

Final Approval

Access Arrangement for the Wallumbilla to Gladstone via Rockhampton Pipeline System (Queensland Gas Pipeline)

1 November 2001

File No:

C2000/993

Commissioners:

Fels
Shogren
Martin
Bhojani
Cousins
Jones

Table of Contents

1. Background	1
2. Duke's revised access arrangement.....	1
2.1 Assessment	2
3. The ACCC's Access Arrangement for the QGP	3
4. Final Approval	3
4.1 Commencement Date	3

1. Background

Duke Australia Operations Pty Ltd (Duke) applied to the Australian Competition and Consumer Commission (the Commission) for approval of its proposed access arrangement for the Wallumbilla to Rockhampton via Gladstone pipeline system on 17 August 2000. This pipeline is also known as the Queensland Gas Pipeline (QGP). The application was made under section 2.2 of the *National Third Party Access Code for Natural Gas Pipeline Systems* (the Code).

The Access Arrangement sets out the policies and terms and conditions on which Duke propose to make access to the QGP available to third parties.

The QGP is the subject of a Queensland Government derogation, which prevents the Commission from reviewing the reference tariffs and related areas of the access arrangement until the revisions submission date (2016). Therefore, the majority of the typically contentious aspects of an access arrangement were not open to Commission consideration. In particular, the Commission was constrained from any assessment of reference tariffs or reference tariff policy.

The Commission's assessment of the proposed access arrangement has been conducted in accordance with the requirements set out in the Code and has been based on information provided by Duke and interested parties. The consultation and assessment process undertaken by the Commission has included:

- release of an Issues Paper in September 2000;
- release of the Draft Decision (pursuant to s.2.13(b) of the Code) on the proposed access arrangement in April 2001, in which the Commission proposed five amendments be made in order for the access arrangement to be approved;
- release of the Final Decision on 1 August 2001, assessing the revised access arrangement Duke submitted in response to the Draft Decision. The Final Decision required two amendments to be made to Duke's revised access arrangement before it would be approved.

This Final Approval relies in part upon facts and analysis set out in the Final Decision and should be read in conjunction with that decision.

2. Duke's revised access arrangement

The Commission's Final Decision required two amendments to Duke's revised access arrangement. The first was amendments to clause 9 of the access arrangement to ensure that 'prospective users' as well as 'users' are able to make bare transfers of capacity. The second amendment was to include in the arrangement a list of specific major events that will trigger a review of the non-tariff elements of the access arrangement.

In response to the Commission's Final Decision, Duke submitted a revised access arrangement dated 6 September 2001. Duke amended clause 9 in the manner set out in the Commission's Final Decision.

With respect to major events that would trigger a review, however, Duke received legal advice that suggested the ACCC does not have the power to require the incorporation of such a list of major events triggers. Duke decided not to incorporate this amendment (amendment 2) in the revised access arrangement.

2.1 Assessment

Having received the revised access arrangement, the Commission is obliged under section 2.19 of the Code to issue a further final decision (which is this Final Approval). If the Commission is satisfied that the revised access arrangement either substantially incorporates the amendments specified or otherwise addresses to the Commission's satisfaction the matters identified in the Final Decision as being the reasons for requiring those amendments, it must approve the revised access arrangement. In any other case, the Commission must not approve the revised access arrangement and must draft and approve its own access arrangement.

Clearly Duke's revised access arrangement does not substantially incorporate the major events trigger amendment specified in the Final Decision. There is also no attempt to otherwise address the concerns underlying the amendment – other than to assert that the Commission does not have the power to require it.

The Commission has sought external legal advice from Counsel which confirms that the Commission does have the power to require the specification of major events in the access arrangement that would trigger a review of the non-tariff elements of the access arrangement.

The Queensland Government has determined in the derogation that the revisions submission date for the QGP access arrangement is the earlier of 31 August 2016 or six months before Duke reasonably expects the capacity of the pipeline will be greater than the 'nominal capacity'. It appears that 2016 is the far more likely date.

With such a long likely period before the next opportunity for review, the Commission would face a very difficult task to try and predict how the Queensland gas market may develop over that period and what impact such developments may have for the operation of the QGP. The Commission would then have to determine whether the terms and conditions proposed in the access arrangement are appropriate for all those circumstances.

It seems far more appropriate and sensible in these circumstances for the Commission to assess whether the proposed terms and conditions in the access arrangement are suitable in the current environment. If there are significant changes in the Queensland gas market that impact on the operation of the QGP over the next 15 years, then an assessment of whether the proposed terms and conditions remain the most suitable can best be made at that time.

The Code recognises the merit of this approach by making provision for revisions to be triggered by certain events prior to the Revisions Submission Date.

For these reasons, pursuant to section 2.19 of the Code, the Commission does not approve Duke's revised access arrangement.

As a result of this decision, section 2.20 of the Code now requires the Commission to draft and approve its own access arrangement for the QGP.

3. The ACCC's Access Arrangement for the QGP

As required by section 2.20(a) of the code, the Commission has drafted its own access arrangement for the QGP. In doing this, the Commission has sought to maintain the access arrangement as proposed by Duke to the greatest extent possible, while incorporating the major events trigger specified in the Commission's Final Decision.

This has meant that only clause one of the proposed access arrangement has been amended by the Commission – and in particular those elements relating to Revisions Submission Dates and Revisions Commencement Dates.

The Commission's access arrangement for the QGP is available from the Commission's website: <http://www.accc.gov.au>

4. Final Approval

For the reasons expressed in this Approval and in the Final Decision, the Commission has decided to approve its own access arrangement for the QGP under section 2.20(a) of the Code.

4.1 Commencement Date

Section 2.26 of the Code provides that decisions made by the Commission under section 2.20(a) are subject to review by the Australian Competition Tribunal under the Gas Pipelines Access Law. For this reason, an access arrangement drafted and approved by the Commission cannot commence for at least 14 days after the decision to approve it is made.

Subject to the Code and the Gas Pipelines Access Law, the Commission's decision to draft and approve the access arrangement for the QGP has effect from 19 November 2001.