



**BALLERA TO WALLUMBILLA NATURAL GAS PIPELINE
(South West Queensland Pipeline)**

**SUBMISSION#4
CLARIFICATION SUBMISSION**

PUBLIC VERSION

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1. Introduction

1.1 On 31 August 2004, Epic Energy received an email from the ACCC's asking the following questions in connection with the proposed revisions to the SWQP access arrangement and the submissions that have to date been made by the ACCC:

- (1) Proposed revisions to the extensions/expansions policy - what is the impetus for Epic's proposed revisions? I understand from your verbal response yesterday that the insertion of the word 'not' into clause 12.2 is, prima facie, to present Epic's general position that extensions and expansions should not form part of the covered pipeline. The revisions to clauses 12.3 and 12.4 are to ensure the access arrangement is consistent with section 10.1 of the Access Principles (attachment A to the access arrangement).
- (2) Paragraph 2.3 of Submission #2 - response to BHPB regarding services policy - I am a bit confused by Epic's characterisation of BHPB's submission (for example, on my reading, BHPB do not assert a very low probability of development of CSM) , but accept that the appropriate test for reference services is the test set out in section 3.3 of the Code. If upon re-reading BHPB's submission (and paragraph 2.3) Epic has further submissions to make, the ACCC would be open to accepting them. However I suspect that the issues have been addressed by Epic in other sections of its submissions.
- (3) Paragraph 2.17 of submission #2 - response to BHPB regarding extensions and expansions Epic has suggested that BHPB's reasoning 'ignores the fundamental principle of national competition policy - that is, that a service provider can not be compelled to fund an augmentation of infrastructure. However, I do not see any such reasoning in BHPB's submission which was concerned with coverage issues rather than funding issues. BHPB argues in its submission that, given the SWQP's strategic positioning, the absence of regulation could permit anti-competitive outcomes. Could you please clarify what was meant by paragraph 2.17 of its Submission #2?
- (4) Paragraph 4.9 of Submission #2 - concerning the route of a pipeline from Northern Australia. At paragraph 4.9 of Submission #2, Epic states that '... there is an expectation that any supply source from Northern Australia ... will be connected via the Carpentaria Pipeline from Mt Isa...'. However at the meeting of Tuesday 17 August 2004, we were told that the route and impact of a PNG pipeline were 'too uncertain to model'. Is it the case that paragraph 4.9 of Submission #2 is actually only referring to a supply of gas from the Northern Territory?
- (5) Paragraph 5.1 of Submission #2 - the swap - The last sentence of paragraph 5.1 reads: 'Since the signing of the SWAP agreement, the parties' discussions have centred only on access to capacity post 2007

and then only for volumes that will be in excess of those which are not covered by the swap agreement.' Can we assume that the 'not' in this sentence is a typographical error?

- 1.2 This submission answers these questions. It also provides some further evidence to support Epic Energy's submission that the SWQP is at risk of by-pass.
- 1.3 Please note that this is a confidential submission and is only to be used by the ACCC for the purposes of its assessment process. It is not to be provided to third parties without the prior written consent of Epic Energy.

2. Rationale for the proposed revisions to the extensions/expansions policy

2.1 The ACCC requests a better understanding of the rationale behind 2 aspects of the extensions/expansions policy.

2.2 First, what was the rationale for the insertion of the word “not” in clause 12.2.

2.3 Second, what was the rationale for the changes to clauses 12.3 and 12.4.

Rationale for the insertion of “not” in clause 12.2

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

2.5 There are several reasons for this.

2.6 Firstly, 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 face be part of the covered pipeline.

2.7 Secondly (and linked to the first reason), given the evidence put to the ACCC to date and as part of this submission and the lack of any substantiated evidence to the contrary, it is clear that Epic Energy has very limited market power and certainly has no ability to abuse any market power in connection with the building of expansions and extensions to the SWQP.

2.8 Thirdly, Epic Energy submits that for the proposed access arrangement period there is no practical difference between having the default position that expansions and extensions are to be prima face uncovered unless Epic Energy elects otherwise and the default position that they are to be prima face covered unless Epic Energy elects otherwise.

2.9 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 pre-determined the reference tariff for all expansions of capacity on the SWQP up to 110PJ/year (ie 8 compressors).” Accordingly it concluded that Epic Energy’s proposed policy on this point was consistent with the Code. Epic Energy does not submit that the position it is putting forward now creates any practical difference.

- 2.10 Epic Energy notes that the argument has been put in other forums that unless expansions or extensions were prima face treated as covered, the negotiation of terms as to capital contribution or surcharge between Service Provider and prospective Incremental User would occur in circumstances where the prospective user could not invoke the arbitration provisions of the Code and that this is inconsistent with the Code, particularly if a service provider was capable of exercising market power. This argument can only subsist if the ACCC adopts the interpretation that s.6.1 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 user and the Service Provider about the terms of any future expansion. Where the Arbitrator did have jurisdiction, it could require the construction of an expansion under s.6.22, having regard to the matters therein set out and the broader Code imperatives of s.6.15.
- 2.11 Epic Energy submits that such an argument does not exist on a proper construction of the Code. Moreover, based on the submissions provided by Epic Energy to date, there is no evidence to suggest that Epic Energy is in a position to exercise undue market power, particularly during the proposed access arrangement period.
- 2.12 Even if the proper construction of the Code leads to the conclusion that the arbitration provisions of the Code can not apply to "uncovered proposed extensions or expansions", Epic Energy submits that because it does not have the ability to exercise market power, the objectives of the Code will not be furthered if the current wording of this provision of the access arrangement is unaltered.

Rationale for the changes to clauses 12.3 and 12.4

- 2.13 As outlined in paragraph 2.26 in Submission #1, these changes were made to ensure consistency with the Access Principles in attachment A to the Original Access Arrangement.

3. Clarification of Submission #2

3.1 The ACCC has sought clarification of the following paragraphs of Submission #2:

- Paragraph 2.3 - response to BHPB regarding services policy
- Paragraph 2.17 – response to BHPB regarding extensions/expansions policy
- Paragraph 4.9 – the likely interconnection of supplies from Northern Australia
- Paragraph 5.1 – [deleted – confidential]

Clarification of Paragraph 2.3

3.2 Epic Energy claimed that BHPB asserts a very low probability of development of CSM **in the near future** because of the statement in the BHP Submission (see section 3) that developing coal seam methane resources in Central Queensland can be expected to form in the future (**perhaps** the near future).

3.3 Epic Energy does not intend to make further submissions on this point.

Clarification of paragraph 2.17

3.4 Epic Energy's further comments in section 2 of this submission provides further clarification.

Clarification of paragraph 4.9

3.5 Epic Energy's comments about the expected location for the connection of a Northern Australian gas supply with existing infrastructure in Queensland being with the Carpentaria Pipeline in Mt Isa was not referring to Papua New Guinea supplies but rather a supply from the Northern Territory.

3.6 Epic Energy submits that while there is a possibility for a pipeline supplying PNG gas to connect with the CGP at Mt Isa, as mentioned, it is too early to predict with certainty as to the location of its interconnection with existing infrastructure.

Clarification of paragraph 5.1

3.7 Epic Energy wishes to correct the last sentence of paragraph 5.1 of Submission #2 so that it reads as follows:

[deleted – confidential]



SWQP PROPOSED REVISED ACCESS ARRANGEMENT

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4. By-pass risk

- 4.1 Epic Energy has previously stated in submissions that it can not be argued that AFT Services (in particular a backhaul service) is likely to be sought by a significant part of the market because the SWAP agreement has the effect of bypassing the SWQP.
- 4.2 Epic Energy submits that there are other potential forms of bypass that give further credibility to the claim that AFT Services are not likely to be sought by a significant part of the market.
- 4.3 [deleted – confidential]
- 4.4 [deleted – confidential]
- 4.5 [deleted – confidential]
- 4.6 [deleted – confidential]
- 4.7 [deleted – confidential]