



# **Final Decision**

## **Epic Energy Queensland Pty Ltd access arrangement revisions for the Ballera to Wallumbilla Natural Gas Pipeline (South West Queensland Pipeline)**

**Date: 1 December 2004**

**File No:**  
C2004/768

**Commissioners:**  
Sylvan  
King  
McNeill  
Smith  
Willett

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## Abbreviations and glossary of terms

ACCC	Australian Competition and Consumer Commission
access arrangement	Arrangement for third party access to a pipeline provided by a pipeline owner/operator and approved by the relevant regulator in accordance with the Code
access arrangement information	Information provided by a service provider to the relevant regulator pursuant to section 2 of the Code
AFT service	An alternative form of transport service to the full forward haul service (e.g. back haul, interruptible, part haul)
Ballera to Wallumbilla Natural Gas Pipeline Code	Also known as the South West Queensland Pipeline or SWQP <i>National Third Party Access Code for Natural Gas Pipeline Systems</i>
covered pipeline	Pipeline to which the provisions of the Code apply
derogation	A legislative exemption from compliance with specified obligations set out in the Code
Epic	Epic Energy Queensland Pty Ltd
NCC	National Competition Council
prospective user	A person who seeks or who is reasonably likely to seek to enter into a contract for a Service and includes a user who seeks or may seek to enter into a contract for an additional service
reference service	A service which is specified in an access arrangement and in respect of which a reference tariff has been specified in that access arrangement
reference tariff	A tariff specified in an access arrangement as corresponding to a reference service and which has the operation that is described in sections 6.13 and 6.18 of the Code
reference tariff policy	A policy describing the principles that are to be used to determine a reference tariff

service	<p>(a) a service provided by means of a covered pipeline including:</p> <ul style="list-style-type: none"> <li data-bbox="735 286 1362 389">(i) haulage services (such as firm haulage, interruptible haulage, spot haulage and back haul); and</li> <li data-bbox="735 412 1362 479">(ii) the right to interconnect with the covered pipeline; and</li> </ul> <p>(b) services ancillary to the provisions of such services, but does not include the production, sale or purchasing of natural gas</p>
service provider	The person who is the owner or operator of the whole or any part of the pipeline or proposed pipeline
SWQP	South West Queensland Pipeline – also known as the Ballera to Wallumbilla Pipeline

## Summary

Epic Energy Queensland Pty Ltd submitted proposed revisions to its access arrangement for the Ballera to Wallumbilla pipeline in south-west Queensland (also known as the South West Queensland Pipeline) to the Australian Competition and Consumer Commission (ACCC) for approval under the *National Third Party Access Code for Natural Gas Pipeline Systems (Code)* on 9 July 2004.

As a result of a derogation by the Queensland Government, the reference tariffs applicable to Epic's full forward haul service are not reviewable by the ACCC until 2016.

On 6 October 2004, the ACCC made a draft decision under section 2.35(b) of the Code that it proposed not to approve the revisions, and proposed two amendments.

On 18 November 2004, Epic submitted amended revisions to the ACCC that incorporate the revisions proposed by the ACCC in its draft decision.

The ACCC has made a final decision, pursuant to section 2.38(b)(i) of the Code, that it approves Epic's amended revisions.

The access arrangement as revised will become effective on 15 December 2004.

# 1. Introduction

## 1.1 The Ballera to Wallumbilla pipeline

The Ballera to Wallumbilla pipeline supplies gas from the Cooper Basin in south-west Queensland; it is also known as the South West Queensland Pipeline (SWQP). The pipeline is 756 km long, with a diameter of 406 mm and maximum allowable operating pressure of 15 Mpa. It interconnects with the Carpentaria Gas Pipeline at Ballera and with the Roma to Brisbane Pipeline and Wallumbilla to Gladstone Pipeline at Wallumbilla.

The SWQP was constructed in 1996 by Tenneco Gas Australia and is now owned and operated by Epic Energy Queensland Pty Ltd (Epic), which is currently owned by HUT3 Pty Ltd (Hastings Funds Management Limited), a majority owned subsidiary of Westpac Banking Corporation. However, on 8 November 2004 an initial public offering opened for the Hastings Diversified Utilities Fund (which includes Epic).

## 1.2 Access arrangement review

The access arrangement describes the terms and conditions on which Epic makes access to its pipeline available to third parties.

On 9 July 2004, Epic submitted to the Australian Competition and Consumer Commission (ACCC) proposed revisions to its access arrangement and access arrangement information for the SWQP. Revisions to this access arrangement were due to be submitted by 11 June 2004. On 4 June 2004, Epic requested an extension until 9 July 2004 which the ACCC granted.

The ACCC is required to assess the access arrangement and associated access arrangement information against the principles in the *National Third Party Access Code for Natural Gas Pipeline Systems* (Code). This review, however, is of revisions that relate to 'AFT services' only. In accordance with the legislative exemptions established by section 58 of the *Gas Pipelines Access (Queensland) Act 1998*, a review of all other provisions including the primary reference service in the access arrangement is not scheduled until 2016. This means that the reference tariff and reference tariff policy for the full forward haul service have not been reviewed by the ACCC in this process.

On 6 October 2004, the ACCC made a draft decision pursuant to section 2.35(b) of the Code that it proposed not to approve Epic's proposed revisions to its access arrangement. The ACCC released a draft decision document which also set out two amendments it proposed to be made in order that it approve the revised access arrangement and the reasons for its decision.

A major focus of the current assessment has been Epic's proposal to reclassify a group of reference services known as AFT services so that they would no longer be reference services. Under the Code, reference services have associated reference tariffs. Epic's proposal would remove the obligation for the service provider to publish tariffs for these services. However, as discussed further in chapter 3, Epic has included a new clause in

the amended revisions to its access arrangement it submitted in response to the draft decision that provides that it will not negotiate tariffs for AFT services in excess of the existing reference tariffs (subject to normal escalation).

### 1.3 The assessment process

Under the Code, the ACCC is required to:

- inform interested parties that it has received the proposed revisions to the SWQP access arrangement from Epic (parties were notified on 23 July 2004 with the distribution of an issues paper);
- publish a notice in a national daily paper which at least describes the covered pipeline to which the proposed revisions to the access arrangement relates; states how copies of the documents may be obtained; and requests submissions by a date specified in the notice (the notice was published in the *Australian Financial Review* of 14 July 2004);
- after considering submissions received, issue a draft decision which either proposes to approve or not approve the proposed revisions and states the amendments (or nature of the amendments) which have to be made to the revisions in order for the ACCC to approve them;<sup>1</sup>(the draft decision not to approve Epic's proposed revisions to its access arrangement was made on 6 October 2004 and included two proposed amendments);
- after considering additional submissions, issue a final decision that either approves or does not approve the proposed revisions (or amended revisions) and states the amendments (or nature of the amendments) which have to be made to the revisions in order for the ACCC to approve them; and
- if the amendments are satisfactorily incorporated in amended revisions, issue a final approval. If not, the ACCC may draft and approve its own revisions to the access arrangement. See sections 2.31 to 2.48 of the Code for further details on the assessment process.

It is important to note that under section 58 of the *Gas Pipelines Access (Queensland) Act 1998*, the reference tariffs and reference tariff policy for the forward haul reference service have been determined by the Queensland Minister and cannot be reviewed in this current process. This is discussed in sections 1.3.2 and chapter 2 of the draft decision and in chapter 2 of this document.

The ACCC made its draft determination based on information supplied by Epic, submissions from interested parties and its own analysis. The ACCC invited submissions in response to the draft decision. However, the only submission received was made by the service provider.

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<sup>1</sup> Where revisions are proposed by a service provider that are not required by the access arrangement (for example, as part of a scheduled review), the ACCC is not required to propose amendments that would be necessary for regulatory approval to be granted. Likewise, there is no further final decision (which is also known as a final approval) for revisions proposed voluntarily.

Pursuant to section 2.38(b)(i) of the Code, the ACCC's final decision is to approve Epic's amended revisions to its access arrangement for the SWQP lodged in accordance with section 2.37A of the Code on 18 November 2004. Accordingly, a further final decision (also known as a final approval) is not required.

#### **1.4 Access arrangement documentation**

All public submissions are available from the ACCC's website ([www.accc.gov.au](http://www.accc.gov.au)). They are also placed on the public register held by the Code Registrar.

Copies of the revisions application and associated documents are available from the ACCC's website and may be obtained by contacting ACCC Gas Branch administration on telephone (02) 6243 1233 or fax (02) 6243 1205, or by e-mail to: [swqp@accc.gov.au](mailto:swqp@accc.gov.au).

Any other inquiries should be directed to Mr Luke Griffin on (08) 9325 0633.



## 2. Background

### 2.1 Regulatory framework

#### 2.1.1 Relevant legislation and regulatory bodies

The legislation and relevant documents regulating access to the Queensland natural gas transmission industry are:

- the Code, under which transmission service providers are required to submit access arrangements to the ACCC for approval;
- the *Gas Pipelines Access (South Australia) Act 1997*;<sup>2</sup> and
- the *Gas Pipelines Access (Queensland) Act 1998*.

The Code bodies and appeals bodies in Queensland with respect to transmission pipelines are:

- the ACCC – regulator and arbitrator;<sup>3</sup>
- the National Competition Council – Code advisory body;
- the Commonwealth Minister – coverage decision maker;
- the Federal Court – judicial review; and
- the Australian Competition Tribunal (the Tribunal) – administrative review.

#### 2.1.2 Queensland derogations

In 1997 the Queensland Government was a signatory to the Natural Gas Pipelines Access Agreement – a Council of Australian Governments intergovernmental agreement to implement the Code. In accordance with this agreement, the Queensland Government passed the *Gas Pipelines Access (Queensland) Act 1998*, which came into effect on 19 May 2000.

The *Gas Pipelines Access (Queensland) Act 1998* applies the *Gas Pipelines Access Law* (comprising the Code and the legal framework for its operation) in Queensland, as well as regulations governing issues of specific relevance to Queensland such as the nomination of regulatory bodies. In addition, the *Gas Pipelines Access (Queensland) Act 1998* makes a number of amendments to the *Petroleum Act (Queensland) 1923* and the *Gas Act (Queensland) 1965* to create a regulatory framework consistent with the Code.

The *Gas Pipelines Access (Queensland) Act 1998* established a number of derogations from the Code. In particular, section 58 of the Act provides that the initial reference tariffs for several transmission pipelines were to be approved and gazetted by the

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<sup>2</sup> South Australia acted as ‘lead legislator’ for the national gas access legislation.

<sup>3</sup> The ACCC is also regulator and arbitrator with respect of transmission pipelines in the other States and Territories with the exception of Western Australia.

Queensland Minister for Mines and Energy rather than complying with the access pricing principles – and related regulatory process – in the Code. As a result, the reference tariffs for Epic’s SWQP forward haul service are not reviewable by the ACCC until 2016. The reference tariffs and reference tariff policy for AFT services have not been reviewable until now.

While the derogation applying to the ACCC’s assessment of tariffs for AFT services will conclude on 11 December 2004, the ACCC can only determine appropriate reference tariffs for these services if they are reference services in accordance with the Code. Epic’s amended revisions to its access arrangement, once approved, will result in only one reference service, the full forward haul service. The reference tariff for this service is derogated until 2016.

### **2.1.3 Certification of the Queensland Gas Access Regime**

On 25 September 1998, in accordance with the *Natural Gas Pipelines Access Agreement*, the Queensland Premier applied to the National Competition Council (NCC) for certification of the effectiveness of the Queensland Third Party Access Regime for Natural Gas Pipelines (the Queensland regime). If a regime is certified as effective, services cannot be declared for access under Part IIIA of the *Trade Practices Act 1974*.

In considering the effectiveness of the Queensland regime, the NCC was required to apply the relevant principles in the Competition Principles Agreement. The NCC made its final recommendation to the Minister regarding certification of the Queensland regime on 21 November 2002. The Minister is yet to release a decision on the effectiveness of the Queensland regime.

The ACCC's consideration of the access arrangement revisions for the SWQP is not affected by the status of the effectiveness of the Queensland regime.

## **2.2 Criteria for assessing a revised access arrangement**

The ACCC may approve proposed revisions to an access arrangement only if it is satisfied that the access arrangement as revised contains the elements and satisfies the principles set out in sections 3.1 to 3.20 of the Code. These are summarised below. Revisions to an access arrangement cannot be opposed solely on the basis that the access arrangement as revised would not address a matter that section 3 of the Code does not require it to address.<sup>4</sup> Subject to this, the ACCC has a broad discretion in accepting or opposing a revised access arrangement.

An access arrangement, or a revised access arrangement (including amended revisions to an access arrangement), must include the following elements:

- a policy on the service or services to be offered which includes a description of the service(s) to be offered;

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<sup>4</sup> See section 2.46 of the Code.

- a reference tariff policy and one or more reference tariffs;<sup>5</sup>
- terms and conditions on which the service provider will supply each reference service;
- a statement of whether a contract carriage or market carriage capacity management policy is applicable;
- a trading policy that enables a user to trade its right to obtain a service (on a contract carriage pipeline) to another person;
- a queuing policy to determine users' priorities in obtaining access to spare and developable capacity on a pipeline;
- an extensions and expansions policy to determine the treatment of an extension or expansion of a pipeline under the Code;
- a date by which revisions to the access arrangement must be submitted; and
- a date by which the revisions are intended to commence.

In considering proposed revisions to the access arrangement, the ACCC must take into account the provisions of the access arrangement and, pursuant to section 2.46, the factors set out in section 2.24 of the Code:

- the service provider's legitimate business interests and investment in the covered pipeline;
- firm and binding contractual obligations of the service provider or other persons (or both) already using the covered pipeline;
- the operational and technical requirements necessary for the safe and reliable operation of the covered pipeline;
- the economically efficient operation of the covered pipeline;
- the public interest, including the public interest in having competition in markets (whether or not in Australia);
- the interests of users and prospective users; and
- any other matters that the ACCC considers relevant.

If approving amended revisions to an access arrangement lodged pursuant to section 2.37A of the Code, after considering any submissions received by the due date, the regulator must be satisfied that the amended revisions:<sup>6</sup>

- incorporate or substantially incorporate the amendments specified by the regulator in its draft decision; or

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<sup>5</sup> A reference tariff operates as a benchmark tariff for a particular service and provides users and prospective users with a right of access to the specific service at the specific tariff. Reference tariffs are normally assessed against the reference tariff principles in section 8 of the Code. In this instance, however, the reference tariffs and reference tariff policy for the forward haul service have been derogated from the operation of the Code by Queensland legislation until 2016. Reference tariffs and reference tariff policies for AFT services are required only if they are reference services.

<sup>6</sup> See section 2.38A of the Code.

- otherwise address to the regulator’s satisfaction the matters the regulator identified in its draft decision as being the reasons for requiring the amendments specified in the draft decision.

### **2.3 The draft decision**

After assessing Epic’s proposed revised access arrangement against the Code (consistent with the outline presented in section 2.2), the ACCC proposed not to approve the revised access arrangement for the SWQP. Pursuant to section 2.35(b) of the Code, the ACCC proposed two amendments which were set out in the relevant sections of the draft decision. The ACCC also invited Epic to make a number of minor editorial changes to its proposed access arrangement revisions.

Chapter 3 sets out the ACCC’s analysis of Epic’s amended revisions to its access arrangement in response to the ACCC’s draft decision.

### **2.4 Submissions post draft decision**

In its draft decision, the ACCC invited interested parties to make further submissions by 27 October 2004. Only one submission was received after the draft decision, Epic Energy Submission #6, October 2004.

### 3. Assessment of Epic's amended access arrangement revisions

Epic lodged amended revisions to its access arrangement on 18 November 2004. The amended revisions include changes in response to the amendments proposed in the draft decision, changes to the clause concerning commencement of the revised access arrangement and other minor changes. These are assessed in turn below.

#### 3.1 Proposed amendment regarding tariffs for AFT services

The draft decision proposed the following amendment:

##### Proposed amendment A2.1

Epic must add the new clause proposed in submission #5 to section 6.1 of its access arrangement.

The new clause originally proposed by the service provider in response to concerns raised by interested parties states that:<sup>7</sup>

- (d) In making available any of the Services referred to in paragraph 6.1(a)(ii), Epic Energy will not require tariffs for the following Services higher than those approved by the Queensland Minister pursuant to section 58 of the Gas Pipelines Access (Queensland) Act 1998 (subject only to escalation as if each Service were a Reference Service):
- Class BH1 Service
  - Class BZ1 Service
  - Class FZ1 Service
  - Class IT1 Service
  - Class IZ1 Service

The ACCC's consideration of Epic's proposal that AFT services would no longer be classified as reference services with reference tariffs was provided on pages 18-22 of the draft decision.

##### 3.1.1 Submissions after the draft decision

The service provider made a submission on 27 October 2004.<sup>8</sup> No other submissions were received after the draft decision. Epic's submission briefly reiterated its view that AFT services should not be reference services. Epic also noted that it had originally proposed the amendment.

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<sup>7</sup> Epic Energy Submission #5, September 2004, (pp 1-2).

<sup>8</sup> Epic Energy Submission #6, October 2004.

### **3.1.2 ACCC considerations**

Section 2.38A provides that the regulator may approve amended revisions to an access arrangement only if it is satisfied that the amended revisions either (substantially) incorporate the amendments specified or otherwise address the reasons given by the regulator for the amendment.

As Epic has inserted the new clause as proposed in its submission #5 without alteration, the ACCC considers that Epic's amended revised access arrangement of 18 November 2004 incorporates proposed amendment 2.1.

## **3.2 Proposed amendment regarding the major events trigger**

The draft decision proposed the following amendment:

### **Proposed amendment A3.1**

Epic must retain the existing major events trigger in the revised access arrangement.

Clause 13(c) of the access arrangement currently defines a major events trigger that would facilitate a review of non-derogated elements of the access arrangement for the SWQP under certain circumstances. Epic's proposed revisions to its access arrangement lodged on 9 July 2004 proposed removing clause 13(c). Without the review trigger, elements of the access arrangement that are relevant to only the full forward haul service could not be reviewed until 2016 unless Epic voluntarily initiates revisions to its access arrangement before then. This issue was discussed in section 3.6 of the draft decision (pages 36-41).

### **3.2.1 Submissions after the draft decision**

The service provider made a submission on 27 October 2004.<sup>9</sup> No other submissions were received after the draft decision. Epic did not make any comment concerning the substance of the amendment but noted that it had a narrower interpretation of the scope of a review arising from the major events trigger than that presented in the draft decision.<sup>10</sup>

### **3.2.2 ACCC considerations**

As noted above, section 2.38A states that the regulator may approve amended revisions to an access arrangement only if it is satisfied that the amended revisions either (substantially) incorporate the amendments specified or otherwise address the reasons given by the regulator for the amendment. Epic has included the relevant clause in its amended revised access arrangement.

Accordingly, the ACCC considers that Epic's amended revised access arrangement complies with proposed amendment 3.1.

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<sup>9</sup> Epic Energy Submission #6, October 2004.

<sup>10</sup> Epic Energy Submission #6, October 2004, p.2.

### **3.3 Other changes reflected in the amended revisions**

#### **3.3.1 Amendment to clause 4 concerning commencement**

Clause 4 of Epic's proposed revised access arrangement (which was submitted on 9 July 2004) stated that the access arrangement would take effect on the later of the date that an approval under section 2.42 of the Code becomes effective or 11 December 2004.<sup>11</sup> Epic has amended Clause 4 such that if the amended revised access arrangement is approved under section 2.38 of the Code before 11 December 2004, it will take effect on the date that approval becomes effective (pursuant to section 2.48 of the Code).

Section 2.42 would only be applicable if the ACCC's final decision was to not approve Epic's revisions and Epic did not submit amended revisions to the ACCC's satisfaction. The ACCC would then be required to issue a further final decision. Section 2.48 provides for a minimum of 14 days between the time of the regulator's decision to approve revisions to an access arrangement and the time they come into effect.

As the ACCC's final decision is to approve Epic's amended revisions to the access arrangement pursuant to section 2.38 of the Code, a further final decision is unnecessary. This amendment is consistent with approval of the amended revised access arrangement at the final decision stage and the amended revisions will become effective on 15 December 2004 (14 days after the final decision).

#### **3.3.2 Metering schedule**

On pages 24 and 25 of the draft decision, the ACCC noted that it had contracted Sleeman Consulting to assess proposed amendments to the metering standards in Annexure B to the access arrangement. Sleeman Consulting advised that the proposed changes were reasonable. However, the report also suggested some improvements to the metering schedule. Epic has incorporated several of these amendments to Annexure B in its amended revised access arrangement.

#### **3.3.3 Typographical and minor editorial changes**

Epic has corrected a number typographical and formatting errors in its amended revised access arrangement.

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<sup>11</sup> Clause 13(b)(i) of the access arrangement as approved by the ACCC in 2002 specifies a revisions commencement date of 11 December 2004.

## **Final decision**

Pursuant to section 2.38(b)(i) of the Code, the ACCC approves Epic's amended revisions to its access arrangement.

The access arrangement as revised will become effective on 15 December 2004.



## Appendix A:

The following interested parties provided submissions:

<i>Pre draft decision</i>	<i>[Date received]</i>
BHPB Minerals Pty Limited	10 August 2004
Xstrata Copper	11 August 2004
Epic Energy (confidential and public versions)	[16] August 2004
Energex Retail	18 August 2004
Enertrade	25 August 2004
Santos Limited	25 August 2004
Epic Energy (confidential and public versions)	24 August 2004
Epic Energy (confidential and public versions)	31 August 2004
Epic Energy (confidential and public versions)	6 September 2004
Epic Energy	[20] September 2004
<i>Post draft decision</i>	<i>[Date received]</i>
Epic Energy	27 October 2004