



Hon. Terry Mackenroth MP



Queensland
Government

FAXED
30.5.01

Deputy Premier
Treasurer
and Minister for Sport

Our Reference: T0100914

30 MAY 2001

Ms K Kaur
Acting General Manager
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Australian Competition and Consumer Commission
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**MINISTERIAL
URGENT**

Dear Ms Kaur

Thank you for your letter of 17 April 2001 providing Queensland Treasury the opportunity to comment upon the Commission's Draft Decision on the proposed Access Arrangement for the Wallumbilla to Gladstone via Rockhampton Pipeline (Queensland Gas Pipeline).

I am advised by my department there is one aspect of the Draft Decision of concern, namely, proposed amendment A3.5 of the decision. This amendment states the access arrangement must include a list of specific major events which will trigger a review of the non-tariff elements of the access arrangement. The proposed amendment would appear not to comply with section 3.17 of the Third Party Access Code for Natural Gas Pipelines ("the Code").

Section 3.17 (Review and Expiry of the Access Arrangement) of the Code requires the Relevant Regulator, when approving the revisions submission date and the revisions commencement date, to have regard to the objectives in section 8.1 (General Principles) of the Code. No other matters are stated as requiring consideration. Section 8.1 sets out the objectives which are to be met in designing reference tariffs and reference tariff policy. The Regulator may, having had regard to section 8.1, require:

- (i) an earlier revisions submission date or revisions commencement date than proposed by the service provider; or

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- 4 JUN 2001

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- (ii) specific major events be defined which may trigger an obligation to submit revisions prior to the revisions submission date.

In relation to (i), the Draft Decision correctly notes the effect of section 58(4) of the *Gas Pipelines Access (Queensland) Act 1998* ("the Act") is the Commission is unable to review the revisions commencement date and the revisions submission date established for the access arrangement.

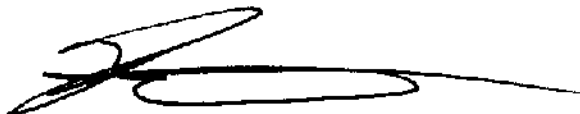
In relation to (ii), by referring specifically to section 8.1 of the Code, the wording of clause 3.17 suggests the "specific major events" must be events, and only such events, which will have an impact on the reference tariffs and reference tariff policy, thus requiring a review of the reference tariffs. Accordingly the proposed requirement for inclusion of events to trigger a review of non-tariff matters is likely to contravene the Code. Certainly, the derogation of the reference tariffs and reference tariff policy under section 58(4) of the Act would render inappropriate any requirement to include events which would trigger a review of the reference tariffs and reference tariff policy.

Leaving aside the issue of the legality of requiring the identification of events which would trigger a review of the non-tariff elements, there is a question as to the nature of any review in response to the events proposed by the Commission ie. the interconnection of another pipeline with the Queensland Gas Pipeline, and the introduction of a significant new gas supply source to one of the Pipeline's markets.

The prospect of additional competition from new infrastructure or new gas supplies would raise the question of whether lesser regulatory requirements, or revocation of coverage, would be appropriate if there will be sufficient market discipline placed on the owner of the subject pipeline to curb any misuse of market power. This potential outcome would need to be considered in view of the recent decision by the Australian Competition Tribunal in relation to the Eastern Gas Pipeline (EGP). In this decision, the Tribunal considered Code coverage of the EGP was not necessary given the level of competition the owners faced from alternative gas supplies and pipelines.

If you have any queries in relation to this matter, please contact Mr Tim Spencer on telephone (07) 3225 1249 of Queensland Treasury.

Yours sincerely



TERRY MACKENROTH