



**Australian  
Competition &  
Consumer  
Commission**

# **Issues Paper**

**Proposed revisions to the  
access arrangement by  
Epic Energy Queensland Pty Ltd for the  
Ballera to Wallumbilla Natural Gas Pipeline  
(South West Queensland Pipeline)**

July 2004

File No: C2004/768

## Preface

On 9 July 2004, Epic Energy Queensland Pty Ltd (Epic) submitted to the Australian Competition and Consumer Commission (ACCC) proposed revisions to its access arrangement and access arrangement information for the Ballera to Wallumbilla Pipeline (also known as the South West Queensland Pipeline or SWQP). Revisions to this access arrangement were due to be submitted by 11 June 2004, however, on 4 June 2004 Epic requested an extension until 9 July 2004 which the ACCC granted.

The access arrangement and access arrangement information describe the terms and conditions on which Epic will make access to its pipeline available to third parties.

The ACCC will assess the access arrangement and access arrangement information against the principles in the *National Third Party Access Code for Natural Gas Pipeline Systems* (Code). However, the current review is of revisions that relate to 'AFT services' with a review of all other revisions including the primary reference service in the access arrangement not scheduled until 2016 in accordance with the legislative exemptions contained in the Queensland Gas Pipelines Access Law. This means that the reference tariff, reference tariff policy for the forward haul service will not be reviewed by the ACCC at this time.

The issues paper identifies a number of issues raised by Epic's proposal. Interested parties are invited to make submissions to the ACCC on any issues raised by, or relevant to, these revisions by Wednesday 11 August 2004. After considering these submissions, the ACCC will issue its draft decision. After considering further submissions, the ACCC will issue its final decision.

Submissions will be made available from the ACCC's website ([www.accc.gov.au](http://www.accc.gov.au)). They will also be placed on the public register held by the Code Registrar. Submissions should be supplied in electronic format compatible with Microsoft Word to the review e-mail address below. In addition, one original signed document should be mailed to the postal address below.

The ACCC's e-mail address for this review is [swqp@acc.gov.au](mailto:swqp@acc.gov.au). Hard copies of submissions should be forwarded to:

Mr Mike Buckley  
General Manager  
Regulatory Affairs – Gas  
Australian Competition and Consumer Commission  
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Copies of the revisions application and this issues paper are available from the ACCC's website and may be obtained by contacting Ms Stacey Breen on telephone (02) 6243 1233 or fax (02) 6243 1205, or by e-mail to: [swqp@acc.gov.au](mailto:swqp@acc.gov.au).

Any other inquiries should be directed to Mr Luke Griffin on (08) 9325 0633.

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## Abbreviations and glossary of terms

ACCC	Australian Competition and Consumer Commission
access arrangement	Arrangement for third party access to a pipeline provided by a pipeline owner/operator and submitted to the relevant regulator for approval in accordance with the 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
AFT service	An alternative form of transport service to the full forward haul service
COAG	Council of Australian Governments
Code	<i>National Third Party Access Code for Natural Gas Pipeline Systems</i>
Covered pipeline	Pipeline to which the provisions of the Code apply
Derogation	A legislative exemption from compliance with specified obligations set out in the Code
Epic	Epic Energy Queensland Pty Ltd
GPAL	Gas Pipelines Access Law
NCC	National Competition Council
Prospective user	A person who seeks or who is reasonably likely to seek to enter into a contract for a Service and includes a user who seeks or may seek to enter into a contract for an additional service
Reference service	A service which is specified in an access arrangement and in respect of which a reference tariff has been specified in that access arrangement
Reference tariff	A tariff specified in an access arrangement as corresponding to a reference service and which has the operation that is described in sections 6.13 and 6.18
Reference tariff policy	A policy describing the principles that are to be used to determine a reference tariff
Revisions commencement date	The date upon which the next revisions to the access arrangement are intended to commence
Revisions submissions date	The date upon which the service provider must submit revisions to the access arrangement

Service	<p>A service provided by means of a covered pipeline including:</p> <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> <p>but does not include the production, sale or purchasing of natural gas</p>
Service policy	A policy detailing the service or services to be offered
Service provider	The person who is the owner or operator of the whole or any part of the pipeline or proposed pipeline
SWQP	South West Queensland Pipeline – also known as the Ballera to Wallumbilla Pipeline

# 1. Introduction

## Background

On 4 June 2002, the Australian Competition and Consumer Commission (ACCC) approved an access arrangement for Epic Energy Queensland Pty Ltd's (Epic) Ballera to Wallumbilla Pipeline (also known as the South West Queensland Pipeline or SWQP), under provisions of the *National Third Party Access Code for Natural Gas Pipeline Systems* (Code), which came into effect on 18 June 2002.

This access arrangement requires Epic to submit to the ACCC revisions relating to AFT services by 11 June 2004. An extension was granted by the ACCC giving Epic until 9 July to submit revisions.

The purpose of this Issues Paper is to:

- list a number of issues that the ACCC has identified as relevant to its role in assessing the proposed revised access arrangement and access arrangement information relating to the SWQP; and
- invite interested parties to make submissions on these and other relevant issues that they consider the ACCC should examine in its assessment of this proposed revised access arrangement.

## The current assessment process

The proposed revised access arrangement (in conjunction with the access arrangement information and other associated documentation)<sup>1</sup> describes the terms and conditions on which Epic will make access available to third parties during the next access arrangement period. As a result of the derogations,<sup>2</sup> the revisions submission date differs depending on the service. For the main reference service (full forward haul) the initial access arrangement period extends to 2016,<sup>3</sup> while for AFT services (defined in the derogation as an alternative form of transportation service to a full forward haul), the revisions commencement date is 11 December 2004. The access arrangement currently in place includes a major events review trigger which would enable review of all aspects of the access arrangement other than the firm forward haul tariffs in particular circumstances.<sup>4</sup>

Under the Code, the ACCC is required to:

- inform interested parties that it has received the proposed revisions to the SWQP access arrangement from Epic;

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<sup>1</sup> Access arrangement documentation includes the annexures to the access arrangement; A - access principles, B - additional terms and conditions, and C - definitions.

<sup>2</sup> See chapter 2 for a description of the derogations.

<sup>3</sup> Under the Code, service providers have the discretion to submit revisions earlier than the scheduled review.

<sup>4</sup> See chapter 4 for more detail on the impact of and proposed revisions to the major events trigger.

- publish a notice in a national daily paper which at least describes the covered pipeline to which the proposed revisions to the access arrangement relates; states how copies of the documents may be obtained; and requests submissions by a date specified in the notice;
- after considering submissions received, issue a draft decision which either proposes to approve the revisions to the access arrangement or not to approve the proposed revisions to the access arrangement and states the amendments (or nature of the amendments) which have to be made to the revisions in order for the ACCC to approve the revised access arrangement. Submissions will be sought again following release of the ACCC's draft decision;
- after considering any additional submissions, issue a final decision that either approves or does not approve the proposed revisions to the access arrangement (or amended revisions to the access arrangement) and states the amendments (or nature of the amendments) which have to be made to the revisions in order for the ACCC to approve the revised access arrangement; and
- if the amendments are satisfactorily incorporated in an amended revised access arrangement, issue a final approval. If not, the ACCC may draft and approve its own revisions to the access arrangement. See sections 2.31 to 2.48 of the Code for further detail on the assessment process.

It is important to note that under section 58 of the *Gas Pipelines Access (Queensland) Act 1998*, the reference tariffs and reference tariff policy for the forward haul reference service have been determined by the Queensland Minister and cannot currently be reviewed in this process. This is discussed in more detail in chapter 2 below.

## **Ownership and the service provider**

The SWQP was constructed in 1996 by Tenneco Gas Australia and subsequently purchased by Epic Energy. Epic Energy Queensland Pty Ltd continues to be the service provider for the SWQP notwithstanding the recent acquisition of Epic Energy Queensland Pty Ltd by Hastings Funds Management.

## **Key issues**

The ACCC has identified a range of issues (refer to chapter 4, in particular) which are likely to be relevant to its assessment of the proposed revisions to the access arrangement and for which it invites comments. The key issues that the ACCC will focus on during its assessment include:

- services policy – whether backhaul or other AFT services are demanded by a significant part of the market and should continue to be reference services
- review and expiry of the access arrangement – removal of the existing major events review trigger and an access arrangement period of two years for AFT services
- extensions and expansions policy – exclusion on pipeline augmentations from the covered pipeline unless Epic so elects
- other non-tariff elements

## 2. Regulatory framework

### Relevant legislation and regulatory bodies

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

- the Code, under which transmission service providers are required to submit access arrangements to the ACCC for approval;
- the *Gas Pipelines Access (South Australia) Act 1997*;<sup>5</sup> and
- the *Gas Pipelines Access (Queensland) Act 1998*.

Code bodies and appeals bodies in Queensland with respect to transmission pipelines are:

- the ACCC – regulator and arbitrator;<sup>6</sup>
- the National Competition Council – Code advisory body;
- the Commonwealth Minister – coverage decision maker;
- the Federal Court – judicial review; and
- the Australian Competition Tribunal – administrative appeal.

### Queensland derogations

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

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

The Gas Pipelines Access (Queensland) Act established 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 for Epic’s SWQP forward haul service are not reviewable by the ACCC until 2016. The reference tariffs and tariff policy for AFT services have not been reviewable until now.

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<sup>5</sup> South Australia acted as ‘lead legislator’ for the national gas access legislation.

<sup>6</sup> The ACCC is also regulator and arbitrator with respect of transmission pipelines in the other States and Territories with the exception of Western Australia.



While the derogation applying to the ACCC assessment of tariffs for AFT services has concluded, the ACCC can only determine appropriate tariffs for these services if they are reference services in accordance with the Code. Epic's proposed revisions to its access arrangement, if approved, would result in only one reference service, the full forward haul service. The reference tariff for this service is derogated until 2016.

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

On 25 September 1998, and in accordance with the Natural Gas Pipelines Access Agreement, 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, services cannot be declared for access under Part IIIA of the *Trade Practices Act 1974*.

In considering the effectiveness of the Queensland regime, the NCC was required to apply the relevant principles in the Competition Principles Agreement. The NCC made its final recommendation to the Minister regarding certification of the Queensland regime on 21 November 2002. The Minister is yet to make a decision on the effectiveness of the Queensland regime.

Non certification of the Queensland regime will not affect the ACCC's consideration of the proposed revised access arrangement for the SWQP. However, it would expose the SWQP to the possibility of declaration under Part IIIA of the Trade Practices Act 1974. If the SWQP was declared, unsatisfied access seekers would be able to notify access disputes to the ACCC for binding arbitration and the ACCC would not be bound by the reference tariffs established by the Queensland Minister in the derogations.

### 3. Assessment criteria

The ACCC may approve proposed revisions to an access arrangement only if it is satisfied that the access arrangement as revised would contain the elements and satisfy the principles set out in sections 3.1 to 3.20 of the Code, which are summarised below. Revisions to an access arrangement cannot be opposed solely on the basis that the access arrangement as revised would not address a matter that section 3 of the Code does not require it to address.<sup>7</sup> Subject to this, the ACCC has a broad discretion in accepting or opposing a revised access arrangement.

An access arrangement, or a revised access arrangement, must include the following elements:

- a policy on the service or services to be offered which includes a description of the service(s) to be offered;
- a reference tariff policy and one or more reference tariffs;<sup>8</sup>
- 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 of an extension or expansion of a pipeline under the Code;
- a date by which revisions to the access arrangement must be submitted; and
- a date by which the revisions are intended to commence.

In considering whether a revised access arrangement complies with the Code, the ACCC must take into account the provisions of the access arrangement and, pursuant to section 2.24 of the Code:

- 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

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<sup>7</sup> See section 2.24 of the Code.

<sup>8</sup> A reference tariff operates as a benchmark tariff for a particular service and provides users with a right of access to the specific service at the specific tariff. Reference tariffs are normally assessed against the reference tariff principles in section 8 of the Code. In this instance, however, the reference tariffs and reference tariff policy for the forward haul service have been derogated from the operation of the Code by Queensland legislation until 2016. Reference tariffs and reference tariff policies for AFT services are required only if they are reference services

(whether or not in Australia);

- the interests of users and prospective users; and
- any other matters that the ACCC considers relevant.

## 4. Proposed revisions

### The content of the access arrangement

The required contents of an access arrangement (including a revised access arrangement) were listed in broad terms earlier in Chapter 3. The ACCC must be satisfied that the proposed revisions would result in an access arrangement that meets the content requirements of the Code before it can approve them. It must also be satisfied of the reasonableness of the terms and conditions on which services will be offered. As previously noted, however, the reference tariffs and reference tariff policy for the forward haul service are not reviewable until 2016.

### Services policy

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 regulator's opinion should be included in the services policy.

To the extent that it is practicable and reasonable, a service provider should make available only those elements of a service required by users and prospective users and apply a separate tariff for each element if this is requested.

The access arrangement for the SWQP currently includes a range of reference services (with corresponding reference tariffs as determined under the Queensland derogation). These include:

- forward haul service; and
- AFT services, specifically:
  - (a) Class BH1 - Back Haul Service
  - (b) Class IT1 - Interruptible Transportation Service
  - (c) Class FZ1 - Forward Part Haul Service (Zonal)
  - (d) Class BZ1 - Back Part Haul Service (Zonal)
  - (e) Class IZ1 - Interruptible Part Haul Service (Zonal)

However, section 3 of Annexure A of Epic's proposed revised access arrangement lists only the forward haul reference service described above. That is, Epic has proposed revisions to the access arrangement such that AFT services would become non reference services with corresponding terms and conditions to be negotiated.

### ***Issues for Consideration***

- a) Are users and prospective users satisfied with Epic's proposal to have only one reference service (the forward haul service)?
- b) Are there other services that are likely to be sought during the forthcoming access arrangement period by a significant part of the market for which a reference tariff should be included? If so, what are they, what is the expected level of demand for these services, and on what basis should the reference tariff be set?
- c) Are users and prospective users satisfied with Epic's proposal for the terms and conditions of the non reference services to be negotiated?

## **Terms and conditions**

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. To be approved, these terms and conditions must be considered reasonable by the regulator. Epic has made various consequential revisions to its access arrangement terms and conditions as part of the reclassification of AFT services as non reference services. Interested parties are directed to the 'marked-up' versions of the access arrangement documentation including the annexures in responding to the issues raised below.

### ***Issues for consideration***

- a) Are the proposed revisions to the terms and conditions acceptable to users and prospective users?

## **Extensions and expansions policy**

Epic has modified its extensions and expansions policy which is outlined in section 12 of its proposed revised access arrangement. Epic has proposed that extensions and expansions will not be part of the covered pipeline unless it elects otherwise by providing notice in writing to the regulator.

Epic's current access arrangement provides for extensions and expansion proposed by Epic to become part of the covered pipeline unless it elects otherwise. While the ACCC's default position is that expansions should be covered, it does not seek to have expansions covered in all instances, a different conclusion was reached in the case of the SWQP in 2001.<sup>9</sup>

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<sup>9</sup> ACCC, Final Decision: access arrangement for Ballera to Wallumbilla Pipeline System, November 2001, p. 23.

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.

### ***Issues for Consideration***

- (a) Are Epic's proposed revisions to its extensions and expansions policy for the SWQP acceptable to users and prospective users?
- (b) Notwithstanding Epic's existing access arrangement, is it appropriate for the initial coverage decision to rest with the service provider in this instance?

## **Term and review of the access arrangement**

Section 3.17 of the Code states that an access arrangement must include a revisions submission date and a revisions commencement date. The current access arrangement provides for the proposed revisions to the access arrangement to come into effect on the later of:

- 11 December 2004; or
- the date on which the approval by the ACCC takes effect under the Code.

Section 3.17 of the Code also provides that the regulator may, in making its decision on an access arrangement, require that specific major events be defined that trigger an obligation on the service provider to submit revisions prior to the revisions submissions date.

Section 3.18 provides that the regulator, when considering an access arrangement with an access arrangement period greater than five years, must not approve the access arrangement without first considering whether mechanisms should be included to address the risk on which the terms of the access arrangement were based and approved proving incorrect.

The existing provisions contain a major events review trigger which would require Epic to lodge revisions to its access arrangement upon receiving notification by the regulator under particular circumstances.<sup>10</sup> Such a review would not be limited to AFT services, but rather would include all non-tariff elements of the firm forward haul service. However, Epic has proposed to remove the trigger mechanism from its access arrangement.

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<sup>10</sup> See section 13 of Epic's existing access arrangement or section 13 of the proposed revised access arrangement with 'mark-ups'.

In its proposed revised access arrangement, Epic has proposed a revisions submission date of 1 July 2006 for revisions relating to AFT services, and an expected revisions commencement date of 1 January 2007.<sup>11</sup>

### ***Issues for Consideration***

- (a) Epic's removal of the trigger mechanism would potentially prevent regulatory review of the non-tariff elements of the firm forward haul service until 2016, notwithstanding the possibility of major changes to the nature of the pipeline's operations in that time.
- (b) Is Epic's proposed removal of the trigger mechanism appropriate?
- (c) Is a two year access arrangement period for AFT services appropriate, having regard to section 3.17 and the objectives of section 8.1 of the Code?

### **Epic's accompanying submission**

Epic indicated in its cover letter to its proposed access arrangement revisions that it would be providing the ACCC with a supporting submission. The ACCC is yet to receive such a submission, but will place it on the internet with Epic's proposed access arrangement revisions when it is received. Should Epic's submission be available in time, interested parties are invited to make comment.

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<sup>11</sup> The revisions submission date and revisions commencement date relating to the forward haul service will remain as 30 June 2016 and 30 December 2016 respectively.