

ExxonMobil
Gas Marketing

10 July 2002

Ms. K. Kaur
General Manager
Regulatory Affairs - Gas
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

Moomba to Sydney Pipeline
revised access arrangement
submission to ACCC by EAPL

Dear Ms. Kaur,

Thank you for the opportunity to comment on the revised access arrangement for the Moomba to Sydney Pipeline submitted by the East Australian Pipeline Ltd (EAPL) on 20 June 2002. While we appreciate that separate gas transportation agreements will be negotiated between EAPL and prospective users, the access arrangement provides principles under which such separate agreements would be negotiated. We therefore believe it is important that the access arrangement provides appropriate principles for balanced risk sharing between EAPL and users. The revised access arrangement proposed by EAPL does not provide such balanced risk sharing principles in the following key areas;

1. Under clause 6.13 EAPL is able to recover from a user its proportion of EAPL's costs associated with the introduction of full retail contestability. This clause does not provide any limitation on those costs that can be passed on to a user and should be clarified to only allow EAPL to recover its direct and reasonable costs associated with that particular user.
2. If a user has delivered gas within specification at the receipt point, then that user should be entitled to receive gas within specification at the delivery point. It has no control over whether EAPL will accept non specification gas and therefore should not be required to take on this risk. The liabilities for direct or indirect damages should be allocated to EAPL and the user appropriately as proposed in item 4 below.
3. Clause 23 of Attachment D requires notification of non specification gas at the receipt point but does not require notification of non specification gas at the delivery point if EAPL or the user become aware. Non specification gas at the delivery point could arise as a result of another user's injection. Clause 23 should be amended to require EAPL to notify the user if this has or is about to occur.

4. Clause 24 of Attachment D provides indemnity for EAPL by the user for non specification gas received at the receipt point from or on behalf of the user. This clause should be clarified to only apply to unauthorised non specification gas. In the case that EAPL authorises the delivery of non specification gas then EAPL should be liable for this decision.

Reciprocal clauses to clause 24 should be added requiring EAPL to indemnify the user for any loss, cost, expense or damage (including direct, indirect and consequential loss) which arises out of or in connection with:

- receipt by EAPL from or on behalf of the user of any quantity of authorised non specification gas at a receipt point; or
 - delivery of non specification gas at the delivery point (unless as a result of unauthorised non specification gas being received at the receipt point from or on behalf of the user).
5. While clause 26 of Attachment D defines custody and control of gas to be with EAPL between the receipt and delivery points, it is unclear whether the risk for the gas is with EAPL while it is in its custody and control. Clearly EAPL is in management and control of the pipeline and its operation and therefore risk should pass to EAPL while gas is under its custody and control. An example may be where a third party damages the pipeline with a resultant leak causing damage to persons and property. Liabilities for such an incident should appropriately remain with EAPL.
 6. Clause 60 of Attachment D proposes that a capacity charge relief will commence on expiry of 24 hours from the Force Majeure occurrence. Relief should occur from the point in time that EAPL can not offer the users full MDQ which should be the commencement of the Force Majeure period - otherwise the user is paying for a service that is not being provided.
 7. Clause 65 of Attachment D allows assignment of an transportation agreement by EAPL to a person holding an interest in the pipeline without the consent of the user. There is no test to ensure the appropriate technical and operational competency of the assignee. Assignment to a party without the appropriate technical and operational competence to operate and maintain a pipeline would place a significant risk on to the users.
 8. Clarification is required for Clause 73 of Attachment D to ensure that the limitation of liability applies generally and not just to gross negligence or wilful misconduct cases. Further, the user's liability should be limited in the case of authorised non-specification gas and exceptions to EAPL's limitation to liability should include authorised non-specification gas and authorised overruns.
 9. Clause 74 of Attachment D requires the user to carry all risk property damage insurance to a specified reasonable amount. The is too restrictive as there is no allowance for self insurance.

We believe that in its review of the revised access arrangements the ACCC should consider the risk sharing principles and the key areas highlighted in this submission and ensure appropriate principles are included within its final decision.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Chee-Hong Yap', with a stylized flourish at the end.

Chee-Hong Yap
Gas Marketing Manager – Cooper/Eromanga