

11 July 2001

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Australian Competition and Consumer Commission
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Dear Ms Kaur

MOOMBA TO ADELAIDE PIPELINE SYSTEM (MAPS) ACCESS ARRANGEMENT

I refer to the revised subject document and associated Issues Paper emailed by the ACCC on 28 May 2001 inviting comment.

As you are aware Origin Energy has provided a significant level of comment on previous versions of the Access Arrangement and we are pleased to review the current document in light of those earlier submissions. Our comments are set out below.

As the ACCC is aware, the process of concluding an Access Arrangement for the MAPS has become protracted as Epic Energy has effectively tried to entrench unacceptable detailed haulage contract terms in its Access Arrangement under the auspices of the National Third Party Access Code for Natural Gas Pipeline Systems (the Code).

In its Issues Paper the ACCC has noted the substantial level of amendments by Epic in its latest draft. However, whilst some of the amendments have served to address concerns raised by interested parties and requested by the ACCC in its Draft Decision, much of the change is in the form of drafting boilerplate that fails to address unacceptable terms that have been proposed by Epic for some time.

Even though the current capacity of the MAPS is fully contracted through to the end of 2005, Origin remains concerned that the terms of this Access Arrangement should reflect the anticipated needs of the market from 2006 onwards. The current Access Arrangement will no doubt form the basis of haulage agreements negotiated prior to 2006, when the next Access Arrangement will take effect. There will be a need to maintain consistency between many terms in this Access Arrangement and future revisions to accommodate haulage contracts that apply beyond any revision date.

As you are aware Origin made a detailed submission on the previous version of the MAPS Access Arrangement covering all of the issues that we felt needed to be dealt with to

deliver a reasonable and workable Access Arrangement. Subsequent to that submission Origin met with Epic over several sittings to discuss our concerns. At those meetings Origin felt that Epic were genuinely accepting of our concerns and willing to identify solutions to the issues raised. However the latest document falls very significantly short of meeting the expectations generated at those discussions.

Origin is very concerned that Epic has failed to address to any significant extent the majority of our concerns raised at the last review. Origin notes in particular that Epic, in its submission, dismissed a large number of Origin's comments as being "relatively low level matters which do not go to the question of whether Epic Energy's proposed access arrangement is reasonable and complies with the Code". Origin submits that the Draft Access Arrangement in its current form is unacceptable and does not meet the requirements of the Code in that it fails to take into account the interests of users and that the proposed terms and conditions are not reasonable.

The Commission must ensure that the approved Access Arrangement represents a balanced position between the legitimate interests of all parties. To this end, we recommend that the Commission should attend a structured debate between Origin and Epic at which each party could put its position and the ACCC provide the ruling to Epic as to the changes (if any) it should make to the Access Arrangement to accommodate each point.

Our current submission (attached) is based upon Origin's previous response by analysing the extent to which our concerns have been taken into consideration. We have also reviewed the document for any new issues that have been introduced in the latest draft. In addition several key concerns have been further addressed in a separate confidential submission. While we maintain that all of Origin's original concerns are important to meeting the needs of the current and future shippers (as is required by the Code), the key issues are absolutely vital to that objective.

The Commission has asked for submissions on several matters outlined in its Issues Paper dated 25 May 2001. To the extent that these are not already covered in the attachment, Origin provides its comments on those matters as follows.

Extensions/expansions policy – implications for future tariffs

Origin does not believe that any proposed or possible future capital expenditure on expansion should be rolled-in, in advance of its completion.

Origin does not believe that any of the criteria listed in section 8.16(b) of the Code would be likely to be satisfied. Condition (i) is clearly stated by Epic not to apply and we see no reason to doubt that assessment. Condition (ii) appears to be aimed at an enhancement that, in addition to providing additional capacity for a new user, provides significant additional security of supply to all users. An example of this might be the addition of a third compressor at a compressor station. In Origin's view, a normal increase by looping or increased compressor power would be unlikely to fulfil that criterion. We do not believe that Condition (iii) applies and we are not aware that additional pipeline development is claimed to be required to maintain safety, integrity or the contracted capacity of services by Epic or any user.

Further, Origin does not believe that the Commission should be pre-empting any commercial decisions by parties as to whether additional capacity on this or other pipelines into the SA market should be built. Importantly, the true economic drivers of the cost of new capacity on the MAP compared with alternative possibilities should not be distorted by increasing charges for existing capacity on the MAP to subsidise expansion of that facility. This would artificially impact the market conditions for the development of new pipeline services into South Australia.

Part haul and back haul service – options under consideration

Origin is of the view that, in relation to the inclusion of back-haul services, it is impossible to provide a Reference Tariff for this service initially. We believe that this should be dealt with as a service where the additional revenue, net of true costs (negative as well as positive) should be rebated 80% to the firm users at the time such services become required. Origin has no objection to the Commission outlining the principles to be applied in the determination of such services if and when they are ultimately required.

In conclusion Origin reiterates that in its latest draft of the MAPS Access Arrangement, Epic Energy has failed to respond adequately to the comments put forward by Origin and other users in previous submissions. In view of the very protracted nature of this process, Origin believes that the Commission, in bringing the matter to a satisfactory close should require Epic to make the amendments that in the Commission's view are necessary in such a detailed Access Arrangement, having regard to the valid needs of users. Origin, for its part is prepared to participate in a discussion or debate with Epic, with the Commission's involvement to facilitate this process.

Please do not hesitate to contact me if you have any questions or wish to discuss this matter with us.

Yours sincerely

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Attachment

Origin's Comments on the extent to which the revised Draft Access Arrangement has addressed issues raised by Origin in its submission on the Draft Decision.

1. General Comments

These are overall comments and little notice of them seems to have been taken by Epic.

2. Commencement and Review

Our suggestion has not been accepted. A period of only six months (from 1 July 2005 to 1 January 2006) is provided from the submission by Epic of proposed changes until they are due to come into effect. It is clear that only minor changes could be dealt with in that time frame. It is therefore imperative that the details of Origin's previous submission are adequately addressed at this stage before the final decision is made on this Access Arrangement. This has not occurred to date.

3. Capacity of the Pipeline System

It does not appear that any of Origin's concerns have been addressed.

4. Definition of MDQ

This is a critical issue. Origin currently delivers gas through 21 delivery points and would be severely adversely affected unless this issue is addressed. Clause (b) of the definition should be modified to read, "not less than the sum of the User's Primary Capacity Quantities divided by 1.25".

5. Services Policy

No issues addressed.

Additional comment to our item 5.2: If the Retention Allowance provisions are not altered, it is absolutely essential that all (or at least 80%) of the revenue from additional services (and penalty charges) is rebated to the users since they are providing, through the retention allowance, the fuel gas which represents most of the actual costs of these services.

6. IT Service Rebate

The definition of Spare Capacity has been resolved but the other issues have not been addressed.

7. Queuing Policy

The previous queuing policy has been replaced. Origin notes that the new policy is much less prescriptive and more flexible.

8. Contracting for IT Service

Origin's point for IT Service has been addressed. However, there does not now appear to be an equivalent process for FT Service.

9. Creditworthiness Requirements.

Epic's response to Origin's submission indicated that a new section on Insurance would be introduced. This does not appear to have occurred.

10. Extensions and Expansions.

While the change to the policy renders the specific comments inapplicable, Origin notes the lack of any control on the Service Provider to provide the expansions on reasonable terms.

11. Principle Receipt and Delivery Obligations of User.

The majority of the comments refer to Schedule 2. No revised copy of this document has been sighted. The comments therefore largely remain unsatisfied at this stage. Origin notes the inclusion of Clause 12.4(b) to overcome one anomaly.

12. Principle Receipt and Delivery Obligations of Service Provider.

This comment has been satisfied.

13. Rights of Service Provider.

Comments not addressed.

14. Gas Quality.

All comments except 14.2 remain unaddressed. The addition of clause 15.2(b) goes some way towards satisfying our concern in 14.2 but should be amended to require approval of all users providing that the approval cannot unreasonably be withheld.

15. Retention Allowance.

This issue remains a serious concern to Origin. The only satisfactory way for this pipeline is for the pipeline operator to be responsible for System Use Gas. The wide variety of applications and patterns of use of different users, the fact that there are wide variations in system use requirements from day to day and, importantly, that the system use gas peaks frequently precede the pipeline delivery peaks, means that the free provision of system use gas will always fall unfairly across users.

By far the best method of dealing with this issue is for the Pipeline owner to provide system use gas. This puts the economic driver on the one party who can control it. The operation of this pipeline is complex with multiple compressors and wide variability of loads on a daily and even hourly basis. It would be impossible for any user to challenge the reasonableness of any quantity of System Use Gas taken by the Pipeline Owner.

If the Pipeline Owner succeeds in retaining this provision, in spite of it being a far less satisfactory position, then the following minimum requirements must be introduced to ensure that the system is as fair as it can be to all users even if the total quantity is not minimised:

- o System Use gas must be reconciled monthly to ensure that each party has provided its pro-rata share of system use gas for the month.
- o All penalty charges imposed by the pipeline owner must be rebated (minimum 80%) to the users since they have provided the excess gas, which is the main cost involved in coping with unscheduled or sub-optimal activities.

16. Forecasting, Nominating & Scheduling.

Origin's comments have not been addressed. The timing issues are more of a nuisance than otherwise but the variation rights and draconian drop-dead positions need to be satisfied.

17. Imbalance and Zone Variations

It appears that the only concession Epic has made is that the imbalance charge is waived if the imbalance was caused by Epic's negligence or breach. Origin continues to maintain that these arrangements need significant change.

18. N/a

19. Allocation of Receipt Point Quantities.

Concerns are comparatively minor.

20. Allocation of Delivery Point Quantities

Epic has made no changes and the proposed procedure remains totally unacceptable.

21. Priority of Service.

Concerns are comparatively minor.

22. Curtailment and

23. Operational Flow Orders

Epic has made some concession on being reasonable but most of Origin's comments need to be addressed further.

24. Trading Policy.

Origin's comments have only been partially addressed and further modification is still required.

25. EBB.

These comments have not been addressed.

26. Receipt and Delivery Points

Some issues have been partially addressed but only for the duration of the Existing Agreements. Epic should not assume it can necessarily dictate terms beyond that time.

27. Receipt and Delivery Points (Schedule 8)

This issue has not been addressed.

28. Payment.

The new 32.1(a) is acceptable but 32.1(b) is inconsistent with it and should be deleted.

29. Force Majeure.

Origin's comments remain largely unaddressed

30. Liability and Indemnity.

Epic has amended clause 35.3 to provide that where a party is fraudulent or shows a wilful disregard of its obligations under the Agreement, it is liable to the other party for all damages arising out of that fraud or wilful disregard. Acts of a User which may be construed as demonstrating a wilful disregard for its obligations under the Agreement would include taking delivery of overrun, excess imbalance and failure to comply with a curtailment notice. In Origin's view clause 35.3 should only apply to Epic's wilful disregard of its obligations under the Agreement. User's liability for breaches of the Agreement (both wilful and otherwise) is already dealt with in other clauses of the Agreement. Epic is already adequately protected where Users go into overrun, excess imbalance or fail to comply with OFO or curtailment notices by the default charges and penalties that apply under the Agreement. Users should not be subject to further exposure created by clause 35.3. In short, in Origin's view clause 35.3 should only apply to breaches of the Agreement by Epic. Liability for a User's wilful breach is already dealt with by other clauses in the Agreement.

Origin notes that its concerns in relation to the width of the indemnity clauses have not been addressed, particularly in relation to ensuring that Epic's actions for which the User is required to provide indemnity are only carried out as a last resort when all other reasonable actions have failed.

31. Default and Termination.

Origin's comments do not appear to have been addressed.

32. Dispute Resolution.

Origin's comments do not appear to have been addressed.

33. Assignment.

Origin's comments do not appear to have been addressed.

34. Access to Information.

Origin's comments do not appear to have been addressed.

35. Notices.

Origin's issues have been satisfactorily addressed and Origin has no further comment on this point.

36. GST Clause.

Origin's comment does not appear to have been addressed.