

14 February 2003

Mr Russell Phillips
Acting General Manager Regulatory Affairs - Gas
The Australian Competition and Consumer Commission
PO Box 1199
Dickson ACT 2602

FILE No:
DOC
MAR/PRISM:

Dear Mr Phillips

Moomba - Sydney Pipeline Access Arrangement

We refer to the two submissions made to the Commission in response to EAPL's submission on the impact of the Epic Decision and the Commission's issues paper on this matter. A precis of the two submissions is contained in the attachment.

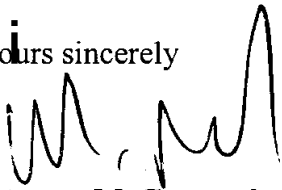
The Duke submission supports EAPL's contention that the Draft Decision is significantly in error in the light of the Epic Decision and deals with the issues of proper process given that the Draft Decision .

The EMRF submission deals with only a few of the issues raised in the EAPL submission and provides little response to the issues raised by the Commission in its issues paper. In doing so it has not provided argument against EAPL's submission or provided a basis for adopting a value for the ICB different to that proposed by EAPL.

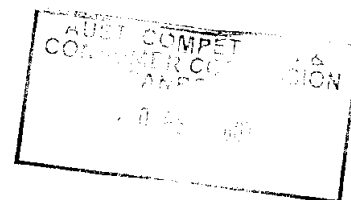
The issues raised by EAPL in its submission on the impact of the Epic Decision remain as significant matters for the Commission to address. There has been only one submission challenging EAPL's assessment of that impact, which contrasts with the number of submissions in response to the original 1999 proposed Access Arrangement and to the Draft Decision. On a matter of such fundamental importance as the ICB, the very fact that energy market participants have not sought to argue against the interpretation put forward by EAPL makes it reasonable to infer that participants accepted the logic of the submission. This adds considerable weight to EAPL's position about how the Draft Decision erred as a matter of law, particularly in regard to appropriate value for the ICB.

We await the Commission's advice about its proposed process leading to the Final Decision recognising that this may be affected by consideration of the impact of the recently announced AGL gas supply arrangements referred to in my letter of 30 January 2003.

Yours sincerely



Michael McCormack
General Manager – Commercial



attach.

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Attachment

Precis of Submissions to the ACCC on the Impact of the Epic Decision.

The Duke submission:

- States that the impact of the Epic Decision is that the Commission has erred in making its Draft Decision.
- Advocates that it is appropriate, given the errors in the Draft Decision, that a complete process be undertaken by issuing a further (or revised) Draft Decision before proceeding with the proceeding with the review process to the Final Decision in line with the Code.

The Energy Market Reform Forum submission:

- States that the Commission's Draft Decision is not invalidated and asserts that EAPL's ICB proposed in its submission is not supported by the Epic Decision, as this would represent "supra normal monopoly rents". The submission provides no support for this view.
- Emphasises the importance of "reasonable expectations" but does not apply this to the arguments presented by EAPL.
- Discusses the matter of monopoly returns but does not reflect the significant point that was reached in the Epic Decision that consideration and inclusion of monopoly returns is legitimate and appropriate for a regulator under relevant circumstances.
- Argues that the Commission has not applied a "fairness test" in the Draft Decision, which we would argue is incorrect since use of this test is transparent-in the Draft Decision. The EMRF has not argued against the proposition that "fairness" is not a consideration in determining DORC nor that such a test is, in fact, inconsistent with the principles identified in the Epic Decision in its interpretation of the Code.