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28 September 2000

Ms Kanwaljit Kaur  
Acting General Manager  
Regulatory Affairs – Gas  
Australian Competition and Consumer Commission  
PO Box 1199  
DICKSON ACT 2602

Dear Ms Kaur

**Re: Ballera to Wallumbilla Pipeline ACCC Issues Paper Submission**

Epic Energy notes that the Australian Competition and Consumer Commission (“the ACCC”) has recently published an Issues Paper for Epic Energy’s Ballera to Wallumbilla Pipeline in South-West Queensland (“SWQP”) and Duke Energy International’s Wallumbilla to Gladstone Pipeline.

Epic Energy wishes to address points raised in that paper and provide an explanation to the market for its decisions in relation to the Access Arrangement for the SWQP to assist in the submissions process. Epic Energy believes that any market response made on the basis of the Issues Paper alone will lack awareness of the relevant underlying considerations facing the SWQP and its derogated tariff.

This submission by Epic Energy deals exclusively with four matters raised in the Issues Paper:

- ?? the Queensland certification process;
- ?? the choice by Epic Energy of a single Reference Service offered within the Access Arrangement for the SWQP;
- ?? an Access Arrangement Information that only deals with Category 5 of Attachment A to the *National Access Code for Gas Pipeline Systems* (“the Code”); and,
- ?? duration of the SWQP Access Arrangement.

**1. Certification Process**

Epic Energy contends that the process that the National Competition Council (“NCC”) is currently undertaking in assessing the “effectiveness” pursuant to Part IIIA of the *Trade Practices Act, 1974* of the Queensland regime is irrelevant to the ACCC’s assessment of the SWQP Access Arrangement.

The ACCC's assessment of the Epic Energy's Access Arrangement should be limited to applying the law *as it stands* in Queensland. In other words, the "effectiveness" or otherwise of the Queensland regime is immaterial for the purposes of the assessment process. The law remains in force and effect regardless of an adverse recommendation by the NCC alone, and it is the law that both the regulator and service provider must comply with.

Epic Energy believes the NCC assessment of the Queensland regime must remain totally separate from any examination of Access Arrangements submitted by service providers in adherence to the law. Epic Energy contends that it is inappropriate to give any regard to the effectiveness of the regime as part of the current process.

## 2. Single Reference Service

The ACCC seek the market's response on Epic Energy's decision to offer a single Reference Service (Full Forward Haul Service, or FH1 Service) within the Access Arrangement. The ACCC rightly point out that this is just one of several services that were derogated by Queensland pursuant to the law. The other services derogated within the Access Principles are classified as "AFT" (Alternative Forms of Transportation) Services.

The AFT Services were included in the Access Principles in 1997, two years after the Full Forward Haul Service for the SWQP was created. It must be noted that these extra services were only included within the Access Principles as the consent of the Minister for Mines and Energy was necessary to enable Epic Energy to offer these services to shippers.

However, like the Full Forward Haul Service, the AFT Services are called "Reference Services" within the Access Principles. Epic Energy submits that the label of "Reference Services" as it appears in the Access Principles is a term of art – it is no more than a description.

At no point was there ever any intention on the part of Epic Energy or, as Epic Energy understands, the Queensland Government (the party who accepted and gazetted the derogations offered by Epic Energy) to classify the AFT Services as Reference Services, as that term is defined in the Code. The derogation reflects the understanding of the parties at the time the Access Principles were created.

The Reference Service(s) for the purposes of the Access Arrangement must still meet the criteria set out in section 3.2 of the Code. That is, a Reference Service must be a service that is **sought by a significant part of the market** [emphasis added].

Only those services on the SWQP that are sought by a significant part of the market meet the Code criteria of being a "Reference Service". The Reference Service offered by Epic Energy in the Access Arrangement – Full Forward Haul Service – is the service from which in excess of 95% of the revenue from the SWQP is obtained. All other services utilised on the SWQP, which includes the AFT services and others which are not otherwise listed together make up less than 5% of the revenue that Epic Energy earns from the pipeline.

Epic Energy therefore contends that the Full Forward Haul Service offered within the Access Arrangement is the only service sought by a significant part of the market and is thus the only service which meets the Code requirements for a Reference Service.

## 3. Access Arrangement Information

Epic Energy contends that a comparison of the approach taken by the Queensland Government as against the process normally taken under the Code is immaterial for the purposes of assessing the Access Arrangement which contains significant derogations from the Code. Further, the ACCC's comments that the lack of information is a "significant" issue does not go to the real issue – Epic Energy's tariffs and tariff policy were not determined by a Code mechanism,

but by a law of the state of Queensland. There is therefore no requirement upon Epic Energy to demonstrate compliance with the Code.

It is not a question of whether it is “reasonable” for Epic Energy to decide not to submit an Access Arrangement Information that complies with all the categories listed in Attachment A to the Code. Epic Energy believes it has complied fully with the law in submitting the Access Arrangement Information in relation to category 5 information only.

Epic Energy questions why the ACCC insists upon the preparation and submission of a full Access Arrangement Information when doing so adds no value whatsoever to the process and is no more than an added imposition on the resources of Epic Energy.

#### **4. Duration of the Access Arrangement**

There are several points that should be raised in response to the ACCC’s expressed concerns regarding the duration of the Access Arrangement’s review period.

##### ***Forecast Inaccuracy***

The ACCC poses the following question to the market:

*“Should the Commission require a mechanism be included to address the risk of forecasts on which the terms of the Access Arrangement were based and approved proving correct? If so, what type of mechanism?”*

Epic Energy believes the above statement has the potential to mislead the market. The derogated Access Principles already include a revenue sharing mechanism. This mechanism allows those users who hold Gas Transportation Agreements with terms in excess of five years to receive a revenue credit of at least 40% of revenue in excess of a threshold level.

Epic Energy notes that section 3.18 of the Code allows the regulator to require the insertion of a “trigger” to re-open the Access Arrangement and/or a revenue sharing mechanism in order to address the risks inherent in volume forecasts over a prolonged period of time.

Epic Energy contends that the revenue sharing mechanism within the Access Arrangement accords fully with this provision and that the ACCC should have informed the market of its existence.

In any event, Epic Energy questions why the ACCC has asked the market to address this question as the derogated Access Principles do not provide for any new mechanism to be inserted.

##### ***Five Year Review Periods***

Epic Energy takes exception to the ACCC’s claim on page 25 of the Issues Paper:

*“Normally, non-tariff elements are reviewed every five years – even where tariffs are fixed for longer periods.”*

Were the ACCC to take this approach with the SWQP and review the non-tariff elements of the Access Arrangement prior to the effluxion of the remaining 16 years of the derogation it would be acting outside of its powers conferred under the Code.

The Code provides that, pursuant to section 3.18 (as discussed above), for an Access Arrangement of a longer duration than five years, the regulator may include a defined event that serves to re-open the Access Arrangement or a revenue sharing mechanism. Where one of

these mechanisms is included in an Access Arrangement to reduce the risk of an inaccurate volume forecast the five yearly review is limited to an investigation by the regulator of whether an identified review event has occurred.

Section 3.18 does not provide the regulator with a wholesale review opportunity and it would be inappropriate for the regulator to so act.

### ***Identification of “Trigger” Events***

Epic Energy does not believe it appropriate for the ACCC to call for submissions on events to serve as a trigger for the company to resubmit its Access Arrangement. As the ACCC are aware, the Access Principles were made for a fixed period as a result of a competitive tender process won by Epic Energy.

It would be improper for the ACCC to seek to include as a trigger to prompt the re-opening of the Access Arrangement a recommendation that the Queensland regime is “ineffective”. As stated earlier this assessment does not of itself affect the Queensland law or the SWQP Access Arrangement.

There is no scope for the ACCC to seek a “back-door” method in which to re-open the Access Arrangement as the derogations from the Code clearly set the review period of the Reference Service.

### **Conclusion**

It is important for the market to be made aware of all the salient issues surrounding the application of the Queensland regime to the SWQP.

Epic Energy’s remains committed to working with the ACCC in its assessment of the Access Arrangement pursuant to the Queensland law. I can be contacted on (08) 9492 3880 to discuss any of the matters raised above.

Yours sincerely

**Alistair Butcher**  
**Regulatory Affairs Specialist**