

Our Ref: MAPS/AA/EOT 130405
Your Ref:

Epic Energy South Australia Pty Limited
ACN 068 599 815
Level 8
60 Collins Street
Melbourne VIC 3000
PO Box 18206
Collins Street East
Telephone (03) 8626 8407
Facsimile (03) 8626 8454
Web Site www.epicenergy.com.au

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Mr Mike Buckley
General Manager
Gas Group
Australian Competition & Consumer Commission
PO Box 1199
DICKSON ACT 2602

Dear Mr Buckley

Revisions to Access Arrangement for Moomba to Adelaide Pipeline System

I am writing on behalf of Epic Energy South Australia Pty Ltd ('EESA') to seek an extension of time for submission to the ACCC by EESA of revisions to the Access Arrangement ('AA') for the Moomba to Adelaide Pipeline System ('MAPS').

Background

Under section 2.28 of the National Third Party Access Code for Natural Gas Pipeline Systems ('Code'), by the date provided for in the Access Arrangement as the Revisions Submission Date (or as otherwise required by an Access Arrangement), the Service Provider must submit to the Relevant Regulator proposed revisions to an Access Arrangement together with the applicable Access Arrangement Information.

Clause 1.2 of the MAPS AA provides that EESA will submit revisions to the AA to the Regulator on 1 July 2005.

Clause 1.3 of the MAPS AA provides that the revisions to the AA referred to in clause 1.2 are intended to commence on 1 January 2006.

Code permits extensions of time to be granted

EESA requests that the ACCC extend the time period referred to in section 2.28 of the Code pursuant to its powers under section 7.19 of the Code.

Section 7.19 provides:

'The Relevant Regulator may on one or more occasions, at its discretion, grant extensions to any time period in this Code that applies to a person other than the Relevant Regulator, the NCC or the Relevant Minister, provided that an application

for that extension has been received by it before the expiration of the time period in question. Time periods applying to the Relevant Regulator, NCC or Relevant Minister may be extended as otherwise provided in this Code.'

Precedents

EESA is aware of three previous occasions where a Relevant Regulator of a transmission pipeline has granted an extension of time under the Code for the submission of revisions to an Access Arrangement, namely the following cases:

- Moomba to Sydney Pipeline;
- South West Queensland Pipeline; and
- Dampier to Bunbury Natural Gas Pipeline.

Period of extension of time sought

EESA seeks a three month extension of time until 1 October 2005 (or such later date as the ACCC considers appropriate) for the submission of revisions to the MAPS AA.

Reasons for application

The reasons for the application are as follows.

EESA has made an application under sections 1.24 and 1.25 of the Code for revocation of coverage of MAPS as a Covered Pipeline under the Code. The application was made to the National Competition Council ('NCC') on 15 March 2005. If the Relevant Minister determines that coverage should be revoked, then the MAPS will cease to be a Covered Pipeline under the Code and it will therefore be unnecessary for EESA to submit revisions to the MAPS AA.

The timeline for consideration of the revocation application is as follows:

Step	Date
Application lodged	15 March 2005
NCC Issues Paper released	30 March 2005
Public submissions due	3 May 2005
NCC draft recommendations issued	7 June 2005
Submissions on draft recommendations due	21 June 2005
NCC final recommendation to Minister - within 14 to 28 days after issue of draft recommendation.	21 June to 5 July 2005 (unless time further extended)
Minister to make decision on NCC's coverage recommendation - within 21 days after receipt of NCC recommendation	12 July to 26 July 2005 (unless time further extended)

If the timetable issued by the NCC is unaltered the Minister's decision should be known by 26 July 2005, however, the Code permits the NCC and the Minister to further extend, on one or more occasions, the relevant period for decision making (see sections 7.16 to 7.18 of the Code).

Given that the NCC has already extended the time for the making of its draft recommendations, it is possible that the NCC may further extend this timetable, particularly given the complexity of the issues involved in the revocation application. EESA considers it likely that the Minister's decision may not be known until August 2005 or later.

The rationale for the particular extension of time sought in this letter is that the extension will enable a probable result (as indicated by the NCC's recommendation to the Minister) of the revocation application to be known before EESA has to undertake the bulk of the work that would be required if the MAPS continues to be a Covered Pipeline and must consequently submit revisions to the MAPS AA.

If the probable result of the revocation application was that the application would not be granted, then EESA would undertake the work necessary to enable EESA to submit the revisions to the MAPS AA by 1 October 2005 (or such other date as the ACCC may fix).

EESA believes that in all the circumstances the balance of convenience favours the ACCC granting an extension of time sufficient to enable the probable result of the revocation application to be known before EESA is required to submit revisions to the MAPS AA.

EESA asks the ACCC to take into account the following matters in exercising its discretion.

The ownership and management of EESA has changed since the process of drafting and approval of the MAPS AA was completed by the ACCC in 2002. In June 2004, Hastings Funds Management Limited ('Hastings'), through a subsidiary now called Epic Energy Holdings Pty Ltd, acquired ownership of EESA. The assets owned by Epic Energy Holdings Pty Ltd (including its interest in the MAPS) were rolled into a fund called the Hastings Diversified Utilities Fund ('HDUF'), and in December 2004 HDUF was listed on the Australian Stock Exchange.

The senior management of Epic Energy (including EESA) has entirely changed from 2004, with most of the senior management team having only been recently appointed. Epic Energy is also in the process of relocating its head office from Perth to Melbourne. The effect of these circumstances is to make more complex the process of formulation of revisions to the MAPS AA.

EESA estimates that costs in the order of \$700,000 may be incurred by it in relation to the revisions process. EESA will need to engage a range of external consultants (economic, accounting and legal) to assist it with the revisions process. Significant management time will be required to deal with the revisions process.

If the revocation application is successful, and the existing date for submission of revisions of 1 July 2005 is unaltered, it would render wasted (and unrecoverable) any expenditure incurred by EESA, and resources used by EESA, in connection with the revisions process. In addition, it would waste the time and resources of the ACCC in its consideration of the revisions.

The grant of an extension of time would avoid these consequences.

Lack of prejudice to other persons if extension of time is granted

EESA also considers that the grant of an extension of time would not materially prejudice any third parties.

EESA notes that the submission of revisions by 1 October 2005 would enable the timetable in the Code for consideration of the revisions to be completed before 1 January 2006. However, even if the ACCC was to extend the time for the taking of one or more various steps in the revisions process, and as a consequence the process was not completed by 1

January 2006, the existing MAPS AA (as drafted and approved by the ACCC and varied by the Tribunal) would continue to apply until the revisions process was complete.

As a practical matter, it is most unlikely that the reference tariff under a revised MAPS AA would be lower than the reference tariff under the existing AA. Therefore parties seeking services under the MAPS AA at the tariffs provided for in the current AA would not be disadvantaged by any delay beyond 1 January 2006 in the finalisation of revisions to the AA.

Further, the competitive position is such that it is unlikely that potential shippers would seek the reference service at the reference tariff under the MAPS AA either now or after 1 January 2006. No person has sought a reference service under the AA since it came into force in 2002. The competitive position is such that shippers are likely to be able to negotiate services with EESA at tariffs lower than the existing reference tariff. The factual basis for this is explained at length in EESA's revocation application submission (which is publicly available on the NCC's website). For example, reference is made at paragraph 2.10 of the application to the position that contracted volumes on the MAPS are forecast to decline from 418 TJ/day in 2005 to 194 TJ/day in 2006. In that environment, any delay beyond 1 January 2006 in finalisation of revisions to the MAPS AA is most unlikely to have any practical impact on existing or potential shippers.

EESA is therefore most confident that the extension of time sought by it would not adversely affect third parties.

Further information concerning extension application

If there is any aspect of this application which you wish to discuss with EESA or if there is any further information that the ACCC seeks for its consideration of the application, would you please advise me. If the ACCC considers that the grant of an extension should be made subject to conditions or assurances from EESA, we would also be pleased to address those issues.

I request that this application receive consideration by the ACCC as a matter of some urgency. Due to the lead time involved in undertaking the work necessary for the submission of revisions EESA, we would wish to know as early as possible the result of this application.

Yours sincerely

Stephen Livens
Manager Regulation, Risk & Insurance