

Draft Decision

Access Arrangements proposed by Australian Pipelines Trust Petroleum Pipelines Ltd for the Roma to Brisbane Pipeline System

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Abbreviations and glossary of terms

ACCC	Australian Competition and Consumer Commission
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
APT	Australian Pipeline Trust Petroleum Pipelines Limited
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
Code	<i>National Third Party Access Code for Natural Gas Pipeline Systems</i>
Commission	Australian Competition and Consumer Commission
Contract carriage pipeline	A system of managing third party access whereby: The service provider normally manages its ability to provide services by requiring users to use no more than the quantity of service specified in a contract; Users normally are required to enter into a contract that specifies a quantity of service; Changes for use of a service are normally based at least in part upon the quantity of service specified in a contract; and 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
CS Energy	CS Energy Limited
DVC	Daily Variance Charge
Derogation	A legislative exemption from compliance with specified obligations set out in the National Gas Code
Energex	Energex Retail Pty Limited
Energy Users	Energy Users Association of Australia
Ergon	Ergon Energy Gas Pty Limited

GJ	GigaJoule
GPAL	Refers to <i>Gas Pipelines Access (Queensland) Law</i> or <i>Gas Pipelines access Law</i>
haulage	The term generally applied in this Draft Decision to the service provided by the operator or owner of a gas pipeline transmission system. Also described in the industry as ‘transmission’ or ‘transportation’ or gas
ICB	Initial Capital Base
MDQ	Maximum Daily Quantity
MHQ	Maximum Hourly Quantity
Mpa	Megapascal (unit of pressure)
National Gas Code	<i>National Third Party Access Code for Natural Gas Pipeline Systems</i>
NCC	National Competition Council
Origin	Origin Energy Retail Limited
p.a.	Per annum
PJ	PetaJoule (equal to 1 000 000 GJ)
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
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
RBP	Roma to Brisbane Pipeline
Santos	Santos Limited

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.
Shipper	An alternative term generally used in this Draft Decision to describe an existing user of the RBP.
TJ	Terajoule (equal to 1 000 GJ).

Executive Summary

Introduction

On 6 November 2000 Australian Pipeline Trust (APT) applied for approval of a proposed access arrangement for the Roma to Brisbane Pipeline (RBP). The application was made under section 2.2 of the *National Third Party Access Code for Natural Gas Pipeline Systems* (the Code).

Physical status of the pipeline

Since APT released the RBP access arrangement there has been significant expansion of the pipeline. APT stated in the access arrangement that the pipeline capacity is 118.5TJ/day, however, currently the pipeline capacity is up to 145TJ/day. The Commission considers that it would be helpful to users if the RBP access arrangement was updated in regard to the current capacity and structure of the pipeline, and an indication sought from APT of the circumstances in which it will add compression to the system.

Reference tariff and reference tariff policy

The RBP is the subject of a Queensland Government Derogation up to 101TJ/day, which prevents the Commission from reviewing the reference tariffs related areas of the access arrangement and access arrangement information for capacity up to 101TJ/day until the revisions submission date (2006). Therefore, the majority of the typically contentious aspects of an access arrangement are not open to Commission consideration. In particular, this Draft Decision contains no assessment of reference tariffs or reference tariff policy.

As well as the approved tariff arrangement, APT is proposing to include in the reference tariff policy additional provisions relating to adjustment of the capital base to take account of new facilities investment. However, legal advice provided to the Commission, indicated that the approved tariff arrangement represents the reference tariff policy in its entirety. The Commission understands, therefore, that APT is unable to add to the reference tariff policy in the manner proposed. Accordingly, the Commission proposes an amendment that the additional clauses in the Access Arrangement should be deleted.

Services policy

APT proposed to offer two transportation services, a reference service and a negotiated service. The reference service, a non-interruptible transportation service, is described in the approved tariff arrangement and applies to capacity up to 101TJ/day. The Queensland derogation prevents the Commission from approving additional reference services, which have been requested by some interested parties. The Commission would, however, be entitled to require the services policy to include additional, non-reference services, if it considered appropriate to do so.

Nevertheless, the Commission does not propose to require APT to amend its access arrangement to include in its services policy any additional services. Since these

services could only be included as non-reference services, some negotiation between APT and the user as to terms and conditions would be necessary. Any additional services required by users, such as backhaul or an interruptible service, could be settled with APT as a negotiated service, as contained in the access arrangement.

Terms and conditions

In the access arrangement, APT stated that it ‘will provide services on the terms and conditions set out in its Standard Access Agreement for the service from time to time.’ APT’s ‘Standard Access Agreement’ does not form part of the terms and conditions contained in the access arrangement. However, a provision of the access arrangement states that terms and conditions of the access agreement will be consistent with the terms and conditions contained in the access arrangement.

The Commission is concerned that APT can effectively change the terms and conditions of access by amending its Standard Access Agreement over time without reference to the Commission. The Commission is proposing an amendment, that either APT submit its Standard Access Agreement as part of the access arrangement, or alternatively that it be made clear that users have a right to access the reference service subject only to the terms and conditions contained in the access arrangement. If any inconsistency develops between the approved access arrangement and APT’s Standard Access Agreement, the terms and conditions in the access arrangement would prevail.

Trading policy

Some interested parties have requested that APT specify the ‘reasonable commercial and technical grounds’ on which it would withhold its consent to the transfer (other than a ‘bare transfer’) of contracted quantity to another user. However, APT’s proposal mirrors the provisions of the Code, and there is no obligation on the part of the service provider to include additional criteria specifying what constitutes ‘reasonable commercial and technical grounds’.

Notwithstanding the limitations of the Code, the Commission does not believe that the service provider’s discretion in this situation is unfettered and sees merit in a proposal to further define ‘reasonable commercial and technical grounds’. While the Commission cannot mandate that APT amend the access arrangement to specific objective criteria defining ‘reasonable commercial and technical grounds’, APT is encouraged to do so.

Queuing policy

A number of parties opposed the inclusion of Clause 6.5, which requires a prospective user to demonstrate, upon request, that it has agreements in place for access to a supply of gas at the time it is anticipated that access will be offered. Parties have contended that this information is commercially sensitive.

The Commission agree that the requirement to demonstrate sufficient gas supplies as currently worded is likely to force prospective users to unnecessarily reveal commercially sensitive information. The Commission considers that written confirmation from a prospective user that it has sufficient gas supplies available should be sufficient assurance for the service provider.

APT's proposed access arrangement provides for a request for a reference service to have priority over a request for a negotiated service. The Commission has some sympathy with the view that a prospective user's position in the queue should not be placed in jeopardy if the prospective user wishes to negotiate a service other than the reference service. Accordingly, the Commission proposes that the reference service and negotiated services have equal priority. The Commission considers it particularly relevant in this instance as the proposed access arrangement contains only one specific service, the reference service, and hence negotiated services may conceivably become quite common. The amendment proposed by the Commission would not deprive APT of the right to provide the reference service at the reference tariff.

Extensions/expansions policy

APT's proposed access arrangement provides that APT will consult with the Commission regarding whether or not an extension of the RBP, or expansion beyond capacity of 101TJ/day, will be treated as part of the covered pipeline. However, there is no obligation on the part of APT to seek the Commission's consent.

The Commission proposes a number of amendments to APT's extensions and expansion policy:

- APT should seek the consent of the Commission prior to including an extension as part of the covered pipeline;
- APT should specify how an extension which is to be treated as part of the covered pipeline will affect reference tariffs; and
- any expansion to the covered pipeline is to be considered part of the covered pipeline, unless at that time the regulator agrees that the expansion should not be covered. This amendment acknowledges the potential for market power when capacity is full and the opportunity for monopoly rents to be extracted if the expansion is unregulated.

Proposed Amendments

The Commission proposes the following amendments to the access arrangement.

Proposed Amendment A1.1

In order for APT's access arrangement for the RBP to be approved, APT must set out the current capacity and structure of the pipeline and APT must indicate their expectations for augmentation and what that would entail.

Proposed Amendment A2.1

In order for APT's access arrangement for the RBP to be approved, APT must amend the access arrangement to remove the proposed additions to the reference tariff policy such that it accurately reflects the policy approved by the Queensland Minister.

Proposed Amendment A3.1

In order for APT's access arrangement for the RBP to be approved, APT must either:

- submit its standard access agreement as part of this access arrangement and undertake to submit proposed changes to the Commission for approval in accordance with section 2.28 the Code. The Commission may, pursuant to section 2.33 of the Code, approve the proposed revisions without public consultation if the revisions are not material and will not affect the reference tariff or reference service; or
- amend the access arrangement so that it is clear that prospective users have a right to access the reference service (given available capacity) subject only to those terms and conditions set out in the approved access arrangement.

Proposed Amendment A3.2

In order for APT's access arrangement for the RBP to be approved, APT must amend its queuing policy to provide that:

- the reference service and negotiated services have equal priority; and
- no provision of the queuing policy diminishes APT's right to provide the reference service at the reference tariff (plus a surcharge in relation to developable capacity beyond 101TJ/day if applicable).

Proposed Amendment A3.3

In order for APT's access arrangement for the RBP to be approved, section 6.5 of the proposed queuing policy must be amended such that APT, in seeking that a prospective user demonstrate that it will have access to a supply of gas at the time it is anticipated it will be offered access to the service, can only seek written confirmation from the prospective user that the necessary supply arrangements are in place. No commercially sensitive information (such as location of the gas supply or the identity of the supplier) can be required to be divulged.

Proposed Amendment A3.4

In order for APT's access arrangement for the RBP to be approved, sections 7.1 of the proposed extensions/expansions policy must be amended such that APT must seek the approval of the Regulator prior to electing that an extension form part of the Covered Pipeline for the purposes of this access arrangement.

Proposed Amendment A3.5

In order for APT's access arrangement for the RBP to be approved, section 7.1 of the proposed extensions/expansions policy must be amended to specify how any extension, which is to be treated as part of the Covered Pipeline, will affect reference tariffs.

Proposed Amendment A3.6

In order for APT's access arrangement for the RBP to be approved, APT must amend its extensions and expansions policy to the effect that at the time the pipeline comes into operation, any expansion to the Covered Pipeline is to be considered part of the Covered Pipeline, unless at the time the Regulator agrees that the expansion should be covered.

1. Introduction

1.1 Invitation to make submissions

On 6 November 2000 Australian Pipeline Trust (APT) and Interstate Pipelines Pty applied for approval of a proposed access arrangement for the Roma to Brisbane Pipeline (RBP). APT bought out Interstate Pipelines Pty while the Commission was assessing this access arrangement. The application was made under section 2.2 of the *National Third Party access Code for Natural Gas Pipeline Systems* (the Code).

The Australian Competition and Consumer Commission (Commission) now releases its Draft Decision on the proposed access arrangement and invites submissions from the service provider and interested parties by 21 September 2001 to assist the Commission in reaching a Final Decision.

The RBP was constructed to meet the energy needs of the utility distribution systems and major industrial and power generation facilities in southeastern Queensland and the Brisbane metropolitan area. The RBP transports gas from the gas hub at Wallumbilla, near Roma, in southeastern Queensland to markets along the pipeline route and markets in Brisbane in southeastern Queensland.

Australian Pipeline Trust Petroleum Pipelines Ltd owns and operates the RBP and is the service provider.

Pursuant to section 2.13 of the Code, this Draft Decision proposes to reject the access arrangement and nature of the amendments (or nature of the amendments) that would have to be made to the proposed access arrangement in order for the Commission to approve it. The Draft Decision identifies, for the benefit of the service provider and third parties, the issues that need to be resolved before the Commission makes a Final Decision whether to approve the access arrangement proposed by the service provider.

The Commission will consider carefully responses by the service provider and third parties, and may seek to follow up particular issues with the applicant and other interested parties during the remaining public consultation period. Contact details for enquiries to the Commission are given overleaf.

This introduction includes:

- a description of the current assessment process;
- a description of the regulatory framework;
- an outline of the access arrangement submitted for approval;
- a summary of the criteria for assessing an access arrangement under the Code; and
- the Commission's Draft Decision.

How to make submissions

Please forward submissions to the Commission by close of business on 21 September 2001. To ensure that the Commission and APT have an adequate opportunity to consider the submissions only nominal extensions of time will be granted.

Please forward submissions in electronic and paper form to:

File reference: C2000/1178

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Public submissions will be e-mailed to the applicant, APT, for response during XXXX 2001. Submissions will be available publicly on public register files maintained by the Code Registrar and Commission. Once all submissions are received, public submissions will be available from the Commission's web-site.

If you include information that is of a **confidential** or **commercially sensitive** nature in your submission, it should be clearly marked as such. Under section 7.12 of the Code, the regulator (the Commission) must not disclose such information to any person nor to the Code Registrar. However, information may be disclosed if the regulator 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. Therefore if you wish to claim confidentiality or commercial sensitivity, please explain your reasons and identify the legitimate business interests that would be harmed by public disclosure of the information.

If you claim confidentiality for part of a submission, please provide separate hard copies and electronic versions of the submission in 'public' and 'confidential' formats.

To name electronic documents a useful convention to follow would be:

Public [or Confid] company name [day month year].

For example: 'Public Gasgen 150201.doc'.

To avoid potential confusion over the date of electronic versions of submissions and covering letters, please avoid using templates that automatically update each time the document is opened.

1.2 Consultative process and relevant documents

The Code sets out the following public consultation process applicable to the Commission as regulator. The Commission must:

- inform interested parties that it has received the access arrangement;
- publish a notice, in a national daily newspaper, that describes the covered pipeline to which the access arrangement relates, states how copies of the application documents can be obtained and requests submissions by a date specified in the notice;
- publish notices, in a national daily newspaper, of extensions to the date by which a Final Decision on the access arrangement is due;
- after considering submissions received, issue a Draft Decision that either proposes to approve the access arrangement or proposes not to approve the access arrangement. The regulator must state the amendments (or the nature of the amendments) that have to be made to the access arrangement in order for the regulator to approve it. The regulator must seek submissions following release of the Draft Decision;
- after considering any additional submissions and a revised access arrangement (if submitted), 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) that 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 for the pipeline system.

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 capacity up to 101TJ/day for this access arrangement have been determined by the Queensland Minister and cannot currently be reviewed in this process. Information regarding the certification of the effectiveness of this Regime is discussed in 1.3.3.

In November 2000 the Commission published an advertisement in the Australian Financial Review to advise that it had received APT's proposed access arrangement.

The advertisement invited submissions from interested parties in response to an *Issues Paper* that it released at that time. The Commission received written submissions from seven interested parties. These parties which are list in attachment A were Santos, Incitec, Ergon, Energex, Energy Users, Origin and CS Energy.

The major issues raised by interested parties in the submissions included:

- the access arrangement offers only one reference service for firm forward haul up to 101TJ/day;
- the service provider can earn revenues greater than the tariff from the negotiated service, that are not shared back to the users;
- the service provider may withhold consent, for a user to change Receipt or Delivery Points, on reasonable commercial or technical grounds; and
- the service provider can “elect” whether an extension beyond 101TJ/day is treated as part of the covered pipeline.

1.3 Regulatory framework

The main legislation regulating access to gas transmission services in Queensland is outlined below.

Gas Pipelines Access (Queensland) Act 1998

This Act is referred to as the *Gas Pipelines Access Law* (GPAL). The GPAL governs the conduct of pipeline service providers and other interested parties in respect of access issues and regulatory, dispute resolution and administrative processes. In addition, the GPAL amends the *Petroleum Act 1923* (Queensland) and the *Gas Act 1965* (Queensland) in an attempt to create a regulatory regime consistent with the Code.

Gas Pipelines access (Queensland) Act 1998 – Derogations

The GPAL establishes a number of derogations from the 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 Code. As a result the reference tariffs are non-reviewable for a specified period of time, in the case of the RBP approximately of five years.

The National Third Party access Code for Natural Gas Pipeline Systems

This is referred to as the Code, and among other things, requires transmission service providers to submit access arrangements to the Commission for approval. Pipelines covered under the Code when it was implemented are obliged to lodge access arrangements. RBP is a ‘covered’ pipeline.

Gas Pipelines access (South Australia) Act 1997

In accordance with the Natural Gas Pipelines access Agreement, South Australia was the lead legislator in implementing the national gas access legislation.

Regulatory institutions

The regulatory institutions with responsibility for administering the Queensland legislation with respect to transmission pipelines are:

- the National Competition Council – Coverage advisory body;
- the Commonwealth Minister – Coverage Decision Maker;
- the Commission – Relevant Regulator and Relevant Arbitrator;¹
- the Australian Competition Tribunal – merits review body; and
- the Federal Court – judicial review.

The Queensland Competition Authority² (QCA) is regulator and arbitrator in Queensland with respect to distribution (reticulation) pipelines. At present, the QCA has not approved access arrangements for the distribution companies.

1.3.1 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). The Commonwealth makes the decision about whether such regimes are ‘effective’ based on recommendations from the National Competition Council.

Should the Commonwealth Minister certify the Regime as effective, then the services subject to the Regime cannot be declared for access under Part IIIA of the *Trade Practices Act 1974*. In the event of the Regime not being certified as effective, then the Commission’s considerations of the access arrangement would not be necessarily affected. However, in this case the pipeline would be exposed to the risk of being declared 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 arbitrating such an access dispute, the Commission would not be bound by the reference tariffs established by the Queensland Minister in the derogations. The Commission would operate under Part IIIA of the TPA rather than the Code to determine a tariff in these circumstances.

¹ The Commission is also regulator and arbitrator with respect to transmission pipelines in the other States and Territories with the exception of Western Australia.

² Queensland Competition Authority Act 1997

1.4 Period of RBP access arrangement

As established in the derogations, the submission date for the review of APT's access arrangement is 31 January 2006.

1.5 Criteria for assessing an access arrangement

The Commission may approve a proposed access arrangement only if it is satisfied that it contains the elements and satisfies the principles set out in sections 3.1 to 3.20 of the Code. Those principles are summarised below. The regulator cannot reject a proposed access arrangement on the basis that the arrangement does not address a matter that section 3 of the Code does not require it to address. Otherwise, the Commission has broad discretion within the terms of the Code in approving an access arrangement.

An access arrangement must include a policy on the service or services to be offered, which includes a description of the service(s) to be offered. The policy must include one or more services that are likely to be sought by a significant part of the market and any service(s) that, in the Commission's opinion, should be included in the policy. To the extent practicable and reasonable, users and prospective users must be able to obtain those portions of the service(s) that they require, and the policy must allow for a separate tariff for an element of a service so requested.

An access arrangement must contain one or more reference services for which a corresponding reference tariff applies. A reference tariff operates as a benchmark for negotiation of terms of supply of a particular service and provides users with a right of access to the specific service at that tariff. The reference tariff will apply in the event an access dispute goes to arbitration. Reference tariffs must be determined according to the principles in section 8 of the Code.

An access arrangement must include the following elements:

- terms and conditions on which the service provider will supply each reference service;
- a statement of whether a contract carriage or market carriage capacity management policy is applicable;
- 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 under the Code of an extension or expansion of a pipeline;
- a date by which revisions to the arrangement must be submitted; and
- a date by which the revisions are intended to commence.

In considering whether an access arrangement complies with the Code, the regulator must (pursuant to section 2 of the Code) take into account:

- the legitimate business interests and investment 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.

1.6 Physical status of the pipeline

The RBP was constructed to meet the energy needs of the utility distribution systems and major industrial and power generation facilities in southeastern Queensland and the Brisbane metropolitan area. The original RBP is a ten inch diameter pipeline designed to receive gas from the gas hub at Wallumbilla, near Roma, in south central Queensland to markets along the pipeline route and markets in Brisbane in south eastern Queensland. The original capacity of the pipeline was 78TJ/day.

The RBP has undergone considerable expansion with the installation of compressors between 1981 and 1986 and through looping during 1998 to 2000. The RBP has nearly been entirely looped. The looped pipeline sections are capable of running at higher pressure than the original pipeline and are larger with a sixteen inch diameter.

In addition to the looping, compressors have been added upgrading the capacity of the RBP to approximately 145TJ/day. APT have incrementally looped the pipeline in accordance to the exact demand for gas from each user. The RBP has not had any spare capacity for some years now, since APT have looped the pipeline each time to increase the capacity by the exact quantity of new contracts.

Is the high pressure Roma to Brisbane Pipeline a new Pipeline?

CS Energy stated that with the looping stages completed it might be possible that the looped pipeline could be operated and regulated as a new pipeline. CS Energy in their submission referred to the high-pressure looped pipeline as the Wallumbilla to Bellbird Pipeline (WBP). CS Energy suggested that it might be appropriate to issue a separate licence for the WBP, quite distinct from the RBP licence. Further, CS Energy suggested that it would be helpful if the service provider indicated when, or if, it

contemplates seeking approval to operate the WBP at a higher operating pressure with different services to that offered on the RBP.³

1.6.1 Commissions consideration

The Commission understands that the RBP is nearly fully looped and that the looped pipeline is capable of being operated at a higher pressure. The Commission discussed with APT the potential of separating the two pipelines. APT responded that there is a possibility of operating the two pipelines separated at different pressures, however, the commercial reality is that they would still be regarded as one separate pipeline.

As noted earlier, since APT released the RBP access arrangement there has been significant expansion of the pipeline, currently the pipeline's capacity is already beyond 118.5TJ/day. The Commission considers that it would be helpful to users if the RBP access arrangement was updated in regard to the current capacity and structure of the pipeline and an indication from APT of the circumstances in which it will add compression to the system.

Proposed Amendment A1.1

In order for APT's access arrangement for the RBP to be approved, APT must set out the current capacity and structure of the pipeline and APT must indicate their expectations for augmentation and what that would entail.

1.7 Nature of the derogation

Reference tariffs in the RBP access arrangement are only explicitly derogated up to 101TJ/day. Further, the access arrangement only provides a reference service for capacity up to the first 101TJ/day of the pipeline. A negotiated service is offered for capacity from 101TJ/day and beyond. The Commission sought legal advice from Counsel as to whether the Commission can require additional reference services in the access arrangement beyond 101TJ/day.

Counsel's advice was that the Commission couldn't require additional reference tariffs due to the wording of section 58(3) of the GPAL, which states:

The approved tariff arrangement is taken to be approved under the Gas Pipeline access Law as the reference tariff and the reference tariff policy for the access arrangement to be submitted under the law for the pipeline until the revisions commencement date for the access arrangement.

Counsel advised that the Commission can require the services policy in the access arrangement to describe additional services, but these could not be reference services, since no additional reference tariff can be set for this pipeline, which is subject to a derogation in the GPAL. The nature of the derogation is discussed in more depth in section 3.1.4 of the Draft Decision.

³ CS Energy submission, 29 January 2001, p. 5.

Intention of the Queensland Government

The Commission understood from discussions with staff of the Queensland Department of Mines and Energy (QDME) that the Queensland Government's intention in making the derogation was that the Commission would be restricted from assessing reference tariffs for capacity up to 101TJ/day. For capacity beyond 101TJ/day, however, the Commission would be able to determine reference tariffs following the appropriate Code processes. As noted previously, the nature of the derogation is such that the Commission cannot determine reference tariffs beyond 101TJ/day. The Commission wrote to the Queensland Government to clarify this uncertainty, seeking confirmation of its intentions in making the derogation.

The Queensland Treasury Office of Energy (QTE) responded⁴ that it did not consider it necessary to amend the legislation, as the lack of other reference services in the proposed access arrangement at this time would not have a major effect on a prospective user's access to the pipeline. Further, QTE stated that if there is an access dispute over the provision of a service, it would appear the dispute could be addressed under the dispute resolution provisions of the Code.

The Queensland Government's intention in drafting the derogation is discussed in more depth in section 3.1.4 of the Draft Decision.

1.8 Information disclosure

Many submissions indicated that the information disclosed by the RBP in their access arrangement information is insufficient to users and prospective users with respect to how the reference tariffs were initially derived and how negotiated services will be priced in the future.

The derogation relating to this access arrangement explicitly releases APT from the obligation to provide access arrangement information in connection with the access arrangement under the reference service and reference tariff offered. Further, the Commission is unable to require APT to provide tariff information related to negotiated services.

Information disclosure is discussed in more depth in chapter 4 of the Draft Decision.

1.9 Impact on access

The Commission considers that the Queensland Government's derogations are not having the effect that was intended. Currently, users seeking access to the RBP are not provided with reference services and have not been provided with helpful access arrangement information to assist them in negotiating a reasonable tariff. As noted the Queensland Government does not consider this a concern given that if there were an

⁴ QTE sent a letter to the Commission on 25 June 2001, it can be found on the web site <http://www.accc.gov.au/gas/fs-gas.htm>.

access dispute over the provision of a service, the dispute could be addressed under the dispute resolution provisions of the Code.

One of the underlying tenets of the Code is the ability for prospective users to access the common services of a pipeline at a pre-approved 'reference' tariff. This concept was created in recognition that the costs and delays of dispute resolution (and arbitration in particular) will often outweigh the expected benefits for the majority of users. Exactly this concern has been raised by Queensland gas industry participants with the Queensland Government's approach. In fact, users went so far as to state that they would not seek arbitration to gain access to services because of the potential for delays and costs.

1.10 Draft Decision

The Commission proposes not to approve the access arrangement for the RBP.

Pursuant to section 2.13, the proposed amendments that must be incorporated in a revised access arrangement for it to be approved (under section 2.16) are set out in the relevant sections of this Draft Decision and are brought together in the Executive Summary.

Chapter 2 describes the reference tariffs as determined by the Queensland Minister. Chapters 3 and 4 set out the Commission's analysis of:

- the non-tariff elements of service, that is, the service provider's proposed access policies, terms and conditions of service and arrangements for review of the access arrangement (chapter 3); and
- information provision and performance indicators (chapter 4).

Chapter 5 re-states the Commission's draft decision on the basis of the analysis preceding that chapter.

2. Reference tariff elements

2.1 Reference tariff

2.1.1 Reference tariff requirements

The reference tariffs for this pipeline have been derogated by the Queensland Government. The reference tariffs as set out in the derogation are included as schedule A to the access arrangement, and summarised in this chapter. As described earlier, these tariffs are not subject to review by the Commission in its consideration of this access arrangement.

2.1.2 APT's reference tariffs

The reference tariff applies to the reference service, defined in section 2 of Schedule A of the proposed access arrangement, and consists of:

- for each month, a reservation charge equal to the capacity reservation rate multiplied by the user's MDQ multiplied by 30.4375;
- a throughput charge equal to the throughput rate multiplied by the sum of the quantities of gas (in GJ) delivered to all delivery points for or on behalf of the user;
- authorised overrun charges, unauthorised overrun charges, daily variance charges and imbalance charges in accordance with sections 1.2, 1.3 and 1.4 of Schedule A of the proposed access arrangement;
- a charge for new taxes, duties or charges imposed by any government or other regulatory authority in accordance with section 1.5 of Schedule A of the proposed access arrangement;
- costs of construction, operation and maintenance of additional receipt or delivery points and for an increase in the existing receipt or delivery MDQ of existing receipt of delivery points in accordance with section 1.6 of the proposed access arrangement; and
- for each month, any capacity reservation surcharge under section 1.7 of Schedule A of the proposed access arrangement.

Daily variance, imbalance and overrun charges

APT stated that the overrun, daily variance and imbalance charges are subject to the service provider providing the user with:

- sufficient and timely information, or where a user's capacity falls with that part of the nominal capacity of the pipeline above 78.9TJ/day and below 101TJ/day, adequate time to install communication measures at the users option to access sufficient and timely information; and
- adequate time to install control measures at the user's option;

which will allow the user to take practical measures to avoid incurring such charges.⁵

Overrun, variance and imbalance charges are discussed in section 3.2 of the Draft Decision.

Charges in respect of delivery or receipt points

APT stated that it may recover from a user or group of users (in proportion agreed) the costs of:

- constructing capital improvements⁶; and
- operating and maintaining the capital improvements;

provided that no charges for capital improvements and operating and maintenance costs may be recovered under the examples listed in clause 1.6 of the access arrangement, except where the improvements are for an increase in the capacity of the pipeline.⁷

Capacity reservation surcharge

APT stated that where the capacity sought by the user is provided from that part of the nominal capacity of the pipeline above 78.9TJ/day and below 101TJ/day, the user shall pay a capacity reservation surcharge.⁸

Reference tariff escalation

APT stated that the capacity reservation rate, throughput rate, surcharge rate, authorised overrun rate, unauthorised overrun rate, daily variance rate and imbalance rate will be adjusted from the date nominated in the definition of the relevant rate on each 1 January, 1 April, 1 July and 1 October in each year in accordance with the following formula:

$$\text{Revised Rate} = \text{Rate} \times \left[1 + 0.75x \frac{(CPI_q - CPI_{q-1})}{CPI_{q-1}} \right]$$

where

Rate = The capacity reservation rate, throughput rate, surcharge rate, authorised overrun rate, unauthorised overrun rate, daily variance rate and imbalance rate for the quarter before the adjustment being made.

⁵ Access Arrangement, 6 November 2001, clause 1.1.3, p. 12.

⁶ The capital improvements listed in clause 1.6 of the access arrangement relates to: additional receipt points or delivery points or, for receipt or delivery points operated by the owner of the receipt or delivery point, constructing capital improvements for increases in the receipt point MDQ or delivery point MDQ or to comply with agreed metering quality and related upgrading of existing receipt points or delivery points for the pipeline specifically required to deliver gas to or receive gas from that user or group of users, including the construction of receipt points, delivery points, regulation, metering and quality monitoring facilities.

⁷ Access Arrangement, 6 November 2001, clause 1.6, p. 13.

⁸ Access Arrangement, 6 November 2001, clause 1.7, p. 13.

Revised Rate = The capacity reservation rate, throughput rate, surcharge rate, authorised overrun rate, daily variance rate and imbalance rate to be applied from the date of the adjustment.

CPIq = CPI for the quarter immediately before the date of the adjustment.

CPIq-1 = CPI for the quarter immediately before the quarter referred to in CPIq.⁹

2.1.3 Submissions by interested parties

The submissions raised several concerns on the following issues in regard to the reference tariff elements:

- excess rates of return;
- introducing a profit/revenue sharing mechanism, where rates of returns in excess of those deemed acceptable by the Commission are shared with the original service user;
- the cost of using some of the laterals cannot be clearly identified;
- zonal pricing should be provided to assist each user to calculate its cost and benefit for trading a contracted service to another user; and
- establishing an initial capital base.

Rates of return

Several submissions noted that studies pertaining to the RBP have indicated that the rates of return are excessive.

Energex noted that it currently pays a higher transportation price compared to other pipelines for gas delivered to South East Queensland (SEQ) via the RBP and that this point has been identified by a number of organisations such as the Commission and the NCC.¹⁰

Origin noted that the proposed reference tariffs and the underlying rates of return places the RBP amongst the highest priced pipelines in Australia.¹¹

Introducing a profit/ revenue sharing mechanism

Energex suggested that given the perceived rate of return noted for the RBP, a revenue sharing policy would be an appropriate mechanism to compensate transportation pricing for the contracted users when above normal revenues are generated from the pipeline system.¹²

⁹ Access Arrangement, 6 November 2001, clause 1.8, p. 14.

¹⁰ Energex submission, 20 February 2001.

¹¹ Origin submission, 30 January 2001, clause 2.1.

¹² Energex submission, 20 February 2001.

Santos noted that substantial revenue is generated from the daily variance charges, imbalance charges, overrun charges, receipt point charges and interruptible transportation services which are not included in the determination of the reference tariff. A sharing mechanism would act as an automatic trigger to protect the shippers against unacceptable high transportation costs in the RBP.¹³

Origin recommended that rates of returns in excess of those deemed acceptable by the Commission be shared with the original service user to the point where any inequitable tariff position is nullified, and thereafter on an equal basis across all service users.¹⁴

CS Energy suggested that it might be more efficient if there were a mechanism that allowed short-term profits to be shared amongst current users and the service provider.¹⁵

Pricing of laterals

Santos considered that it is unclear whether the Peat to Scotia lateral will form part of the access arrangement.¹⁶ CS Energy stated that it might be useful for the RBP access principles to mention how the Peat to Scotia lateral would impact on the RBP's ability to receive and transport gas.

CS Energy suggested that it might be appropriate to issue a separate pipeline licence for the Swanbank lateral with separate access principles. This will allow the cost of using this lateral to be clearly identified, so that in the future other potential users could estimate whether there is spare capacity, and whether it is worthwhile to contract to use this pipeline after installing a metering station or whether to build a competing pipeline.¹⁷

Zonal pricing

CS Energy proposed that zonal pricing be provided to assist each user to calculate its cost and benefit for trading a contracted service to another user. For example, if a firm transportation price were provided for the total pipeline with separate tariff adjustments for the different zones and laterals, spurs and connecting pipelines as they eventuate, this would assist in the proper allocation of costs.

Alternatively, CS Energy suggested that the tariff could be structured to give a capacity reservation charge for a firm forward haul relative to the distance from receipt and delivery points with a separate throughput charge based on distance transported.¹⁸

Initial Capital Base

Ergon stated that under chapter 8 of the Code, the Initial Capital Base (ICB) approved by the regulator can only be revised in subsequent access arrangement periods in

¹³ Santos submission, January 2001, p. 5.

¹⁴ Origin submission, 30 January 2001, clause 2.1.

¹⁵ CS Energy submission, 29 January 2001, p. 11.

¹⁶ Santos submission, 29 January 2001, p. 3.

¹⁷ CS Energy submission, 29 January 2001, p.5.

¹⁸ CS Energy submission, 29 January 2001, p. 9.

accordance with section 8.9 (ie to reflect new facilities and investments). Further, Ergon stated that essentially once approved, the ICB for the prevailing assets are locked in and cannot be subsequently revisited by the regulator.

Ergon considered that it was unclear from the Code or the GPAL, whether the Commission will be able to redetermine the ICB for the pipeline once it assumes responsibility for the tariff arrangements. Given that the Minister took responsibility in this initial access arrangement period, Ergon questioned whether there is scope for the Commission to make a re-determination, or whether it is required to regard the ministerially approved ICB as permanent.¹⁹

Energy users pointed out that the ICB is the single most important item of interest to customers in any access review not only because of its effect on authorised revenue but also because it forms the base for all subsequent reviews on a particular pipeline system.²⁰

2.1.4 Commission's considerations

The Commission notes interested parties considerations, however, due to the derogation on the RBP by the Queensland Government, the Commission is unable to review the reference tariffs until the end of the access arrangement period, which is given as the revisions commencement date of 29 July 2006.

Zonal Pricing

CS Energy's proposal for zonal pricing is inconsistent with the 'postage stamp' tariff described in the approved tariff arrangement, which the Commission has no authority to review for the initial access arrangement period. A user may negotiate with APT for a distance-based tariff as part of a negotiated service, however APT is under no obligation to agree to such a request.

Initial Capital Base

The Commission will be establishing a value for the ICB at the commencement of the next access arrangement period.

Additional provisions in relation to new facilities investment

As noted due to the derogation on the RBP by the Queensland Government, the Commission is unable to review the reference tariffs until the end of the access arrangement period, which is given as the revisions Commencement date of 29 July 2006.

With regard to the additional provisions proposed by APT in relation to new facilities investment, legal advice provided to the Commission indicates that the tariff arrangement approved by the Minister represents the reference tariff policy in its entirety. The Commission, therefore, cannot approve APT's proposal to additions to the reference tariff policy.

¹⁹ Ergon submission, 29 January 2001, p 6.

²⁰ Energy users Association of Australia, 8 February, 2001.

The proposed provisions appear to be generally consistent with the Code. Nevertheless, because APT does not have the power to modify the reference tariff policy, the Commission proposes an amendment that the additional provisions be removed from the access arrangement. In any case these provisions would be unlikely to have any practical effect. The provisions relate to adjustments to the capital base to take account of new facilities investment, yet a value for the ICB has not been established for the initial access arrangement (it does not form part of the tariff arrangement approved by the Minister). In effect, a value for the capital base will not be established until the commencement of the next access arrangement period.

Proposed Amendment A2.1

In order for APT's access arrangement for the RBP to be approved, APT must amend the access arrangement to remove the proposed additions to the reference tariff policy such that it accurately reflects the policy approved by the Queensland Minister.

3. Non-tariff elements

In this chapter the mandatory non-tariff elements of the proposed access arrangement for RBP are assessed for compliance with the National Gas Code. The Code requirements are outlined for each mandatory element followed by a summary of the service provider's proposal, the issues raised in submissions, APT's response to submissions and the Commission's considerations. Where relevant these are followed by amendments that the Commission proposes be made for the access arrangement to be approved. All amendments are replicated in the Executive Summary.

Section 3 of the Code establishes the minimum content of an access arrangement, which includes the following non-tariff mandatory elements:

- a services policy that must contain at least one service that is likely to be sought by a significant part of the market;
- terms and conditions on which the service provider will supply each reference service;
- a capacity management policy to state whether the covered pipeline is a contract carriage or market carriage pipeline;
- in the case of a contract carriage pipeline, a trading policy which refers to the trading of capacity;
- a queuing policy which defines the priority that users and prospective users have to negotiate capacity where there is insufficient capacity on the pipeline;
- an extensions/expansions policy which determines whether or not an extension or expansion of a covered pipeline is to be treated as part of the covered pipeline for the purposes of the Code; and
- a review date by which revisions to the access arrangement must be submitted and a date on which the revisions are intended to commence.

3.1 Services policy

3.1.1 Code requirements

Sections 3.1 and 3.2 of the 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 relevant 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 those elements of a service required by users and prospective users and, if requested, apply a separate tariff to each.

3.1.2 APT's proposal

APT proposed to offer two transportation services under its access arrangement:

- reference service: non-interruptible transportation service for gas delivered into the pipeline by or on behalf of the user through any length of the pipeline in the direction from Wallumbilla to Brisbane, including an overrun service.
- negotiated service: agreements negotiated to meet the needs of a user, which differ from those in the reference service.

Reference service

- The reference service for the pipeline is described in the tariff arrangement approved by the Minister for Mines and Energy.
- The reference service is offered for capacity up to the first 101TJ/day of contracted capacity in the pipeline.²¹

Negotiated service

- A negotiated service is offered for capacity from 101TJ/day to 118.5TJ/day; a negotiated service is offered for capacity above 118.5TJ/day, subject to the extensions/expansion policy.
- Where a prospective user has special needs, which differ from those which would be satisfied by the reference service, the prospective user may seek to negotiate different terms and conditions with APT, hence, as a negotiated service.
- Should a dispute arise, APT purported that it will be resolved in accordance with the dispute resolution procedures in the Gas Pipeline Access Law and the access Code, unless the parties agree otherwise.²²

Access and requests for service

Conditions which a prospective user must observe before gaining access to the service are set out in clause 1.3 of the proposed access arrangement and summarised as follows:

- a prospective user must lodge a request and meet APT's prudential requirements;
- the request must have a minimum level of detail required being that which is detailed in Schedule E;
- a prospective user may have only one active request for a given tranche of capacity to a particular delivery point;
- APT will advise the prospective user where a request is incomplete. If the request is amended within 7 days [of notice], the priority of this request will depend on the

²¹ Access Arrangements, 6 November 2000, Section 1, clause 1.1, p. 1.

²² Access Arrangement, 6 November 2000, Section 1, clause 1.2, p. 1.

date on which APT first received the request. Otherwise, the priority will depend on the date on which APT receives the complete request;

- within 30 days of receiving a complete request, APT will advise the prospective user whether capacity is available, whether there is a queue for that capacity and of the price;
- a request will lapse unless the prospective user has either entered into an access agreement for a reference service or a negotiated service, or commenced bona fide negotiations, within 30 days of APT advising that capacity is available.²³
- where there is sufficient capacity to meet a request, there will be no queue;
- where there is insufficient capacity to satisfy a request, then a queue will be formed and the queuing policy (outlined in section 6 of access arrangement) will apply.²⁴

Prudential Requirements

APT stated that prudential requirements are applicable to both a user and prospective user of the pipeline and must be met in order to obtain a service from APT. These requirements are listed under clause 1.3 of the proposed access arrangement and also are detailed below:

- the prospective user must be a resident in, or have a permanent establishment in, Australia;
- the prospective user must not be under external administration as defined in the Corporations Law or under any similar form of administration in any other jurisdiction;
- the prospective user may be required to provide reasonable security in the form of a parent company guarantee or a bank guarantee or similar security. The nature and extent of the security will be determined having regard to the nature and extent of the obligations of the prospective user under the access arrangement.²⁵

3.1.3 Submissions by interested parties

In their submissions parties raised the following issues in respect of APT's proposed services policy:

- the need for more services such as pressure service, interruptible service, and back haul service; and
- demand for a reference tariff beyond 101TJ/day.

²³ A Request for service will not lapse in the event of a dispute being notified under the Code until that dispute has been resolved in accordance with the Code.

²⁴ Access Arrangement, 6 November 2000, Section 1, clause 1.3, p. 1.

²⁵ Access Arrangement, 6 November 2000, Section 1, clause 1.3, p. 2.

Request for more services

CS Energy considered that the explanatory information and the reference services offered lacked compliance with the spirit of the Code.²⁶ CS Energy suggested a number of additional reference services that would be demanded, such as a:

- **Pressure service:** CS Energy believed that with the development of gas fired electricity generation facilities there would be a demand for a pressure service. This is due to gas fired electricity facilities needing a higher, more exact, delivery pressure. CS Energy suggested that the access arrangement should declare how it will treat requests for pressure exceeding its declared minimum and the impact that a pressure service could have on users and prospective users. In addition, CS Energy suggested that the access arrangement should indicate how such a pressure service would impact on the queuing policy, the timing of any compressor installations or looping and the treatment of pressure service costs.²⁷
- **Interruptible service:** CS Energy argued that a transparent interruptible tariff should be made available given that this service is available on most pipelines.²⁸
- **Backhaul service:** CS Energy stated that a tariff should be published for this service due to real possibility of alternate gas supplies.²⁹
- **Spot service:** CS Energy argued that spot tariffs should be allowed as a regulated tariff. According to CS Energy, there could be more gas producers and more gas pipeline users in the future, thus more flexible tariffs would decrease the costs for the end customer.³⁰
- **Overrun and Imbalance policy:** CS Energy claimed that it is difficult for power stations to accurately predict the amount of gas that it will use in any hour or day, given the numerous variables that create fluctuations. Subsequently, CS Energy claimed that it is difficult to predict usage for extended periods, such as the fifteen-year term required by pipeline owners to obtain a commercial tariff. Hence, CS Energy proposed that there should be a different reference service, overrun and imbalance policy for electricity generators.³¹
- **Park and Loan service:** CS Energy believed that this should be a declared service as it is a useful tool for power generators and other users.³²

²⁶ CS Energy submission, 29 January 2001, p 8.

²⁷ CS Energy submission, 29 January 2001, p 14.

²⁸ CS Energy submission, 29 January 2001, p. 14.

²⁹ CS Energy submission, 29 January 2001, p. 15.

³⁰ CS Energy submission, 29 January 2001, p. 15.

³¹ CS Energy submission, 29 January 2001, p. 8.

³² CS Energy submission, 29 January 2001, p. 15.

Demand for reference tariff beyond 101TJ/day

Ergon believed that the reference service being offered by APT is sufficient to meet a significant part of the market's demand. However, Ergon noted that there is no reason given by APT why the full capacity of the pipeline (up to 118.5 TJ/day) cannot be contracted under the reference tariff. Further, Ergon stated that the pipeline is forecast to exceed the volume threshold of 101TJ/day on an average daily basis in 2002 therefore Ergon believed that users who contract capacity beyond this amount are discriminated against.³³

CS Energy noted that the more opportunity there is for a negotiated service that differs from the regulated service tariff the more competitive disadvantage current users may face as the new regulatory regime is implemented, especially if there are few regulated services. CS Energy proposed that all negotiated services should be reviewed by an independent third party for their impact on the forecasted revenue that served as a basis for the regulated tariffs.³⁴

Origin submitted that the introduction of negotiated services and negotiated tariffs will create a potential for an inequitable pricing structure between new and existing service users.³⁵

Santos and Energex considered that a negotiated tariff arrangement between 101TJ/day and 118.5TJ per day, where there are no reference tariffs for any new customers and no reference tariff principles for any new capacity, is inconsistent with the intent of the Code.³⁶ Further, Energex noted that that a prospective user cannot negotiate transportation rights with any certainty as there is no reference tariff as a starting point or supportive information to substantiate an alternative commercial position.³⁷

3.1.4 Commission's considerations

In light of the comments from interested parties regarding the provision of additional services and given that this access arrangement is only derogated to 101TJ/day, the Commission sought legal advice from Counsel as to whether the Commission can require the inclusion of additional reference services. Counsel advised the Commission that it could not require the inclusion of additional reference tariffs.

Can the Commission require reference tariffs beyond 101TJ/day?

In ordinary circumstances, the Commission can require a reference tariff to be set for any service that satisfies section 3.3 of the Code. Section 3.3 of the Code states that:

“An access arrangement must include a reference tariff for:

³³ Ergon submission, 29 January 2001, p 3.

³⁴ Ergon submission, 29 January 2001, p 9-10.

³⁵ Origin submission, 30 January 2001, clause 2.1.

³⁶ Santos submission, January 2001, clause 2.1, p. 4.

³⁷ Energex submission, 20 February 2001.

- (a) at least one service that is likely to be sought by a significant part of the market; and
- (b) each service that is likely to be sought by a significant part of the market and for which the Relevant Regulator considers a reference tariff should be included”.

If a reference tariff is set for such a service, it is a reference service.

Section 58 of the Queensland Gas Pipelines Access Law

In the case of a pipeline that is subject to derogation under the GPAL, the situation is affected by section 58. Section 58(3) states that:

The approved tariff arrangement is taken to be approved under the Gas Pipeline access Law as the reference tariff and reference tariff policy for the access arrangement to be submitted under the law for the pipeline until the revisions commencement date for the access arrangement.

Section 58(3) provides that the approved tariff arrangement is taken to be the reference tariff for the access arrangement for the pipeline. The use of the words “access arrangement” and “pipeline” are crucial. Section 58(3) does not say that the approved tariff arrangement is the reference tariff for the service or a service described in the approved tariff arrangement. Rather, it provides that *the* reference tariff for the access arrangement for the pipeline is that which is set out in the approved tariff arrangement.

What is the effect of section 58(3)?

The Commission may consider that section 3.3 of the Code is satisfied and that a reference service is likely to be sought by a significant part of the market. In this case, what the Code permits the Commission to require of the service provider is inconsistent with the derogations of the GPAL. Wherever, there is inconsistency between the Code and the derogation and the GPAL, the derogations of the GPAL prevail over the Code.

In conclusion, the Commission can in approving an access arrangement for a pipeline that is subject to a derogation under the GPAL, require the access arrangement to describe additional services, but these cannot be reference services, since no additional reference tariff can be set for a pipeline that is subject to a derogations of the GPAL.

Queensland Government’s intention

The Commission understood that the Queensland Government’s intention in making the derogation was that the Commission would be restricted from assessing reference tariffs for capacity up to 101TJ/day. For capacity beyond 101TJ/day, however, the Commission would be able to determine reference tariffs following the appropriate normal Code process. The Commission wrote to the Queensland Government seeking confirmation of its intentions in making the derogation. As noted previously, legal advice stated that the Commission could not determine reference tariffs beyond 101TJ/day.

The Queensland Treasury Office of Energy (QTE)³⁸ stated that regardless of its intention, it was not necessary to amend the legislation due to the right of prospective

³⁸ QTE sent a letter to the Commission on 25 June 2001, it can be found on the web site <http://www.accc.gov.au/gas/fs-gas.htm>.

users seeking access to services other than the reference service to negotiate with the service provider. Should such a prospective user not be satisfied with the outcomes of negotiations, it has the right to notify an access dispute to the Commission. The Commission then can arbitrate and determine a tariff and associated terms and conditions for that prospective user to access the specific service.

The Commission informed interested parties of the Queensland Government's view that arbitration is an adequate mechanism for gaining access to other services. However, interested parties responded that they did not believe that this is a viable course of action for a number of reasons, including:

- the costs of going through an arbitration may exceed the benefits in terms of reduced tariffs; and
- the potentially significant delays involved in a dispute resolution and arbitration may make it an unworkable option. For example, a new project may have a window of opportunity that will close well before an outcome might be expected from notifying a dispute. This is especially the case on this pipeline, where the Commission has not gone through the detailed process of assessing proposed reference tariffs.

The Commission believes that a minor legislative amendment can be made by the Queensland Government to ensure that its gas access legislation is having the effect it intended.

3.2 Terms and conditions

3.2.1 Code Requirements

Section 3.6 of the Code requires an access arrangement to include the terms and conditions on which a service provider will supply each reference service. These terms and conditions must be reasonable according to the relevant regulator's assessment.

3.2.2 APT's proposal

APT stated that it will provide the services on the terms and conditions set out in its Standard Access Agreement for the service from time to time. In addition, APT stated that the terms and conditions of the access agreement will be consistent with the access arrangement including the approved tariff arrangement in schedule A and schedule C.

APT submitted that it will not discriminate between prospective users in the provision of services on the basis of:

- past transactions or relationships with any one or more of the owners of the pipeline;
- the identity of the prospective user; or
- the prospective user being a related party of any one or more of the owners of the pipeline.

The key aspects of the terms and conditions are set out in schedule A and schedule C of the proposed access arrangement and tariff arrangement approved by the Minister.

Overruns, Variances and Imbalances

APT stated that overruns are a method used by a pipeliner to ensure that on any day the pipeline can deliver users their MDQ. Overruns occur when MDQ is exceeded. That is, when gas delivered is greater than that nominated by the user. An overrun can be authorised (where APT has agreed to a user's request for additional gas at a particular delivery point) or unauthorised.³⁹

APT stated that it will allow daily variances (where the delivered or received quantity exceeds the nominated amount by more than 10 percent of the MDQ)⁴⁰ to occur on four days within a month (or 24 days in a year) before a user is required to pay a daily

³⁹ Access Arrangement, 6 November 2000, Schedule A, clause 2.27, p. 18.

⁴⁰ Access Arrangement, 6 November 2000, Schedule A, clause 2.2.8, p. 19.

variance charge.⁴¹ The daily variance charge is calculated by multiplying the daily variance rate by the daily variance quantity.⁴²

APT acknowledged that it is impossible for a user to balance receipts and deliveries on any day and, consequently, has established an inventory system. A user's imbalance is calculated each month. If an imbalance exists a user is expected to rectify it during the next month. If at the end of the three months a user remains out of balance then the quantity attracts an imbalance charge.⁴³

System Use Gas

The system use gas proposed by APT can be summarised as follows:

- the user will supply at its cost the proportion of users' system use gas determined by APT up to the quantity determined by multiplying:
 - the total quantity of system use gas not supplied by other users by the aggregate quantity of gas delivered for or on behalf of the user and divided by the aggregate quantity of gas delivered for or on behalf of all users of the reference service.⁴⁴

Line Pack

The linepack service proposed by APT can be summarised as follows:

- the user will supply at its cost the proportion of users' linepack determined by APT which will not exceed the quantity determined by multiplying:
 - the ratio of user's MDQ to the total MDQ of all users at that time; by
 - the difference between the linepack determined by APT and the fixed quantity of gas supplied by APT.⁴⁵

Adjustment in MDQ for Gross Heating Value

APT stated that if the gas presented by a user causes a reduction below 40MJ/m³ in the average Gross Heating Value of the gas, and APT is reasonably of the opinion that the aggregate quantities of gas to be delivered may exceed the capacity of the pipeline, the obligation for APT to deliver gas is adjusted.⁴⁶

⁴¹ Access Arrangement, 6 November 2000, Schedule A, clause 1.6, p. 12.

⁴² The daily variance rate means in any quarter, the rate obtained by adjusting \$0.252/GJ at 1 July 1994 pursuant to section 1.8 of the access arrangement. The daily variance quantity means the quantity calculated in the manner set out in section 2.2.8(g) of the access arrangement.

⁴³ The imbalance charge = imbalance rate multiplied by the imbalance existing at the end of the month.

⁴⁴ Access Arrangement, 6 November 2000, Schedule A, clause 2.2.2, p. 16.

⁴⁵ Access Arrangement, 6 November 2000, Schedule A, clause 2.2.3, p. 16.

⁴⁶ For more information on the adjustment to quantity or gas and Throughput Rates, refer to clause 2.2.5 of the proposed access arrangement.

Gas Quality Specifications

APT's gas quality specification for the RBP are set out in schedule A: attachment 1 of the access arrangement. The specifications include heating value, Wobbe Index, sulphur content and the receipt point temperature.

Schedule A: attachment 1 of the access arrangement information provides details relating to the technical specifications of the pipeline.

APT has nominated the pressure at which users will deliver gas at a receipt point at a pressure between 1000 kPa(g) and 10,000 kPa(g), or such other pressure as the user and service provider agree from time to time.⁴⁷

3.2.3 Submissions by interested parties

In their submissions, interested parties raised the following issues in respect of APT's proposed terms and conditions policy:

- the identity of the relevant terms and conditions is unclear;
- there are excess charges by having both a daily variance and imbalance charge;
- it is not necessary to adjust the MDQ due to a reduction of gross heating value; and
- the treatment and use of system use gas and linepack is vague and inflexible.

These issues are discussed in turn below.

Identity of terms and conditions

Ergon indicated that the access arrangement does not clearly identify the relevant terms and conditions, which enable prospective users to be sufficiently well informed before making a specific access request.⁴⁸ CS Energy submitted that the lack of information makes it unclear what detailed terms and conditions will apply to the day-to-day administration issues of the pipeline.⁴⁹

Ergon noted that the format of the access arrangement, whereby terms and conditions are dispersed throughout the numerous schedules, means that it is difficult to fully assess the requirements and obligations for a user or prospective user. Ergon suggested a comprehensive "terms and conditions" schedule, which incorporates all necessary aspects of a default access arrangement within the one document.⁵⁰

Overruns, variances and imbalances

Origin noted that an imbalance charge is designed to promote diligence in the services day-to-day operating methodology. However, Origin suggested that the daily variance

⁴⁷ Access Arrangement, 6 November 2000, Schedule C, clause 27, p. 34.

⁴⁸ Ergon submission, 29 January 2001, p. 5.

⁴⁹ CS Energy submission, 29 January 2001, p. 9.

⁵⁰ Ergon submission, 29 January 2001, p. 5.

charge (DVC) is more of a revenue-raising tool than an incentive for proper day-to-day management.

Origin suggested that the DVC is a nullifying charge that offsets the +/- 10% allowable imbalance on pipeline Line Pack by double dipping on imbalance positions above the +/- 10% allowable imbalance.⁵¹ Further, Santos stated that it is possible to have no impact on a pipeline by having an equal and opposite receipt and delivery point variance, and yet receive a double charge.⁵²

Origin and CS Energy contended that daily variances are unavoidable even by the most diligent of the service users.⁵³ Both parties called for the DVC to be eliminated, as the imbalance charge is adequate to encourage operators to be diligent. CS Energy suggested that if a DVC is to be applied, then it should only be applied if the service provider can document, through the dispute process, that a daily variance is excessive or disruptive.⁵⁴

MDQ adjustment

Origin questioned the need for an adjustment of MDQ by the service provider based on a reduction of gross heating value. Origin stated that the inclusion of a gas specification and the overriding general condition requiring gas entering the pipeline to conform to it, unless agreed otherwise by the service provider, is in Origin's opinion, more than adequate to control both pipeline gas quality and throughput capacity.⁵⁵

Santos submitted that while the shipper is delivering gas on specification to the service provider, it is not appropriate to reduce a shipper's transportation entitlement or charge additional throughput costs. According to Santos, most gas producers in Queensland supply gas below a heating value of 40 MJ/m³. Further, Santos stated that the introduction of this concept is a back door approach to change the Queensland gas specification or achieve higher revenues.⁵⁶

System Use Gas and Line Pack

Santos noted that there is no protection for firm shippers or interruptible shippers utilising their line pack. Santos noted that a shipper's line pack is allocated in proportion to its MDQ. However, it is unclear to Santos whether interruptible shippers

⁵¹ Origin submission, 30 January 2001, p 2.

⁵² Santos submission, January 2001, p. 10.

⁵³ CS Energy submission, 29 January 2001, pp 14-15.

Information is provided in the submission from CS Energy regarding the fact that electricity generators fluctuate greatly in their daily usage of gas, as this is dependent on a great number of variables. Hence, for a service provider of electricity, daily variances are almost unavoidable.

⁵⁴ CS Energy submission, 29 January 2001, p. 14.

⁵⁵ Origin submission, 30 January 2001, p. 1.

⁵⁶ Santos submission, 29 January 2001, p. 11.

are to provide any line pack in the pipeline, and what mechanism exists to protect firm shippers' from losing line pack to interruptible shippers, which do not have any MDQ.⁵⁷

Energex considered that the present allocation method for line pack and system use gas is impenetrable to current users and that little mention is made in the proposed access arrangement of how allocations of line pack and system use of gas are made. Further, Energex considered that no provision has been made for allocating gas at South East Queensland gate stations to multiple parties or for additional delivery points on current contracts. Energex suggested that the general treatment of these issues has been vague, restrictive and inflexible.⁵⁸

3.2.4 Commission's considerations

The response of interested parties to the proposed terms and conditions of the access arrangement was to request a much greater level of flexibility. The Commission considers that, as a whole, the arrangement favours the service provider, particularly in the way it limits the obligations of the service provider and requires the user to indemnify the service provider in a range of situations. The Commission's consideration of some of these issues is constrained since they are exempted by the derogation.

Identity of terms and conditions

The Commission notes that because of the nature of the derogation, APT has separated the derogated elements of the access arrangement from the non-derogated. Hence, the terms and conditions have been dispersed across the access arrangement. The Commission considers that structuring the access arrangement in such a way actually makes more sense for regulatory approval purposes. Nevertheless, the Commission recognises that from a users perspective, once the access arrangement is approved, it would be more transparent and helpful to have all the terms and conditions consolidated into one place.

The Commission has requested from APT a comprehensive schedule of the "terms and conditions", which they have agreed to produce.

Overruns, variances and imbalances

The Commission does not consider that APT is double dipping by implementing both the daily variance charge (DVC) and the imbalance charge. Each of the charges implemented by APT are dealing with different imbalances, for example:

- an overrun charge occurs when a user exceeds (takes or delivers more gas than) its MDQ (or less often MHQ) at a supply or delivery point. These can be authorised (by prior notification) or unauthorised;
- a DVC is the difference between actual demand or supply at a point and what is nominated by the user prior to the day; and

⁵⁷ Santos submission, 29 January 2001, p. 10.

⁵⁸ Energex submission, 20 February 2001, p. 2.

- the imbalance charge is the difference between user's input of gas to the system and their withdrawal over a period (usually measured over a month), and must be corrected by the next month.

In relation to a user's overrun, the Commission considers that APT will provide as stated in the access arrangement an authorised overrun unless there are valid reasons, such as limited capacity in the pipeline and/or the user has an unfavourable record in exceeding MDQ.

The Commission accepts that it is within APT's right to request the user to correct an imbalance if it is likely for example to jeopardise the ability of APT to operate the pipeline properly. The Commission considers that APT provides the user with a reasonable time frame, that is three months, to correct the imbalance.

MDQ adjustment

The Commission considers that the gas specification in the access arrangement already identifies an acceptable range for the heating value between 35 MJ per cubic metre of gas and 43 MJ per cubic metre of gas if it contains less than or equal to 4% of inerts (the range is narrower if inerts exceed 4%). This adjustment introduces the possibility of an additional impost on users who supply gas that otherwise conforms with the gas specification but has heating value below 40 MJ per cubic metre, circumstances where the pipeline capacity is taken up in full.

The Commission recognises that the service provider normally incurs additional cost in transporting gas with lower than planned heating value, but this is a factor that should be and normally is taken into account in the initial planning and design of a pipeline and in any subsequent enhancement of capacity. In this case, the service provider does not provide fuel gas for compression, it is part of system use gas, which has to be provided by users.

On balance, the Commission does not consider that the proposed adjustment is either necessary or fair to users. However, as this section is covered by the derogation the Commission has no power to request an amendment.

System Use Gas and Linepack

The Commission spoke to APT about regarding some users concerns that the general treatment of system use gas and linepack was vague and inflexible. APT stated that they were developing a clarifying statement on the treatment and use of system use gas and linepack to be included in the access arrangement.

Gas Quality Specifications

The Commission is aware that its role and expertise is as an economic rather than technical regulator, and that it has not conducted a full technical review of the gas quality specification.

However, the Commission encourages APT to amend its access arrangement to state that APT will seek to amend its access arrangement following any recommendations by the Gas Quality Specifications Working Group to adopt more flexible and consistent gas specification in Queensland.

Standard Access Agreement

In the access arrangement APT stated that it ‘will provide services on the terms and conditions set out in its Standard Access Agreement for the service from time to time.’ APT’s ‘Standard Access Agreement’ does not form part of the terms and conditions. However, a provision of the access arrangement states that terms and conditions of the access Agreement will be consistent with the terms and conditions contained in the access arrangement.

The Commission is concerned that APT can effectively change the terms and conditions of access by amending its Standard Access Agreement over time without reference to the Commission. The Commission is proposing an amendment that either APT submit its standard agreement as part of the access arrangement, or alternatively that it be made clear that users have a right to access the reference service subject only to the terms and conditions contained in the access arrangement. If any inconsistency develops between the approved access arrangement and APT’s standard agreement, the terms and conditions in the access arrangement would prevail.

Proposed Amendment A3.1

In order for APT’s access arrangement for the RBP to be approved, APT must either:

- submit its standard access agreement as part of this access arrangement and undertake to submit proposed changes to the Commission for approval in accordance with section 2.28 the Code. The Commission may, pursuant to section 2.33 of the Code, approve the proposed revisions without public consultation if the revisions are not material and will not affect the reference tariff or reference service; or
- amend the access arrangement so that it is clear that prospective users have a right to access the reference service (given available capacity) subject only to those terms and conditions set out in the approved access arrangement.

3.3 Capacity management policy

3.3.1 Code Requirements

Section 3.7 of the Code requires that an access arrangement include a statement that the covered pipeline is either a contract carriage pipeline or a market carriage pipeline.

3.3.2 APT’s proposal

APT submitted that for the purpose of section 3.7 of the access Code, the pipeline is a contract carriage pipeline.

3.3.3 submissions by interested parties

No comments were received on this issue.

3.3.4 Commission's considerations

As the access arrangement includes a statement that the RBP is a contract carriage pipeline, it satisfies the requirements of section 3.7 of the Code.

3.4 Trading policy

3.4.1 Code Requirements

Sections 3.9 to 3.11 of the Code sets out the requirements for a trading policy. If a pipeline is a contract carriage pipeline, which APT proposes for the RBP, the access arrangement must include a trading policy that explains the rights of a user to trade its right to obtain a service to another person. The trading policy must, among other things, allow a user to transfer capacity:

- without the service provider's consent, if the obligations and terms under the contract between the user and the service provider remain unaltered by the transfer; and
- with the service provider's consent, in any other case.

Consent may be withheld only on reasonable commercial or technical grounds and the trading policy may specify conditions under which consent will be granted and any conditions attached to that consent.

3.4.2 APT's proposal

Section 5 of APT's access arrangement states that users can trade rights in three circumstances. These are:

- a user may make a 'bare transfer' without the consent of APT provided that prior to utilising it the transferee notifies APT of the portion of contracted capacity subject to the bare transfer and of the nature of the contracted capacity subject to the bare transfer.
- a user may only transfer or assign all or part of its contracted capacity other than by way of a bare transfer with the prior consent of APT, which will only be withheld on reasonable commercial or technical grounds, and which may be given subject to reasonable commercial or technical conditions.
- a user may only change the receipt point and/or delivery point specified in a service agreement with the prior consent of APT, which will only be withheld on reasonable commercial or technical grounds, and which may be given subject to reasonable commercial or technical conditions.⁵⁹

⁵⁹ Access Arrangement, 6 November 2001, p. 6.

3.4.3 Submissions by interested parties

In their submissions parties raised the following issues in respect of APT's trading policy:

- priority of existing shippers right over reserved capacity;
- inability of users to trade linepack;
- that users should be able to vary receipt or delivery points without APT's consent under certain conditions (which should be spelt out in the access arrangement);
- that APT's ability to withhold it's consent to a capacity trade on 'reasonable commercial and technical grounds' without spelling out further what such grounds might be leave APT in an undesirable position of market power; and
- that the requirement to notify APT regarding the portion and nature of a bare transfer could force users to unnecessarily reveal commercially sensitive information.

Priority of existing shippers right over reserved capacity

Santos noted a deficiency in the proposed access arrangement where priority is not given to existing shippers seeking to trade and utilise their reserved capacity, ahead of the service provider on-selling this capacity to another interruptible shipper. Further, Santos submitted that if this were allowed, the service provider would receive a double revenue stream from the first firm shipper paying capacity reservation charges and the second revenue stream from the interruptible shipper.⁶⁰

Line pack trading

Origin and Santos believed that to efficiently utilise the existing capacity of the RBP (in a manner that achieves the maximum aggregate throughput by all service users thus reducing overall cost) a facility that enables and encourages line pack trading between service users should be included. On a given day the total pipeline line pack can be at an optimum level while each individual service user will be experiencing an imbalance situation incurring not only the line pack imbalance charge but the daily variance charge as well.⁶¹

Origin and CS Energy submitted that any provision for line pack trading must be subject to mechanisms to ensure that the service provider is not financially disadvantaged and that any transaction be technically feasible.⁶²

Changing the delivery or receipt points

Origin stated that the requirement for the service provider's consent for the granting of or revision to receipt point and/or delivery point access is not specific and subject to

⁶⁰ Santos submission, 29 January 2001, clause 3.4, p. 7.

⁶¹ Santos submission, January 2001, p. 3 and Origin submission, 30 January 2001, p. 2.

⁶² Origin submission, January 2001, p. 2 and CS Energy submission, 29 January 2001, p. 15.

interpretation. Further, Origin stated that it would appear that the service provider is facing a conflict of interest by being both judge and jury in determining access to receipt and delivery points⁶³.

Santos stated that there are no clear guidelines or mechanisms for shippers to utilise multiple receipt or delivery points.⁶⁴ Further, Santos considered that the shipper should be allowed to accept gas from multiple producers to satisfy their transportation obligation. Santos stated that this would enhance the security of supply.

CS Energy believed that the ability of existing and potential users to be able to use new connecting points for gas trading should be anticipated in the access principles and allowed without penalty of interference by the service provider.⁶⁵

Receipt Points at Wallumbilla

Origin noted that the RBP currently has four separate receipt points at Wallumbilla that are all physically located within the same compound connected to the same point on the RBP. Origin believed that it would be reasonable to assume that this be viewed as a single receipt point with appropriate limits associated with each branch.⁶⁶

Santos considered that APT should permit shippers to use multiple receipt points at the head of the pipeline at Wallumbilla.⁶⁷

Consent on reasonable commercial and technical grounds

Ergon suggested that an appropriate definition be provided for the term reasonable commercial grounds or technical conditions under which APT will consent to a transfer of capacity (other than by way of bare transfer) or a change to receipt/delivery points.⁶⁸

Energex, Origin and Santos noted that much of the discretion lies with the pipeline owner whose interpretation of reasonable commercial and technical grounds arbitrates activities between pipeline users and their contracted services. Further, these parties called for a clear definition as to the selection process, as access could be withheld on reasonable commercial grounds while the service provider maximises revenue through unregulated tariffs.

Ergon suggested that the access arrangement should allow for any dispute in regard to withholding of consent on reasonable commercial grounds to be dealt with through a recognised dispute resolution procedure.⁶⁹

⁶³ Origin submission, 30 January 2001, p 3.

⁶⁴ Santos submission, January 2001, clause 3.5, p. 7.

⁶⁵ CS Energy submission, 29 January 2001, p. 9.

⁶⁶ Origin submission, 30 January 2001, clause 3.2.

⁶⁷ Santos submission, 29 January 2001, clause 3.3, p. 6.

⁶⁸ Ergon submission, 29 January 2001, p. 5.

⁶⁹ Ergon submission, 29 January 2001, p. 5.

CS Energy stated that the service provider should only be allowed to withhold consent to a trade between users on reasonable technical grounds and not on commercial grounds.⁷⁰

Santos proposed the following amendments to the trading policy:

- A. Permit a line pack transfer between shippers by way of notice to the service provider, without consent being required. As a result of this transaction, no shipper shall fall below 90% of its target line pack. The shippers own line pack in the RBP and trading line pack is a book adjustment at no cost to the service provider.
- B. The service provider shall provide access to additional Receipt or Delivery Points without consent being required, where the shipper satisfies the following conditions:
 - i. The aggregate of the varied Receipt or Delivery Point maximum daily quantities (MDQs) does not exceed the aggregate of the shipper's Receipt or Delivery Point MDQs prior to the inclusion of the additional Receipt or Delivery Point.
 - ii. It is technically feasible, within the constraints of the service provider's contractual obligations to receive or deliver the varied MDQs at the specified Receipt/Delivery Points.
 - iii. The shipper makes all appropriate arrangements with its customers as a result of the variation nominated.
 - iv. The service provider will not, as a result of such a variation, incur any additional capital cost, which it would not otherwise have incurred, or will be required to advance the time at which capital costs would otherwise have been required. In the event that a new Receipt or Delivery Point is required, an agreement by the requesting party to indemnify the service provider for the additional costs (both capital and operating) will suffice to ensure that the service provider will not incur any additional capital costs.
 - v. As a result of the variation, and where the transportation distance is equal to or less than previously provided under the shipper's transportation contract, the shipper will pay the same amount of revenue to the service provider. Where the transportation distance is increased, the shipper will provide additional revenue in accordance with the service provider's access arrangement to satisfy the incremental transportation distance.
 - vi. In the circumstances where the shipper does not satisfy all of the above requirements, then the service provider based on reasonable commercial and technical grounds will require consent. The ACCC should adjudicate any situation where the user believes that the service provider has rejected its request on unreasonable grounds. 71

Nature and portion of a bare transfer

Ergon queried why a transferee must reveal commercially sensitive information to the service provider regarding the portion and nature of the contracted capacity that is subject to a bare transfer.⁷²

⁷⁰ CS Energy submission, 29 January 2001, p 9.

⁷¹ Santos submission, 29 January 2001, p 8.

⁷² Ergon submission, 29 January 2001, p. 5.

3.4.4 Commission's considerations

APT's proposed trading policy closely follows the minimum requirements of the Code. Nevertheless, interested parties raised a number of concerns with the proposed trading policy, which the Commission considers need to be dealt with.

Priority of existing shippers right over reserved capacity

The Commission considers that shippers have a right to trade and any action by APT to deliberately restrict that trade for the purposes of selling interruptible is likely to be in breach of the access arrangement and hinders the access provisions of the Code.

Line pack trading

Under the provisions of the Code relating to a service provider's trading policy, the Code does not specifically require that an access arrangement include a policy in relation to the trading of linepack. The Commission has some doubts that it can require a service provider to require an amendment to the access arrangement to include such a policy. It is doubtful that linepack would be classified as a service under the Code. It is not a service being provided by the service provider and it is a supply of a quantity of gas which is specifically excluded from the definition of 'service' under the Code. Moreover, the Commission may not require an access arrangement to address a matter which the Code does not require the access arrangement to address (section 2.24 of the Code).

The Commission spoke to APT about interested parties' concern that there are restrictions in regard to line pack trading. APT stated that they didn't believe that the access arrangement restricted line pack trading. Further, APT stated that they will administer line pack trading, but, only at a cost.

The Commission notes APT's intention to recover reasonable costs from administering line pack trading. To the extent APT incurs costs, it is not unreasonable for it to seek cost recovery. As such, the charges are also open to challenge by users if they are deemed excessive. The Commission believes this matter is best left to the parties to resolve at the time. Accordingly, the Commission does not propose to seek an amendment to the access arrangement on this issue.

Changing the delivery or receipt points

Submissions made by a number of parties related to the use of receipt and delivery points and the transfer of MDQ by a user from one receipt or delivery point to another. In the past the Commission has encouraged provisions for flexibility in such arrangements. For example, in its determination on an application for authorisation by the North West Shelf Project it stated:

An issue of concern to the Commission in relation to reform of the gas industry is the delivery point of gas. The Commission considers that contractual supply arrangements with provision for an alternate or additional delivery points have the potential to foster more flexible and efficient supply arrangements. However, if delivery point provisions are rigid and open to dispute and protracted renegotiation, gas reform initiatives may be frustrated. In the Commission's view, a pro-competitive delivery point provision in a gas supply contract would have options that:

- provide for the nomination of alternative or additional delivery points, subject to consent for such nominations not being unreasonably withheld where the change or addition would not result in significant additional cost to the parties; and
- provide for dispute resolution, according to a fair and efficient process specified in the agreement, by an independent party acceptable to the parties to the agreement, so as to deal with any issues that might arise.⁷³

While the circumstances of gas supply contracts may differ, similar issues apply in gas transportation contracts, but with the potential benefit of access dispute resolution measures available under the Code.

Aspects in relation to receipt and delivery points that may be a concern to the Commission include:

- the interpretation of ‘reasonable commercial and technical grounds’;
- the requirement that all users at a receipt or delivery point must agree to sharing a facility;
- flexibility in the use of receipt and delivery points; and
- charges applicable to the new transportation agreement to not be less than the original charges.

Flexibility with regard to choice of receipt or delivery points could of course be negotiated between the parties at the outset, possibly with some premium on the charges to the user. Such arrangements are potentially available by means of a negotiable service.

The Commission notes, as with line pack trading, that it is not unreasonable for APT to seek cost recovery from users’ transfer of receipt or delivery points.

Receipt Points at Wallumbilla

The Commission informed APT that a number of interested parties believed that the four receipt points at Wallumbilla should be treated as a single receipt point. APT stated that there are separate metering facilities for each and there are administrative costs in switching receipt points that need to be covered.

Reasonable terms and conditions

The Commission considers that to allow the service provider to withhold consent based solely on its own determination of reasonable commercial grounds may be inappropriate, and creates a potential conflict of interest for the service provider.⁷⁴

The Commission believes, however, that the current arrangements do not leave it to the sole discretion of the service provider.

⁷³ ACCC Authorisation No A90624, North West Shelf Project, 29 July 1998, p. vii.

⁷⁴ Draft decision – Wallumbilla to Gladstone via Rockhampton access arrangement, April 2001, p. 24.

A trading policy must enable prospective users to enter into transportation contracts that allow the user to transfer capacity in the circumstances set out in section 3.10 of the Code. Where the service provider's consent is required, section 3.10 provides that the service provider may only withhold consent on 'reasonable commercial and technical grounds.' Once the service provider and the user enter into a transportation contract that includes these terms, the user will be able to enforce its rights under the contract if it believes that a service provider has unreasonably withheld its consent (this is discussed further below). The Commission sees merit in Santos' proposed amendments for the trading policy and believes that it has the potential to reduce future disputes.

The Commission considers that it is in the interests of APT and prospective and current users to describe in some detail their proposed interpretation of 'reasonable commercial and technical grounds'. Although, the parties currently have the option of seeking commercial arbitration or court action, the Commission considers that disputes could be avoided by setting out objective criteria in the access arrangement by which the service provider will be bound when deciding whether to consent to a proposal to vary receipt and delivery points.

Portion and Nature of Bare Transfer

The Commission notes the concerns of CS Energy that the requirement that users notify APT of the portion and nature of the capacity to be traded may result in the provision of commercially sensitive information. While the wording of the access arrangement mirrors the Code provisions, the Code goes on to state that the trading policy must not require any other details regarding the transaction to be provided to the service provider. This implies that while some basic information should sensibly be provided to the service provider to enable it to meet the transportation needs of the transferee, there is a presumption that the amount of information the service provider may seek is limited.

The Commission considers that the concern arises primarily due to potential differences in the interpretation of the word 'nature' in the Code. While the Code provides no guidance as to what constitutes the 'nature' of the capacity transfer in this context, the Commission interprets this to mean the type of service, quantity traded and the receipt and delivery points.

Arbitration under the Code

The Commission is also concerned that there is some misunderstanding of its powers under the Code to arbitrate disputes. Section 6.1 of the Code provides that:

If a prospective user and a service provider are unable to agree on one or more aspects of access to a service the prospective user or service provider may notify the Relevant Regulator in writing that a dispute exists. A prospective user or service provider may not give a notice to the Relevant Regulator under this section unless an access arrangement has been accepted by the Relevant Regulator (or the Relevant Regulator has drafted and approved its own access arrangement) with respect to the Covered Pipeline concerned.

Part Four of the GPAL sets out procedures for the conduct of an arbitration that is notified under the Code. Section 6.1 is the only provision of the Code that authorises parties to notify a dispute to an arbitrator.

The Commission has received legal advice to the effect that, as section 6.1 of the Code only refers to prospective users, it is only prospective users that have the power to notify a dispute under the Code. This means that a user of a pipeline under a contract will not be able to notify a dispute under section 6 of the Code where a dispute arises between the user and the service provider in the context of that contract.

This highlights that it is important for users to ensure that their contracts for access to services contain all of the necessary terms and conditions, including those relating to their rights to trade capacity. Although the access arrangement sets out the minimum terms and conditions upon which prospective users are entitled to access, the user has the right to waive these rights or vary them by agreement with the service provider. It is up to the user to ensure that the provisions of the access arrangement that operate to their benefit are incorporated into their contract and are therefore enforceable through the usual commercial avenues.

3.5 Queuing policy

3.5.1 Code requirements

Sections 3.12 to 3.15 set out the Code 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 Code. The purpose of a queuing policy is to allocate spare capacity where there is insufficient capacity to satisfy the needs of all users and potential users that have requested capacity.

A queuing policy must be set out in sufficient detail to enable users and prospective users to understand in advance how it will operate. It must also, to the extent reasonably possible, accommodate the legitimate business interests of the service provider, of users and prospective users, and must generate economically efficient outcomes.

3.5.2 APT's proposal

Section 6 of the access arrangement contained the service provider's queuing policy. Where there is insufficient capacity to satisfy a request, a queue will be formed. The queue will include all relevant requests that cannot be satisfied. Where an offer has been made in response to a request received prior to formation of the queue, that request will take first position in the queue.

At the time a request is placed in a new or existing queue, APT will advise the prospective user of:

- its position in the queue;
- the aggregate capacity sought under requests which are ahead of it on the queue;
- its estimate of when capacity may become available; and

- the quantum of any surcharge levied for developable capacity.⁷⁵

A request for service may lapse and be removed for the queue if:

- the prospective user does not respond to APT's request for confirmation of the request within 14 days;
- the entity to whom the prospective user assigns its request does not meet APT's prudential requirements; and
- the prospective user notifies APT that it does not want to proceed with the request.

A request will not lapse in the event that there is a dispute. The request will retain its priority until the dispute is resolved in accordance with the Code.⁷⁶

APT stated that where a queue exists a prospective user must on request demonstrate to the service provider that the prospective user will have access to a supply of gas at the time it is anticipated that the prospective user will be offered access to the service.⁷⁷

When capacity is available which meets the requirements of any request in a queue, that capacity will be progressively offered to each prospective user in the queue in order of priority. APT will advise each of those prospective users of its plans to make capacity available, and the terms and conditions on which the capacity will be available.

A prospective user will have 30 days after an offer is made to enter into a service agreement.⁷⁸

Priority of prospective users in obtaining services

The priority date of a request is the date a completed request is received by APT. Where APT determines that two or more requests relate to the same tranche of capacity for the same delivery point, all those requests will have the priority date of the earliest request. A request for a reference service will have priority over a request for a negotiated service.⁷⁹

3.5.3 Submissions by interested parties

In their submissions parties raised the following issues in respect of APT's queuing policy:

- existing users should surrender the capacity they are not utilising;

⁷⁵ Access Arrangement, 6 November 2000, clause 61, p. 7.

⁷⁶ Access Arrangement, 6 November 2000, clause 6.2, p. 7.

⁷⁷ Access Arrangement, 6 November 2000, clause 6.5, p. 8.

⁷⁸ Access Arrangement, 6 November 2000, clause 6.3, p. 8.

⁷⁹ Access Arrangement, 6 November 2000, clause 6.4, p. 8.

- a party that funds an expansion should be able to jump the queue;
- the reference service should not have priority over a negotiated service; and
- demonstrating access to gas supply when joining the queue could provide the service provider with unnecessary sensitive commercial information.

Existing users should surrender capacity they are not utilising

Ergon considered that competition could be stifled if a pipeline's capacity is fully contracted yet not fully utilised. Further, Ergon considered that to ensure that available capacity can be accessed, the queuing policy should include a mechanism whereby users who do not fully utilise their contracted capacity sufficiently should be required to surrender that capacity if there are prospective users queuing to obtain access.⁸⁰

The party that funds an expansion should jump the queue

CS Energy considered that the ability for a party in the queue to pay an additional amount, for example for early compression, should be able to move up in the queue. Thus as long as the same opportunities are available for all potential users, CS Energy believed that a more efficient and effective pipeline would result.

Reference service priority over a negotiated service

CS Energy noted that the proposed access arrangement contains a provision that a reference service has priority over a negotiated service. CS Energy believed that justification should be provided for the inclusion of this provision since it may have detrimental effects on the efficient operation of the RBP.⁸¹

Demonstrating access to gas supply when joining the queue

Ergon opposed the inclusion of clause 6.5, which requires a prospective user to demonstrate, upon request, that it has agreements in place for access to a supply of gas at the time it is anticipated that access to the service will be offered. Ergon contended that this information is commercially sensitive. Additionally, Ergon stated that they could see no public benefit in providing this information to a service provider.⁸²

3.5.4 Commission's considerations

The purpose of a queuing policy is to allocate spare capacity where there is insufficient capacity to satisfy the needs of all users and potential users who have requested capacity. The Commission considers that the proposed queuing policy in the main satisfies the requirements of the Code. However, the Commission has some concerns, which are outlined below.

⁸⁰ Ergon submission, 29 January 2001, p. 5.

⁸¹ CS Energy submission, 29 January 2001, p. 10.

⁸² Ergon submission, 29 January 2001, clause 3.5, p. 5.

Existing user should surrender capacity they are not utilising

The Commission notes Ergon's submission in regard to establishing a mechanism in the queuing policy whereby existing users surrender their contracted but unused capacity should a prospective user in a queue require access.

The Commission considers that there is good sense in an access arrangement providing for relinquishment and reallocation of capacity. In a competitive transmission market any capacity released or surrendered by a shipper will be available for resale by the service provider (if the shipper itself does not deal with it).

However, the Commission does not consider it appropriate to establish the mechanism described by Ergon in the access arrangement. While the Code requires a user to make details available about the quantity, type and timing of unutilised contracted capacity to any person who requests this information, the Code imposes no obligation on the part of the user to relinquish any unutilised contracted capacity.

The underlying rationale is that it costs a great deal to reserve pipeline capacity but not use it, creating a significant incentive for shippers to relinquish or trade unused capacity. In the event that a shipper contracted for capacity that it did not intend to use, the pipeline company could sell that capacity on an interruptible basis anyway. Further, such conduct would likely be in breach of the hindering access prohibition in the GPAL.

The party that funds an expansion should jump the queue

The Commission considers that a prospective user should not be entitled to 'jump the queue' by offering to pay a tariff higher than the reference tariff. While offering scarce capacity to the highest bidders would be an effective means of clearing the queue, it may result in monopoly rents to the service provider and be inconsistent with the Code's pricing principles.

The Commission recognises that commercial negotiation is the fundamental proponent of the Code's framework for providing access. However, the service provider is at all times required to comply with the queuing policy. This would mean for example that if a third party offered to fund an extension on the condition that they would be able to jump the queue, the service provider would be required to offer that deal in accordance with the queuing policy. The arbitrator is similarly bound to the queuing policy in making access determinations in the case of a dispute.

Reference service priority over a negotiated service

The Commission considers that APT's proposal that the reference service has precedent over a negotiated service is consistent with the broad intent of the Code if the only condition in contention is the price of access. A service provider is entitled to receive, and a prospective user is entitled to pay, the reference tariff for a reference service. The service provider should be under no obligation to offer the reference service to a prospective user at a tariff less than the reference tariff.

The situation is not as straight-forward where a prospective user genuinely wishes to negotiate some variation to the terms and conditions contained in the access arrangement that may justify a variation in price. CS Energy for one is concerned that

a prospective user's position in the queue may be placed in jeopardy if the prospective user wishes to negotiate a service other than the reference service. The Commission has some sympathy with this viewpoint and proposes that the reference service and negotiated services have equal priority. The Commission considers it particularly relevant in this instance as the proposed access arrangement contains only one specific service, the reference service up to 101TJ/day, and hence negotiated services may conceivably become quite common.

The amendment proposed by the Commission would not deprive APT of the right to provide the reference service at the reference tariff. In the event of a dispute either party, APT or a prospective user, may refer the matter to the Commission for arbitration. If the sole subject of a dispute is the tariff, the Commission must determine that the reference tariff will apply (subject to sections 6.18 to 6.21 of the Code).

Proposed Amendment A3.2

In order for APT's access arrangement for the RBP to be approved, APT must amend its queuing policy to provide that:

- the reference service and negotiated services have equal priority; and
- no provision of the queuing policy diminishes APT's right to provide the reference service at the reference tariff (plus a surcharge in relation to developable capacity beyond 101TJ/day if applicable).

Demonstrate access to supply of gas

A number of parties oppose the inclusion of Clause 6.5 which requires a prospective user to demonstrate, upon request, that it has agreements in place for access to a supply of gas at the time it is anticipated that access to the service will be offered. Further, the parties have contended that this information is commercially sensitive.

The Commission agrees that the requirement to demonstrate sufficient gas supplies as currently worded is likely to force prospective users to unnecessarily reveal commercially sensitive information. Further, the Commission believes that written confirmation from a prospective user that it has sufficient gas supplies available should be sufficient for the service provider. Should that confirmation later prove to have been misleading, the service provider would have legal redress against the prospective user. This should enable the service provider to have the confidence it requires that there will be sufficient gas to transport to make any prospective investment worthwhile, yet not oblige the prospective user to divulge unnecessary commercially sensitive information regarding its gas suppliers.

Proposed Amendment A3.3

In order for APT's access arrangement to be approved, section 6.5 of the proposed queuing policy must be amended such that APT, in seeking that a prospective user demonstrate that it will have access to a supply of gas at the time it is anticipated it will be offered access to the service, can only seek written confirmation from the prospective user that the necessary supply arrangements are in place. No commercially sensitive information (such as location of the gas supply or the identity of the supplier) can be required to be divulged.

3.6 Extensions and expansions policy

3.6.1 Code Requirements

Section 3.16 of the national Code requires an access arrangement to have an extensions/expansions policy. The policy is to set out the method to be applied to determine whether any extension to or expansion of the system's capacity will be treated as part of the covered pipeline. A service provider is also required to specify the impact on reference tariffs of treating an extension or expansion as part of the covered pipeline.⁸³ In addition, an extensions and expansions policy must outline the conditions on which the service provider will fund new facilities and provide a description of those new facilities.

3.6.2 APT's proposal

In the event that APT undertakes a geographical extension to the pipeline it will elect, after consultation with the regulator, whether the extension forms part of the pipeline for the purposes of the access arrangement.⁸⁴

Should APT undertake to expand capacity, there are two categories under which this expansion can fall:

Expansion of Capacity from 101 to 118.5 TJ per Day

APT propose to expand the capacity of the pipeline to 118.5TJ/day, subject to certain conditions including obtaining all necessary authorities and approvals for such expansion.

Capacity from 101 to 118.5 TJ/day will be offered as a negotiated service at a negotiated tariff.

⁸³ For example, reference tariffs may remain unchanged, but a surcharge may be levied on incremental users.

⁸⁴ Access Arrangement, 6 November 2000, clause 7.1, p. 9.

Expansion of Capacity Beyond 118.5 TJ per Day

APT stated that in the event it expands the capacity of the pipeline above 118.5 TJ/day, it will elect after consultation with the regulator how to treat the expansion, for example, it may elect:

- that the expansion will not be treated as part of the covered pipeline; or
- that the expansion will form part of the pipeline and that the reference tariffs will remain unchanged but a surcharge will be levied on the incremental users as permitted under the access Code; or
- it will submit revisions to this access arrangement pursuant to section 2.28 of the access Code.⁸⁵

3.6.3 Submissions by interested parties

In their submissions parties raised the following issues in respect of APT's queuing policy:

- amendments to extensions and expansions policy;
- a definition for geographic extension;
- election by service provider after consultation to have extension covered or uncovered; and
- impact on reference tariffs if an extension is covered.

Amendments to the extensions and expansions policy

Santos noted that it is difficult for any new user to assess whether a tariff is fair and reasonable compared to existing transportation users, or can be justified based on the capital expenditure required to satisfy the new users' transportation requirement. Equally, Santos considered that existing users may be discriminated against if they have contracted a higher unit cost (TJ/d) capacity expansion and do not share the lower capital expenditure costs or reduced operating costs associated with later new users' transportation entitlements.⁸⁶

Santos proposed the following revisions to the extension/expansion policy to address these problems:⁸⁷

- During an extension/expansion the incremental expenditure be used to set a new tariff.
- At this time, the overall return of the pipeline is reviewed based on a single combined pipeline, which includes total revenue from all arrangements (firm, interruptible, additional charges, etc.). If the rate of return exceeds a prescribed level, then some form of revenue payment is returned to existing shippers presently contracted at different capacity tranche levels.

⁸⁵ Access Arrangement, 6 November 2000, clause 7.3, p. 9.

⁸⁶ Santos submission, 29 January 2001, p 5.

⁸⁷ Santos submission, 29 January 2001, p 5.

Definition for geographic extension

CS Energy noted that there is no definition for the term “geographic extension to the pipeline”, thus the circumstances in which APT would be required to refer the issue to the regulator may be unclear.⁸⁸

Election by service provider after consultation to have extension covered or uncovered

Ergon contested the fact that APT have the option, after consultation with the Commission, to elect not to treat any geographical extension as part of the covered pipeline, potentially allowing the service provider to set unregulated tariffs on these extensions. Further, Ergon asserted that the access arrangement should require coverage of each pipeline extension/expansion to be considered on a case-by-case basis and that the methodology by which coverage is determined be clearly specified and subject to a public consultation.⁸⁹

CS Energy submitted that the service provider should not be allowed to choose to extend the pipeline beyond its present configuration, including looping, without the regulator’s approval.⁹⁰

Impact on reference tariffs if an extension is covered

Ergon suggested that there should be greater detail provided about how service providers would determine the impact that an extension/expansion would have on the reference tariffs. For example, there could be an economic feasibility test to determine if the prevailing tariff structure will apply to an extension or whether a surcharge will be levied on incremental users.⁹¹

CS Energy suggested that the proposed arrangements for triggering an expansion in capacity should be explicitly stated in the access principles policy. Further, CS Energy believed that the service provider should declare the impact of one compressor on the capacity of the pipeline or the increase in capacity for each of the declared compressors that would be contemplated in setting the overall revenue targets for the pipeline. CS Energy wanted this incorporated into the access principles such that over-contracting of pipeline capacity by APT based on optimum usage or diversification of maximum loads rather than peak demands does not occur.⁹²

In addition, CS Energy suggested parameters for the threshold quantities. CS Energy wanted the service provider to be penalised if it does not install new compressors when it has potential customers above capacity.⁹³

⁸⁸ CS Energy submission, 29 January 2001, p. 12.

⁸⁹ Ergon submission, 29 January 2001, clause 3.7, p. 5.

⁹⁰ CS Energy submission, 29 January 2001, p. 13.

⁹¹ Ergon submission, 29 January 2001, p 6.

⁹² CS Energy submission, 29 January 2001, p 13.

⁹³ CS Energy submission, 29 January 2001, p 13.

3.6.4 Commission's considerations

The Commission considers that:

- given the inability of users to access reference services from 101TJ/day;
- the physical structure of the pipeline;
- the fully contracted state of the pipeline system; and
- the derogation;

the extensions and expansions policy is fundamental to users in gaining access.

Definition for geographic extension

The Commission notes CS Energy's desire for a definition of 'geographic extension', however, the Commission considers that 'geographic extension' is widely understood.

Election by service provider after consultation to have extension covered or uncovered

In the event that APT undertakes a geographical extension to the Pipeline it proposes to elect, after *consultation* with the Regulator, whether the extension forms part of the pipeline for the purposes of the access arrangement.

Ergon contested the fact that APT have the option, after consultation with the Commission, to elect not to treat any geographical extension as part of the covered pipeline, potentially allowing the service provider to set unregulated tariffs on these extensions.

The Commission considers that in the event that APT elects not to treat an extension as part of the covered pipeline, an application can be made to the NCC by any person (under sections 1.2 and 1.3 of the Code) for the expansion to be declared a covered pipeline under the Code.

However, the Commission believes that APT have loosely paraphrased the Code here, and that prior to including an extension as part of the covered pipeline, APT should be required to seek the regulator's approval, rather than just having to consult with the regulator and then make an election itself.

Proposed Amendment A3.4

In order for APT's access arrangement for the RBP to be approved, sections 7.1 of the proposed extensions/expansions policy must be amended such that APT must seek the approval of the Regulator prior to electing that an extension or expansion form part of the Covered Pipeline for the purposes of this access arrangement.

Impact on reference tariffs if an extension is covered

Ergon suggested that there should be greater detail provided about how service providers would determine the impact that an extension/expansion would have on

reference tariffs. For example, there could be an economic feasibility test to determine if the prevailing tariff structure will apply to an extension or whether a surcharge will be levied on incremental users.

Section 3.16(b) of the Code requires an extensions/expansions policy to specify how any extension or expansion, which is to be treated as part of the Covered Pipeline, will affect reference tariffs. With respect to expansions, the access arrangement is clear on this point, but with respect to extensions, APT's proposed extensions/expansions policy does not adequately address this issue.

Proposed Amendment A3.5

In order for APT's access arrangement to be approved, section 7.1 of the proposed extensions/expansions policy must be amended to specify how any extension, which is to be treated as part of the Covered Pipeline, will affect reference tariffs.

Expansion of capacity beyond 101TJ/day

The Commission considers that APT's policy in relation to expansions of capacity beyond 101TJ/day allows APT too much discretion in determining whether the expansion should be treated as part of the covered pipeline. While APT proposes that it consult the Commission, it is not obliged to follow the Commission's advice.

The fact that a pipeline requires expansion to satisfy demand may be an indication that the service provider has market power and the opportunity to extract monopoly rents if unregulated. These circumstances would be inconsistent with section 2.24(d) of the Code⁹⁴ (the economically efficient operation of the covered pipeline), section 2.24(e) (the public interest) and section 2.24(f) (the interests of users and prospective users). Accordingly, the Commission requires an amendment to the access arrangement to the effect that any expansion to the covered pipeline is to be considered part of the covered pipeline, unless at the time the regulator agrees that the expansion should not be covered.

Proposed Amendment A3.6

In order for APT's access arrangement for the RBP to be approved, APT must amend its extensions and expansions policy to the effect that at the time the pipeline comes into operation, any expansion to the Covered Pipeline is to be considered part of the Covered Pipeline, unless at the time the Regulator agrees that the expansion should not be covered.

⁹⁴ Section 2.24 of the Code sets out the factors that the Commission must take into account in assessing a proposed access arrangement.

3.7 Review and expiry of the access arrangement

3.7.1 Code requirements

Section 3.17 of the Code requires an access arrangement to include a date upon which the service provider must submit to the regulator a revised access arrangement (revisions submission date) and a date upon which the revisions are intended to commence (revisions commencement date).

In deciding whether these two dates are appropriate, the regulator must have regard to the objectives contained in section 8.1 of the Code. Having done so, the regulator may require an amendment to the proposed access arrangement to include earlier or later dates. The regulator may also require that specific major events be defined as a trigger that would oblige the service provider to submit revisions before the revisions submission date (section 3.17(ii)).

An access arrangement period accepted by the regulator may be of any duration. However, if the period is greater than five years, the regulator must consider whether mechanisms should be included to address the potential risk that forecasts, on which terms of the proposed access arrangement are based, subsequently prove to be incorrect (section 3.18 of the Code). The Code provides examples of such mechanisms for guidance. Thus a regulator could consider triggers for early submission of revisions based on:

- divergence of the service provider's profitability or the value of services reserved in contracts from a specified range; or
- changes to the type or mix of services provided.

The regulator could require a service provider to return to users some or all revenue or profits in excess of a certain amount.

Finally, the revisions commencement date is not a fixed date. The date is subject to variation at the time the regulator approves the revisions pursuant to section 2.48 of the Code. This section states in part:

Subject to the Gas Pipelines Access Law, revisions to an access arrangement come into effect on the date specified by the Relevant Regulator in its decision to approve the revisions (which date must not be earlier than either a date 14 days after the day the decision was made or ... the revisions Commencement date).

3.7.2 APT's proposal

APT proposed to submit revisions to the access arrangement on the later of either 29 July 2006 (which is the revisions commencement date in the tariff arrangement) or upon the date on which approval by the regulator of the revisions to the access arrangement takes effect under the National Code.

3.7.3 Submissions by interested parties

Ergon stated they would support a mechanism whereby a review of the access arrangement would be triggered if a specified major event occurred. Examples of major events are:

- development of a new pipeline as an alternative or a complement to the existing pipeline;
- variation from forecast in revenue from the pipeline of more than 10%; and
- variation from forecast in total gas demand of more than 10%.

Ergon also stated that the conditions should specify (in accordance with clause 3.18 of the Code) that any excess revenue or profit would be returned to users.⁹⁵

3.7.4 APT's response to Issues Paper

APT submitted that requiring inclusion of trigger events, or an adjustment mechanism would be inappropriate:

- If the nature of the revisions arising from a trigger event were such that the derogation would be maintained, or if the adjustment mechanism did not operate to revise tariffs during the period of derogations, there would appear to be little benefit in undertaking a review. In this case, APT submitted that such a requirement would be inappropriate and contrary to the public interest.
- Alternatively, if the Commission sought to require revisions of a trigger event or an adjustment mechanism which resulted in revisions to the tariffs prior to July 2006, the Commission would be seeking to act in a manner inconsistent with the Gas Pipelines access Law (Queensland). The intent and effect of the derogations is clearly identified in the Intergovernmental Agreement:

...the tariff and tariff-related sections of the existing access principles for the [pipelines] are to be rewritten as reference tariffs (and reference tariff policy) for reference services to conform, as close as possible to the National access Code, while preserving the existing tariff principles embodied in the original access arrangements.

reference tariffs (and reference tariff policy) will be those taken from the existing access principles...These will not be subject to public and ACCC scrutiny until the nominated review date expressed in the individual access arrangements.

(Intergovernmental Agreement, Annexure I).

APT contended that if the Commission believes that the possibility of change to the derogation warrants inclusion of a trigger event or similar, they would submit that this is incorrect and inconsistent with the Commission's role in approving the derogation access arrangements under the *Gas Pipelines Access (Queensland) Act*. Since any change to the derogations could only be effected by legislation, any change to the

⁹⁵ Ergon submission, 29 January 2001, clause 3.7, p. 5.

derogated tariff arrangement should be effected through clear legislative intent, rather than by artificial means such as inclusion of a review event or adjustment mechanism.⁹⁶

3.7.5 Commission's considerations

In light of the comments from Ergon regarding the provision of a trigger mechanism, the Commission sought legal advice from Counsel as to whether the Commission can require the inclusion of a trigger mechanism. Counsel advised the Commission that it could only require APT to include a trigger mechanism that deals with non-tariff matters.

Counsel stated that the effect of section 58(4) of the GPAL is that the revisions submission date and the revisions commencement date for the access arrangement are the dates contained in the tariff arrangement approved by the Queensland Minister. This means that the Commission cannot reject these dates under the Code.

However, Counsel advised that section 2.28 of the Code makes provisions for revisions to be lodged in other circumstances. Therefore, if the access arrangement makes provision for submissions to be made in relation to non-tariff matters at an earlier date, section 2.28 requires those revisions to be submitted. Section 3.17(ii) contains such a provision, enabling the Commission to require an access arrangement to provide for early revision of non-tariff matters by defining certain events that would trigger a review of non-tariff matters, prior to the revision submission date.

Counsel stated that this power only allows the Commission to require that the access arrangement define specific major events that trigger an obligation on the service provider to submit revisions prior to the revisions submission date. Counsel concluded that the Commission could require APT to provide for early revisions of non-tariff matters by defining certain events that would trigger a review of non-tariff matters, prior to the revisions submission date. The Commission considers that given that the derogation expires on 29 July 2006, a trigger for non-tariff matters is not necessary for the RBP access arrangement.

⁹⁶ Agility submission, 31 January 2001.

4. Information provisions and key performance indicators

4.1 Information Provision

4.1.1 Code requirements

The service provider's access arrangement information must contain sufficient information in the opinion of the relevant regulator to:

- enable users and prospective users to understand the derivation of the elements in the proposed access arrangement described in sections 3.1 to 3.20 of the Code; and
- form an opinion as to the compliance of the access arrangement with the provisions of the Code (section 2.6).

However, the Queensland government (via the derogation) has exempted APT from the requirement to provide access arrangement information that is related to reference tariffs. Therefore, the derogation exempts APT from the requirement to provide information relating to categories one to four of the access arrangement (as set out in Attachment A to the Code), and some elements of the information required for categories five and six.

Figure 4.1: Summary of Attachment A information

The information required is divided into six categories:

Category 1: access and pricing principles

Tariff determination methodology; cost allocation approach; and incentive structures.

Category 2: capital costs

Asset values and valuation methodology; depreciation and asset life; committed capital works and planned capital investment (including justification for); rates of return on equity and debt; and debt/equity ratio assumed.

Category 3: operations and maintenance costs

Fixed *versus* variable costs; cost of services by others; cost allocations, for example, between pricing zones, and cost categories.

Category 4: overheads and marketing costs

Costs at corporate level; allocation of costs between regulated and unregulated segments; cost allocations between pricing zones, services or categories of asset.

Category 5: system capacity and volume assumptions

Description of system capabilities; map of piping system; average and peak demand; existing and expected future volumes; system load profiles and customer numbers.

Category 6: key performance indicators

4.1.2 APT's Proposal

Category 5 – capacity and volume assumptions

APT has provided some information that allows interested parties to form an opinion as to the compliance of the access arrangement with the Code in its proposed access arrangement.

Category 6 – key performance indicators

Category 6 of Attachment A to the Code requires the disclosure of key performance indicators (KPIs). The KPIs given as examples include:

- industry KPIs used by the service provider to justify 'reasonably incurred' costs; and
- the service provider's KPIs for each pricing zone, service or category of asset.

APT has not provided KPIs in its access arrangement.

4.1.3 Submissions by interested parties

Many submissions indicated that the information disclosed by the RBP in their access arrangement information is insufficient to users and prospective users with respect to how the reference tariffs were initially derived and how negotiated services will be priced in the future.

CS Energy stated that it did not consider that the information provided for the quantity up to 101TJ/day per day as adequate.⁹⁷ Incitec stated that the National Gas Code relating to information disclosure and reference tariffs are significant elements, which can allow users to understand the derivation of their tariffs and assess that they are fair and reasonable. In that regard, the Queensland derogations, by preventing transparency in the terms and conditions of the proposed access arrangements, are not in the interest of users nor consistent with the Competition policy principles.⁹⁸

4.1.4 Commission's considerations

The derogation to the RBP relating to this access arrangement explicitly releases APT from the obligation to provide access arrangement information in connection with the access arrangement under the reference service and reference tariff offered.

Given that the Commission is unable to require APT to provide additional reference tariffs beyond 101TJ/day and tariff-related information for reference tariffs, the Commission considered that obtaining access arrangement information relating to negotiated services would assist users in negotiating a reasonable tariff for that service. The Commission sought legal advice as to whether or not it could require APT to

⁹⁷ CS Energy submission, 29 January 2001, p.7.

⁹⁸ Incitec submission, p .6.

provide access arrangement information for negotiated services. The advice stated that the Commission is unable to require APT to provide this information, given the breadth of the derogation and that the bulk of the relevant information is tariff-related.

The advice noted that the operator of a covered pipeline is ordinarily required under section 2.2 of the Code to produce a proposed access arrangement together with the applicable access arrangement information. In relation to the content of the access arrangement information, sections 2.6 and 2.7 of the Code provide that nearly all the information required is solely needed to understand and assess the reference tariff, reference tariff policy and revisions submission and Commencement Dates.

The derogation does not explicitly override section 2.6 and 2.7 of the Code. However, the Commission cannot require APT to release information relating to tariffs for negotiated services since no tariffs are prescribed for such a service under the access arrangement.

5. Draft Decision

Pursuant to section 2.13(b) of the Code, the Commission proposes not to approve APT's proposed access arrangement in its present form.

The amendments or the nature of amendments that would have to be made in order for the Commission to approve the proposed access arrangement are recorded in this Draft Decision.

Appendix A: Submissions from interested parties

Ergon Energy Gas Pty Ltd, 29 January 2001

CS Energy Limited, 29 January 2001

Santos Ltd, 29 January 2001

Incitec, 29 January 2001

Origin Energy Retail Limited, 30 January 2001

Energy Users Association of Australia, 8 February 2001

Energex Retail Pty Limited, 20 February, 2001