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***INCITEC Submission: On The Proposed Roma To
Brisbane Pipeline Access Arrangements***

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1. Introduction

INCTIEC welcomes the opportunity to provide its views to the ACCC on the proposed Roma to Brisbane Pipeline Access Arrangements.

INCITEC is concerned with the significant deficiencies in the proposed Access Arrangement and Access Arrangement Information. Without adequate information disclosures and information on reference tariffs and reference tariff principles, gas users such as INCITEC, are unable to understand the derivation of their tariffs or assess that tariffs are fair and reasonable.

We believe that the proposed access arrangements are inconsistent with the objectives of the National Gas Code and should not be authorised in its present form by the ACCC.

2. Information Disclosure

INCITEC is a major gas user in Queensland and New South Wales and has consistently supported the key provisions of the National Gas Code, particularly Sections 2.6 and 2.7 relating to the provision of information in proposed Access Arrangements. There must be sufficient information in the Access Arrangement Information to enable users, such as INCITEC, to understand the derivation of their tariffs and to ensure that they are fair and reasonable.

Accordingly, INCITEC has required that information disclosure according to Attachment A of the National Gas Code (Information Disclosure By A Service Provider To Interested Parties) be provided so that we could also understand that capital and non-capital costs are fairly allocated as between customer classes and that overall, the proposed Access Arrangements comply with the objectives of the National Gas Code, viz:-

“To establish a framework for third party access to gas pipelines that:-

- a. facilitates the development and operation of a national market for natural gas; and
- b. prevents abuse of monopoly power; and
- c. promotes a competitive market for natural gas in which customers may choose suppliers, including producers, retailers and traders; and

- d. provides rights of access to natural gas pipelines on conditions that are fair and reasonable for both Service Providers and Users; and
- e. provides for resolution of disputes.”

Whilst a negotiated service is proposed to be offered for capacity from 101TJ/day to 118.5TJ/day (but no reference service is to be offered), the proposed Access Arrangements do not provide information which enable users to understand how requests for access will be treated. The absence of information in terms of Section 2.6 and 2.7 would also disadvantage potential users seeking negotiated services. These potential access seekers would be unable to negotiate acceptable tariffs without recourse to arbitration, with all the attendant costs and delays involved.

Overall, INCITEC believes that the current regulatory review cannot be comprehensive (in terms of meeting the objectives of the National Gas Code) in view of the proposed Queensland derogation exempting the network service provider from the requirements to submit Access Arrangement Information for capacity up to 101TJ/day.

3. Reference Tariffs And Reference Tariff Policy

It is a matter of major regret that the ACCC is not able to review or vary reference tariffs until the review date in 2006. Major gas users, including INCITEC, consider that Section 8 (Reference Tariff Principles) of the National Gas Code provide the means by which regulators and users are able to assess that the terms and conditions of access are fair and reasonable, and balance the interests of both network service providers and users. Thus, Section 8.1 states:-

“A Reference Tariff and Reference Tariff policy should be designed with a view to achieving the following objectives:-

- a. providing the Service Provider with the opportunity to earn a stream of revenue that recovers the efficient costs of delivering the Reference Service over the expected life of the assets used in delivering that Service;
- b. replicating the outcome of a competitive market;
- c. ensuring the safe and reliable operation of the Pipeline;

- d. not distorting investments decisions in Pipeline transportation systems of in upstream and downstream industries;
- e. efficiency in the level and structure of the Reference Tariff; and
- f. providing an incentive to the Service Provider to reduce costs and to develop the market for Reference and other Services.

To the extent that any of these objectives conflict in their application to a particular Reference Tariff determination, the Relevant Regulator may determine the manner in which they can best be reconciled or which of them should prevail.”

INCITEC agrees with the views of other stakeholders who have also expressed concerns generally with the Queensland derogations. For example, Envestra¹ has pointed out that derogations designed to protect the commercial interests of pipeline owners holding pre-existing contracts (prior to the National Gas Code) are not necessary as there is already a mechanism in the Code that recognises pre-existing contracts. Moreover, non-uniform regulatory arrangements would apply in Queensland, and would be inconsistent with the adoption of national approaches in pipeline regulation.

Ergon Energy² has also raised other concerns in relation to the Queensland derogation perse:-

- concerns that its customers not be deprived of the benefits of gas on gas competition because the proposed access arrangements act to frustrate that competition;
- there was no tender process for the Roma to Brisbane pipeline;
- do the reference tariffs satisfy Section 3.33(c) of the Code, if not can any deficiency in the Access Arrangement be justified as in the public interest in regards to any regional market.

INCITEC also notes that the ACCC considers that the estimated return on equity proposed for the Roma to Brisbane pipeline is “higher than could reasonably be expected in the circumstances and may be inconsistent with the pricing principles of the National Gas Code. Moreover, INCITEC notes that the National Competition Council has identified a number of

¹ Envestra. Letter To Mr Ed Willett, National Competition Council, 18 May 1999. ‘Certification of the Queensland Third Party Access Regime for Natural Gas Pipelines (Queensland Regime).’

elements of the Queensland derogations that may be amended before it could recommend that the Queensland Gas Pipeline Regime be certified as effective. The elements include the derogated tariffs, information disclosure, the length of some of the review periods and revenue sharing mechanisms.

4. Term And Review

INCITEC agrees with the Revisions Submission Date being 31 January 2006, provided derogations with respect to information disclosure and reference tariffs are withdrawn.

INCITEC supports a trigger mechanism which would require a network service provider to submit revisions to its Access Arrangement. Such a trigger mechanism would include earning a return on equity higher than the current range being earned (although INCITEC disagrees with such a high range for return on equity on the grounds that it is inconsistent with the objectives of the Code and is excessive).

5. Conclusion And Recommendation

INCITEC is disappointed that the Queensland derogations with respect to the Roma-Brisbane pipeline mean that the Commission is unable to properly assess the proposed Access Arrangements in terms of compliance with the National Gas Code. Provisions in the National Gas Code relating to information disclosure and reference tariffs are significant elements, which can allow users to understand the derivation of their tariffs and assess that they are fair and reasonable. In that regard, the Queensland derogations by preventing transparency in the terms and conditions of the proposed access arrangements are not in the interest of users nor consistent with the Competition Policy principles.

INCITEC recommends that the ACCC should not authorise the proposed access arrangements until the identified deficiencies are rectified or until the National Competition Council's report on the Certification application is released and appropriate amendments made to the Queensland Gas Pipeline Access Regime.

² Ergon Energy. Letter To Mr Ed Willett, National Competition Council, 'Certification of the Queensland Gas Pipeline Access Regime as an effective regime?'