Access Arrangement. Epic propose that it may vary the Gas Transportation Agreement Terms and Conditions without the consent of the User or the Commission (except for those terms set out in section 10.3 of Epic's proposed Access Arrangement), if the amendment does not in aggregate detract from the value of the Reference Service to the User.

Issues for consideration

- a) Does the Access Arrangement clearly identify the relevant terms and conditions, which enable a Prospective User to be sufficiently well informed before making a specific access request?
- b) Are the proposed terms and conditions reasonable?

5.2.5 Trading Policy

Sections 3.9 to 3.11 of the National Gas Code set out the requirements for a Trading Policy. If a pipeline is a Contract Carriage pipeline, which Epic proposes for the SWQP, the Access Arrangement must include a Trading Policy. This explains the rights of a User to trade its right to obtain a service to another person. The Trading Policy must also allow a User to transfer capacity.

Epic permit a Bare Transfer without their consent provided the transferee notifies Epic of the portion of Contracted Capacity subject to the Bare Transfer and of the nature of the Contracted Capacity subject to the Bare Transfer. For any other form of transfer the User is required to seek Epic's consent. Epic may withhold consent on reasonable commercial or technical grounds.

Issues for consideration

- a) Does the proposed Trading Policy sufficiently explain the rights of the User to trade a service to another person?
- b) Should a transfer other than a Bare Transfer be subject to Epic's consent on reasonable commercial grounds?

5.2.6 Queuing Policy

Sections 3.12 to 3.15 of the National Gas Code set out the requirements for a Queuing Policy. An Access Arrangement must include a Queuing Policy that determines the priority given to Users and Prospective Users for obtaining access to a Covered Pipeline and for seeking dispute resolution under section 6 of the National Gas Code.

The policy must set out sufficient detail to enable Users and Prospective Users to understand in advance how it will operate; to the extent reasonably possible, accommodate the legitimate business interests of the Service Provider, Users and Prospective Users; and to the extent reasonably possible, generate economically efficient outcomes.

Epic proposes that for a Prospective User to obtain access it must follow the procedures set out in the Gas Transportation Guide. The Gas Transportation Guide was not provided with the Access Arrangement. The Commission understands that Epic are still developing the Gas Transportation Guide and will release it shortly. A Gas Transportation Request must also be accompanied by the Prescribed Fee.

Epic will assess Gas Transportation Requests in the order in which they are received. Epic also proposes that it may deal with Gas Transportation Requests out of order provided that the Gas Transportation Requests, which were first in time, are not ultimately disadvantaged.

If a Gas Transportation Request is rejected, that Gas Transportation Request's priority is lost.

Issues for Consideration

- a) Are there sufficient details in the proposed Queuing Policy that would enable Users and Potential Users to understand how the Queuing Policy will operate?
- b) Does the proposed Queuing Policy accommodate the legitimate business interests of the Service Provider, Users and Prospective Users?
- c) Is the 'Prescribed Fee' of \$5000 plus GST reasonable?

5.2.7 Extensions/Expansions Policy

Section 3.16 of the National Gas Code requires an Access Arrangement to include an extensions/expansions policy which sets out the method to determine which extensions and expansions will be treated as part of the Covered Pipeline and, if covered, how they will affect Reference Tariffs.

Epic propose in the event that they do elect to enhance or expand the capacity of the SWQP pipeline, the Reference Tariffs for existing delivery points will not be affected before the next Revision Commencement Date - 2016 or 2004 (see section 5.2.8).

Unless it elects otherwise, Epic propose that any extension or expansion of the SWQP will become part of the Covered Pipeline.

From time to time, Epic may seek Surcharges or Capital Contributions from Prospective Users in respect of New Facilities Investment.

Issues for Consideration

- a) Does the proposed Access Arrangement sufficiently specify how extensions and expansions will affect Reference Tariffs?
- b) Is it reasonable for the Service Provider to impose a Surcharge or Capital Contribution in respect of New Facilities Investment?

5.2.8 Term and Review

Epic propose the commencement date of this Access Arrangement to be the later of:

- 17 February 2001; or
- the date on which the approval by the ACCC takes effect under the National Gas Code.

Section 3.17 of the National Gas Code states that an Access Arrangement must include a Revisions Submission Date and a Revisions Commencement Date. Epic propose:

- the Revisions Submission Date is 30 June 2016
- the Revisions Commencement date is 30 December 2016

The derogation (set out in Annexure A of the proposed Access Arrangement) states that for AFT Services (an alternative form of Transportation Service to a Full Forward Reference Service) the Revisions Submission Date is 11 June 2004. For all other revisions, the Revisions Submission Date is 30 June 2016. The corresponding Revisions Commencement Dates are 6 months after the Revisions Submission Dates.

Section 3.17 also provides that the regulator may, in making its decision on an Access Arrangement require that specific major events be defined that trigger an obligation on the Service Provider to submit revisions prior to the Revisions Submissions Date.

Section 3.18 provides that the Regulator, when considering an Access Arrangement with an Access Arrangement Period greater than five years must not approve the Access Arrangement without first considering whether mechanisms should be included to address the risk on which the terms of the Access Arrangement were based and approved proving incorrect. These mechanisms may include:

- (a) requiring the Service Provider to submit revisions to the Access Arrangement prior to the Revisions Submission Date if certain events occur, for example:
 - (i) if a Service Provider's profits derived from a Covered Pipeline are outside a specified range or if the value of Services reserved in contracts with Users are outside a specified range;
 - (ii) if the type or mix of Services provided by means of a Covered Pipeline changes in a certain way; or
- (b) a Service Provider returning some or all revenue or profits in excess of a certain amount to Users, whether in the form of lower charges or some other form.

Issues for Consideration

In this instance, the derogation sets the length of the Access Arrangement Period.

For all other aspects of the Access Arrangement, the derogation fixes the review date at 30 June 2016 and this is not currently reviewable by the Commission in its assessment of this Access Arrangement. The Commission understands however, that the extended duration of this Access Arrangement is one aspect of the derogation that the NCC is seeking to have the Queensland Government change.

An important subsidiary effect of having the non-review period determined in the derogation until 2016 is that once the Commission approves the non-tariff elements of the Access Arrangement, they also cannot be reviewed again before 2016 – unless the Service Provider applies to have them varied.

Normally, non-tariff elements are reviewed every five years – even where tariffs are fixed for longer periods.

- (a) The Commission is interested in views as to the appropriate timing of the first review of the AFT Services. The derogation appears to set it at 11 June 2004, while Epic propose the first review take place on 30 June 2016.

- (b) Should the Commission require that specific major events be defined that trigger an obligation on the Service Provider to submit revisions prior to the Revisions Submissions Date? If so, what specific major events?
- (c) Should the Commission require a mechanism be included to address the risk of forecasts on which the terms of the Access Arrangement were based and approved proving incorrect? If so, what type of mechanism?

Attachment A

INFORMATION DISCLOSURE BY A SERVICE PROVIDER TO INTERESTED PARTIES

Pursuant to section 2.7 the following categories of information must be included in the Access Arrangement Information.

The specific items of information listed under each category are examples of the minimum disclosure requirements applicable to that category but, pursuant to sections 2.8 and 2.9, the Relevant Regulator may:

- allow some of the information disclosed to be categorised or aggregated; and
- not require some of the specific items of information to be disclosed,

if in the Relevant Regulator's opinion it is necessary in order to ensure the disclosure of the information is not unduly harmful to the legitimate business interests of the service provider or a user or Prospective user.

Category 1: Information Regarding Access & Pricing Principles

Tariff determination methodology
Cost allocation approach
Incentive structures

Category 2: Information Regarding Capital Costs

Asset values for each pricing zone, service or category of asset
Information as to asset valuation methodologies - historical cost or asset valuation
Assumptions on economic life of asset for depreciation
Depreciation
Accumulated depreciation
Committed capital works and capital investment
Description of nature and justification for planned capital investment
Rates of return - on equity and on debt
Capital structure - debt/equity split assumed
Equity returns assumed - variables used in derivation
Debt costs assumed - variables used in derivation

Category 3: Information Regarding Operations & Maintenance

Fixed versus variable costs
Cost allocation between zones, services or categories of asset & between regulated/unregulated
Wages & Salaries - by pricing zone, service or category of asset
Cost of services by others including rental equipment
Gas used in operations - unaccounted for gas to be separated from compressor fuel
Materials & supply
Property taxes

Category 4: Information Regarding Overheads & Marketing Costs

Total service provider costs at corporate level
Allocation of costs between regulated/unregulated segments
Allocation of costs between particular zones, services or categories of asset

Category 5: Information Regarding System Capacity & Volume Assumptions

Description of system capabilities
Map of piping system - pipe sizes, distances and maximum delivery capability
Average daily and peak demand at "city gates" defined by volume and pressure
Total annual volume delivered - existing term and expected future volumes
Annual volume across each pricing zone, service or category of asset
System load profile by month in each pricing zone, service or category of asset
Total number of customers in each pricing zone, service or category of asset

Category 6: Information Regarding Key Performance Indicators

Industry KPIs used by the service provider to justify "reasonably incurred" costs
Service provider's KPIs for each pricing zone, service or category of asset