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Final Approval

Access Arrangement proposed by APT Petroleum Pipelines Ltd for the Wallumbilla to Brisbane Pipeline System

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1. Background

On 6 November 2000 Australian Pipeline Trust (APT) applied for approval of its proposed access arrangement for the Wallumbilla to Brisbane Pipeline, commonly known as 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). APT Petroleum Pipelines Ltd (an APT related company) owns and operates the RBP and is the service provider.

The access arrangement describes the terms and conditions on which APT proposes to make access to services provided by the RBP available to third parties.

The RBP is the subject of a Queensland Government derogation that prevents the Commission from reviewing the reference tariffs and related areas of the access arrangement until the revisions submissions date. Therefore, a significant proportion of the typically contentious aspects of an access arrangement were not open to Commission consideration. In particular, the Commission was constrained from any assessment of reference tariffs or reference tariff policy.

The Commission's assessment of the proposed access arrangement has been conducted in accordance with the requirements set out in the Code and has been based on information provided by APT and interested parties. The consultation and assessment process undertaken by the Commission has included:

- release of the Draft Decision (pursuant to s. 2.13 of the Code) on the proposed access arrangement on 15 August 2001, in which the Commission proposed eight amendments to be made in order for the access arrangement to be approved;
- release of the Final Decision (pursuant to s. 2.16 of the Code) on 16 January 2002, in which the Commission required seven amendments to be made in order for the access arrangement to be approved.

Following the release of the Commission's Final Decision, APT was originally given until 28 February 2002 to submit its revised access arrangement. The Commission later extended this date to 31 May 2002. Prior to lodging its revised access arrangement, APT submitted to the Commission an outline of the proposed amendments to its access arrangement. APT adopted this course of action as it wished to seek some indication from the Commission that the amendments complied with the Commission's Final Decision. Following on-going discussions with Commission staff, APT submitted the revised access arrangement itself to the Commission in August 2002.

This Final Approval assesses APT's revised access arrangement and relies in part upon the facts and analysis set out in the Commission's Final Decision. The Final Approval document should be read in conjunction with that decision.

2. APT's revised access arrangement

2.1 Assessment

Having received the revised access arrangement, the Commission is obliged under section 2.19 of the Code to issue a further final decision (which is this Final Approval). The Commission has assessed APT's revised access arrangement and found that APT has incorporated the amendments specified in the Final Decision to the Commission's satisfaction. Accordingly, the Commission approves the revised access arrangement submitted by APT.

A brief discussion follows of each of the amendments contained in the Commission's Final Decision and how APT has addressed these amendments. In many cases the amendments were first proposed by the Commission in its Draft Decision and APT responded positively to the proposed amendments in its submission in response to the Draft Decision.

2.1.1 Physical status of the pipeline

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.

This amendment was proposed by the Commission in its Draft Decision and in its response APT stated that it would provide the appropriate information. In its revised access arrangement APT stated the current capacity of the pipeline (approximately 178TJ/day) and provided details of the structure of the pipeline. APT also provided details of the conditions under which it would augment the pipeline. Clause 7.2 of the revised access arrangement states:

Generally, the Service Provider would expect to continue to expand the capacity of the pipeline to meet requirements for additional capacity where:

- there are sufficient proven reserves to cover the economic life of the expanded pipeline; and
- the User commits to the use of the expanded capacity at a tariff negotiated between the Service Provider and the User; and
- it is technically and economically feasible to provide additional capacity.

Furthermore, APT states that the access arrangement will apply to capacity up to 178TJ/day. Under the tariff arrangement approved by the Minister the reference service and reference tariff apply up to capacity of 101TJ/day only. Capacity between 101TJ/day and 178TJ/day is offered as a negotiated service at a negotiated tariff.

2.1.2 Reference tariff and reference tariff policy

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.

In its original access arrangement APT proposed 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. Following release of the Commission's Draft Decision APT agreed to make this amendment and has done so in its revised access arrangement.

2.1.3 Terms and conditions

Amendment A3.1

In order for APT's access arrangement for the RBP to be approved, APT's access arrangement must be amended by deleting all references to its standard Access Agreement.

In its original 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**' [emphasis added].

The Commission was concerned that APT would be able to effectively change the terms and conditions of access by amending its Standard Access Agreement over time without reference to the Commission. In its revised access arrangement APT deleted the words 'from time to time'. The access arrangement now reads that APT will provide services on the terms and conditions set out in an access agreement and the terms and conditions of access agreements will be consistent with the access arrangement. The Commission considers that APT's amendment addresses the Commission's concerns which were raised in its Final Decision.

Inspection and audit of metering records

APT's revised access arrangement includes the following new provision (clause 25 of Schedule C):

The user may not appoint an auditor under section 24 of this Schedule C if the User has exercised its rights under section 2.2.12 of Schedule A to inspect such records.

Section 2.2.12, which is part of the derogation, states that a user may inspect and audit metering records on one occasion only in each year. Clause 24 of Schedule C provides for the user's auditor to undertake the inspection on behalf of the user. The new

clause 25 clarifies that the right of a user's auditor to undertake the inspection is waived if the user him/herself has already undertaken the inspection in the same year.

The Commission considers that this new provision is not material, merely clarifies the intent of the access arrangement as originally submitted and complies with the Code.

Amendment A3.2

In order for APT's access arrangement for the RBP to be approved, APT must amend its terms and conditions to state that, subject to other provisions in the access arrangement, APT will be obliged to transport and deliver gas nominated by the user on each day up to the user's MDQ.

The Commission was concerned that, while APT's proposed access arrangement stated that APT was under no obligation to transport gas on behalf of a user in excess of that user's maximum daily quantity (MDQ), there was no explicit provision stating APT's obligation to transport gas up to the user's MDQ. Accordingly, APT revised its terms and conditions as follows (clause 3 of Schedule 3):

Subject to other provisions of this Access Agreement including the limitation on the Service Provider's obligation to receive or deliver gas up to the User's MDQ, the provisions of sections 2.2.1 and 2.2.4 of Schedule A and also subject to the User's compliance with its obligations in relation to Line Pack, balancing, Nominations and delivery of gas into the pipeline at the minimum pressure:

- (a) on any Day the Service Provider will receive, transport and deliver the quantity of gas nominated by the User for that Day, up to the User's MDQ; and
- (b) except pursuant to an Overrun Service, the Service Provider will not be obliged on any Day:
 - (i) to deliver at any of the User's Delivery Points a quantity of gas greater than the Delivery Point MDQ for that Delivery Point; or
 - (ii) to receive at any of the User's Receipt Points a quantity of gas, excluding the User's share of Users' Linepack, greater than the Receipt Point MDQ for that Receipt Point.

2.1.4 Priority of services

Amendment A3.3

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, subject to a prospective user seeking the reference service at the reference tariff having priority over a prospective user seeking the reference service at a tariff less than the reference tariff.

The Commission was concerned that prospective users seeking a service other than a reference service would be in jeopardy of losing their place in the queue to a seeker of

the reference service. The Commission considered that this was an important issue in this instance as apart from the reference service the only other service offered by APT was a negotiated service. In response to the Final Decision APT has amended its access arrangement by deleting the clause that states that the reference service has priority over negotiated services and inserting the following clause (clause 6.4):

A Request for a Reference Service will have priority over a Request for the same Service at a tariff less than the Reference Tariff. Otherwise, the priority of a Request for any service depends on its priority date.

The priority date of a request for service is the date that a completed request is received by APT. Hence the priority of requests for services will be in accordance with the order in which completed requests are received by APT, with reference services having no greater priority than negotiated services except as provided for above. APT's proposed amendment recognises that a service provider should not be obliged to offer a reference service to a prospective user at a tariff lower than the reference tariff.

2.1.5 Extensions and expansions policy

In its Final Decision the Commission required the following two amendments to APT's proposed extensions and expansions policy.

Amendment A3.4

In order for APT's access arrangement for the RBP to be approved, APT must amend section 7 of its extensions and expansions policy to the effect that, at the time it comes into operation, any expansion is to be considered as part of the covered pipeline unless at that time the Commission agrees that the expansion should not be covered.

Amendment A3.5

In order for APT's access arrangement for the RBP to be approved, APT must amend section 7.3 of its extensions and expansions policy by deleting the clause that reads:

that the expansion will form part of the covered pipeline and that Reference Tariffs will remain unchanged but a Surcharge will be levied on Incremental Users as permitted under the Access Code.

The first of these two amendments acknowledged the potential for market power when capacity is full and the opportunity for monopoly rents to be extracted if an expansion of a pipeline is unregulated. The rationale for the second amendment was to remove any inconsistency between the extensions/expansions policy and the derogation. The reference service and reference tariff do not apply for capacity beyond 101TJ/day and APT is not permitted to add to the derogated tariff arrangement by including a provision in the access arrangement that would allow APT to levy a surcharge.

In its revised access arrangement APT has addressed this issue by combining clauses 7.2 and 7.3 from its original access arrangement into a single clause (clause 7.2):

- In the event that the Service Provider expands the capacity of the Pipeline above 178TJ/Day, the expansion will, at the time it comes into operation, be Covered and be subject to this Access Arrangement unless the Regulator agrees that the expansion should not be Covered.
- Where an expansion is Covered and is subject to this Access Arrangement, access to that capacity will be offered as a Negotiated Service at a negotiated tariff.

3. Final Approval

For the reasons expressed in this Final Approval and in the Commission's Final Decision, pursuant to section 2.19 of the Code, the Commission approves APT's revised access arrangement for the RBP.

The access arrangement commences on 1 October 2002.

This Final Approval document and the revised access arrangement are available on the Commission's website: <http://www.accc.gov.au>