



Draft Decision

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

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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 approved by the relevant regulator 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 (e.g. back haul, interruptible, part haul)
Ballera to Wallumbilla Natural Gas Pipeline	Also known as the South West Queensland Pipeline or SWQP
bare transfer	When a transfer or assignment of capacity rights does not result in an alteration to the terms of a contract with the service provider
CGP	Carpentaria Gas Pipeline – transports gas from Ballera to Mount Isa
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
CSM	Coal seam methane
derogation	A legislative exemption from compliance with specified obligations set out in the Code
Epic	Epic Energy Queensland Pty Ltd
FH1	Full forward haul service
GJ	GigaJoule
GPAL	<i>Gas Pipelines Access (Queensland) Law</i>
NCC	National Competition Council
PJ	PetaJoule (equal to 1 000 000 GJ)

prospective user	A person who seeks or who is reasonably likely to seek to enter into a contract for a Service and includes a user who seeks or may seek to enter into a contract for an additional service
queuing policy	A policy for determining the priority that a prospective user has, as against any other prospective user, to obtain access to spare capacity
reference service	A service which is specified in an access arrangement and in respect of which a reference tariff has been specified in that access arrangement
reference tariff	A tariff specified in an access arrangement as corresponding to a reference service and which has the operation that is described in sections 6.13 and 6.18 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
service	(a) a service provided by means of a covered pipeline including: <ul style="list-style-type: none"> (i) haulage services (such as firm haulage, interruptible haulage, spot haulage and back haul); and (ii) the right to interconnect with the covered pipeline; and (b) services ancillary to the provisions of such services, but does not include the production, sale or purchasing of natural gas
service policy	A policy detailing the service or services to be offered
service provider	The person who is the owner or operator of the whole or any part of the pipeline or proposed pipeline
SWQGP	South West Queensland Gas Producers
SWQP	South West Queensland Pipeline – also known as the Ballera to Wallumbilla Pipeline
TJ	TeraJoule (equal to 1 000 GJ)

Summary

Introduction

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 (otherwise known as the South West Queensland Pipeline (SWQP)).

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

The ACCC invites submissions on this draft decision from the applicant and interested parties by 27 October 2004 to assist it in reaching a final decision.

The draft decision at a glance

Queensland derogations

The SWQP is the subject of a Queensland Government derogation, which precludes the ACCC from reviewing the reference tariffs and tariff policy for the forward haul service until 30 June 2016. The current review is restricted to revisions relating to AFT services,¹ and to other changes which have been proposed by Epic. All other revisions will be considered in 2016, unless events specified in the major events trigger occur prior to 30 June 2016. Further, the ACCC may consider any revisions that Epic voluntarily submits prior to a scheduled review.

Review period

The ACCC proposes to accept Epic's proposal for a two year review period, with a revisions submission date of 1 July 2006 and a revisions commencement date of 1 January 2007 for AFT services. A shorter review period is appropriate given the uncertain future demand for services on the SWQP.

AFT services

Epic has proposed to remove the AFT services listed in the access arrangement from the classification of reference services, and offer those services on terms and conditions to be negotiated. A number of submissions from interested parties were received on this proposal, all opposing Epic's proposed revision. However, the ACCC has not received evidence from interested parties that would demonstrate to its satisfaction that the listed AFT services are 'likely to be sought by a significant part of the market' during the proposed two year access period, in accordance with section 3.3(b) of the Code. Further, Epic proposes to undertake not to charge tariffs higher than those approved under the Queensland derogation for AFT services. The ACCC has decided, on balance, that it

¹ See the glossary or section 2.1.2 for a description of the AFT services. The derogation covering AFT services ceases in December 2004.

proposes to accept Epic’s proposed revision. This acceptance follows the ACCC’s proposal to accept Epic’s proposed two year review period.

Non-tariff elements

Epic has proposed a number of amendments to the non-tariff elements of the access arrangement that are consequential to the removal of the listed AFT services from the classification of reference services. Additionally, Epic has proposed a number of technical revisions to the non-tariff elements of the access arrangement and revisions intended to clarify aspects of the non-tariff elements. The ACCC proposes to accept these revisions.

The ACCC proposes to accept a change to the default coverage position in Epic’s extensions and expansions policy. It also proposes to accept amendments detailing the effect of extensions and expansions on reference tariffs as they clarify the provisions of the access arrangement.

Major events trigger

The ACCC proposes to not accept Epic’s proposal to remove the major events trigger. This trigger does not relate solely to AFT services, but also permits review of the non-tariff elements of the forward haul service. These elements of the access arrangement will not otherwise be reviewable until 2016. A number of interested parties have indicated major events that they consider would be likely to occur during that time which would impact upon the operation of the SWQP. Should these events not occur, Epic’s interests will not be adversely affected, however, should they occur the ACCC will be able to make an assessment of the access arrangement in light of the evidence available at the time of the event.

Proposed amendments

Proposed amendment A2.1

Epic must add the new clause proposed in submission #5 to the services policy.

Proposed amendment A3.1

Epic must retain the existing major events trigger in the revised access arrangement.

1. Introduction

1.1 Background and invitation to make submissions

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. Revisions to this access arrangement were due to be submitted by 11 June 2004. On 4 June 2004, Epic requested an extension until 9 July 2004 which the ACCC granted.

This pipeline supplies gas from the Cooper Basin in south-west Queensland; it is also known as the South West Queensland Pipeline (SWQP). The pipeline is 756 kilometres long, with a diameter of 406 mm and maximum allowable operating pressure of 15 Mpa. It was constructed in 1996 by Tenneco Gas Australia and is now owned operated by Epic, which is owned by HUT3 Pty Ltd (Hastings Funds Management Limited), a majority owned subsidiary of Westpac Banking Corporation. The SWQP interconnects with the Carpentaria Gas Pipeline (CGP) at Ballera and with the Roma to Brisbane Pipeline and Wallumbilla to Gladstone Pipeline at Wallumbilla.

The access arrangement describes the terms and conditions on which Epic makes access to its pipeline available to third parties.

The ACCC is required to 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 provisions including the primary reference service in the access arrangement not scheduled until 2016 in accordance with the legislative exemptions established by section 58 of the *Gas Pipelines Access (Queensland) Act 1998*. This means that the reference tariff and reference tariff policy for the forward haul service will not be reviewed by the ACCC at this time.

The ACCC has made a draft determination based on information supplied by Epic, submissions from interested parties and its own analysis. The ACCC invites submissions in response to this draft decision.

Pursuant to section 2.35(b) of the Code, this draft decision proposes the amendments (or the nature of the amendments) that would have to be made to the proposed revisions in order for the ACCC to approve them. The draft decision identifies, for the benefit of Epic and third parties, the issues that need to be resolved before the ACCC makes a final decision whether to approve the revisions to the access arrangement proposed by Epic.

The ACCC will consider further responses by Epic and third parties, and may seek to follow up particular issues with Epic and other interested parties during the remainder of the consultation process.

This document includes:

- a description of the current assessment process and of the steps to final approval of a revised access arrangement for the SWQP;
- a description of the regulatory framework for the Queensland gas industry;
- a summary of the criteria for assessing an access arrangement under the Code;
- an outline of Epic's access arrangement; and
- the ACCC's draft decision.

1.1.1 Submissions

Submissions are available from the ACCC's website (www.accc.gov.au). They are also 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 prefers that all written submissions be publicly available to foster an informed, transparent and robust consultative process. Accordingly, submissions will be treated as public documents unless otherwise requested. Parties wishing to submit confidential information are asked to provide both confidential and non-confidential versions of their submission. All non-confidential submissions will be placed on the ACCC's website. Any information for which confidentiality is claimed will be dealt with under sections 7.11-7.13 of the Code.

The ACCC's e-mail address for this review is 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
PO Box 1199
Dickson ACT 2602

Copies of the revisions application and associated documents are available from the ACCC's website and may be obtained by contacting ACCC Gas Branch administration on telephone (02) 6243 1233 or fax (02) 6243 1205, or by e-mail to: swqp@acc.gov.au.

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

1.2 The assessment process

The proposed revised access arrangement (in conjunction with the access arrangement information and other associated documentation)² 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 derogation,³ the revisions submission date differs depending on the service. For the main reference service (full forward haul) the initial access arrangement period extends to 2016,⁴ while for AFT services (defined in the derogation as an alternative form of transportation service to the full forward haul service), the revisions commencement date is 11 December 2004. The access arrangement as 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.⁵

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 (parties were notified on 23 July 2004 with the distribution of an issues paper);
- 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 (the notice was published in the *Australian Financial Review* of 14 July 2004);
- after considering submissions received, issue a draft decision which either proposes to approve the revisions or not to approve the proposed revisions and states the amendments (or nature of the amendments) which have to be made to the revisions in order for the ACCC to approve them;⁶
- after considering additional submissions, issue a final decision that either approves or does not approve the proposed revisions (or amended revisions) and states the amendments (or nature of the amendments) which have to be made to the revisions in order for the ACCC to approve them; and
- if the amendments are satisfactorily incorporated in amended revisions, issue a final approval. If not, the ACCC may draft and approve its own revisions to the access

² Access arrangement documentation includes the annexures to the access arrangement; A - access principles, B - additional terms and conditions, and C - definitions.

³ See chapter 2 for a description of the derogation.

⁴ Under the Code, service providers have the discretion to submit revisions earlier than the scheduled review.

⁵ See chapter 4 for more detail on the impact of and proposed revisions to the major events trigger.

⁶ Where revisions are proposed by a service provider that are not required by the access arrangement (for example, as part of a scheduled review), the ACCC is not required to propose amendments that would be necessary for regulatory approval to be granted. Likewise, there is no further final decision (which is also known as a final approval) for revisions proposed voluntarily.

arrangement. See sections 2.31 to 2.48 of the Code for further details 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 be reviewed in this current process. This is discussed in more detail in section 1.3.2 and chapter 2.

1.3 Regulatory framework

1.3.1 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*;⁷ and
- the *Gas Pipelines Access (Queensland) Act 1998*.

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

- the ACCC – regulator and arbitrator;⁸
- the National Competition Council – Code advisory body;
- the Commonwealth Minister – coverage decision maker;
- the Federal Court – judicial review; and
- the Australian Competition Tribunal (the Tribunal) – administrative review.

1.3.2 Queensland derogations

In 1997 the Queensland Government was a signatory to the Natural Gas Pipelines Access Agreement – a Council of Australian Governments (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 (Queensland) Act 1998* applies the *Gas Pipelines Access Law* (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 (Queensland)*

⁷ South Australia acted as ‘lead legislator’ for the national gas access legislation.

⁸ The ACCC is also regulator and arbitrator with respect of transmission pipelines in the other States and Territories with the exception of Western Australia.

Act 1998 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 1998* established a number of derogations from the Code. In particular, section 58 of the Act provides that the initial 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 reference tariff policy for AFT services have not been reviewable until now.

While the derogation applying to the ACCC’s assessment of tariffs for AFT services will conclude on 11 December 2004, the ACCC can only determine appropriate reference 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.

1.3.3 Certification of the Queensland Gas Access Regime

On 25 September 1998, in accordance with the *Natural Gas Pipelines Access Agreement*, the Queensland Premier applied to the National Competition Council (NCC) for certification of 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 release a decision on the effectiveness of the Queensland regime.

The ACCC's consideration of the proposed revised access arrangement for the SWQP is not affected by the status of the effectiveness of the Queensland regime.

1.4 Criteria for assessing a revised access arrangement

The ACCC may approve proposed revisions to an access arrangement only if it is satisfied that the access arrangement as revised contains the elements and satisfies the principles set out in sections 3.1 to 3.20 of the Code. These 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.⁹ Subject to this, the ACCC has a broad discretion in accepting or opposing a revised access arrangement.

⁹ See section 2.46 of the Code.

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;¹⁰
- 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 and 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 proposed revisions to the access arrangement, the ACCC must take into account the provisions of the access arrangement and, pursuant to section 2.46, the factors set out in section 2.24 of the Code:

- the service provider's legitimate business interests and investment in the covered pipeline;
- 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

¹⁰ A reference tariff operates as a benchmark tariff for a particular service and provides users and prospective 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.

- any other matters that the ACCC considers relevant.

1.4.1 Scope of the review

The review dates presented in clause 13 of Epic’s access arrangement are an essential element required by section 3.17 of the Code. Pursuant to clause 13 of Epic’s access arrangement, this review is a scheduled review of revisions relating to AFT services. This is an unusual review in that it is not open for the ACCC to review all aspects of Epic’s access arrangement.¹¹

However, section 2.28 also provides for service providers to submit revisions of their own volition at a time other than the scheduled revisions submission date. The assessment of voluntary revisions is different to revisions submitted in accordance with the revisions submission date as can be seen at section 2.35(b) of the Code:

- 2.35 After considering submissions received by the date specified in the notice published under section 2.31(b) the Relevant Regulator must issue a draft decision which either:
- (a) proposes to approve the revisions to the Access Arrangement; or
 - (b) proposes not to approve the revisions to the Access Arrangement and provides reasons why the Relevant Regulator proposes not to approve the revisions to the Access Arrangement (and, if the revisions have been proposed by the Service Provider as required by the Access Arrangement, states the amendments (or nature of the amendments) which would have to be made to the revisions in order for the Relevant Regulator to approve them).

Accordingly, where Epic has proposed revisions that do not relate to AFT services, these revisions are treated as voluntary revisions. The ACCC’s role is to either to accept or reject these revisions. Where the revisions are required by the access arrangement, the ACCC must propose amendments that would need to be made to reach regulatory approval (where relevant). An example of proposed revisions that may be considered voluntary is Epic’s changes to the policy about the effect of extensions and expansions on the reference tariff. As under Epic’s proposal, none of the AFT services would have reference tariffs, these amendments can only relate to the derogated forward haul service.

1.5 Draft decision

The ACCC proposes not to approve the revised access arrangement for the SWQP.

Pursuant to section 2.35(b) of the Code, the ACCC’s proposed amendments are set out in the relevant sections of this draft decision and are brought together in the Summary.

Chapter 2 describes the reference tariffs in Epic’s access arrangement as determined by the Queensland Minister and sets out the analysis of Epic’s proposal with respect to its services policy and tariffs.

Chapters 3 and 4 respectively set out the ACCC’s analysis of:

¹¹ That is, the scheduled review is only for revisions relating to AFT services.

- the remaining non-tariff elements of Epic’s access arrangement, that is, the service provider’s proposed access policies, terms and conditions of service and arrangements for review of the access arrangement (as revised); and
- information provision and performance indicators.

Chapter 5 re-states the ACCC’s draft determination on the basis of the analysis preceding that chapter.

2. Services and reference tariff policies

Section 3 of the Code establishes the minimum content of an access arrangement. The first two elements are assessed below, while the remaining mandatory elements are assessed in chapter 3 of this draft decision. The mandatory elements outlined in section 3 of the Code are:

- a services policy that must contain at least one service that is likely to be sought by a significant part of the market;
- reference tariffs and a reference tariff policy that must include a reference tariff for at least one service that is likely to be sought by a significant part of the market, and any service that is likely to be sought by a significant part of the market for which the regulator considers a reference tariff should be included;
- the service provider's terms and conditions for the supply of 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 policy on 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 and expansions policy which sets out a method for determining whether or not an extension or expansion of a covered pipeline will 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.

The Code requirements are outlined for both elements followed by a summary of the service provider's proposal. This is followed by a summary of submissions received in respect of these elements and the ACCC's assessment of Epic's proposal against the Code.

2.1.1 Code requirements

Sections 3.1 to 3.5 of the Code set out the general requirements for an access arrangement with respect to services policy, reference tariffs and reference tariff 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 describe any services likely to be sought by a significant part of the market, and any that in the ACCC's opinion should be included. When 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.

Similarly, section 3.3 of the Code requires an access arrangement to include a reference tariff for at least one service that is likely to be sought by a significant part of the market and each service that is likely to be sought by a significant part of the market and for which the regulator considers a reference tariff should be included.¹²

Section 3.4 of the Code requires all reference tariffs in an access arrangement to comply with the reference tariff principles in section 8 of the Code. Section 3.5 of the Code requires an access arrangement to include a policy describing the principles that are to be used to determine a reference tariff. Ordinarily, this reference tariff policy must, in the regulator's opinion, comply with the reference tariff principles set out in section 8 of the Code.

However, the Queensland Government derogated the reference tariffs and reference tariff policy for the SWQP. The derogation applies to the forward haul service until 2016, while for the services collectively known as AFT services, the derogation ceases to take effect following this review. Accordingly, other than tariffs for the full forward haul service, any reference tariffs in the access arrangement following this review must comply with section 8 of the Code.

2.1.2 Current access arrangement provisions

Epic's current services policy (clause 6 of the access arrangement) describes six reference services in accordance with the Tariff Arrangement approved by the Queensland Minister pursuant to section 58 of the *Gas Pipelines Access (Queensland) Act*. The services consist of full forward haul and five services which are generally known as AFT services.¹³ Each of the six services is described in detail in section 3 of Annexure A (Access Principles) to the access arrangement.

The derogated reference tariffs applying to AFT services are included as Annexure A to the access arrangement, and summarised in the box below.¹⁴ As outlined earlier, the reference tariff for the full forward haul service is not subject to review by the ACCC until 2016.

¹² Reference Service is defined in section 10.8 of the Code as a service which is specified in an access arrangement and in respect of which a reference tariff has been specified in that access arrangement.

¹³ As noted by Epic at paragraph 2.12 of Submission #1, the services policy does not actually use the term AFT services. However, 'AFT service' is defined in the Access Principles document on p 2, which forms Annexure A to the access arrangement: "AFT Service" means an alternative form of transportation Service to a Full Forward Haul Service.

¹⁴ See sections 2.4 to 2.8 of Attachment A to the existing access arrangement for an alternate presentation of the reference tariffs AFT services.

Existing reference tariffs for AFT services¹⁵

Back Haul Service (BH1)

The monthly reservation rate for the BH1 service is derived by:

- a) dividing the throughput rate for FH1¹⁶ service by 1.2 (load factor adjustment); and
- b) adding the throughput rate to the monthly reservation rate for FH1 service, then halving this amount.

All other relevant rates are 50% of the FH1 rates.

Interruptible Transportation Service (IT1)

The IT1 service is only available to the extent that Epic determines it can receive, transport and deliver gas for the user without causing any interruption of service to users under firm gas transportation agreements.

The tariffs for IT1 are derived as follows:

- a) the throughput rate and authorised overrun rate is derived by adding the monthly reservation and throughput rates for FH1 service; and
- b) other relevant rates are the same as for FH1 service (see section nine of Annexure A to the access arrangement).

Forward Part Haul Service (Zonal) (FZ1)

The forward part haul service (zonal) provides for the transportation of gas through fewer than eight zones, without interruption except as is expressly excused under any access arrangement.

The tariffs for this service are derived by dividing the reference tariffs for FH1 service by 8 then multiplying by 1.1.

Back Part Haul Service (Zonal) (BZ1)

This service is identical to the FZ1 service, except that it is only available on a firm basis to the extent that sufficient forward haul transportation services are being performed on that day to permit a back haul transportation service.

The tariffs for FZ1 service are derived by dividing the relevant BH1 tariff by 8 and multiplying by 1.1.

Interruptible Part Haul Service (Zonal) (IZ1)

The interruptible part haul service (zonal) provides for the transportation of gas through fewer than eight zones without interruption, except as is expressly excused under any access arrangement. The service is only available to the extent that Epic determines it can receive, transport and deliver gas for the user without causing any interruption of service to users under firm gas transportation agreements.

The throughput rate for this service is derived by adding the monthly reservation rate to the throughput rate for FH1 service, dividing the result by 8 and multiplying by 1.1.

Other rates for this service are derived by dividing the relevant rates for FH1 service by 8 and multiplying by 1.1.

¹⁵ Reference rates for AFT services in 1997 dollars are included in Schedule 2 to Annexure A of Epic's access arrangement.

¹⁶ FH1 is a term used to describe the full forward haul service on the SWQP.

2.1.3 Proposed revisions

Epic has proposed that the AFT services be included in its access arrangement as non reference services with terms and conditions to be negotiated. Epic has proposed to remove the reference tariffs for all services other than full forward haul from its access arrangement. Accordingly, the only reference service would be the full forward haul service (FH1).

The access arrangement (as revised) would continue to include a clause indicating the service provider's willingness to negotiate other non reference services with prospective users.

Epic has proposed revisions to Annexure A (Access Principles) to the access arrangement that reflect the proposed revisions to its services policy. Clause 7 of Epic's access arrangement covering the reference tariff policy continues to refer to the access principles document rather than duplicating the policy.

2.1.4 Submissions by interested parties and responses by Epic

The ACCC received submissions from BHPB Minerals, Xstrata Copper, Energex, Enertrade and Santos. Each of these parties is opposed to Epic's proposal to cease offering AFT services as reference services (with reference tariffs). The submissions are discussed in turn below, with Epic's respective responses.

BHPB Minerals, Cannington submission

BHPB Minerals submits that the AFT services should not be removed from the list of reference services:¹⁷

BHPB Minerals opposes the proposed removal of all AFT services. It believes that each of the AFT service classes may prove to be important, with the developing coal seam methane resources in Central Queensland, which can be expected to form in the future (perhaps the near future) an important source of competitive gas supply to both the east coast and to North West Queensland. Furthermore, this supply may seek to utilise access to the SWQP through the Gilmore Basin Pipeline or access from the south via a Moomba to Sydney Pipeline interconnection.

Further, BHPB Minerals expresses its concern that delays in establishing tariffs for a back haul service could curtail or eliminate the ability of new sources to compete with existing sources.¹⁸

Epic response to BHPB Minerals submission

Epic submits that any relationship between the provision of AFT services and the development of CSM is not relevant to the issue of what services should be reference services. Rather, Epic states that:¹⁹

... the test is whether a service is likely to be sought by a significant part of the market not whether the service is important to the development of gas reserves in an upstream market.

¹⁷ BHPB Minerals Submission 10 August 2004, p. 1.

¹⁸ *ibid.*

¹⁹ Epic Energy, Submission #2 August 2004, paragraph 2.3 (p. 4).

Epic also responded by suggesting that even BHPB Minerals envisaged a low probability of AFT services playing an important role in the development of CSM:²⁰

However, even if it is relevant (which Epic Energy disputes), the test for a reference service is not satisfied because the submission asserts there is only a low probability (by use of the term “may”) of the ability of these services to develop the coal seam methane[.]

Notwithstanding the above submission, Epic acknowledges that it is generally accepted that CSM could play an important role in meeting projected demand growth. However, Epic also claims that it is acknowledged that use of CSM is likely to be temporary in nature, bridging the gap between the decline of the Cooper basin reserves and the introduction of gas from northern Australia.²¹

Epic also submitted that the swap agreement between the Cooper basin producers and Origin²² has the potential to act as the most significant barrier to the development of CSM for supply to south east Australia. Should the SWQP be used to deliver CSM gas during the access arrangement period:²³

Epic Energy considers that its ability to exert undue market power is negated to a large extent by the further potential for bypass risk materialising with the construction of a pipeline from Wallumbilla to NSW and the connection of a northern Australian gas supply connecting at either Moomba or Ballera. While Epic Energy does not believe that these possibilities are likely to eventuate during the access arrangement period, they will act as a substantial threat to Epic Energy thus making it difficult if not impossible for Epic Energy to exert any market power.

Finally, in relation to supply to Mt Isa on the CGP, Epic noted that there are limitations to the effectiveness of the interconnect with the SWQP. The interconnect is fully contracted by a party until at least 2005.²⁴ While work is being done to resolve the technical issues, the interconnect is fully contracted to a single party. In summation, Epic states the following:²⁵

Accordingly, these physical and upstream limitations and the fact that [deleted – confidential] has contracted the entire capacity of the existing interconnector are the most significant barriers to the development of additional gas/CSM reserves and to the ability of new retailers to enter the Mt Isa market. The setting of the AFT Services as reference services will not achieve any benefit to customers.

²⁰ Epic Energy, Submission #2 August 2004, paragraph 2.4 (p. 4).

²¹ *ibid.*, paragraph 2.5 (p. 4).

²² Under the swap arrangement, the Cooper basin producers provide gas at Moomba in exchange for the provision of gas at the head of the Roma to Brisbane Pipeline by Origin. See paragraphs 4.31-4.33 of Epic’s submission #1 for further information.

²³ Epic Energy, Submission #2 August 2004, paragraphs 2.12-2.13 (p. 1).

²⁴ See Epic Energy, Submission #2 August 2004, paragraph 2.15 for further information on the interconnect.

²⁵ Epic Energy, Submission #2 August 2004, paragraph 2.16 (p. 2).

Xstrata Copper submission

Xstrata Copper submits that it is ‘keenly interested in developing a reliable source of supply to Mount Isa as an alternative gas supply to that available from the SWQGP’.²⁶ Xstrata Copper acknowledges that there are pressure limitations associated with the interconnect between the SWQP and the CGP, but submits that:²⁷

...until July 2007, Xstrata Copper considers that a backhaul service is a necessary service to be offered for the SWQP as a reference service. Epic Energy should not be permitted to withdraw a reference service at a time when that service could now be utilised by the market (upon the commissioning of the back-pressure value).

Allowing a backhaul service to be offered only on a negotiated basis exposes potential users to uncertainty and cost risk, and is not acceptable.

Xstrata Copper submitted that the SWQGP ‘exercise significant influence over the introduction of alternate gas (physically and through swaps) into the Mount Isa market’.²⁸

Epic response to Xstrata Copper submission

In response to Xstrata Copper’s statement about the influence of the SWQGP over the introduction of alternative gas to Mt Isa, Epic submitted that the market power of the producers is not limited to the Mt Isa market:²⁹

...In the case of the market for the delivery of coal seam methane reserves to the south east Australian markets, their market power is potentially significant as the only means by which these reserves can access these markets is by one of the following:

- By way of a swap agreement with the producers. ...
- By way of securing a back haul service on the SWQP and securing access to the Producers’ existing pipeline linking the Ballera processing facilities with the Moomba processing facilities. ...
- By way of building a parallel pipeline linking Ballera with Moomba. Epic Energy has been a proponent of such a pipeline and is aware that other proponents exist for a similar pipeline. However without a foundation load such as Origin, the economics of the project become very difficult to justify.

In response to Xstrata Copper’s submission that it requires a back haul service on the SWQP, Epic submitted that:³⁰

...no party has provided any evidence to substantiate their claim that there is likely to be a significant part of the market seeking any AFT Service. Moreover, Epic Energy has provided significant uncontradicted evidence to show [sic] support its claim that there will not be a significant part of the market which is likely to seek the back haul service due to factors beyond Epic Energy’s control.

²⁶ Xstrata Copper Submission 11 August 2004. SWQGP is an abbreviation of South West Queensland Gas Producers.

²⁷ *ibid.*, p. 2.

²⁸ *ibid.*, p. 1.

²⁹ Epic Energy, Submission #2 August 2004, paragraph 3.4 (p. 4).

³⁰ *ibid.*, paragraph 3.5 (p. 5).

Energex Retail submission

Energex submits that a market failure arises in the case of the SWQP due to the presence of a monopoly service provider.³¹ Energex submits that:³²

... ENERGEX believes that at the minimum, Back Haul Service, and possibly Back Part Haul Service, should continue to be offered as Reference Services over the proposed two year access period to 31 December 2006.

Energex submitted that it anticipates growth in demand for back haul service in particular:³³

ENERGEX believes that Back Haul Service will become increasingly sought by a significant part of the market over the next two years as operational issues associated with the interconnect between the SWQP and the Carpentaria [sic] Gas Pipeline ("the CGP") are resolved and Mt Isa becomes increasingly accessible by retailers along the SWQP.

...it is expected that Back Haul Service will be demanded by a significant part of the market given the benefits of an increased diversity of supply and potential for competitive pressures to be exerted on prices.

...ENERGEX considers that regulation of tariffs for Back Haul and Part Back Haul Services is essential for ensuring that competition is allowed to flourish the Mt Isa market and the market north of Gilmore. ... Ultimately, any costs will be borne by end users in the form of uncompetitive gas prices that arise from the pricing behaviour of a limited number of retailers willing to supply these markets, and or which reflect the pass through of uncompetitive prices for AFT Services.

Given the potential for competition in these markets to be adversely affected, ENERGEX urges the Commission to consider the need to require the continuation of the provision of Back Haul Service and Back Part Haul Service as Reference Services over the proposed two year access period.³⁴

Epic response to Energex submission

Epic submits that Energex has partly based its submission on the presumption that the inclusion of AFT services as reference services in the access arrangement justifies their retention. Epic further submits that such an approach ignores the historical context for the inclusion of AFT services and is wrong.³⁵

Epic also expressed doubt with respect to anticipated increases in demand for AFT services to service markets north of Gilmore and in Mt Isa:³⁶

Epic Energy understands that the majority of the Mt Isa market is supplied by gas sourced from the SWQ Producers ex Ballera under long term supply contracts. Accordingly, the ability of a new retailer [to enter] into the market for the duration of these contracts will prove difficult.

To the extent that any anticipated growth is not secured by these long term supply contracts, Epic Energy understands that the potential growth in the Mt Isa market is minimal and moreover there is

³¹ Energex Retail Submission, 18 August 2004, p. 1.

³² *ibid.*

³³ *ibid.*, p. 2.

³⁴ *ibid.*, p. 3.

³⁵ Epic Energy, Submission #2 August 2004, paragraphs 4.2-4.3 (p. 8).

³⁶ *ibid.*, paragraphs 4.7-4.8 (p. 8).

real capacity for the SWQ Producers to discount their price for gas in order to retain the Mount Isa market.

With respect to the likelihood of demand for AFT services to service the market north of Gilmore Epic submitted that the market is supplied by long-term contracts which also cover incremental growth.³⁷

In response to Energex's submission that Epic would not offer access on fair and reasonable terms, Epic stated the following:³⁸

As an independent service provider which has no involvement in the upstream or downstream markets, Epic Energy's only means of securing revenue is to contract for capacity. Therefore the threat of arbitration is a significant threat for Epic Energy.

In addition given that the pipeline is underutilised and is subject to significant market power of other stakeholders, Epic Energy has significant incentives to offer services at competitive rates in order to stimulate utilisation of the pipeline's capacity.

Enertrade submission

Enertrade's submission was primarily concerned with the withdrawal of AFT services from the list of reference services. Enertrade submits that Epic's approach compels parties seeking access to AFT services to negotiate on a case by case basis with the potential to considerably impede the finalisation of tariff arrangements.³⁹ Enertrade is further concerned by the timing of Epic's proposal, at 'a time when such services are increasingly likely to be sought by users'.⁴⁰ Enertrade presented the following analysis to support its statement that AFT services are likely to be increasingly sought by the market:⁴¹

First, the major exploration and production efforts in the Bowen/Surat basins for coal seam methane are likely to significantly expand the amount of gas available for injection into the SWQP at Roma.

Second, a significant number of users on the Carpentaria Gas Pipeline (CGP) and the Cheepie to Barcardine pipelines are likely to seek back haul arrangements to meet their gas supply needs. Backhaul arrangements on the SWQP to supply the CGP are likely to increase given resolution of pressure supply issues on the interconnect between these pipelines.

Third, Origin and Santos recent[ly] entered gas swap arrangements to exchange gas at Ballera (Origin) for gas at Moomba (Santos). Enertrade understands that the Origin-Santos swap arrangements do not necessarily result in an equal amount of gas at Ballera being swapped for gas at Moomba. With increases in demand for gas in Sydney and Adelaide, it may be that the swap will result in a net decrease in gas available at Ballera. Thus, the swap arrangements could well increase demand for backhaul services in order to supply demand for gas along the SWQP west of Roma, and in particular for injection into the CGP and the Cheepie to Barcardine pipeline.

Fourth, it is reasonably likely, given growing demand in Sydney and Adelaide, that the SWQP will be extended westwards or southwards in the future to connect with the Moomba to Sydney and/or Moomba to Adelaide pipelines. This would increase the probability of back haul flows on the SWQP.

³⁷ Epic Energy, Submission #2 August 2004, paragraph 4.10 (p. 8).

³⁸ *ibid.*, paragraphs 4.11-4.12 (p. 9).

³⁹ Enertrade Submission, 23 August 2004, p 2.

⁴⁰ *ibid.*

⁴¹ *ibid.*, pp. 2-3.

Fifth, the Queensland Government is shortly due to enact the *Electricity (13% Gas Scheme) Amendment Bill 2004*. The Bill is designed to promote the use of gas in electricity generation by imposing penalties on liable parties that do not secure gas energy certificates in respect of thirteen per cent of their load. This scheme is likely to increase demand for backhaul on the SWQP since both the CGP and the Cheepie to Barcardine pipeline supply gas to significant gas-fired power stations.

Given the above, Enertrade considers that the provision of AFT services is important in promoting competition in the supply of gas from the Bowen/Surat basins to users located along the length of the SWQP, the CGP, and the Cheepie to Barcardine pipeline. These users would be disadvantaged by the withdrawal of established tariffs for these services and the requirement to negotiate tariffs on a case-by-case basis for the supply of gas from producers in the Bowen/Surat basins.

...

In summary, for the reasons outlined above Enertrade urges the ACCC to continue to classify AFT Services as reference services with published tariffs and their own conditions.

Epic response to Enertrade submission

Epic provided a detailed response to Enertrade's submission which is replicated in part below. Epic stated the following with respect to the use of the SWQP to supply markets along the Cheepie and Gilmore to Barcardine pipelines:⁴²

It is Epic Energy's understanding that Enertrade is reviewing the operation of the Barcardine Power Station, which if anything, may result in a reduction in gas requirements.

Epic Energy understands that apart from the power station at Barcardine, there is no substantial demand in the foreseeable future for gas along the Cheepie pipeline that would warrant a substantial part of the market likely to seek a backhaul or forward haul service along the SWQP.

Furthermore, to the extent that there is any substantial incremental demand for gas along the route of the Cheepie pipeline, any gas that would be sourced from fields requiring transportation on the SWQP would be competing with gas sourced from the Gilmore field, which is supplied directly into the Cheepie pipeline. Thus, the gas that would need to be supplied via the SWQP would be competing at a cost disadvantage to the Gilmore gas. For Epic Energy to realise greater flows in its pipeline, it would therefore need to offer market based tariffs.

In spite of the above, Epic Energy is willing to continue to provide part backhaul services to Cheepie, on the current terms if that is what the market requires, for any demand that arises and as long as Epic Energy is able to provide a backhaul service on its pipeline.

Epic stated the following with respect to using the SWQP to back haul gas to Ballera:⁴³

Epic Energy has encouraged the introduction of government initiatives to promote the use of gas. However, with the physical impediments that exist between Ballera and Moomba, Epic Energy does not see how a substantial part of the market for the supply of gas is likely to enter into a contract for a backhaul service at least during the regulatory period. Furthermore the uncertainty of forward haul quantities in the SWQP caused by the Origin/ SWQ Producers gas swap is a significant deterrent to other potential backhaul shippers during the regulatory period, because Epic Energy is unable to guarantee the availability of backhaul capacity without committing to an expansion of the SWQP to allow the receipt of gas into the SWQP at Wallumbilla and the physical reversal of flow in the pipeline. The current configuration of the SWQP does not allow such flow reversal to occur.

⁴² Epic Energy, Submission #3 August 2004, paragraphs 2.4 – 2.7 (p. 3).

⁴³ *ibid.*, paragraphs 2.10-2.11 (pp. 3-4).

As said above, if parties are concerned at there being no posted tariff, Epic Energy would be more than prepared to continue the current posted tariffs.

Epic also noted that it has never denied a party access to the pipeline for an AFT service, that it is prepared to offer reduced tariffs, and that there are significant amounts of uncontracted capacity on the pipeline.⁴⁴ Epic claims that it has actually been encouraging the finalisation of tariff arrangements.⁴⁵

Santos Limited submission

Santos expressed some concern with Epic's proposal, suggesting that there is 'no apparent reason for the change'.⁴⁶ Santos also expressed its desire for reference services other than for full forward haul to be included in the access arrangement.⁴⁷

There are current needs for other than forward haul services that need to be addressed within an access arrangement. This approach from Epic appears to run counter to existing conditions for no reason. It is counterproductive to competition in the gas market to be required to negotiate a tariff each time that other than forward haul services are needed.

Epic response to Santos submission

Epic did not address the issues raised by Santos directly in response, but indicated that it had already addressed the issues in its earlier submissions.⁴⁸

2.1.5 ACCC's considerations

Epic's proposal to re-classify the AFT services from reference services to non-reference services is the most substantial of the proposed revisions. It has important potential ramifications for parties seeking access to those services on the SWQP. The reference tariffs currently in place for the SWQP were not set under the Code. However the derogation applying to AFT services expires in 2004. Accordingly, if any of the AFT services were to continue as reference services, reference tariffs would need to be established in accordance with the reference tariff principles set out in section 8 of the Code. Amongst other things, this process would involve establishing an initial capital base and a rate of return, and forecasts of operating costs and of demand for services.

Excluding the submissions made by Epic, the ACCC received five submissions concerning Epic's proposed revisions. Arguably, the primary issue in all of these submissions was whether one or more of the AFT services should be included in the access arrangement as reference services with corresponding reference tariffs and defined terms and conditions. All of these parties were opposed to Epic's proposed re-classification. Interested parties made submissions that one or more of the AFT services are currently (or would be) sought on the SWQP.

⁴⁴ Epic Energy, Submission #3 August 2004, paragraphs 2.8-2.9 (p. 3).

⁴⁵ *ibid.*, paragraph 2.9 (p. 3).

⁴⁶ Santos Limited Submission, 25 August 2004, p. 1.

⁴⁷ *ibid.*

⁴⁸ Epic Energy, Submission #3, August 2004, paragraph 3.2 (p. 5).

Epic submitted that the inclusion of AFT services as reference services in the access arrangement was not a result of an assessment against the requirements of section 3.3 of the Code and that accordingly, no regard should be had to the fact that AFT services were reference services in the initial access arrangement.⁴⁹ However, under section 2.46(b) of the Code, the ACCC must take into account the existing provisions of the access arrangement.

The ACCC does, however, agree with Epic that the inclusion of AFT services as reference services was a matter of law. In its Final Approval, the ACCC stated:⁵⁰

The Commission took the view in its *Final Decision* that the Queensland Government derogation has deemed the listed services to be Reference Services for the purposes of the access arrangement under the Code. The Commission noted:

For this reason the Commission believes that under the derogation these services are as a matter of law reference services for the purposes of the code. The Commission agrees it is possible not to require Epic to list the AFT services as Reference Services in its Services Policy. This would not, however, change the fact that they are Reference Services. To not include them in the Services Policy would then be potentially misleading for access seekers and would not be appropriate.

[Footnotes deleted]

The ACCC has given due weight to the inclusion of the AFT services as reference services in the initial access arrangement. In doing so, the ACCC has given regard to the context of their inclusion as a matter of law as set out in the derogation, rather than an assessment under section 3.3 of the Code.

Are any of the AFT services likely to be sought by a significant part of the market during the access arrangement period?

Looking forward, it appears unlikely that the existing use of the SWQP will remain unchanged. There is evidence to suggest that, under a range of scenarios, a variety of services would be sought on the SWQP. This is in contrast to the existing use of the SWQP which is largely for full forward haul service transporting gas from Ballera to Wallumbilla accounting for approximately 95 per cent of existing transportation revenue.⁵¹

The question then turns to timing – *when are alternative services likely to be sought by a significant part of the market?* Despite all of the submissions supporting the inclusion of one or more AFT services as reference services, the ACCC has some doubt as to whether the first part of the test in section 3.3(b) of the Code has been met. That is, the ACCC is uncertain whether any of the AFT services are likely to be sought by a significant part of the market during the proposed access arrangement period of just two years.

At this stage, no interested party has been able to demonstrate to the ACCC's satisfaction that there is likely to be a significant part of the market that seeks an AFT

⁴⁹ Epic Energy, Submission #1, August 2004, paragraph 3.4 (p. 9).

⁵⁰ ACCC Final Approval SWQP Access Arrangement 4 June 2002, p 4.

⁵¹ For example, see Epic Energy Submission #1 August 2004, paragraph 4.3 (p. 10).

service before the end of 2006. If Epic had proposed a longer access arrangement period, there would have been a greater likelihood that the AFT services would be sought by a significant part of the market during the next access arrangement period.

BHPB Minerals commented broadly about the importance of AFT services as reference services, referring to future demand (perhaps near future) rather than a specific forecast over the coming two year period. Xstrata Copper submitted that it requires additional gas to its current 15 PJ per annum supply from the SWQGP. However, it acknowledged the current physical and contractual limitations of the interconnect between the CGP (between Ballera and Mt Isa) and the SWQP. While some of these limitations may be alleviated in due course, the quantum of additional gas sought by Xstrata Copper was not indicated in its submission. The ACCC has not seen any evidence that would suggest that the additional demand referred to by Xstrata Copper is likely to represent a significant part of the market.

Energex submitted that back haul and part back haul service would be required to service growth in demand in the Mt Isa market (after resolving the technical difficulties with the interconnect between the SWQP and the CGP) and the market north of Gilmore. However, there was no quantification of this demand provided. Further, Epic submitted that its understanding is that growth in the Mt Isa market is secured by existing contracts, and to the extent that it is not, Epic submits that the demand growth is minimal.⁵² With respect to the market north of Gilmore, Epic noted that the market is supplied by long-term contracts which cover incremental demand. Further on this issue, in response to Enertrade, Epic noted that the most substantial user of gas on the Gilmore to Barcaldine pipeline is currently reviewing its operations which, it suggests, may result in reduced gas consumption.⁵³

Epic argued that gas supply along the Gilmore to Barcaldine pipeline (also using the SWQP) would need to compete with gas sourced from the Gilmore field and that it would need to offer market based tariffs.⁵⁴ However, such an argument does not demonstrate that the service is unlikely to be sought.

Santos submitted that services other than full forward haul were currently required on the SWQP. However, it provided little evidence on which to base an assessment under section 3.3 of the Code.

As indicated above, no interested party has been able to demonstrate to the ACCC's satisfaction that AFT services are likely to be sought by a significant part of the market before the end of 2006.

Should any of the AFT services be reference services?

If the first part of the test in 3.3(b) of the Code has been met, the ACCC has some discretion as to whether or not to require the inclusion of one or more AFT services as reference services. In the four submissions made by Epic, it has provided some evidence to support its assertions that it does not possess market power in respect of AFT

⁵² Epic Energy Submission #2, August 2004, paragraphs 4.7-4.8 (p. 8).

⁵³ Epic Energy Submission #3, August 2004, paragraphs 2.4-2.5 (p. 3).

⁵⁴ *ibid.*, paragraph 2.6 (p. 3).

services. The rationale behind Epic's submissions that it does not possess market power is that Epic would have sufficient incentives to negotiate fair access to AFT services without reference tariffs. While not making a direct assessment as to the degree of Epic's market power, the following points stated by Epic give the ACCC a level of comfort that the objectives of the Code would not be substantially furthered by requiring any of the AFT services to be reference services at this time:

- The service provider has no existing interests in upstream or downstream markets;
- The swap between Santos and Origin has highlighted alternatives to physical transportation on the SWQP⁵⁵;
- There are other potential developments such as a pipeline from Wallumbilla to NSW that could mitigate Epic's negotiating power;
- Epic claims that the underutilisation of the SWQP gives it a significant incentive to offer competitive rates to stimulate utilisation of the pipeline;
- Epic also refers to the threat of arbitration as being significant if it were to consider exercising market power unduly;
- Epic submitted that it has never refused access and is highly motivated to contract capacity, offering reduced tariffs at a time when there is significant uncontracted capacity;⁵⁶
- Epic has offered to continue providing part back haul services to Cheepie on the current terms, and generally to continue to offer services at the current posted tariffs.⁵⁷ Epic has also proposed to include a new clause in section 6.1 of the access arrangement following the concerns raised by interested parties. The new clause to be included in Epic's revised access arrangements states that:⁵⁸

(d) In making available any of the Services referred to in paragraph 6.1(a)(ii), Epic Energy will not require tariffs for the following Services higher than those approved by the Queensland Minister pursuant to section 58 of the Gas Pipelines Access (Queensland) Act 1998 (subject only to escalation as if each Service were a Reference Service):

- Class BH1 Service
- Class BZ1 Service
- Class FZ1 Service
- Class IT1 Service
- Class IZ1 Service

- Provision is made in the access arrangement for review should there be a substantial change in circumstances. See section 3.6 of this draft decision for further detail.

⁵⁵ Epic Energy Submission #1, August 2004, paragraphs 4.31-4.33 (p.15).

⁵⁶ Epic Energy Submission #3, August 2004, paragraph 2.9 (p. 3).

⁵⁷ *ibid.*, paragraph 2.7 and 2.11 (pp. 3-4).

⁵⁸ Epic Energy Submission #5, September 2004, (pp 1-2).

Further, the ACCC considers that it may be adverse to Epic's legitimate business interests (see section 2.24(a) of the Code) to go through the process of establishing reference tariffs for AFT services under the Code at this time. As noted above, reference tariffs for service on the SWQP are yet to be determined under the Code. Such a process would require further resources from Epic in establishing an initial capital base and other information that would be required under the Code. In addition, there are substantial practical difficulties in establishing reference tariffs for services when the likely extent of demand for those services is not known with any certainty.

Notwithstanding Epic's submissions and its legitimate business interests, the ACCC is required to consider other factors under section 2.24 of the Code such as the interests of users and prospective users and the public interest, including the public interest in having competition in markets. It can not be disregarded that all parties that made submissions other than the service provider sought one or more of the reference services in addition to FH1 to be reference services with reference tariffs.

BHPB Minerals, Enertrade and Santos were opposed to an access arrangement whereby prospective users would be required to negotiate access to AFT services on a case by case basis. Xstrata Copper submitted that such an approach exposes users to uncertainty and cost risk and is unacceptable. Santos and Energex both expressed concern at the potential for competition to be adversely affected by the withdrawal of reference services. Similarly, BHPB Minerals submitted that the AFT services may prove important in the development of the CSM reserves in Queensland.

However, given Epic's proposal to continue to offer the AFT services on existing terms and the other factors set out above, it is not clear that the objectives of the Code would be furthered by requiring the AFT services to be reference services at this time. While the AFT services would not carry the same status as reference services, Epic's proposed new clause to be added as 6.1(d) is of some merit. In the course of arbitration, section 6.18(a) of the Code requires the arbitrator not to make a decision that is contrary to an access arrangement (subject to the factors set out in 6.18(b), (c) and (d)).

Conclusion

There is uncertainty as to whether any of the AFT services are likely to be sought by a significant part of the market. On balance, after considering all submissions, the ACCC proposes not to require the inclusion of any of the AFT services as reference services for the second access arrangement period. However, the ACCC proposes the following amendment in accordance with Epic's proposal presented in submission #5:

Proposed amendment A2.1

Epic must add the clause proposed in submission #5 to section 6.1 of its access arrangement.

3. Terms and conditions and other access policies

In this chapter the remaining mandatory non-tariff elements of the proposed revised access arrangement for the SWQP are assessed for compliance with the Code. The Code requirements are outlined for each element followed by a summary of the service provider's proposal. Where relevant this is followed by a summary of submissions received in respect of that element and any amendments that the ACCC proposes be made for the proposed access arrangement to be approved. All proposed amendments are replicated in the summary.

This chapter presents the ACCC's analysis of the following non-tariff mandatory access arrangement elements required by the Code:

- the service provider's terms and conditions for the supply of 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 policy on 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 and expansions policy which sets out a method for determining whether or not an extension or expansion of a covered pipeline will be treated as part of the covered pipeline for the purposes of the Code, and, if so how it would affect reference tariffs; 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 Terms and conditions of service

3.1.1 Code requirements

Section 3.6 of the Code requires that an access arrangement 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 ACCC's assessment.

3.1.2 Current access arrangement provisions

The terms and conditions upon which Epic will provide the existing reference services are set out in the Gas Transportation Agreement Terms and Conditions. These terms and conditions are presented in the documents annexed to the access arrangement:

- Annexure A – Access Principles
- Annexure B – Additional Terms and Conditions
- Annexure C - Definitions

3.1.3 Proposed revisions

Epic's proposed revisions maintain the approach of specifying the terms and conditions of access in the access arrangement annexures. In the body of the access arrangement itself, Epic has proposed the addition of a new clause 10.2 that states that nothing obliges Epic to grant access to the SWQP for non-reference services in accordance with the Gas Transportation Agreement Terms and Conditions.

There is a range of minor revisions proposed to the annexures, mostly as a consequence of the proposal not to offer the AFT services as reference services. Epic stated in its first submission that these revisions are either amendments directly relating to AFT services or consequential amendments.⁵⁹ Further, Epic stated that:⁶⁰

Epic has not sought to propose revisions to other aspects of the Access Arrangement, as they are not within the scope of the Regulator's role. The only exception is in relation to revisions to correct typographical or logical errors or as a result of changes in law, which if not corrected, would render certain parts of the access arrangement difficult to understand.

There are also changes to Annexure B of the access arrangement. Epic has proposed amending clause 12.1 that currently makes allowance for Epic to install a customer reporting system. According to Epic these changes have been proposed to 'reflect the fact that the customer reporting system is now established'.⁶¹ Epic has also proposed changes to the schedule to Annexure B, which describes standards and requirements for metering equipment.⁶² Epic has not provided an explanation for these specific changes.

3.1.4 Submissions from interested parties

No submissions were received from interested parties on this issue. Five submissions were received in relation to the removal of AFT from the list of reference services, which are discussed above at section 2.1.4.

3.1.5 ACCC's considerations

Changes relating to the proposed removal of reference services are discussed at section 2.1.

The proposed amendment to clause 12.1 does not change any terms or conditions for the operation of the customer reporting system. It amends the clause to state that Epic has established a customer reporting system, rather than state that Epic may install a customer reporting system. As such, the proposed amendment is benign.

As the proposed amendments to the metering standards and requirement are of a technical nature, the ACCC contracted Sleeman Consulting to assess the changes and their implications for both the service provider and users. Sleeman Consulting has advised the ACCC that the proposed changes are reasonable and unlikely to disadvantage existing or prospective users of the pipeline. Sleeman Consulting did

⁵⁹ Epic Energy Submission #1, August 2004, paragraph 2.25 (p. 6).

⁶⁰ *ibid.*, paragraph 2.23 (p. 6).

⁶¹ *ibid.*, paragraph 2.26(12) (p. 7).

⁶² See Clause 6 of the SWQP access arrangement.

however suggest some further improvements which Epic may choose to incorporate. Epic has been provided with a copy of the report.⁶³

The changes to the terms and conditions of service are directed at clarifying the operation of the access arrangement or improving technical requirements. The changes are unlikely to disadvantage existing or prospective users, and the ACCC considers that they are reasonable and satisfy section 3.6 of the Code.

3.2 Capacity management policy

3.2.1 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.

3.2.2 Current access arrangement provisions

Clause 14 of the existing access arrangement states that the pipeline is a contract carriage pipeline.

3.2.3 Proposed revisions

Epic has not proposed any revisions to the capacity management policy.

3.2.4 Submissions from interested parties

No submissions were received on this issue.

3.2.5 ACCC's considerations

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

3.3 Trading policy

3.3.1 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, 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 (a bare transfer); and

⁶³ Epic was provided with a copy of the report at a meeting held with ACCC staff on 16 September 2004.

- 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.

Section 3.10(c) provides that, where technically and commercially reasonable, a user must be permitted to change the delivery or receipt point from that specified in a contract of service, with the prior written consent of the service provider.

3.3.2 Current access arrangement provisions

Epic permits a bare transfer without its consent, and transfers other than bare transfers with its written consent, in accordance with sections 3.9 to 3.11 of the Code. Epic has not specified any conditions under which consent will be granted or any conditions attached to that consent.

Clause 12.6 of the additional terms and conditions in Annexure B to the access arrangement allows a shipper to add additional delivery or receipt points and alter the quantities received or delivered to the various points. Epic allows these changes provided it has capacity, it is technically feasible, the shipper makes appropriate arrangements and the shipper pays for any additional transportation costs. Epic expressly states that it is not required to create any new receipt or delivery points.

3.3.3 Proposed revisions

Epic has not proposed any significant revisions to its trading policy. In clause 12.6 of the additional terms and conditions in Annexure B to the access arrangement, Epic proposes to remove a reference to clause 6.3 in the access arrangement. Clause 6.3 relates to back haul services that Epic has proposed removing from the list of reference services.

3.3.4 Submissions from interested parties

No submissions were made on this issue.

3.3.5 ACCC’s considerations

The proposed revised access arrangement includes a statement that bare transfers in accordance with section 3.10(a) of the Code and transfers, other than bare transfers, in accordance with section 3.10(b) are permitted. Annexure B to the revised access arrangement allows for the change of delivery and receipt points in accordance with 3.10(c). The conditions specified by Epic in this regard relate to the technical and commercial reasonableness of any change in delivery or receipt points. The ACCC views the conditions as reasonable. Accordingly, the ACCC considers that sections 3.9 and 3.10 of the Code are satisfied.

3.4 Queuing policy

3.4.1 Code requirements

Sections 3.12 to 3.15 set out the Code's requirements for a queuing policy. An access arrangement must include a queuing policy for determining the priority that a prospective user has, as against any other prospective user, to obtain access to spare capacity and developable capacity where the provision of the service sought by the prospective user may impede the ability of the service provider to provide a service that is sought or which may be sought by another prospective user.

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, users and prospective users, and must generate economically efficient outcomes.

3.4.2 Current access arrangement provisions

For a prospective user to obtain access it must follow the procedures set out in the gas transportation guide and pay a prescribed fee for the request. Epic then considers the request as a 'reasonable and prudent' pipeline operator based on the information provided with the request. Epic may request further information from a prospective user as it reasonably considers necessary to assess the request.

The priority of prospective users is determined by the order in which their transportation requests are received by Epic. However, Epic may deal with requests out of order, provided that the requests which were first in time are not ultimately disadvantaged. If a gas transportation request is rejected, that request's priority is lost.

3.4.3 Proposed revisions

Epic proposes to add a new clause 5.2(d) that expressly provides that nothing requires it to accept requests that do not follow the procedure for applying for access or if a prospective user fails to provide requested information.

Epic proposes to change the terms 'gas transportation guide' and 'gas transportation request' to 'access guide' and 'access request' respectively. Although this change appears cosmetic, Epic proposes to change the definition of the term 'service' (which is used to define the term 'access request') such that all services offered by the pipeline are subject to the application process and queuing policy. Currently, the definition of service means that only the defined forward haul and AFT services are subject to the application process and queuing policy.

3.4.4 Submissions by interested parties

No submissions were made on this issue.

3.4.5 ACCC's considerations

The new clause 5.2(d) clarifies the operation of the queuing policy and does not alter the operation of the queuing policy. The proposed change to the definition of 'service' broadens the operation of the queuing policy slightly to cover services not previously

covered by the queuing policy. However, as noted in chapter 2, the demand for these services is not expected to be significant. Further, inclusion in the queuing policy accommodates the interests of users, consistent with the requirement in section 3.13(b) of the Code. Overall, both changes are relatively benign. As the proposed revised access arrangement contains a queuing policy and the ACCC considers that the policy satisfies the requirements of section 3.13, the ACCC is of the view that it satisfies the requirements of section 3.12 of the Code. The ACCC proposes to accept Epic's queuing policy.

3.5 Extensions and expansions policy

3.5.1 Code requirements

The Code requires an access arrangement to have an extensions and expansions policy (section 3.16). The policy must 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 required to specify the impact on reference tariffs of treating an extension or expansion as part of the covered pipeline.⁶⁴ In addition, if the service provider agrees to fund new facilities upon certain conditions being met, an extensions and expansions policy must outline these conditions and provide a description of those new facilities.

3.5.2 Current access arrangement provisions

Currently, if Epic proposes to extend or enhance the SWQP, the extension or expansion will become part of the covered pipeline, unless Epic elects otherwise. An extension or expansion that is covered does not affect the reference tariff until the current revisions commencement date, that is, 11 December 2004. Shippers using any incremental capacity are to pay the reference tariff (for use of the SWQP), plus a surcharge or capital contribution if agreed with Epic.

3.5.3 Proposed revisions

Coverage of extensions and expansions

Epic proposes that extensions to or expansions of the SWQP will not be part of the covered pipeline unless Epic elects otherwise by providing notice in writing to the regulator.

Effect of extensions and expansions on reference tariffs

Epic proposes to modify the extensions and expansions policy to clarify the effect of extensions and expansions on reference tariffs.

Expansions that become part of the covered pipeline that do not result in the pipeline exceeding the nominal capacity⁶⁵ before 30 December 2016 would not affect the

⁶⁴ For example, reference tariffs may remain unchanged, but a surcharge may be levied on incremental users.

⁶⁵ Nominal capacity is defined as the fully compressed capacity of the pipeline, being 110 PJ per annum with eight compressor stations operating.

reference tariff. Expansions that result in the pipeline exceeding the fully compressed capacity before 30 December 2016 would not affect the reference tariff until 30 December 2016 (the next revisions commencement date for FH1 services). Clause 10.1 of the access principles states that the reference tariffs have been established for the pipeline and any compression facilities up to the nominal capacity of the pipeline.

Extensions would not affect the reference tariff without Epic first lodging revisions to the access arrangement. Epic proposes to retain the ability, from time to time, to seek surcharges or capital contributions from prospective shippers for new facilities investment (subject to the treatment of covered expansions and extensions as discussed above).

As noted earlier, in its first submission, Epic stated that it had limited its revisions to AFT services and corrections of errors.⁶⁶

Epic submitted that the changes to its extensions and expansions policy were to achieve consistency with the access principles.⁶⁷ Section 10.1 of the Epic's access principles provides that reference tariffs apply to services, including any compression facilities installed on the pipeline up to the nominal capacity of the pipeline. They do not include the construction of other facilities or compression of capacity beyond the nominal capacity.

3.5.4 Submissions by interested parties

Coverage of extensions and expansions

Xstrata Copper, BHPB Minerals and Santos have objected to the proposal that extensions and expansions not be covered unless Epic elects otherwise.

Santos⁶⁸ and BHPB Minerals⁶⁹ both emphasised the importance of coverage of the SWQP as it is strategically positioned to take advantage of future expansions of gas supply.

In this context, BHPB Minerals submitted that the absence of regulation would permit anti-competitive outcomes.⁷⁰ BHPB Minerals also noted that the Queensland Government derogation is limited to volumes that could be exceeded under certain scenarios 'contemplated as realistic'. Santos argued that there was no valid reason for Epic's proposed change and that the proposed change would make access less timely and more cumbersome:⁷¹

There appears to be no valid reason for the proposed change to extensions and expansions not being part of the covered pipeline. At a time that the complexities of competition in the market place are

⁶⁶ Epic Energy Submission #1, August 2004, paragraph 2.23 (p. 6).

⁶⁷ *ibid.*, paragraph 2.26 (4) (p. 7).

⁶⁸ Santos Submission, 25 August 2004, p. 1

⁶⁹ BHPB Minerals Submission, 10 August 2004, p. 2.

⁷⁰ *ibid.*

⁷¹ Santos Submission, 25 August 2004, p. 1.

increasing it is counterproductive to change access arrangements such that the time of response from a service provider is increased and the response is made more cumbersome. Appeals to the ACCC after an unfavourable response are an inefficient way of having decisions review and fail to respond to competitive pressures in reasonable timeframes.

Epic responded to BHPB Minerals' submission by stating that a fundamental principle of national competition policy was that a service provider could not be compelled to fund an augmentation of infrastructure and that Epic does not expect capacity to be exceeded, given its capacity and volume forecasts for the foreseeable future.⁷²

The ACCC was concerned that Epic's response related to the funding of expansions and did not address the arguments raised by BHPB Minerals. The ACCC identified this issue to Epic in a written request for further details on the 31 August 2004 and asked for clarification. Epic responded by referring the ACCC to arguments provided in Epic's fourth submission.⁷³

Xstrata Copper submitted that the most likely augmentation would be an interconnection to the Moomba to Sydney Pipeline.⁷⁴ Given the significance of such an interconnect, Xstrata Copper considers it should be a covered pipeline, with the coverage decision not resting with the service provider.

Xstrata Copper further submitted that the interconnect between the SWQP and the CGP from Ballera to Mt Isa is not covered. Xstrata Copper argued that this pipeline should be covered, despite the current capacity of the interconnect being fully contracted.

Epic responded to Xstrata Copper's submission by arguing that the Tribunal has concluded that,⁷⁵ in the absence of specific evidence of Epic's ability to exert market power, market power could not be used to justify the inclusion of an expansion as part of the covered pipeline.⁷⁶

Epic Energy refers to the reasoning of the Australian Competition Tribunal decision in connection with Epic Energy South Australia Pty Ltd's application for a review of the ACCC's decision to draft and approve its own access arrangement whereby the ACT concluded that in the absence of specific evidence of Epic Energy's ability to exert market power, this can not be used to justify the inclusion of an expansion as part of the covered pipeline. Furthermore, to the extent that there must be demonstrated that the benefits of coverage must be "not trivial". Epic Energy submits this has not been demonstrated by any of the submissions to date.

Epic responded to Xstrata Copper's submission on the interconnect between the SWQP and the CGP by asserting that Epic could not exercise market power over the interconnect because its capacity was fully contracted, and that the GPAL does not

⁷² Epic Energy Submission #2, August 2004, paragraphs 2.17 to 2.18 (p. 3).

⁷³ Epic Energy Submission #4, September 2004, paragraphs 3.2 (p. 5).

⁷⁴ Xstrata Copper Submission, 11 August 2004, p. 2.

⁷⁵ *Epic Energy South Australia Pty Ltd, Application for review of decision to Australian Competition Tribunal*, 10 December 2003.

⁷⁶ Epic Energy Submission #2, August 2004, paragraph 3.9 (p. 6).

allow for revisions to the extensions and expansions policy to be applied retrospectively. Epic stated that:⁷⁷

... Epic Energy understands that because the extensions/expansions policy at the time the interconnect was built did not provide for extensions or expansions to be part of the covered pipeline, the Law does not allow for the extensions expansions policy to be amended on review of an access arrangement so as to have retrospective effect to such expansions or extensions.

The ACCC wrote to Epic requesting clarification of aspects of its proposed revised access arrangement and submissions. Concerning extensions and expansions, the ACCC asked Epic to explain the reason for Epic's revisions to its extensions and expansions policy. In particular, the ACCC noted that Epic had stated that it adopted a default position that extensions and expansions are not covered to maintain consistency with Epic's general policy that extensions and expansions should not form part of the covered pipeline. Epic responded in a fourth submission to the ACCC by stating that:⁷⁸

...Epic Energy adopts the default position that an expansion or extension to the pipeline will not be covered unless it elects otherwise.

Epic gave three reasons for this. First, Epic stated it would not fund an expansion without sufficient foundation customers, making regulation of an extension or expansion unnecessary.⁷⁹

...Epic Energy would only agree to fund an expansion of or extension to the SWQP if Epic Energy has in place sufficient foundation customers to make it economically viable to commence with construction. Epic Energy has already submitted in various forums that because of regulatory risk, it would not fund an expansion or extension to the pipeline that would result in there being spare capacity available to prospective users. Accordingly, there seems no reason why an expansion or extension should prima facie be part of the covered pipeline.

Second, Epic said that the evidence it had put to the ACCC demonstrated that it has limited market power over the building of expansions and extensions to the SWQP.⁸⁰ It also submitted that there was no substantiated evidence to the contrary.

Third, Epic considers that there is no difference between a default position that expansions and extensions are 'prima facie' uncovered unless Epic elects otherwise and a default position that expansions and extensions are 'prima facie' covered unless Epic Energy elects otherwise.⁸¹ Further, Epic stated that:⁸²

In the Final Decision for the Original Access Arrangement, the ACCC sought to distinguish this aspect of the extensions/expansions policy with the SWQP from that with the MAPS. The ACCC reasoned that in the case of the SWQP, Epic Energy's "ability to exert market power is significantly diminished due to the derogation. Under the derogation, the Queensland Government has predetermined the reference tariff for all expansions of capacity on the SWQP up to 110PJ/year (ie 8

⁷⁷ Epic Energy Submission #2, August 2004, paragraph 3.7 (p. 5).

⁷⁸ Epic Energy Submission #4, September 2004, paragraph 2.4 (p. 3).

⁷⁹ *ibid.*, paragraph 2.6 (p. 3).

⁸⁰ *ibid.*, paragraph 2.7 (p. 3). Also see paragraphs 2.11 and 2.12 (p. 4).

⁸¹ *ibid.*, paragraph 2.8 (p. 3).

⁸² *ibid.*, paragraph 2.9 (p. 3).

compressors).” Accordingly it concluded the Epic Energy does not submit that the position it is putting forward now creates any practical difference.

Epic also sought to address concerns that a default position that a pipeline is not covered would preclude users from access to the arbitration provisions of the Code if there was a dispute over access to expansions or extensions. Epic stated that:⁸³

This argument can only subsist if the ACCC adopts the interpretation that s6.1 of the Code (which provides for notification of a dispute for arbitration purposes) only applied to a “Service” in relation to a “Covered Pipeline” (definitions s.10.8), and that unless an expansion was stipulated in the Expansions Policy to be covered, there would be no jurisdiction in the Arbitrator to determine a complaint between a prospective users and the Service Provider about the terms of any future expansion.

Epic argued that this was not the correct construction of section 6 of the Code.

Effect of extensions and expansions on reference tariffs

The ACCC stated in a letter to Epic⁸⁴ that it understood the rationale for Epic’s proposed amendments to section 12.3 and 12.4 was to create consistency between the access arrangement and section 10.1 of the access principles. Epic confirmed this understanding in its response.⁸⁵

3.5.5 ACCC’s considerations

Coverage of extensions

The ACCC believes that coverage does not need to be the default position for extensions. The barriers to entry for constructing extensions are likely to be lower than for expansions. Other pipeline companies can compete to construct extensions to the pipeline.

Discretion over coverage of expansions

In contrast, a service provider’s economies of scale and scope tend to be substantially greater when expanding a pipeline. The ACCC believes that the discretion as to whether an expansion is covered should generally rest with the regulator. This provides an effective and administratively simple means for users and prospective users to seek coverage. The alternative of seeking coverage of expansions through the ministerial coverage process is more cumbersome. In its recent review of the Gas Access Regime,⁸⁶ the Productivity Commission (PC) agreed with this position. The PC stated:⁸⁷

It is difficult to see how a case could be made that the market power of a covered pipeline did not apply to an expansion of that pipeline. Under these circumstances, not covering an expansion by default has the potential to add to the administrative costs of the regime without increasing its benefits. If a service provider considers that the expansion has reduced its ability to exert market

⁸³ Epic Energy Submission #4, September 2004, paragraph 2.10 (p. 4).

⁸⁴ Email dated 31 August 2004 from ACCC to Epic Energy.

⁸⁵ Epic Energy Submission #4, September 2004, paragraph 2.13 (p. 4).

⁸⁶ Productivity Commission, *Review of the Gas Access Regime*, pp. 322-328.

⁸⁷ *ibid.*, p. 328.

power in the relevant market, then the appropriate approach is to apply for revocation of the entire pipeline.

The PC recommended that section 3.16 of the Gas Code ‘should be amended so that it unambiguously clarifies that any expansion of a covered pipeline will be covered.’⁸⁸

The ACCC notes that Epic asserted that it is currently unable to exercise market power over users or prospective users of the SWQP.⁸⁹ Whether Epic has the ability to exercise market power at a future point in time is not an assessment that can be made reliably now. A number of interested parties have highlighted the strategic significance of the SWQP and indicated scenarios under which demand for AFT services could significantly increase such that Epic could possibly exercise market power over uncovered expansions.

If, as Epic asserts, it is unable to exercise market power, and this is unchanged at the time of construction, then the ACCC would be likely to conclude that the augmentation should not be covered. Under such circumstances, Epic’s legitimate interests (as specified in section 2.24(a) of the Code) would be unlikely to be compromised and it should be indifferent to the possibility of coverage. However, if contrary to Epic’s expectations, it is in fact able to exercise market power in the future, then the interests of users (as specified in section 2.24(f) of the Code) and the public interest in promoting competition in markets (as specified in section 2.24(e) of the Code) would be appropriately guarded.

Epic asserted that it would not fund an extension or expansion of the SWQP without sufficient foundation customers to make it economically viable. Epic also submitted that it would not allow for any spare capacity on such an extension or expansion. However, the circumstances affecting any future augmentation may vary from Epic’s current expectations. If, contrary to Epic’s expectations, there is excess capacity coverage may be appropriate. The existence of foundation customers and availability of excess capacity are factors that will be better known and more reliably assessed at a time closer to the actual occurrence of any augmentation.

Further, if as Epic asserts, there will be no excess capacity on any extensions or expansions, Epic should be indifferent to the possibility of coverage. The access arrangement would be unlikely to impact upon the services offered as there would be no capacity to offer services beyond those already subject to foundation contracts.⁹⁰ The ACCC would be best placed to make a decision on the coverage of future expansions at the time of those expansions. It should be noted that the ACCC is not suggesting that all expansions would necessarily be covered. Rather, it would make an assessment of the merits of covering expansions in light of the specific circumstances and information available at a time closer to the actual occurrence of the expansion. The ACCC believes that this is consistent with the reasoning adopted by the Tribunal in the *Epic Energy South Australia Pty Ltd, Applications for review of decisions to Australian Competition*

⁸⁸ Productivity Commission, *Review of the Gas Access Regime*, Recommendation 7.15, p. 328.

⁸⁹ Epic Energy’s submissions in support of this assertion are discussed above at section 2.1.5.

⁹⁰ Contractual obligations to foundation customers are protected by s2.47 of the Code.

Tribunal.⁹¹ Accordingly, the ACCC considers that the regulator should, in general, have discretion over coverage decisions for expansions.

In its response to Xstrata Copper's submission, Epic argued that the Tribunal concluded in *Epic Energy South Australia Pty Ltd, Applications for review of decisions to Australian Competition Tribunal*⁹² that specific evidence of ability to exercise market power is required for coverage of an expansion. The ACCC notes that while the Tribunal found that the Pelican Point expansion in that case should not be covered, it did not generalise this finding to all expansions. While Epic originally appealed against the general expansions policy incorporated in the ACCC's final approval decision and the access arrangement it drafted and approved, Epic withdrew this ground of appeal prior to the hearing.

If Epic's interpretation of this decision is correct, this does not imply that the coverage decision for expansions should be left with the service provider. Rather, allowance should be made for the regulator to make a decision upon the specific circumstances surrounding the expansion. This is facilitated by giving the regulator discretion over the coverage of expansions.

While the ACCC believes that the discretion as to whether an expansion is covered should rest with the regulator, the ACCC recognises that there may be circumstances where this policy is not necessary. Currently, the discretion as to whether an expansion or extension of the SWQP is covered rests with Epic. In its final decision on the SWQP in 2001, the ACCC stated that this position was accepted because the derogation of the SWQP tariffs made it unlikely that Epic could exercise market power over any expansions:⁹³

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.

The derogation for AFT services will expire in December 2004, creating the possibility that Epic could in the future exercise market power. However, Epic proposes to undertake in the access arrangement not to charge a tariff above the derogated tariffs set by the Queensland Government (and currently included in the access arrangement for AFT services). As this undertaking effectively imposes the existing derogated tariffs as a cap for AFT services, Epic's ability to exert market power remains significantly diminished.⁹⁴ Consequently, as with the final decision on the SWQP in 2001, the ACCC does not propose to require Epic to amend its extensions and expansions policy to confer discretion on whether expansions are covered to the regulator.

⁹¹ *Epic Energy South Australia Pty Ltd, Application for review of decision to Australian Competition Tribunal*, 10 December 2003.

⁹² *ibid.*

⁹³ ACCC, 28 November 2001, *Final Decision: Access Arrangement proposed by Epic Energy Queensland Pty Ltd for the Ballera to Wallumbilla Pipeline System*, p.23.

⁹⁴ The ACCC has not formed a view as to the reasonableness of the derogated AFT tariffs.

Default coverage of expansions

Epic has stated that there is no difference between the alternative default positions (that is, that extensions and expansions would or would not be covered). The ACCC believes that the relevant Code provisions are not as clear as this suggests. In particular, the dispute resolution provisions may potentially have the effect under certain circumstances of excluding prospective users seeking access to services on extensions or expansions when the default policy is that extensions and expansions are not covered.

However, the correct interpretation is uncertain, and the circumstances that might give rise to this outcome seem unlikely to occur during the two year access arrangement period as the SWQP is expected to continue operating substantially below capacity for its duration.

The ACCC proposes not to require Epic to amend its proposed extensions and expansions policy to require default coverage of expansions.

Interconnect between the SWQP and the CGP

In its submission, Xstrata Copper asserted that the interconnect between the SWQP and the CGP should be covered. This interconnect was built before the access arrangement for the SWQP came into effect.

While the possibility of coverage of the CGP interconnect is not precluded by the provisions of the Code, the ACCC is of the view that, on current evidence, coverage is not warranted. As indicated by Epic, the capacity on the interconnect is fully contracted and physically constrained. Under the current circumstances, the ACCC believes there is likely to be inadequate benefits arising from coverage of the interconnect to justify coverage at this time.

Effect of extensions and expansions on reference tariffs

Epic's proposed revisions to the effect of extensions and expansions on reference tariffs (clauses 12.3 and 12.4) do not directly relate to AFT services. Under Epic's proposal, none of the AFT services would have reference tariffs. Hence, these amendments can only relate to the derogated forward haul service. As discussed in chapter 1, the Code provides for Epic to voluntarily submit revisions not required by the access arrangement. The ACCC can accept or reject such revisions.

Section 10.1 of Epic's access principles provides that reference tariffs apply to services, including any compression facilities installed on the pipeline up to the nominal capacity of the pipeline. They do not include the construction of other facilities or compression of capacity beyond the nominal capacity. Epic has proposed a modification to section 12.3 to expressly state in the access arrangement (rather than just in the access principles) the effect of extensions and expansions on reference tariffs under each of the above circumstances. As the revisions to the effect of extensions and expansions on reference tariffs proposed by Epic clarify the current operation of the access arrangement in light of clause 10.1 of the access principles, the ACCC believes that the changes are benign and proposes to accept the changes.

3.6 Review and expiry of the access arrangement

3.6.1 Code requirements

Section 3.17 of the Code requires an access arrangement to include a date upon which the service provider must submit a revised access arrangement to the regulator (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. The regulator may require an amendment to the proposed access arrangement to include earlier or later dates. However, section 58(4) of the GPAL provides that the revisions submission date and revisions commencement date mentioned in the reference tariff policy are taken to be the same dates in the access arrangement. This meant that the ACCC was unable, when originally approving of the access arrangement, to review these revisions dates in the access arrangement. The Tribunal discussed the interaction between section 58(4) and the Code in *DEI Queensland Pipeline Pty Ltd v Australian Competition and Consumer Commission*⁹⁵:

Section 58(4) of the Act displaces what would otherwise be the duty of the ACCC to approve or disapprove of the review dates, and to have regard to the objectives in s8.1 in making its decision in that respect. That is because the review dates specified by the local Minister are taken to be the review dates for the purposes of the Access Arrangement.

Under the Code, the regulator may 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(b)(ii)).

An access arrangement period 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.

⁹⁵ *DEI Queensland Pipeline Pty Ltd v Australian Competition and Consumer Commission* [2002] ACompT 2, par. 41.

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).

3.6.2 Current access arrangement provisions

Review dates

The revisions submission date for revisions relating to AFT services is 11 June 2004 and the revisions commencement date is 11 December 2004. For all other revisions to the access arrangement, the revisions submission date is 30 June 2016 and the revisions commencement date is 30 December 2016.

Major events trigger

Epic is also required to submit revisions to the access arrangement within one month of receiving written notice from the ACCC that one of two events has occurred. These events are the interconnection of another pipeline with the SWQP or the introduction of a significant new source of supply to one of the SWQP's markets. These events must either substantially change the types of services likely to be sought by the market or have a substantial effect on the direction of the flow of natural gas through all or part of the pipeline. While section 58 of the *Gas Pipelines Access (Queensland) Act 1998* remains in effect, such a review would not result in a review of the derogated elements of the access arrangement (in particular, the reference tariffs for the forward haul service and the revisions submission and commencement dates for non-AFT revisions).

3.6.3 Proposed revisions

Review dates

Epic proposes that the next revisions submission date for revisions relating to AFT services is 1 July 2006. The revisions commencement date for revisions relating to AFT services would be the later of 1 January 2007 and the date the Regulator's approved access arrangement becomes effective under section 2.48 of the Code. The result of these revisions would be that there would be only two years between reviews of AFT services.

Major events trigger

Epic has proposed to remove the trigger that currently provides for review of all aspects of the access arrangement (except those derogated by section 58 of the *Gas Pipeline Access (Queensland) Act 1998*).

As noted earlier, Epic stated that it had limited its revisions to AFT services and corrections of errors on the basis that other revisions are not within the scope of the regulator's role.⁹⁶

Epic stated that the major events trigger was removed because of the relatively short proposed access arrangement period and because Epic had not received a formal request that would see either trigger event eventuate during the access arrangement period.⁹⁷

Given the relatively short proposed Access Arrangement Period, and the fact that Epic Energy has not received a formal request that would see any of the trigger events contained in the Original Access Arrangement materialising during this proposed period, Epic Energy cannot see any benefit to them being included.

3.6.4 Submissions by interested parties

Review dates

None of the submissions opposed the two year access arrangement period. Xstrata Copper submitted that it did not oppose a two year period.⁹⁸

Major events trigger

Xstrata Copper, BHPB Minerals and Santos have objected to the proposed removal of the trigger mechanism.

Xstrata Copper⁹⁹ and BHPB Minerals¹⁰⁰ both stated that events may occur during the next access arrangement period that would require review of the access arrangement. Xstrata Copper considered a review of the forward haul service would be needed if pipeline operations substantially changed, such as on termination of the Incitec-Pivot contract in 2007¹⁰¹ or interconnection with the Moomba to Sydney pipeline. BHPB Minerals stated:

Over the term of the access arrangement, many commentators predict substantial changes to the gas transmission systems and gas flows in Australia, particularly as a result of potential gas suppliers from the North West and from Papua New Guinea. This has the potential to make major changes in gas markets and the economics of gas transmission lines.

Santos submitted that gas transmission requirements were volatile and that removing the major events trigger would provide a less flexible response.¹⁰² Santos gave the example of gas transmission requirements being influenced by gas coming into Australia from the north.

⁹⁶ Epic Energy Submission #1, August 2004, paragraph 2.23 (p. 6).

⁹⁷ *ibid.*, paragraph 2.26 (6) (p. 7).

⁹⁸ Xstrata Copper Submission, 11 August 2004, p. 2.

⁹⁹ *ibid.*

¹⁰⁰ BHPB Minerals Submission, 10 August 2004, p. 2.

¹⁰¹ On 6 September 2004, Incitec Pivot announced that it had signed a ten year contract with Origin and Queensland Gas Company together with Pangaea Oil and Gas for the supply of gas beginning in the second half of 2007. See <http://www.incitecpivot.com.au/news/story.asp?story=4274>.

¹⁰² Santos Submission, 25 August 2004, p. 2.

Epic responded to BHPB Minerals' submission by stating that the duration of the access arrangement period meant that the trigger contained in the original access arrangement was unnecessary.¹⁰³ Further, Epic argued that it had demonstrated that it is not able to exercise market power for services on its existing capacity or extensions. Epic did not envisage any new sources of gas which would lead to a new connection with the SWQP during the proposed two year access arrangement period.

Epic responded to Xstrata Copper's submission by stating that the derogations preclude review of the forward haul service and that the trigger event can only relate to revisions of AFT services.¹⁰⁴ If its interpretation of the law was incorrect, Epic submitted that, on projected capacity and volume forecasts, a review of the forward haul service before the expiry of the Queensland Government derogation would not be required.

3.6.5 ACCC's considerations

Review dates

A review date of two years is shorter than the five year review period normally included in an access arrangement. However, given that AFT services would be removed as reference services and the expected limited potential for significant relevant market developments in the coming years, the ACCC considers a two year review period to be appropriate.

The ACCC's proposed approval of the review dates is linked to its proposed approval of the removal of AFT services as reference services. Epic has proposed a short review period. A shorter period also protects the interest of users in circumstances where they do not have access to reference tariffs for AFT services.

As the proposed revised access arrangement includes a revisions submission date and revisions commencement date for AFT services and the ACCC considers that the dates satisfy the objectives in section 8.1, the ACCC is of the view that it satisfies the requirements of section 3.17 of the Code.

Major events trigger

In *DEI Queensland Pipeline Pty Ltd v Australian Competition and Consumer Commission*,¹⁰⁵ the Tribunal discussed the interaction between the derogations in section 58 of the *Gas Pipelines Access (Queensland) Act 1998* and the review date provisions contained in sections 3.17 and 3.18 of the Code. The Tribunal stated that:¹⁰⁶

The s3.17(ii) power is one which the ACCC may exercise "making its decision on an Access Arrangement". The power is not appropriately characterised as merely an aspect of the power given to the ACCC to determine whether and if so on what terms it should approve the review dates proposed by the Service Provider in the Access Arrangement. The ACCC might approve the review dates proposed, but nonetheless require that the Access Arrangement include a major events trigger.

¹⁰³ Epic Energy Submission #2, August 2004, paragraphs 2.19 to 2.20 (p. 3).

¹⁰⁴ *ibid.*, paragraphs 3.10 to 3.11 (p. 6).

¹⁰⁵ [2002] ACompT 2.

¹⁰⁶ *DEI Queensland Pipeline Pty Ltd v Australian Competition and Consumer Commission* [2002] ACompT 2, par. 44.

Section 2.46(b) of the Code directs the regulator to take into account the provisions of the access arrangement in assessing any proposed revisions. The existing major events trigger would open up for review all aspects of the access arrangement except for those precluded from review until 2016 under the Queensland Government derogation (that is, the tariffs and reference tariff policy for the full forward haul service and the review dates for all revisions other than those relating to AFT services). Therefore, this would include the non-tariff elements of the full forward haul service, as well as the tariff and non-tariff elements of the AFT services.

In *DEI Queensland Pipeline Pty Ltd v Australian Competition and Consumer Commission*¹⁰⁷ the Tribunal gave the following examples of reasons why there may be pressures for change of the non-tariff elements of an access arrangement:¹⁰⁸

- (a) a change in control of either the Pipeline owner or a Pipeline User may require modifications to the Trading, Queuing or Extensions/Expansions Policy in order to ensure continued non-discriminatory and efficiency access;
- (b) the interconnection of a new pipeline may require a change in Trading Policy in order to facilitate efficient trading of Pipeline capacity across both Pipelines, for example, so that a User could trade capacity with multiple combinations of injection and delivery points; and
- (c) the interconnection of a pipeline that was serving another gas field may result in the need to amend terms and conditions in relation to gas quality requirements and/or which resulted in a change in the direction of flow on the Pipeline that requires an amendment to the Services Policy.

In the initial access arrangement approval process, the ACCC required Epic to include the major events trigger because:¹⁰⁹

The Commission believes it is appropriate to use the provision for early review of the non-tariff elements because of the uncertainty associated with the extended regulatory period. If the current non-tariff elements are operating effectively when a major event triggers a review, Epic may re-submit its current access arrangement to the Commission. However, the Commission reserves the option to review the non-tariff elements if a trigger event occurs, in case modifications to the arrangement are appropriate.

The ACCC considers that these circumstances have not changed. The possibility of early review of the non-tariff elements remains appropriate because of the uncertainty associated with the extended access arrangement period and the interaction that the non-tariff elements of the FH1 service may have with AFT services.

Epic has not provided a rationale for removal of the trigger, other than to assert that AFT services will be reviewed in two years and it expects neither of the events to occur during the review period:¹¹⁰

¹⁰⁷ [2002] ACompT 2, par. 50.

¹⁰⁸ Section 3.18 of the Code provides the examples of divergence of the service provider's profitability or the value of services reserved in contracts from a specified range, and changes to the type or mix of services provided.

¹⁰⁹ ACCC, 28 November 2001, *Final Decision: Access Arrangement proposed by Epic Energy Queensland Pty Ltd for the Ballera to Wallumbilla Pipeline System*, p.26.

¹¹⁰ Epic Energy Submission #1, August 2004, paragraph 2.26 (6) (p. 7).

Given the relatively short proposed Access Arrangement Period, and the fact that Epic Energy has not received a formal request that would see any of the trigger events contained in the Original Access Arrangement materialising during this proposed period, Epic Energy cannot see any benefit to them being included.

In response to BHPB Minerals' submission, Epic stated:¹¹¹

Notwithstanding the duration of the access arrangement period, Epic Energy considers it has provided an overwhelming case to demonstrate that it is not able to exert any form of market power in connection with services for existing capacity and also for developable capacity or extensions to the SWQP. While there are a number of potential new sources of gas that might lead to a new connection with the SWQP, Epic Energy does not envisage that these would be during the proposed access arrangement period.

A number of interested parties have submitted that major developments are expected in the market for gas in Queensland in the near future, and so are likely to occur before 2016. They expect these events to significantly alter the supply of and demand for gas in that market. In particular, submissions have pointed to the possible introduction of a major supply source from northern Australia, such as a pipeline from Papua New Guinea.

If the existing review trigger is retained and such an event occurs, the ACCC will be able to review the access arrangement with the best information, rather than to attempt to account for such an occurrence in its current review. This protects the interests of users and the public interest as prescribed under section 2.24(e) and (f) of the Code, without significantly compromising Epic's legitimate business interests (section 2.24(a) of the Code). If, as Epic predicts, none of the prescribed events arise during the access arrangement period, a review of the access arrangement will not take place. If one of the prescribed events does arise, the ACCC will be able to make an assessment on the information then available. Such a review would necessarily have regard to Epic's legitimate business interests at that time, balanced against the other section 2.24 factors.

Accordingly, the ACCC proposes not to accept Epic's proposed removal of the existing major events trigger.

Proposed amendment A3.1

Epic must retain the existing major events trigger in the revised access arrangement.

¹¹¹ Epic Energy Submission #2, August 2004, paragraphs 3.11 (p.6). See also Epic Energy Submission #2, August 2004, paragraphs 2.20 (p. 3) and 3.11 (p. 6).

4. Information provision and performance indicators

4.1 Information provision

4.1.1 Code requirements

In conjunction with its proposed access arrangement, a service provider is required to submit access arrangement information in accordance with the criteria established in Attachment A of the Code. The service provider's access arrangement information must contain information that, in the opinion of the ACCC, is sufficient 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).

4.1.2 Epic's proposal

Epic has argued that:¹¹²

Given that the only reference tariff proposed is that for the FH Service and that this tariff was approved by the Queensland Minister as part of the approved tariff arrangement in 2000, Epic Energy is of the view that there is an ongoing derogation from the information disclosure requirements of the Code in the access arrangement information.

Consequently, Epic has only provided information regarding system capacity from category 5 of the information listed in Attachment A to the Code and required by section 2.7 of the Code.

4.1.3 ACCC's considerations

The ACCC considers that Epic is under an obligation to provide certain categories of access arrangement information. Contrary to Epic's submission, it is not derogated from the obligation to provide access arrangement information.

However, as Epic proposes to reclassify the AFT services as non-reference services, no tariffs would be established for those services. Further, as the full forward haul tariff was set by the Queensland Minister and is not currently subject to review by the ACCC, the majority of the information listed in Attachment A to the Code is not relevant to the current assessment. The provision of additional access arrangement information by the service provider would therefore not enhance the transparency of Epic's access arrangement.

The ACCC is satisfied that the access arrangement information would enable users and prospective users to understand the derivation of the elements in the proposed access

¹¹² Epic Energy Submission #1, August 2004, paragraph 2.26 (14) (p. 7).

arrangement, and form an opinion as to the compliance of the access arrangement with the provisions of the Code, in accordance with sections 2.6 and 2.7 of the Code.

Further, there have been no requests from interested parties for additional access arrangement information. In 2006, if Epic proposes to include any of the AFT services as reference services, it will need to submit more detailed information to enable interested parties to understand the derivation of proposed reference tariffs.

5. Draft decision

Pursuant to section 2.35(b) of the Code, the ACCC proposes not to approve Epic's proposed revisions to its access arrangement in their present form.

The amendments or the nature of amendments that would have to be made in order for the ACCC to approve the revisions to the access arrangement are recorded in this draft decision.

Appendix A:

The following interested parties provided submissions:

<i>Pre draft decision</i>	<i>[Date received]</i>
BHPB Minerals Pty Limited	10 August 2004
Xstrata Copper	11 August 2004
Epic Energy (confidential and public versions)	[16] August 2004
Energex Retail	18 August 2004
Enertrade	25 August 2004
Santos Limited	25 August 2004
Epic Energy (confidential and public versions)	24 August 2004
Epic Energy (confidential and public versions)	31 August 2004
Epic Energy (confidential and public versions)	6 September 2004
Epic Energy	[20] September 2004