

# **Final Decision**

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

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**Commissioners:**  
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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 and/or operator and submitted to the relevant regulator for approval in accordance with the Code
Access arrangement information	Information provided by a service provider to the Relevant Regulator pursuant to section 2 of the 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
the Act	<i>Gas Pipelines Access (Queensland) Act 1998</i>
APT	Australian Pipeline Trust
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: <ul style="list-style-type: none"><li>■ 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;</li><li>■ users normally are required to enter into a contract that specifies a quantity of service;</li><li>■ changes for use of a service are normally based at least in part upon the quantity of service specified in a contract; and</li><li>■ a user normally has the right to trade its right to obtain a service to another user.</li></ul>
Covered pipeline	Pipeline to which the provisions of the Code apply
CS Energy	CS Energy Limited
DVC	Daily Variance Charge

Derogation	A legislative exemption from compliance with specified obligations set out in the Code
Energex	Energex Retail Pty Limited
Energy Users	Energy Users Association of Australia
Ergon	Ergon Energy Gas Pty Limited
GJ	GigaJoule
ICB	Initial Capital Base
KPI	Key performance indicator
MDQ	Maximum Daily Quantity
MHQ	Maximum Hourly Quantity
Mpa	Megapascal (unit of pressure)
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
QDME	Queensland Department of Mines and Energy
QTE	Queensland Treasury Office of Energy
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 of the Code
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"> <li>(a) haulage services (such as firm haulage, interruptible haulage, spot haulage and backhaul);</li> <li>(b) the right to interconnect with a covered pipeline; and</li> <li>(c) services ancillary to the provisions of such services,</li> </ul> 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 the Australian Pipeline Trust (APT) applied for approval of its proposed access arrangement for the Wallumbilla to Brisbane Pipeline, also 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). The access arrangement describes the terms and conditions on which APT proposes to make access to the services provided by the RBP available to third parties.

Under section 58 of the *Gas Pipelines Access (Queensland) Act 1998*, some elements of the access arrangement, notably the reference tariff and reference tariff policy, reference service and review date, have been determined by the Queensland Government for the initial access arrangement period and cannot be reviewed by the Commission. Consequently, the Commission has jurisdiction to require amendments to the access arrangement with respect to the other non-tariff elements only.

The Commission does not approve APT's access arrangement for the RBP in its present form. Pursuant to section 2.16 of the Code, this Final Decision states 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 required amendments are brought together at the end of this Executive Summary.

## 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 would add capacity to the system. APT provided some of information in its response to the Draft Decision and stated that it would provide further details of the structure of the pipeline.

## Reference tariff and reference tariff policy

The RBP is the subject of a Queensland Government Derogation for capacity 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 (31 January 2006). Therefore, the majority of the typically contentious aspects of an access arrangement are not open to consideration by the Commission. In particular, this Final 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, in its Draft Decision, the Commission proposed an amendment that the additional clauses in the Access Arrangement should be deleted. APT agreed to make this amendment.

### **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 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 an Access Agreement will be consistent with the terms and conditions contained in the access arrangement.

The Commission is 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 Draft Decision the Commission proposed 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.

APT did not agree with this amendment. APT proposed that, where an inconsistency is found between the approved access arrangement and APT’s standard Access Agreement, the terms and conditions in the access arrangement would prevail. This proposal, however, would still not overcome the underlying problem of the standard Access Agreement being changed without reference to the Commission and the Commission being bound by the changes in the event of a dispute. To protect the integrity of the access arrangement process, the Commission requires an amendment to the access arrangement that all references to APT’s standard Access Agreement be deleted from the access arrangement. APT has indicated to the Commission that it has no objection to this proposal.

The Commission requires a further amendment to APT's terms and conditions to the effect that the access arrangement must clarify that APT is obliged to transport and deliver gas up to a user's maximum daily quantity (MDQ), subject to other provisions of the access arrangement.

### **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 capacity to another user. However, APT's proposal essentially mirrors the provisions of the Code, and accordingly the Commission considers that APT's proposal complies with the Code.

### **Queuing policy**

#### *Confirmation of gas supplies*

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 contended that this information is commercially sensitive.

In its Draft Decision the Commission proposed that written confirmation from a prospective user that it has made arrangements for the supply of gas should be sufficient. APT objected to this amendment, but stated that it would not object to an amendment that clarified that the user must demonstrate the matter to APT's 'reasonable satisfaction'. This raises the issue of what constitutes APT's 'reasonable satisfaction' and whether any commercially sensitive information would be required.

In relation to the Ballera to Mt Isa pipeline, the service provider (the Carpentaria Gas Pipeline Joint Venture, of which APT has a majority interest) proposed that commercially sensitive information such as details of gas supply arrangements could be provided to an independent party who would keep the information confidential. In its Final Decision in relation to that pipeline the Commission required an amendment to this effect. This was in response to concerns that the South West Queensland Gas Producers have an interest in the Ballera to Mt Isa pipeline as well as being a gas supplier. However, a similar vertical integration issue does not exist with the RBP. Accordingly, the Commission has decided that no amendment is necessary to APT's proposed access arrangement for the RBP in relation to this matter.

#### *Priority of services*

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, in its Draft Decision, the Commission proposed that the reference service and negotiated services should 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. The amendment

proposed by the Commission would not deprive APT of the right to provide the reference service at the reference tariff.

In response APT proposed an amendment to the effect that:

- where the only issue of contention is the tariff, APT is entitled to give priority to the user seeking a reference service, and
- otherwise, that the priority of a request will depend on its priority date determined under section 6.4 of the access arrangement.

In other words a prospective user seeking the reference service at the reference tariff would have priority over a prospective user seeking the reference service at a discount. This is in accordance with the intent of the Commission's Draft Decision. Accordingly, the Commission requires an amendment to this effect.

### **Extensions/expansions policy**

APT's proposed access arrangement provides that APT will consult with the Commission regarding whether or not an extension to the RBP, or expansion beyond capacity of 118.5TJ/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.

In its Draft Decision the Commission proposed three amendments to APT's extensions and expansion policy. Firstly, the Commission proposed an amendment that APT should seek the consent of the Commission to include an extension as part of the covered pipeline. APT objected to this proposal. The Commission has reconsidered its position and agrees that APT's original proposal is reasonable and consistent with the Code. This is in line with other recent decisions of the Commission on this matter.

Secondly, the Commission proposed an amendment that APT should specify how an extension that is to be treated as part of the covered pipeline will affect reference tariffs. APT stated that it does not have an objection to this amendment. The Commission has since received legal advice that, because of the derogation, the reference service, and hence reference tariffs, cannot apply to extensions after the capacity of the pipeline has reached its nominal capacity of 101TJ/day. The capacity of the RBP already exceeds this level. Therefore, there is no need for the access arrangement to address the issue of how an extension to the pipeline that is to be treated as part of the covered pipeline will affect reference tariffs.

Thirdly, the Commission proposed that any expansion of the covered pipeline above 118.5TJ/day would be considered part of the covered pipeline, unless at that time the Commission agreed 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 an expansion of a pipeline is unregulated. Although the reference service and reference tariff do not apply to expansions beyond 101TJ/day, coverage of an expansion will allow prospective users recourse to the dispute resolution provisions of the Code in the event that they and APT are unable to come to agreement on the terms and conditions of access.

Section 3.16(b) of the Code provides that the extensions and expansions policy should specify how any extension or expansion that is to be treated as part of the covered pipeline will affect reference tariffs. One option proposed by APT for expansions beyond 118.5TJ/day is that the reference tariff will remain unchanged but a surcharge will be levied on incremental users. However, because of the derogation, the reference service cannot apply to expansions beyond 101TJ/day. Therefore, the option proposed by APT is inconsistent with the derogation and should be deleted from the access arrangement, as it implies that the reference service would be available.

## **Amendments**

The Commission requires the following amendments to the access arrangement.

### **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.

### **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.

### **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.

### **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.

### **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.

### **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.



# 1. Introduction

## 1.1 Background

On 6 November 2000 Australian Pipeline Trust (APT) applied for approval of its 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). APT Petroleum Pipelines Ltd<sup>1</sup> (an APT related company) owns and operates the RBP and is the service provider.

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

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. Pursuant to section 2.13 of the Code the Commission issued a Draft Decision on 15 August 2001 proposing not to approve APT's proposed access arrangement.

The Commission has now made a Final Decision not to approve APT's proposed access arrangement. This Final Decision sets out the amendments (or nature of the amendments) that APT would have to make in order for the Commission to approve the access arrangement.

Under section 58 of the *Gas Pipelines Access (Queensland) Act 1998* (the Act), some elements of the access arrangement, notably the reference tariff and reference tariff policy, reference service and review date, have been determined by the Queensland Government for the initial access arrangement period and cannot be reviewed by the Commission. Consequently, the Commission has jurisdiction to require amendments to the access arrangement with respect to the other non-tariff elements only. Many of the issues raised in the submissions related to matters over which the Commission currently has no jurisdiction as a result of the derogation imposed by the Queensland Government. The Queensland Government would have to amend its legislation before the Commission would have any authority to require amendments to the access arrangement in relation to the derogated elements.

The remainder of this introduction includes:

- a description of the current assessment process and the steps to final approval of an access arrangement for the RBP;
- a description of the regulatory framework for the Queensland gas pipeline industry;

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<sup>1</sup> At the time that the proposed access arrangement was lodged, The RBP was owned by APT Petroleum Pipelines Limited and Interstate Pipelines Pty Limited. Since then APT Petroleum Pipelines acquired Interstate Pipelines' interest in the RBP.

- a summary of the criteria for assessing an access arrangement under the Code;
- a description of the physical status of the pipeline;
- a description of the nature of the derogation; and
- the Commission's Final Decision.

## **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 Act, 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 1.3.2.

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 listed in Appendix A, are Santos Ltd (Santos), Incitec Ltd (Incitec), Ergon Energy Gas Pty Ltd (Ergon), Energex Retail Pty Limited (Energex), Energy Users Association of Australia (Energy Users), Origin Energy Retail Limited (Origin) and CS Energy Limited (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.

The Draft Decision contained eight proposed amendments. The Commission invited submissions in response to its Draft Decision and received submissions from APT, Santos and the Queensland Government. The Commission issues this Final Decision after careful consideration of responses received from the service provider and third parties to the Draft Decision.

## **1.3 Regulatory framework**

### **1.3.1 Relevant legislation**

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

#### ***Gas Pipelines Access (Queensland) Act 1998***

The *Gas Pipelines Access (Queensland) Act 1998* (the Act) 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 Act 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 Act 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 for a period of approximately 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. Owners of pipelines covered under the Code when it was implemented are obliged to lodge access arrangements. The 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;<sup>2</sup>
- the Australian Competition Tribunal – merits review body; and
- the Federal Court – judicial review.

The Queensland Competition Authority<sup>3</sup> (QCA) is regulator and arbitrator in Queensland with respect to distribution (reticulation) pipelines.

### **1.3.2 Certification of the Queensland Gas Access Regime**

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

### ***National Competition Council Process***

The Competition Principles Agreement lays down principles against which the NCC must assess the effectiveness of an access regime. Following extensive consultation, the NCC recommends to the relevant Commonwealth Minister whether the access regime should be certified as effective. The Commonwealth Minister is the decision maker.

With respect to the Queensland Government’s application for certification of the Queensland regime, the NCC made its recommendation to the Commonwealth Minister

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<sup>2</sup> The Commission is also regulator and arbitrator with respect to transmission pipelines in the other States and Territories with the exception of Western Australia.

<sup>3</sup> *Queensland Competition Authority Act 1997*.

in February 2001 but has not revealed the content of that recommendation publicly. The Commission understands that the Commonwealth Minister recently notified the NCC that he had received a substantial amount of new material from the Queensland Government and the owners of four gas pipelines subject to derogations under the Queensland regime. The Minister has sought the NCC's advice as to whether this material raises new issues of relevance to his consideration of the 'effectiveness' of the Queensland gas pipeline access regime.

To ensure that all relevant material is properly reflected in its advice to the Minister, the NCC has withdrawn its February 2001 recommendation and will forward a fresh recommendation once it has given full consideration to the submission from the Queensland Government and the joint submission from major pipeline companies.

Given that considerable time has elapsed since interested parties had an opportunity to provide views on the effectiveness of the Queensland Regime, the NCC considers it appropriate to release a draft recommendation for comment prior to forwarding its final recommendation to the Minister.

If the Commonwealth Minister does not certify the regime as effective it would not affect the Commission's consideration of the derogated pipelines' access arrangements. However, such a decision would expose those pipelines to the possibility of declaration under Part IIIA of the Trade Practices Act. 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 rather than the Code to determine a tariff in these circumstances.

## **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 south-eastern 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 with 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 from that offered on the RBP.<sup>4</sup>

### 1.6.1 Commission's considerations

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 pipeline.

As noted earlier, since APT submitted the RBP access arrangement there has been significant expansion of the pipeline. 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 would add capacity to the system.

In its Draft Decision the Commission proposed an amendment that APT must set out the current capacity and structure of the pipeline and also indicate its expectations for augmentation and what that would entail. APT responded that it is currently

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<sup>4</sup> CS Energy submission, 29 January 2001, p. 5.

undertaking additional looping which will result in the RBP effectively having capacity of 156TJ/day. APT also stated that additional capacity could be provided through undertaking a further program of looping, or through installation of additional compressors on the looped section of the pipeline. APT expects to continue to augment the pipeline to satisfy users' requirements. APT also stated that it would provide further details of the structure 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.

## **1.7 Nature of the derogation**

Reference tariffs with respect to the RBP access arrangement are explicitly derogated up to 101TJ/day. Further, the access arrangement provides a reference service only 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 could not require additional reference tariffs due to the wording of section 58(3) of the Act, 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 Act. The nature of the derogation is discussed in more depth in section 3.1 of the Final Decision.

### ***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.

A similar issue arose with respect to the Commission's consideration of the proposed access arrangement for the Ballera to Mt Isa pipeline.<sup>5</sup> In that case 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) responded<sup>6</sup> 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 that 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 Final 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 Final Decision.

## **1.9 Final Decision**

Pursuant to section 2.16 of the Code the Commission does not approve the access arrangement for the RBP submitted by APT in its current form. The 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 Final Decision and are brought together in the Executive Summary.

APT must submit a revised access arrangement to the Commission by 28 February 2002 that substantially incorporates these amendments or otherwise addresses to the Commission's satisfaction the issues that gave rise to the amendments.

Chapter 2 describes the reference tariffs as determined by the Queensland Minister.

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<sup>5</sup> ACCC. Final Decision, *Access Arrangement proposed by the Carpentaria Gas Pipeline Joint Venture for the Ballera to Mount Isa Pipeline*, 16 January 2002.

<sup>6</sup> QTE letter to the Commission on 25 June 2001, which can be found on the Commission's website <http://www.accc.gov.au/gas/fs-gas.htm>.

Chapter 3 set outs the Commission's analysis of the mandatory non-tariff elements of the access arrangement, including: the services policy; terms and conditions; capacity management policy; trading policy; queuing policy; extensions and expansions policy; and review and expiry of the access arrangement.

Chapter 4 examines the provision of access arrangement information.

Chapter 5 states the Commission's Final Decision on the basis of the analysis preceding that chapter.



## 2. Reference tariff elements

### 2.1 Reference tariff and reference tariff policy

#### 2.1.1 Code 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 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 or 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 user's 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.<sup>7</sup>

Overrun, variance and imbalance charges are discussed in section 3.2 of the Final 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 improvements;<sup>8</sup> 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.<sup>9</sup>

***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.<sup>10</sup>

***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.

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<sup>7</sup> Access Arrangement, 6 November 2001, clause 1.1.3, p. 12.

<sup>8</sup> The capital improvements listed in clause 1.6 of the access arrangement relate 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.

<sup>9</sup> Access Arrangement, 6 November 2001, clause 1.6, p. 13.

<sup>10</sup> 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.<sup>11</sup>

### **2.1.3 Submissions by interested parties**

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

- excessive 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.<sup>12</sup>

Origin noted that the proposed reference tariffs and the underlying rates of return place the RBP amongst the highest priced pipelines in Australia.<sup>13</sup>

#### ***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.<sup>14</sup>

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<sup>11</sup> Access Arrangement, 6 November 2001, clause 1.8, p. 14.

<sup>12</sup> Energex submission, 20 February 2001, p. 1.

<sup>13</sup> Origin submission, 30 January 2001, clause 2.1, p. 2.

<sup>14</sup> Energex submission, 20 February 2001, p. 2.

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.<sup>15</sup>

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.<sup>16</sup>

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.<sup>17</sup>

### ***Pricing of laterals***

Santos considered that it is unclear whether the Peat to Scotia lateral will form part of the access arrangement.<sup>18</sup> 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.<sup>19</sup>

### ***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.<sup>20</sup>

### ***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

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<sup>15</sup> Santos submission, January 2001, p. 5.

<sup>16</sup> Origin submission, 30 January 2001, clause 2.1.

<sup>17</sup> CS Energy submission, 29 January 2001, p. 11.

<sup>18</sup> Santos submission, 29 January 2001, p. 3.

<sup>19</sup> CS Energy submission, 29 January 2001, p.5.

<sup>20</sup> CS Energy submission, 29 January 2001, p. 9.

accordance with section 8.9. 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 Act, 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.<sup>21</sup>

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.<sup>22</sup>

#### **2.1.4 Commission's considerations**

The Commission notes interested parties considerations. Due to the derogation on the RBP by the Queensland Government, however, 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 add provisions to the reference tariff policy.

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<sup>21</sup> Ergon submission, 29 January 2001, p. 6.

<sup>22</sup> Energy Users Association of Australia, 8 February, 2001.

The proposed provisions themselves are not inconsistent with the Code. Nevertheless, because APT does not have the power to modify the reference tariff policy, the Commission requires 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.

In its Draft Decision the Commission proposed an amendment to remove the additional clauses. In its response to the Draft Decision APT indicated that it had no objection to the amendment.

#### **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 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.<sup>23</sup>

#### *Negotiated service*

- A negotiated service is offered for capacity from 101TJ/day to 118.5TJ/day; and a negotiated service is also 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 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 Pipelines Access Law and the Code, unless the parties agree otherwise.<sup>24</sup>

#### *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 seven days [of notice], the priority of this request will depend on

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<sup>23</sup> Access Arrangement, 6 November 2000, Section 1, clause 1.1, p. 1.

<sup>24</sup> Access Arrangement, 6 November 2000, Section 1, clause 1.2, p. 1.



the 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;<sup>25</sup>
- where there is sufficient capacity to meet a request, there will be no queue; and
- 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.<sup>26</sup>

### *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.<sup>27</sup>

### **3.1.3 Submissions by interested parties**

In their submissions interested 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.

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<sup>25</sup> 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.

<sup>26</sup> Access Arrangement, 6 November 2000, Section 1, clause 1.3, p. 1.

<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup>
- **Interruptible service:** CS Energy argued that a transparent interruptible tariff should be made available given that this service is available on most pipelines.<sup>30</sup>
- **Backhaul service:** CS Energy stated that a tariff should be published for this service due to real possibility of alternate gas supplies.<sup>31</sup>
- **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.<sup>32</sup>
- **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.<sup>33</sup>
- **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.<sup>34</sup>

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<sup>28</sup> CS Energy submission, 29 January 2001, p. 8.

<sup>29</sup> CS Energy submission, 29 January 2001, p. 14.

<sup>30</sup> CS Energy submission, 29 January 2001, p. 14.

<sup>31</sup> CS Energy submission, 29 January 2001, p. 15.

<sup>32</sup> CS Energy submission, 29 January 2001, p. 15.

<sup>33</sup> CS Energy submission, 29 January 2001, p. 8.

<sup>34</sup> 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. Ergon stated that it believes, therefore, that users who contract capacity beyond this amount are discriminated against.<sup>35</sup>

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.<sup>36</sup>

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.<sup>37</sup>

Santos and Energex considered that a negotiated tariff arrangement between 101TJ/day and 118.5TJ/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.<sup>38</sup> 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.<sup>39</sup>

#### **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:

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<sup>35</sup> Ergon submission, 29 January 2001, p. 3.

<sup>36</sup> Ergon submission, 29 January 2001, p. 9-10.

<sup>37</sup> Origin submission, 30 January 2001, clause 2.1.

<sup>38</sup> Santos submission, January 2001, clause 2.1, p. 4.

<sup>39</sup> Energex submission, 20 February 2001. pp. 1-2.

An access arrangement must include a reference tariff for:

- (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 Gas Pipelines Access (Queensland) Act 1998*

In the case of a pipeline that is subject to derogation under the Act, 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, for section 3.3 of the Code to be satisfied, additional services are likely to be sought by a significant part of the market (as reference services). In this case, what the Code permits the Commission to require of the service provider is inconsistent with the derogations under the Act. Wherever there is inconsistency between the Code and the derogations under the Act, the derogations of the Act prevail over the Code.

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

### *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.

A similar derogation (up to capacity of 175TJ/day) applies to the Carpentaria Gas Pipeline Joint Venture's Ballera to Mt Isa pipeline. The Commission wrote to the Queensland Government with respect to that pipeline seeking confirmation of its intentions in making the derogation. The Queensland Treasury Office of Energy

(QTE)<sup>40</sup> stated that regardless of its intention, it was not necessary to amend the legislation due to the right of prospective 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 would then arbitrate and determine a tariff and associated terms and conditions for that prospective user to access the specific service.

Similar arguments could be made with respect to the RBP. 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 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 considers that the Queensland Government's derogations do not have 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 above, if there were an 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 of 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.

In response to the Commission's Draft Decision, APT stated that it does not agree with the suggestion that the absence of a reference service for such capacity has disadvantaged users. APT argued that:

- the purpose of the Code is to establish reference services for existing capacity and does not assume that access arrangements will automatically include reference tariffs for possible future capacity;

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<sup>40</sup> QTE letter to the Commission, 25 June 2001, which can be found on the Commission's website <http://www.accc.gov.au/gas/fs-gas.htm>.

- the provisions of the Petroleum Act dealing with access continue to apply until approval of the access arrangement, so that pending approval of the access arrangement, Ministerial approval is required for all transportation agreements; and
- APT has continued to develop capacity in response to requests by users without costs and delays in dispute resolution.<sup>41</sup>

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

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<sup>41</sup> APT submission, 4 October 2001, p. 1.

## 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 the provisions of 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 the tariff arrangement approved by the Minister.

#### *Obligation to transport*

APT's obligation to transport gas will consist of the receipt of gas at a user's receipt point(s) and delivery of an equivalent quantity of gas to the user's delivery point(s), net of the user's share of linepack. APT is under no obligation to receive or deliver gas on any day in excess of a user's MDQ.

#### *Overruns, variances and imbalances*

APT stated that overruns are a method used by a pipeliner to ensure that on any day the pipeline can delivery 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.<sup>42</sup>

APT stated that it will allow daily variances (where the delivered or received quantity exceeds the nominated amount by more than ten percent of the MDQ)<sup>43</sup> to occur on four

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<sup>42</sup> Access Arrangement, 6 November 2000, Schedule A, clause 2.27, p. 18.

<sup>43</sup> Access Arrangement, 6 November 2000, Schedule A, clause 2.2.8, p. 19.

days within a month (or 24 days in a year) before a user is required to pay a daily variance charge.<sup>44</sup> The daily variance charge is calculated by multiplying the daily variance rate by the daily variance quantity.<sup>45</sup>

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.<sup>46</sup>

### ***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.<sup>47</sup>

### ***Linepack***

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.<sup>48</sup>

### ***Adjustment in MDQ for gross heating value***

APT stated that if the gas presented by a user causes a reduction below 40MJ/m<sup>3</sup> 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.<sup>49</sup>

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<sup>44</sup> Access Arrangement, 6 November 2000, Schedule A, clause 1.6, p. 12.

<sup>45</sup> 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.

<sup>46</sup> The imbalance charge = imbalance rate multiplied by the imbalance existing at the end of the month.

<sup>47</sup> Access Arrangement, 6 November 2000, Schedule A, clause 2.2.2, p. 16.

<sup>48</sup> Access Arrangement, 6 November 2000, Schedule A, clause 2.2.3, p. 16.

<sup>49</sup> 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 specifications 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.<sup>50</sup>

### **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.<sup>51</sup> 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.<sup>52</sup>

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.<sup>53</sup>

#### ***Overruns, variances and imbalances***

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

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<sup>50</sup> Access Arrangement, 6 November 2000, Schedule C, clause 27, p. 34.

<sup>51</sup> Ergon submission, 29 January 2001, p. 5.

<sup>52</sup> CS Energy submission, 29 January 2001, p. 9.

<sup>53</sup> Ergon submission, 29 January 2001, p. 5.

(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 linepack by double dipping on imbalance positions above the +/- 10% allowable imbalance.<sup>54</sup> 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.<sup>55</sup>

Origin and CS Energy contended that daily variances are unavoidable even by the most diligent of the service users.<sup>56</sup> 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.<sup>57</sup>

### ***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.<sup>58</sup>

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/m<sup>3</sup>. Further, Santos stated that the introduction of this concept is a back door approach to change the Queensland gas specification or achieve higher revenues.<sup>59</sup>

### ***System use gas and linepack***

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

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<sup>54</sup> Origin submission, 30 January 2001, p. 2.

<sup>55</sup> Santos submission, 29 January 2001, p. 10.

<sup>56</sup> 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.

<sup>57</sup> CS Energy submission, 29 January 2001, p. 14.

<sup>58</sup> Origin submission, 30 January 2001, p. 1.

<sup>59</sup> Santos submission, 29 January 2001, p. 11.

provide any linepack in the pipeline, and what mechanism exists to protect firm shippers' from losing linepack to interruptible shippers, which do not have any MDQ.<sup>60</sup>

Energex considered that the present allocation method for linepack and system use gas is impenetrable to current users and that little mention is made in the proposed access arrangement of how allocations of linepack 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.<sup>61</sup>

### **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 throughout the access arrangement. The Commission considers that structuring the access arrangement in such a way makes sense for regulatory approval purposes. Nevertheless, the Commission recognises that from a user's 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.

#### ***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. In its Draft Decision the Commission proposed an amendment that either APT submit its standard Access Agreement as part of the access

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<sup>60</sup> Santos submission, 29 January 2001, p. 10.

<sup>61</sup> Energex submission, 20 February 2001, p. 2.

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.

In its response to the Commission's Draft Decision APT submitted that in reality the second option would be no different from the first – for completeness APT would have to include all the provisions of its standard Access Agreement as part of the terms and conditions of the access arrangement.

APT does not support the amendment as proposed in the Draft Decision for several reasons. APT noted that the amendment would require all changes to its standard Access Agreement to be reviewed by the Commission, even those of a technical or operational nature. APT can see no reason for the Commission's involvement in such matters as it would require the Commission to reach a conclusion on detailed commercial and operational issues. Moreover, APT considers that such involvement would be contrary to the concept of 'light-handed regulation and the underlying principles on which the Code was founded.'<sup>62</sup>

APT's preferred approach is for the access arrangement to set out minimum terms and conditions with detailed contractual terms negotiated with individual users. APT states that if the proposed amendment were adopted any variation to the standard Access Agreement with an individual user would constitute a 'negotiated service', rather than a reference service, even though fundamentally it is still a reference service. APT considers that this would be a 'perverse outcome'.<sup>63</sup>

APT submitted that it would have no objection to an amendment that requires the terms and conditions of the access arrangement to take precedence over the standard Access Agreement in the event of any inconsistency.

The Commission does not consider that the amendment proposed by APT still adequately addresses the issue of the standard Access Agreement being amended without reference to the Commission. As long as the standard Access Agreement as it exists from time to time forms part of the terms and conditions of access, under section 6 of the Code the Commission would be bound by the provisions of that document in the event of a dispute between APT and a prospective user, even though the provisions, and any changes to them, would not have been reviewed by the Commission.

The Commission's preferred approach is to delete the references to the standard Access Agreement from the access arrangement and for all relevant provisions relating to access to be incorporated in the terms and conditions of access. In this manner, minor variations to APT's standard Access Agreement that do not affect access to the pipeline and detract from the value of the reference service would not have to be submitted to the Commission as a review of the access arrangement. This approach was adopted by the Commission in the recent Final Decisions on the access arrangements for Duke Energy's Queensland Gas Pipeline and Epic Energy's South West Queensland Gas

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<sup>62</sup> APT submission 4 October 2001, p. 3.

<sup>63</sup> APT submission 4 October 2001, p. 3.

Pipeline. APT was made aware of the Commission's concerns and has advised that it has no objection to the Commission's approach.

### **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.

### ***Obligation to transport***

While the provisions of APT's proposed access arrangement specifically state that APT is not obliged to transport gas in excess of a user's MDQ, it does not state that APT is obliged to transport gas up to a user's MDQ. Accordingly, the Commission requires an amendment to this effect.<sup>64</sup>

### **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.

### ***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
- the imbalance charge is the difference between a user's input of gas to the system and 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,

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<sup>64</sup> A similar issue was raised by BHP in response to the Commission's Draft Decision on the proposed access arrangement for the Ballera to Mt Isa pipeline. The service provider, CGPJV (of which APT has a majority interest) informed the Commission that its obligation to deliver gas up to a user's MDQ is more implicit in the proposed access arrangement than explicit and that it would not object to an amendment clarifying the position.

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 four per cent of inerts (the range is narrower if inerts exceed four per cent). 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.

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 as 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. In any case, as this section is covered by the derogation the Commission has no power to require an amendment.

### ***System use gas and linepack***

The Commission spoke to APT 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.

### ***Interruptions and curtailments***

In its response to the Draft Decision the Queensland Government proposed that Schedule C of the access arrangement should be amended to make it clear that interruptible, spot or other like services should be fully terminated before firm uninterruptible services are reduced. Or as an alternative, the Queensland Government

suggested that users could pay a premium for priority rights in the event of an interruption.

Interruptible and spot services are not included in the services policy, but users may negotiate such service as negotiated services. By definition, it would be expected that users of interruptible services would have their gas supplies curtailed before reference service users. Given that apart from the reference service the only other service on offer is a ‘negotiated service’ which could have terms and conditions different to the reference service, including those relating to interruptions and curtailments, it does not seem practical to implement the Queensland Government’s proposal to prioritise services beyond what is contained in the access arrangement.

The reference service is described as a ‘non-interruptible gas transportation service’ in the approved tariff arrangement. The Commission considers that the Queensland Government’s proposal of users opting to pay a premium for priority rights in the event of an interruption would devalue the reference service to other users. Moreover, the Queensland’s Government proposal would seem to be an addition to the tariff policy, which the is not permitted under the terms of the derogation.

### **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 set 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.<sup>65</sup>

### **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 its 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

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<sup>65</sup> Access Arrangement, 6 November 2001, p. 6.



- 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.<sup>66</sup>

### ***Linepack 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 linepack trading between service users should be included. On a given day the total pipeline linepack can be at an optimum level while each individual service user will be experiencing an imbalance situation incurring not only the linepack imbalance charge but the daily variance charge as well.<sup>67</sup>

Origin and CS Energy submitted that any provision for linepack trading must be subject to mechanisms to ensure that the service provider is not financially disadvantaged and that any transaction be technically feasible.<sup>68</sup>

### ***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 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 points<sup>69</sup>.

Santos stated that there are no clear guidelines or mechanisms for shippers to utilise multiple receipt or delivery points.<sup>70</sup> 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.

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<sup>66</sup> Santos submission, 29 January 2001, clause 3.4, p. 7.

<sup>67</sup> Santos submission, 29 January 2001, p. 3 and Origin submission, 30 January 2001, p. 2.

<sup>68</sup> Origin submission, 29 January 2001, p. 2 and CS Energy submission, 29 January 2001, p. 15.

<sup>69</sup> Origin submission, 30 January 2001, p. 3.

<sup>70</sup> Santos submission, 29 January 2001, clause 3.5, p. 7.

According to CS Energy 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.<sup>71</sup>

#### *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. In Origin's opinion it would be reasonable to assume that this be viewed as a single receipt point with appropriate limits associated with each branch.<sup>72</sup>

Santos stated that APT should permit shippers to use multiple receipt points at the head of the pipeline at Wallumbilla.<sup>73</sup>

#### ***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.<sup>74</sup>

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.<sup>75</sup>

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.<sup>76</sup>

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.

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<sup>71</sup> CS Energy submission, 29 January 2001, p. 9.

<sup>72</sup> Origin submission, 30 January 2001, clause 3.2.

<sup>73</sup> Santos submission, 29 January 2001, clause 3.3, p. 6.

<sup>74</sup> Ergon submission, 29 January 2001, p. 5.

<sup>75</sup> Ergon submission, 29 January 2001, p. 5.

<sup>76</sup> CS Energy submission, 29 January 2001, p. 9.

- 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.<sup>77</sup>

### ***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.<sup>78</sup>

### **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 capacity and any action by a service provider to deliberately restrict that trade for the purposes of selling interruptible services is likely to be in breach of the access arrangement and hinders the access provisions of the Code.

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<sup>77</sup> Santos submission, 29 January 2001, p. 8.

<sup>78</sup> Ergon submission, 29 January 2001, p. 5.

### ***Linepack 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 amend the access arrangement to include such a policy. Firstly, it is doubtful under the circumstances that linepack would be classified as a service provided by the service provider 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 linepack trading. APT stated that it did not believe that the access arrangement restricted linepack trading. Further, APT stated that it may be willing to administer linepack trading, but only at a cost.

The Commission notes APT's intention to recover reasonable costs from administering linepack trading. To the extent APT incurs costs, it is not unreasonable for it to seek cost recovery. The Commission believes this matter is best left to the parties to resolve at the time. Accordingly, the Commission does not require 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.<sup>79</sup>

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:

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<sup>79</sup> ACCC Authorisation No A90624, North West Shelf Project, 29 July 1998, p. vii.

- 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 linepack 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 commercial and technical grounds***

Some interested parties have sought to have APT define what constitutes its ‘reasonable commercial and technical grounds’ on which it would withhold its consent to transfer capacity. However, the Commission notes that APT’s proposed trading policy mirrors the provisions of the Code and considers that it complies with the Code. Moreover, APT’s proposal is similar to the provisions of other access arrangements that have been considered by the Commission.

Nevertheless, 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’. While the Commission cannot require APT to specify its ‘reasonable commercial and technical grounds’, it encourages APT to do so.

#### ***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.

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 contains 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, if applicable.<sup>80</sup>

A request for service may lapse and be removed from 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.<sup>81</sup>

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.<sup>82</sup>

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 made available.

A prospective user will have 30 days after an offer is made to enter into a service agreement.<sup>83</sup>

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<sup>80</sup> Access Arrangement, 6 November 2000, clause 61, p. 7.

<sup>81</sup> Access Arrangement, 6 November 2000, clause 6.2, p. 7.

<sup>82</sup> Access Arrangement, 6 November 2000, clause 6.5, p. 8.

<sup>83</sup> Access Arrangement, 6 November 2000, clause 6.3, p. 8.

### *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.<sup>84</sup>

### **3.5.3 Submissions by interested parties**

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

- existing users should surrender the capacity they are not utilising;
- 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 stated 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.<sup>85</sup>

#### ***The party that funds an expansion should jump the queue***

According to CS Energy 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 stated that justification should be provided for the inclusion of this provision since it may have detrimental effects on the efficient operation of the RBP.<sup>86</sup>

#### ***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

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<sup>84</sup> Access Arrangement, 6 November 2000, clause 6.4, p. 8.

<sup>85</sup> Ergon submission, 29 January 2001, p. 5.

<sup>86</sup> CS Energy submission, 29 January 2001, p. 10.



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.<sup>87</sup>

### **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.

#### ***Existing users 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 described in section 13.1 of Schedule 1 of the Act.

#### ***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 a fundamental principle 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

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<sup>87</sup> Ergon submission, 29 January 2001, clause 3.5, p. 5.

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 has 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 issue for negotiation 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 in its Draft Decision proposed 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.

The amendment proposed by the Commission in its Draft Decision 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, could 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).

In its response to the Draft Decision APT stated that it has no objection to an amendment provided that:

- APT is entitled to give priority to the user seeking the reference service where the only issue of contention is the tariff; and
- otherwise, the priority of a request for service will depend on its priority date under clause 6.4 of the proposed access arrangement. (Clause 6.4 states that the priority date of a request is the date a completed request is received by APT).

In other words a prospective user seeking the reference service at the reference tariff would have priority over a prospective user seeking the reference service at a discount. This is consistent with the intent of the amendment proposed in the Draft Decision.

### **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.

#### ***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.

In its Draft Decision the Commission stated that the requirement to demonstrate sufficient gas supplies as currently worded is likely to force prospective users unnecessarily to reveal commercially sensitive information. In its Draft Decision the Commission proposed that the access arrangement be amended so that APT can only seek written confirmation from the prospective user that the necessary supply arrangements are in place, and cannot require commercially sensitive information to be divulged.

APT does not agree with this amendment. APT stated that a service provider needs a level of satisfaction that a prospective user has the necessary underlying arrangements in place prior to the service provider expending time and costs responding to a request, and prior to the service provider making an offer which will preclude offers being made to others in the queue. APT also expressed a concern that the proposed amendment was being used to enhance the ringfencing obligations of the Code.

APT submitted that section 6.5 could be satisfied without the production of commercially sensitive information which it would be detrimental to the user to disclose. In its opinion the proposed amendment would expose APT to the risk of reliance on an unsubstantiated assurance by a prospective user. APT stated that it would not object to an amendment which clarifies that the user must demonstrate the relevant matter to APT's reasonable satisfaction.

From discussions between Commission staff and APT, the Commission understands that APT's main concern relates to the pre-contractual stage of negotiation. The Commission understands that the main purpose of APT's requirement that prospective users must demonstrate that they have access to gas supplies is to reduce the likelihood of APT investigating requests that are unrealistic or purely speculative in nature.

Nevertheless, the Commission has some concerns with APT's proposed amendment that the user must demonstrate that it has made arrangements for the supply of gas to APT's 'reasonable satisfaction'. What constitutes APT's 'reasonable satisfaction' is problematic. If the provision of commercially sensitive information, such as the source of the prospective user's gas supply, would constitute APT's 'reasonable satisfaction' then the problem identified by the Commission remains unresolved.

The Commission welcomes APT's comments that the proposed access arrangement as worded would not necessarily require a prospective user to reveal commercially sensitive information.

In relation to the Ballera to Mt Isa pipeline, the service provider (the Carpentaria Gas Pipeline Joint Venture, of which APT has a majority interest) proposed that commercially sensitive information such as details of gas supply arrangements could be provided to an independent party who would keep the information confidential. In its recent Final Decision, the Commission required an amendment to this effect for the Ballera to Mt Isa pipeline. This was in response to concerns that the South West Queensland gas producers have an interest in the Ballera to Mt Isa pipeline as well as being a gas supplier. However, a similar vertical integration issue does not exist with the RBP. Accordingly, in this case the Commission has decided that no amendment is necessary to APT's proposed access arrangement for the RBP.

APT noted that the proposed queuing policy does not contain any obligation on the prospective user to demonstrate its bona fides in lodging a request for service, or entering into negotiations with a service provider. The existence on the queue of a speculative request will cause misunderstandings and confusion for genuine prospective users as well as present significant difficulties to the service provider in developing responses. Accordingly, APT will submit revised wording to address this matter.

#### *Alternative queuing policies*

APT's proposed queuing policy is on a 'first come first served' basis. In its Final Decision on the access arrangement for the Moomba to Adelaide Pipeline System (MAPS), the Commission determined that a 'first come first served' queuing policy was inappropriate for that pipeline, as it would allocate existing spare capacity in an inefficient manner. Instead the Commission required an amendment to the access arrangement to incorporate an alternative queuing policy proposed by the service provider, Epic Energy. That alternative policy is:

- a 'first come, first served' queue for developable capacity; and
- for existing capacity, spare capacity would be allocated on a pro rata basis where excess demand exists. However, should any prospective user disagree with the pro rata allocation, a dispute resolution process would be conducted to allocate spare capacity.

In the MAPS decision, the Commission noted that, because of the incremental approach to pricing, existing capacity will be cheaper than developable capacity. The Commission considered that, where demand for the cheaper existing capacity exceeded spare capacity, a 'first come first served' queue would be inappropriate, as some prospective users would miss out simply because they submitted their request at a later time than other users. Accordingly, the Commission accepted Epic Energy's alternative proposal of a pro-rata basis, and the dispute resolution procedures in circumstances where a pro-rata basis may not be appropriate.

The Commission is not requiring an amendment to APT's 'first come first served' queuing policy for the RBP for the initial access arrangement period. However, the

Commission may consider alternatives at the first review of the access arrangement due in July 2006. In this regard the Commission understands that some contracts expire in 2007<sup>88</sup> raising the possibility of spare capacity becoming available.

## **3.6 Extensions and expansions policy**

### **3.6.1 Code Requirements**

Section 3.16 of the 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.<sup>89</sup> 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.<sup>90</sup>

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 proposes 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.

#### ***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

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<sup>88</sup> APT offer document, *Buried Treasure*, May 2000, p. 31.

<sup>89</sup> For example, reference tariffs may remain unchanged, but a surcharge may be levied on incremental users.

<sup>90</sup> Access Arrangement, 6 November 2000, clause 7.1, p. 9.

- 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 Code.<sup>91</sup>

### **3.6.3 Submissions by interested parties**

In their submissions interested 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 the service provider after consultation to have an 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 capacity expansion and do not share the lower capital expenditure costs or reduced operating costs associated with later new users' transportation entitlements.<sup>92</sup>

Santos proposed the following revisions to the extension/expansion policy to address these problems:<sup>93</sup>

- 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.

#### ***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.<sup>94</sup>

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<sup>91</sup> Access Arrangement, 6 November 2000, clause 7.3, p. 9.

<sup>92</sup> Santos submission, 29 January 2001, p. 5.

<sup>93</sup> Santos submission, 29 January 2001, p. 5.

<sup>94</sup> CS Energy submission, 29 January 2001, p. 12.

### ***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.<sup>95</sup>

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.<sup>96</sup>

### ***Impact on reference tariffs if an extension is covered***

Ergon suggested that there should be greater detail provided about how the service provider 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.<sup>97</sup>

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 stated 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.<sup>98</sup>

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.<sup>99</sup>

## **3.6.4 Commission's considerations**

### ***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.

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<sup>95</sup> Ergon submission, 29 January 2001, clause 3.7, p. 5.

<sup>96</sup> CS Energy submission, 29 January 2001, p. 13.

<sup>97</sup> Ergon submission, 29 January 2001, p. 6.

<sup>98</sup> CS Energy submission, 29 January 2001, p. 13.

<sup>99</sup> CS Energy submission, 29 January 2001, p. 13.

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

In the event that APT undertakes a geographical extension to the RBP 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.

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 extension to be declared a covered pipeline under the Code.

In its Draft Decision the Commission proposed an amendment 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.

APT did not agree with this proposed amendment. APT submitted that section 7.1 of the access arrangement required APT to consult with the Commission prior to making such a decision and that the Draft Decision recognised that the Code does not require a service provider to obtain the regulator's approval whether to include or exclude an extension or expansion as part of the covered pipeline. APT also pointed to the fact that any person can apply for coverage of an extension if APT opted not to include an extension as part of the covered pipeline.

APT considered the proposed amendment to be inconsistent with the regime under the Code, as under which:

- the access arrangement may permit the service provider to elect whether to voluntarily cover the extension, and
- if the service provider does not elect to voluntarily cover the extension, the decision on coverage is made by the Minister.

The Commission does not agree with APT that the Code allows the service provider sole discretion to determine whether an extension should be treated as part of the covered pipeline. While the Code does permit the service provider to nominate a method for determining whether an extension or expansion will be covered, the regulator must assess whether the method is consistent with the principles outlined in section 2.24 of the Code.

Nevertheless, the Commission has reconsidered its position and concluded that APT's original proposal (that APT may elect, after consultation with the Commission, whether an extension is to be treated as part of the covered pipeline) is reasonable and consistent with the Code. This is consistent with other recent decisions made by the Commission on this issue. This contrasts with the approach adopted by the Commission with regard to expansions of the RBP (see below) which states that an expansion would form part of the covered pipeline unless the Commission agrees otherwise. That policy reflects



the potential market power that a service provider may have when a pipeline is fully contracted and no spare capacity exists. The same degree of market power may not exist with extensions, however, particularly as other companies could be able to construct and operate an extension to a pipeline.

### ***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 addresses this point, but with respect to extensions, APT's proposed extensions/expansions policy does not address this issue.

In its Draft Decision the Commission proposed an amendment to specify how any extension, that is to be treated as part of the covered pipeline, will affect reference tariffs. APT indicated to the Commission that it had no objection to the amendment. However, because of the derogation, the reference service, and hence reference tariffs, cannot apply to extensions after the capacity of the pipeline has reached its nominal capacity of 101TJ/day. The capacity of the RBP already exceeds this level. Therefore, there is no need for the access arrangement to address the issue of how an extension to the pipeline that is to be treated as part of the covered pipeline will affect reference tariffs.

### ***Expansion of capacity beyond 118.5TJ/day***

For expansions of capacity beyond 118.5TJ/day, APT proposes that it would consult the Commission 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 Code<sup>100</sup> (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, in its Draft Decision the Commission proposed an amendment to the access arrangement to the effect that any expansion to the covered pipeline would be considered part of the covered pipeline, unless at the time the regulator agreed that the expansion should not be covered.

APT did not agree with this amendment. It stated that the capacity of the RBP has now been expanded to 118.5TJ/day, with further capacity expansion works being

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<sup>100</sup> Section 2.24 of the Code sets out the factors that the Commission must take into account in assessing a proposed access arrangement.

undertaken. APT indicated that section 7.2 of the access arrangement will be amended to apply to all existing and under-construction capacity. It submitted that the Commission's proposed amendment for expansions above 118.5TJ/day is 'unreasonable and unnecessary'. APT noted that the Code recognises that a service provider is entitled to discretion in the manner in which the access arrangement treats expansions and extensions. APT also noted that under the Code any person may apply to the NCC for the expansion to be covered. APT submitted that the proposed amendment would allow the Commission, not APT or the Minister, to decide whether expanded capacity is to be covered. In APT's opinion this is inconsistent with the Code.

The Commission does not agree with APT that the Code allows the service provider sole discretion to determine whether an expansion should be treated as part of the covered pipeline. While the Code does permit the service provider to nominate a method for determining whether an extension or expansion will be covered, the regulator must assess whether the method is consistent with the principles outlined in section 2.24 of the Code.

The implications of the derogated tariff arrangement on the tariff and services policies of the access arrangement were discussed earlier in this Final Decision. The Commission concluded that section 58(3) of the Act was framed in such a manner that the derogated tariff arrangement represents the tariff policy in its entirety and therefore the tariff policy in the access arrangement could not augment the derogated tariff arrangement. The Commission also concluded that no other reference services, other than that contained in the derogated tariff arrangement, could be included in the access arrangement's service policy.

The Commission sought legal advice on the implications of the derogated tariff arrangement on expansions of the pipeline beyond 118.5TJ/day. The Commission has been advised that section 58(3) of the Act suggests that any service with respect to capacity beyond 101TJ/day cannot be offered as a reference service.

The amendment proposed by the Commission in its Draft Decision is consistent with the amendment required by the Commission in its recent Final Decision on Epic Energy's proposed access arrangement for the Moomba to Adelaide Pipeline. In supporting that amendment, the Commission argued:

Owing to the excess demand that is present in the market, Epic may be able to exercise a degree of market power in setting the terms and conditions, including tariffs, for an expansion. This is because it is not constrained by competition or regulation (if Epic were to elect that new facilities would not be covered). Potentially, Epic could be in a position to extract monopoly rents by pricing expansions at just below the point where it would no longer be commercially viable for a prospective user to continue with its proposal.<sup>101</sup>

This contrasts with the position taken by the Commission with respect to Epic Energy's proposed access arrangement for the Ballera to Wallumbilla Pipeline System, also

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<sup>101</sup> ACCC, Final Decision, *Access Arrangement proposed by Epic Energy South Australia Pty Ltd for the Moomba to Adelaide Pipeline System*, 12 September 2001, pp. 171-2.

known as the South West Queensland Pipeline (SWQP). In its Final Decision the Commission stated:

With respect to the SWQP, however, Epic's ability to exert market power is significantly diminished due to the derogation. Under the derogation, the Queensland Government has pre-determined the reference tariff for all expansions of capacity on the SWQP up to 110PJ/year (ie 8 compressors). For this reason the Commission believes that Epic's proposed expansions policy (with the variation Epic have submitted) is consistent with the Code.<sup>102</sup>

For the RBP the Commission has adopted a similar policy to that contained in its Final Decision for Moomba to Adelaide Pipeline. That is, any expansion is to be treated as part of covered pipeline unless the Commission agrees otherwise. Unlike Epic Energy's Ballera to Wallumbilla Pipeline and CGPJV's Ballera to Mt Isa pipeline which are currently operating well below the nominal capacity, capacity on the RBP exceeds its nominal capacity of 101TJ/day. The amendment required by the Commission acknowledges 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. Although the reference service and reference tariff do not apply to expansions beyond 101TJ/day, coverage of an expansion will allow prospective users recourse to the dispute resolution provisions of the Code in the event that they and APT are unable to come to agreement on the terms and conditions of access.

#### **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.

Section 3.16(b) of the Code provides that the extensions/expansions policy should specify how any extension or expansion that is to be treated as part of the covered pipeline will affect reference tariffs. One option proposed by APT for expansions beyond 118.5TJ/day is that the reference tariff will remain unchanged but a surcharge will be levied on incremental users. Given that the reference service does not apply to expansions beyond 118.5TJ/day, this provision is inconsistent with the derogation, as it implies that the reference service would be available, and should be deleted from the access arrangement.

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<sup>102</sup> ACCC, Final Decision, *Access Arrangement proposed by Epic Energy Queensland Pty Ltd for the Ballera to Wallumbilla Pipeline System*, 28 November 2001, p. 23.

## **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.

## **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 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 ten per cent; and
- variation from forecast in total gas demand of more than ten per cent.

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.<sup>103</sup>

### **3.7.4 APT's response to the 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).

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<sup>103</sup> Ergon submission, 29 January 2001, clause 3.7, p. 5.

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 derogated access arrangements under the Act. Since any change to the derogations could only be effected by legislation, any change to the 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.<sup>104</sup>

### **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-derogated matters.

Counsel stated that the effect of section 58(4) of the Act 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.

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<sup>104</sup> 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.<sup>105</sup> Incitec stated that the 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.<sup>106</sup>

#### **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

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<sup>105</sup> CS Energy submission, 29 January 2001, p. 7.

<sup>106</sup> 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. Final Decision**

Pursuant to section 2.16 of the Code, the Commission does not 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 Final Decision.

A revised access arrangement must be submitted to the Commission on or before 28 February 2002.

## **Appendix A: Submissions**

### *In response to the Issues Paper*

Ergon Energy Gas Pty Ltd, 29 January 2001

CS Energy Limited, 29 January 2001

Santos Ltd, 29 January 2001

Incitec Ltd, 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

### *In response to the Draft Decision*

Australian Pipeline Trust, 4 October 2001

Queensland Deputy Premier, Treasurer and Minister for Sport, 5 December 2001