



**BALLERA TO WALLUMBILLA NATURAL GAS PIPELINE  
(South West Queensland Pipeline)**

**SUBMISSION #1  
REVISED ACCESS ARRANGEMENT AND ACCESS  
ARRANGEMENT INFORMATION**

**PUBLIC VERSION**

**AUGUST 2004**

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## **1. Introduction**

1.1 On 9 July 2004, Epic Energy Queensland Pty Ltd (“Epic Energy”) submitted to the Australian Competition and Consumer Commission (“Regulator”), in accordance with section 2.28 of *the National Third Party Access Code for Natural Gas Pipeline Systems* (“Code”), proposed revisions to the Access Arrangement for the Ballera to Wallumbilla Natural Gas Pipeline (“South West Queensland Pipeline” or “SWQP”).

1.2 The revisions proposed by Epic Energy are revisions to the Access Arrangement drafted and approved, on 4 June 2002, by the Regulator under section 2.20(a) of the Code (“Original Access Arrangement”).

1.3 Clause 13 of the Original Access Arrangement states:

*The revisions submissions date is:*

*(i) 11 June 2004 for revisions relating to AFT Services; and*

*(ii) 30 June 2016 for all other revisions to the Access Arrangement.*

1.4 The revisions to the Original Access Arrangement which Epic Energy has now proposed are revisions relating to AFT Services.

1.5 This submission:

- Sets out Epic Energy’s understanding of the scope of the Regulator’s role in reviewing the proposed revised access arrangement and the basis for that understanding; and
- Outlines Epic Energy’s reasons for proposing revisions to the AFT Services of the Original Access Arrangement for the SWQP.

1.6 Epic Energy would be pleased to discuss this submission or any aspect of the proposed revisions with the Regulator.

## 2. The Scope of the Regulator's Role - Revisions relating to AFT Services

2.1 Epic Energy's proposal for revisions to the AFT Services of the Original Access Arrangement for the SWQP is consistent with the terms of the derogations from the *Gas Pipelines Access Law* set out in Annex I of the *Natural Gas Pipelines Access Agreement* made on 7 November 1997 between the Commonwealth Government and the Governments of the States and the Territories.

2.2 In respect of the SWQP, Annex I of the *Natural Gas Pipelines Access Agreement* provides:

- Epic Energy will be required to establish an access arrangement in accordance with the Code and, for this purpose, the tariff and tariff-related sections of the existing access principles for the SWQP are to be rewritten as reference tariffs (and reference tariff policy) for reference services to conform, as closely as possible, to the Code, while preserving the existing tariff principles embodied in the original access arrangements;
- the access arrangement established in accordance with the Code, including the rewritten tariff and tariff-related sections of the existing access principles will be submitted to the Regulator, as required by the Code, under the following conditions:
  - reference tariffs (and reference tariff policy) will be those taken from the existing access principles and will be included in the deeming provisions of the Queensland access legislation; they will not be subject to public and Regulator scrutiny until the nominated review date in the access arrangement; and
  - non-tariff related matters will be submitted to the Regulator for consideration in the normal manner.

2.3 The *Gas Pipelines Access (Queensland) Act 1998* implemented the *Gas Pipelines Access Law* in Queensland. The 1998 Act also gave effect to the derogations of Annex I of the *Natural Gas Pipelines Access Agreement*.

2.4 Section 58 of the *Gas Pipelines Access (Queensland) Act* therefore required that:

- the Queensland Minister for Mines and Energy approve a tariff arrangement for the SWQP;
- the approved tariff arrangement be taken to be approved under the *Gas Pipelines Access Law* as the reference tariff and reference tariff policy for the access arrangement to be submitted under the law for the SWQP until the revisions commencement date for the access arrangement established in accordance with the Code; and

- the revisions submission date and the revisions commencement date set out in the reference tariff policy be taken to be the revisions submission date and the revisions commencement date for the access arrangement established in accordance with the Code.
- 2.5 On 9 June 2000, the Queensland Minister for Mines and Energy approved a tariff arrangement for the SWQP. The approved tariff arrangement was taken to be the reference tariff and reference tariff policy of the access arrangement. The reference tariff and reference tariff policy were set out in the Access Principles attached to the Original Access Arrangement as Annexure A.
- 2.6 It should be noted that Access Principles contained a number of tariffs for services which were described as “reference services”. In relevant submissions made to the Regulator as part of its assessment of the Original Access Arrangement, Epic Energy explained the basis for the inclusion of the tariffs for these services:
- “the definition of Reference Tariffs prior to the imposition of the Code and after its establishment are quite different and can not be linked. The derogated version of [the term] Reference Tariffs prior to the inception of the Code is a descriptive term without intended legal substance. No opportunity was offered to Epic Energy to revise the tariff arrangement made under the Petroleum Act 1923 [ie the access principles], given that it was to be subjected retrospectively to a different regime under the [Qld Act]...”*
- 2.7 Therefore, it can not be said that the inclusion of any of the Services in the Original Access Arrangement was as a result of the Regulator undertaking an assessment of whether any of the Services described in it satisfied the requirements of the Code for services.
- 2.8 The reference tariff policy set out in the Access Principles specified the revisions submission date for the access arrangement. The revisions submissions date was:
- for revisions relating to AFT Services, 11 June 2004 or such earlier date as is agreed to by the service provider (Epic Energy) and the Regulator; and
  - for all other revisions to the Original Access Arrangement, 30 June 2016 or such earlier date as is agreed to by the service provider and the Regulator.
- 2.9 As noted in section 1 of this submission, clause 13 of the Original Access Arrangement recorded that the Revisions Submission Date was to be:
- 11 June 2004 for revisions relating to AFT Services; and
  - 30 June 2016 for all other revisions to the Access Arrangement.
- 2.10 Under section 2.28 of the Code, Epic Energy was to submit revisions to the Original Access Arrangement for the SWQP by the Revisions Submission Date.

Clause 13 of the Original Access Arrangement states that, for revisions relating to AFT Services, the Revisions Submissions Date is 11 June 2004.

- 2.11 At Epic Energy's request, the Regulator exercised its discretion to extend the date for compliance with section 2.28 of the Code until 9 July 2004.
- 2.12 The Original Access Arrangement itself makes no reference to AFT Services. The Services Policy of the Access Arrangement lists six reference services. These are:
- Forward Haul Service (Class FH1);
  - Back Haul Service (Class BH1);
  - Interruptible Transportation Service (Class IT1);
  - Forward Part Haul Service (Zonal) (Class FZ1);
  - Back Part Haul Service (Zonal) (Class BZ1); and
  - Interruptible Part Haul Service (Zonal) (Class IZ1).
- 2.13 The term "AFT Service" is, however, defined in the Access Principles (which is a schedule to the Original Access Arrangement). AFT Service means an alternative form of transportation service to Full Forward Haul Service.
- 2.14 The Access Principles define Full Forward Haul Service (designated Class FH1 – Forward Haul Service). They also define, and fix a reference tariff for, each of five services. These five services are:
- Class BH1 – Back Haul Service;
  - Class IT1 – Interruptible Transportation Service;
  - Class FZ1 – Forward Part Haul Service (Zonal);
  - Class BZ1 – Back Part Haul Service (Zonal); and
  - Class IZ1 – Interruptible Part Haul Service (Zonal).
- 2.15 The Access Principles do not state that any of these five services is an AFT Service. However, because a tariff was fixed for each of them by the Minister as part of the approved tariff arrangement, the Regulator concluded that, in accordance with the terms of the approval of the tariff arrangement by the Queensland Minister Mines and Energy, each of the services was a reference service for the purposes of the Access Arrangement for the SWQP.<sup>1</sup>

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<sup>1</sup> Australian Competition and Consumer Commission, *Final Decision Access Arrangement proposed by Epic Energy Queensland Pty Ltd for the Ballera to Wallumbilla Pipeline System*, 28 November 2001, pages 10 – 12.

2.16 In reaching this conclusion, the Regulator explicitly identified the five services listed in paragraph 3.2 as AFT Services.

2.17 On 12 June 2002, Epic Energy wrote to the Regulator requesting further explanation of:

- its interpretation of what was meant by “revisions relating to AFT services”; and
- how the Regulator would assess any aspect of the revisions to the Access Arrangement for the SWQP that Epic Energy was required to lodge on 11 June 2004 in so far as those revisions related to AFT Services and to the Full Forward Haul Service.

2.18 In its response, dated 17 June 2002, the Regulator advised:

*An “AFT Service” is defined in the Access Principles for the SWQP as:*

*“an alternative form of Transportation Service to a Full Forward Haul Service.”*

*The Commission understands this to mean that the five services other than the Full Forward Haul Service described in the Access Principles are AFT Services.*

2.19 The Regulator also noted that:

*. . . it is clear from the Access Principles for the SWQP that the Revisions Submissions Date of 11 June 2004 applies only with respect to “revisions relating to AFT Services”, while the Revisions Submission Date of 30 June 2016 applies with respect to “all other revisions to the Access Arrangement”.*

2.20 Given this interpretation of clause 13 of the Original Access Arrangement, the Regulator advised Epic Energy that:

*Under s. 2.28 of the Code it is, in the first instance, up to Epic to decide what proposed revisions should be submitted to the Commission for approval in 2004. Epic might, for example, take the view that AFT Services are not likely to be sought by a significant part of the market and that, accordingly, the Access Arrangement should contain no Reference Tariffs for these Services. Alternatively, Epic might elect to submit revised Reference Tariffs for some or all of the AFT Services. Whether the Commission would approve either set of proposed revisions would depend on the circumstances prevailing in 2004 and the outcome of the consultation and assessment process in Section 2 of the Code.*



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2.21 In light of the above, Epic Energy has taken the following services to be AFT Services:

- Back Haul Service (Class BH1);
- Interruptible Transportation Service (Class IT1);
- Forward Part Haul Service (Zonal) (Class FZ1);
- Back Part Haul Service (Zonal) (Class BZ1); and
- Interruptible Part Haul Service (Zonal) (Class IZ1).

2.22 Epic Energy has therefore proposed, and submitted to the Regulator, revisions to those parts of the Original Access Arrangement which deal with each of the five services listed in paragraph 3.18.

2.23 Consistent with clause 13 of the Original Access Arrangement and given the limited scope of the Regulator's role during this regulatory approval process, Epic Energy has not sought to propose revisions to other aspects of the Access Arrangement, as they are not within the scope of the Regulator's role. The only exception is in relation to revisions to correct typographical or logical errors or as a result of changes in law, which if not corrected, would render certain parts of the access arrangement difficult to understand.

2.24 In the revisions it has submitted, Epic Energy has removed these five services from the list of Reference Services offered under the Services Policy of the Access Arrangement (see paragraph 6 of the proposed revised Access Arrangement). Each of these five services and their associated tariffs have been removed as a "reference service" and a "reference tariff" respectively because it is not a service that is likely to be sought by a significant part of the market. An analysis of the market for services provided using the SWQP is presented in the next section of this submission.

2.25 Epic Energy has also made some other revisions to the access arrangement other than those referred to in the immediately preceding paragraph. These amendments are either:

- Themselves directly amendments relating to AFT Services; or
- Consequential amendments as a result of making the amendments referred to in the immediately preceding paragraph.

2.26 These other revisions are:

#### **Access Arrangement revisions**

- (1) Amending paragraph 2 of the access arrangement so that it provides a more fulsome background to the approval of the approved tariff arrangement by the Minister pursuant to section 58 of the Act.

- (2) Paragraph 4 revises the commencement date for the revised Access Arrangement.
- (3) Inserting a new paragraph 10.2 to make it clear that the terms and conditions only apply to the FH1 Reference Service.
- (4) Changing paragraphs 12.3 and 12.4 to achieve consistency with the Access Principles.
- (5) Changing the revisions submission date and revisions commencement date in paragraph 13.
- (6) Removal of the trigger events in paragraph 13. Given the relatively short proposed Access Arrangement Period, and the fact that Epic Energy has not received a formal request that would see any of the trigger events contained in the Original Access Arrangement materialising during this proposed period, Epic Energy can not see any benefit to them being included.

#### **Access Arrangement Annexure A revisions**

- (7) Section 1 – removal of the definition of “Actual System Load Factor” – in the Original Access Arrangement, this term only was used in relation to AFT Services.
- (8) Section 1 – revision of the definition of Pipeline to correctly reflect the extensions/expansions policy
- (9) Section 3.1 – While Epic Energy is of the view that none of the AFT Services are Services that are likely to be sought by a significant part of the market, Epic Energy has sought to maintain the commitment to negotiate for AFT Services and to enter into contracts for these services in certain instances.
- (10) Sections 6 – 8 – These provisions have been revised to make it clear that they do not apply to AFT Services.
- (11) Schedules 1-4 – these have been revised as a result of there being no reference tariff for any of the AFT Services.

#### **Access Arrangement Annexure B revisions**

- (12) Section 12 – these have been amended to reflect the fact that the customer reporting system is now established.
- (13) Section 13.2 – these revisions are as a consequence of the removal of the reference tariffs for AFT Services.



**Access Arrangement Information**

- (14) Given that the only reference tariff proposed is that for the FH Service and that this tariff was approved by the Queensland Minister as part of the approved tariff arrangement in 2000, Epic Energy is of the view that there is an ongoing derogation from the information disclosure requirements of the Code in the access arrangement information.
  
- (15) Sections 1 and 2 – these have been revised to more fulsomely outline the rationale behind the proposed revisions.

### 3. History of inclusion of AFT Services in Original Access Arrangement

- 3.1 It is important to understand the history behind the inclusion of the AFT Services and the associated reference tariffs in the Original Access Arrangement in order to understand the rationale behind Epic Energy's proposed revisions to the Access Arrangement.
- 3.2 The history was outlined in various submissions made to the Regulator by Epic Energy as part of the regulatory approvals process for the Original Access Arrangement. Copies of the relevant extracts of these submissions are attached for ease of reference in **Attachment 1**.
- 3.3 In summary, the position is as follows:
- The Access Principles were approved under a different regime to the Code. That regime used the term reference services but it had a meaning different to the meaning contained in the Code.
  - In addition, the prior regime required the Minister to approve all services entered into in the pipeline that were not included in the Access Principles. To overcome the additional regulatory approval process and in order to facilitate the development of the market for transportation services, Epic Energy sought to include as many services as possible in its Access Principles – hence the inclusion of the AFT Services in the Access Principles.
  - These Access Principles were then approved by the Minister as the approved tariff arrangement under section 58 of the Gas Pipelines Access (Queensland) Act 1998.
  - Each of the AFT Services never underwent the assessment of whether it was a service likely to be sought by a significant part of the market such that the Reference Tariff Policy should have included in it a "reference tariff" for each Service.
- 3.4 Accordingly, Epic Energy submits that in assessing whether there should be reference tariffs and services for services other than the FH1 Service in the proposed Access Arrangement, no regard should be had to the fact that the Reference Tariff Policy and the Service Policy of the Original Access Arrangement did contain such tariffs and reference services.
- 3.5 Instead, the Regulator must only apply the Code and the Law in determining whether to approve Epic Energy's proposed Services Policy and the Reference Tariff and Reference Tariff Policy.

#### **4. Market analysis**

4.1 In order for the Regulator to properly assess Epic Energy's position in its proposed revised Access Arrangement that there are no services other than the FH1 Service which are likely to be sought by a significant part of the market, Epic Energy provides the following market analysis of existing and forecast contracted capacity for the proposed access arrangement period.

[Deleted – confidential]

4.2 [Deleted – confidential]

4.3 [Deleted – Confidential], is a foundation shipper, and has a reserved capacity of approximately [Deleted – confidential] for Forward Haul Service (Class FH1 Service). [deleted – confidential] revenue from this service was approximately 95% of the total revenue earned from transportation services on the pipeline.

4.4 [Deleted – confidential]

4.5 [Deleted – confidential]

4.6 In 2001, Epic Energy commissioned an interconnection between the SWQP and the Carpentaria Pipeline, at Ballera, to allow gas sourced in South East Queensland to be supplied to customers in Mount Isa. [Deleted – confidential]

4.7 [Deleted – confidential]

4.8 The only significant current use of the SWQP, in terms of the volume of gas transported, and in terms of revenues earned by Epic Energy, is the provision of Forward Haul Service to Santos for the supply of gas from the Moomba field to customers in Brisbane and Gladstone.

#### **Future prospects**

4.9 Epic Energy is continuing to market the gas transportation services of the SWQP.

4.10 With the increasing use of gas in electricity generation and the Queensland Government's stated objective of increased gas usage, Epic Energy has sought gas transportation opportunities which might also use park and loan and imbalance services provided using the SWQP. Park and loan services, in particular, are potentially of value to the operators of peaking power stations, which must be available for dispatch at short notice, and before normal pipeline gas deliveries can be scheduled. They are provided from unutilised line pack, but have the limitation that firm service shippers have the "first call" on transportation capacity. Park and loan service is therefore an interruptible service.

4.11 [Deleted – confidential]

- 4.12 [Deleted – confidential]
- 4.13 [Deleted – confidential]
- 4.14 [Deleted – confidential]
- 4.15 Epic Energy is examining the installation of back pressure control on the SWQP to reduce or eliminate the pressure drop resulting from any lowering of delivery pressure by the South West Queensland producers. However, the market in Mount Isa is small, and no users or potential users of gas have indicated a preparedness to contract for supplies through the interconnection to enable Epic Energy to recover the costs of back pressure control.
- 4.16 [Deleted – confidential]
- 4.17 Although it has continued to market the services of the SWQP, Epic Energy does not expect any significant increase in demand for those services from existing users of the Pipeline. [Deleted – confidential]
- 4.18 In view of these limited prospects, Epic Energy has sought to develop the market for the services of the SWQP in other ways.

**Ballera to Moomba Interconnect**

- 4.19 In 2002, Epic Energy began developing proposals for a new gas pipeline, between Ballera and Moomba, interconnecting the SWQP and the Moomba to Adelaide Pipeline System. Epic Energy has been. This new pipeline – the BMI – was expected, in the short to medium term, to allow Queensland producers, particularly producers of coal seam methane, to market gas in South Australia. If sufficient interest were found for interconnection with the Moomba to Sydney Pipeline, it was also expected to allow those producers to market gas in New South Wales.
- 4.20 The BMI would further reduce the dependence of the South Australia gas market (and possibly also the New South Wales market) on Moomba gas supplies. In the longer term, the BMI could allow proponents of a future northern gas supply (from, for example, the Carnarvon Basin, the Timor Sea, or Papua New Guinea) to market gas into South Australia, Victoria and New South Wales.
- 4.21 [Deleted – confidential]
- 4.22 [Deleted – confidential]
- 4.23 [Deleted – confidential]
- 4.24 [Deleted – confidential]
- 4.25 [Deleted – confidential]
- 4.26 [Deleted – confidential]

- 4.27 TXU's April 2004 announcement, and Origin Energy's announcement, on 6 May 2004, that it had signed a heads of agreement for the swapping of gas with Queensland producers, [deleted – confidential]

**Other market opportunities**

- 4.28 [Deleted – confidential]
- 4.29 [Deleted – confidential]
- 4.30 [Deleted – confidential]

**Effect of Swap Arrangement on the market for transportation services on SWQP**

- 4.31 Epic Energy is of the view that as the gas markets of Eastern Australia become increasingly integrated, there will be more and more opportunities for commercial "swap" arrangements that will minimise physical flow of gas on pipelines.
- 4.32 The first large-scale swap deal was announced by Origin and Santos in May 2004. Epic Energy understands that Origin (through subsidiary OCA) had in December 2002 entered into a contract to supply AGL in NSW with up to 340 PJ of CSM from Origin's Bowen Basin tenements over a period of 15 years. Epic understands that this gas would notionally flow via a backhaul shipment along the SWQP pipeline, then via a newly-constructed Ballera to Moomba dry gas pipeline and subsequently on to AGL's NSW markets via the Moomba to Sydney pipeline. However under the gas swap agreement between Origin and Santos, SWQ gas will be delivered via Moomba to meet the Origin/AGL contract while Origin's CSM will be supplied to the head of the Roma to Brisbane Pipeline in order to meet the SWQ gas parties' contractual commitments in south east Queensland.
- 4.33 Epic Energy understands that the Santos/Origin swap deal covers up to 200PJ in total over a period ending 2011. This covers the reduction in throughput that Epic Energy expects will occur over that period under the existing firm gas transportation agreement with the South West Queensland Producers. [Deleted – confidential]

**Epic Energy's assessment of the market for SWQP services**

- 4.34 At the present time, Epic Energy does not expect any significant increase in demand for services provided using the SWQP during the proposed Access Arrangement Period:
- the principal transportation contract, the forward haul contract with Santos is expected to remain in effect with no change in its capacity requirement during the access arrangement period;



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- existing contracts for back part haul and other services will terminate and are unlikely to be replaced;
- some increased requirement for redirection services is anticipated, but these services are incidental to Epic Energy’s gas transportation services, earning relatively small revenues; and
- any significant market growth which might have been associated with the BMI is now unlikely in the foreseeable future [Deleted – confidential].
- Future swap arrangements may impact further on capacity utilisation on the pipeline.

4.35 [Deleted – confidential]

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[Deleted – confidential]

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4.36 [Deleted – confidential]

4.37 Epic Energy’s internal forecasts expect that load factors on SWQP will decline markedly in the short to medium term as physical flow on the pipeline falls as a result of the swap arrangement. Given that average flow will fall to low levels, any occasion when forward flow has to be resumed (for example to cover a [Deleted – confidential]) will result in a very low system average load factor.

4.38 The above analysis shows that the AFT Services – Back haul Service, Interruptible Transportation Service, Forward Part Haul Service (Zonal), Back Part Haul Service (Zonal), and Interruptible Part Haul Service (Zonal) – remain insignificant in terms of their forecast volumes and revenues and the number of customers likely to utilise such services. [Deleted – confidential].

4.39 Each of the five AFT Services is unlikely to be sought by a significant part of the market. Accordingly, Epic Energy has removed these services from the list of Reference Services offered under the Services Policy of the Original Access Arrangement. Subject to operational availability and commercial feasibility, Epic Energy now proposes to make these services available to Prospective Shippers on terms and conditions to be negotiated.

4.40 [Deleted – confidential]

4.41 Epic Energy considers that the information it has provided in this submission is sufficient to satisfy the Regulator of the reasonableness of its proposed revisions. However, if the Regulator receives information from third party that suggests otherwise, Epic Energy requests that the Regulator provide Epic Energy with the opportunity to respond.



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**Attachment 1**

**Relevant Epic Energy Submissions to Regulator in connection with the  
inclusion in the Original Access Arrangement of AFT Services as Reference  
Services**

See Attached

Extract from Submission DDS#2 – Additional Submission in response to Draft Decision – 16 October 2001 – section 2.1

## 2. Response to Specific Amendments

The format of this section of the submission deals with each of the amendments in the draft decision in turn.

### 2.1 Proposed amendment A3.1 – Reference Services

#### *ACCC Amendment*

- 2.1.1 The ACCC requires Epic Energy to include all of the Reference Services established in the Queensland Government's derogation as Reference Services in the access arrangement.

#### *Epic Energy Response*

- 2.1.2 Epic Energy's public submission of 13 July 2001 contains detailed argument as to why all the Services approved by the Queensland Minister under the Amended Access Principles (and which still apply as the framework for seeking access to the SWQ) should not be included as Reference Services under the Code. However, there are certain issues which require restating to ensure that the additional matters mentioned below are understood in the proper context.
- 2.1.3 In the draft decision, the ACCC concludes that under the derogations, all the Services mentioned in the approved tariff arrangement are as a matter of law Reference Services for the purposes of the Code<sup>1</sup>. Epic Energy does not agree with this conclusion for two main reasons.
- 2.1.4 Firstly, the derogations in section 58 of the Qld Act relate only to the Reference Tariff, the Reference Tariff Policy and the Revisions Submissions and Revisions Commencement Dates. They do not in any way modify the requirements of the Code that set out what must be contained in the Services Policy of an access arrangement.

Therefore, in determining what must be included in a Services Policy for this access arrangement, the ACCC must only have regard to the requirements of sections 3.1 and 3.2 of the Code.

While section 3.2 of the Code makes it clear that the ACCC can require an access arrangement to contain a description of the inclusion of any Service that in its opinion should be included in the Services Policy<sup>2</sup> (and Epic Energy's Services Policy includes all the services mentioned in the approved tariff arrangement as "Services"), the remaining provisions of section 3.2 of the Code relate solely to Reference Services. They make it clear that a Service can only be required to be a Reference Service, and therefore a Reference Tariff can only be required to be provided (by virtue of section 3.3 of the Code), if the Service is likely to be sought by a significant part of the market. As mentioned in paragraph 6.4 of the previous submission, only the FH1 Service satisfies this criteria.

Santos further supports this reasoning in its submission to the ACCC<sup>3</sup> - it comments that because:

<sup>1</sup> Section 3.1.4 of ACCC draft decision

<sup>2</sup> Section 3.2(a)(ii) of the Code

<sup>3</sup> Santos submission to the ACCC in response to the ACCC's issues paper, dated 20 October 2000



- the FH1 Service accounts for over 95% of pipeline revenue and it is the only Service that has been properly developed as a Reference Service; and
- the remaining Services that aren't Reference Services can be referred to arbitration under the Code in the event of a dispute arising;

it is appropriate that only one Service (the FH1 Service) be classified as a Reference Service.

- 2.1.5 The second reason is that it is not in the public interest nor is it in the Service Provider's legitimate business interests to require their inclusion in the access arrangement as Reference Services. The Code requires the ACCC to take these considerations into account when assessing an access arrangement<sup>4</sup>.

As mentioned in the previous submission:

*"the definition of Reference Tariffs prior to the imposition of the Code and after its establishment are quite different and can not be linked. The derogated version of [the term] Reference Tariffs prior to the inception of the Code is a descriptive term without intended legal substance. No opportunity was offered to Epic Energy to revise the tariff arrangement made under the Petroleum Act 1923 [ie the access principles], given that it was to be subjected retrospectively to a different regime under the [Qld Act]..."*

- 2.1.6 It should also be noted that the Code only requires an access arrangement to provide relevant benchmarks around which a negotiation could be conducted. However, to set such a variety of Services as Reference Services would lead to inflexibility because in the event of a dispute concerning access to one of the ACCC's proposed Reference Services, the arbitrator would be bound by the applicable Reference Tariff when making a decision in relation to the dispute. This inflexibility is inappropriate and not conducive to encouraging a developing gas market, particularly when they are not Services that are being nor are likely to be sought in the near future by a significant part of the market.
- 2.1.7 For the above reasons, it is submitted that it is in the public interest, the interests of users (as is demonstrated by the Santos submission<sup>5</sup>) and prospective users and is also in the Service Provider's legitimate business interests that an access arrangement not be required to contain an exhaustive list of Services which could possibly be offered on the pipeline as Reference Services.
- 2.1.8 Furthermore, the ACCC makes mention that apart from the legal requirement that all Services are to be Reference Services by virtue of section 58 of the Qld Act, it is important to disclose as many Reference Tariffs as is possible so as to limit the scope of any dispute process, in the event that an access dispute arises under the Code. As mentioned above, if a Reference Tariff attaches to a Service, then if any dispute arises with respect to that Service, an arbitrator is bound to apply the Reference Tariff when arbitrating that dispute.
- 2.1.9 However, the ACCC, in response to a question posed by the National Competition Council as to whether the derogated tariffs produced outcomes which were consistent with tariffs that would be determined by the application of the tariff setting principles of the Code, the ACCC reported that they produced a rate of return on total funds employed that is higher than rates of return underlying recent pipeline access arrangements approved by the

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<sup>4</sup> Section 2.24 of the Code

<sup>5</sup> Santos submission to the ACCC in response to the ACCC's issues paper, dated 20 October 2000

ACCC<sup>6</sup>. While Epic Energy disputes the accuracy of the assumptions used in the report and the findings of the report, on the basis that the ACCC was prepared to release such findings in the report, one must question why the ACCC would seek to consider itself and an arbitrator and prospective users of the SWQP bound by such tariffs. It also questions how, if the ACCC is being consistent with its own statements, it can say this can be in the interests of prospective users of the SWQP and therefore consistent with section 2.24 of the Code.

#### 2.2 Proposed amendment A3.2 – Minimum Duration of FH1 Service Contract

##### **ACCC Amendment**

- 2.2.1 The ACCC requires Epic Energy to reduce the minimum term for a contract for FH1 Service to one or two years.

##### **Epic Energy Response**

- 2.2.2 Epic Energy does not believe that an amendment of this nature can be justified under the Code. Epic Energy contends that a contract of a duration of 5 years is consistent with the Code requirements. Following are reasons to justify this contention.
- 2.2.3 First, gas transmission pipelines and the facilities owned by users of gas supplied directly from those pipelines (unlike the facilities of many of the users of gas supplied from distribution pipeline systems), have design attributes specific to the quantity and quality of gas to be delivered. Where investments in pipelines and user facilities are relationship-specific, long term (rather than short term) contracts are the norm. It is submitted that these are likely to be the most significant class of prospective users of the SWQP.

Long term contracts protect the owners of relationship specific facilities from the risk of expropriation of the value of those facilities in circumstances of frequent renegotiation. In the gas industry, these long term contracts may have a duration of 20 years or more. Epic Energy therefore considers that it has already taken on additional risk by agreeing to set the duration of contracts for a Reference Service at five years.

- 2.2.4 The second reason is that a contract for the FH1 Service of a five year duration is consistent with the duration of contracts for similar Services offered on pipelines operating in markets at a similar stage of development to the Queensland Gas market. While there are other pipelines which have proposed contracts for a lesser duration in their access arrangements, it is submitted that these pipelines operate in markets at different stages of development to the market in which the SWQP operates. Therefore the risk profile for the operation of these pipelines is such that transportation contracts of a duration of less than 5 years can be accepted by a Service Provider.

The most comparable pipeline to the SWQP is the Queensland Gas Pipeline for which a contract has been set at 10 years for a similar firm forward haul Service to the FH1 Service proposed by Epic Energy. It is noted that the ACCC has not required the duration of contracts for this Service to be reduced when issuing its final decision on the access arrangement for this pipeline. To now require something different for the SWQP shows an inconsistency which would not be in the public interest.

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<sup>6</sup> page 27 of ACCC report entitled: "Queensland Gas Pipeline Access Regime: Assessment of tender processes and Reference Tariff outcomes – a report to the National Competition Council", dated April 2000

Epic Energy Submission dated 28 September 2000 – section 1

#### 1. Single Reference Service

The ACCC seek the market's response on Epic Energy's decision to offer a single Reference Service (Full Forward Haul Service, or FH1 Service) within the Access Arrangement. The ACCC rightly point out that this is just one of several services that were derogated by Queensland pursuant to the law. The other services derogated within the Access Principles are classified as "AFT" (Alternative Forms of Transportation) Services.

The AFT Services were included in the Access Principles in 1997, two years after the Full Forward Haul Service for the SWQP was created. It must be noted that these extra services were only included within the Access Principles as the consent of the Minister for Mines and Energy was necessary to enable Epic Energy to offer these services to shippers.

However, like the Full Forward Haul Service, the AFT Services are called "Reference Services" within the Access Principles. Epic Energy submits that the label of "Reference Services" as it appears in the Access Principles is a term of art – it is no more than a description.

At no point was there ever any intention on the part of Epic Energy or, as Epic Energy understands, the Queensland Government (the party who accepted and gazetted the derogations offered by Epic Energy) to classify the AFT Services as Reference Services, as that term is defined in the Code. The derogation reflects the understanding of the parties at the time the Access Principles were created.

The Reference Service(s) for the purposes of the Access Arrangement must still meet the criteria set out in section 3.2 of the Code. That is, a Reference Service must be a service that is **sought by a significant part of the market** [emphasis added].

Only those services on the SWQP that are sought by a significant part of the market meet the Code criteria of being a "Reference Service". The Reference Service offered by Epic Energy in the Access Arrangement – Full Forward Haul Service – is the service from which in excess of 95% of the revenue from the SWQP is obtained. All other services utilised on the SWQP, which includes the AFT services and others which are not otherwise listed together make up less than 5% of the revenue that Epic Energy earns from the pipeline.

Epic Energy therefore contends that the Full Forward Haul Service offered within the Access Arrangement is the only service sought by a significant part of the market and is thus the only service which meets the Code requirements for a Reference Service.

Epic Energy Submission dated 28 July 2001 – section 2

## 2. Reference Services

- 2.1 The Draft Decision does not fully address the circumstances that led to the Services Policy derived in the proposed Access Arrangement. As outlined in the Epic Energy paper of 9 April<sup>1</sup>:

*The tariff setting principles applied to the SWQP were laid down in accordance with the Amended Access Principles<sup>2</sup> granted by the Queensland Department of Minerals and Energy to Tenneco Energy Queensland Pty Ltd<sup>3</sup> in 1996. This states inter alia; “The indicative tariff schedule shall...encompass all charges of any nature to be made to customers for transportation of gas through the pipeline”. As a direct consequence of this, Epic Energy was required to submit all possible transportation services that may have been conducted through the SWQP to the Queensland government for approval.*

*Subsequently, Epic Energy submitted its proposed Access Arrangement for the SWQP for approval under the Code. The services listed within the access principles originally approved, are for Full Forward Haul and a number of AFT Services. The tariffs for the former service are derogated until 2016 and the tariffs for AFT Services until 2004.*

*Section 3.2 of the Code lays down the requirements for a Services Policy and the services proposed by Epic Energy would appear to be in compliance with this section. However, whilst Section 58 of the Qld Act derogates reference tariff policy, it does not obligate Epic Energy to include all services approved under previous legislation.*

- 2.2 Epic Energy has no intention at this point to test the assertion of the ACCC that the AFT Services “...under the derogation...are as a matter of law reference services for the purposes of the code”<sup>4</sup>. It should be noted that the AFT Services are not sought by a significant part of the market and that they will expire under the derogation in 2004. Epic Energy has no intention of offering these services as reference services in future, in accordance with Section 3.3(b) of the code, but may offer similar services as non reference services in subsequent access periods.

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<sup>1</sup> Epic Energy Additional Submission 9 April, 2001, paras 6.1, 6.2, 6.3

<sup>2</sup> Pipeline Licence No. 24 – Amended Access Principles dated 12 Jan 96

<sup>3</sup> A forerunner company to Epic Energy.

<sup>4</sup> Draft Decision Access Arrangement Proposed by Epic Energy Queensland Pty Ltd for the Ballera to Wallumbilla Pipeline System, P13.



**SWQP PROPOSED REVISED ACCESS ARRANGEMENT**  
***PUBLIC VERSION***  
***SUBMISSION #1 – REVISED ACCESS ARRANGEMENT AND ACCESS***  
***ARRANGEMENT INFORMATION***

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Epic Energy Additional Submission dated 9 April 2001 – section 6



## 6. Reference Services

- 6.1 The tariff setting principles applied to the SWQP were laid down in accordance with the Amended Access Principles<sup>1</sup> granted by the Queensland Department of Minerals and Energy to Tenneco Energy Queensland Pty Ltd<sup>2</sup> in 1996. This states *inter alia*; “The indicative tariff schedule shall...encompass all charges of any nature to be made to customers for transportation of gas through the pipeline”. As a direct consequence of this, Epic Energy was required to submit all possible transportation services that may have been conducted through the SWQP to the Queensland government for approval.
- 6.2 Subsequently, Epic Energy submitted its proposed Access Arrangement<sup>3</sup> for the SWQP for approval under the Code. The services listed within the access principles originally approved, are for Full Forward Haul and a number of AFT Services. The tariffs for the former service are derogated until 2016 and the tariffs for AFT Services until 2004.
- 6.3 Section 3.2 of the Code lays down the requirements for a Services Policy and the services proposed by Epic Energy would appear to be in compliance with this section. However, whilst Section 58 of the Qld Act derogates reference tariff policy, it does not obligate Epic Energy to include all services approved under previous legislation.
- 6.4 The only service that meets the criteria for inclusion as a Reference Service under the Code is the Full Forward Haul Service. This service provides in excess of 90% of the Epic Energy transportation market on the SWQP. Section 3.3 of the Code quite clearly intends that services that do not constitute a “significant part of the market” are not required to be included as a Reference Service and that a Reference Tariff need only apply to “at least one Service” that does. As with other Access Arrangement approvals by the ACCC, the Epic Energy Access Arrangement for the SWQP would clearly not normally be required to establish all or any of the AFT Services as Reference Services.
- 6.5 Additionally, the definition of Reference Tariffs prior to the imposition of the Code as the national access regime and after its establishment are quite different and cannot be linked. The derogated version of Reference Tariffs, prior to the inception of the Code is a descriptive term without intended legal substance. No opportunity was offered to Epic Energy to revise the tariff arrangement made under the *Petroleum Act 1923*, given that it be subjected retrospectively to a different regime under the *Gas Pipelines Access (Queensland) Act 1998* and the legislation does not obligate Epic Energy to include them. Hence, as these services are not Reference Services, it is not necessary to include any reference to them and if not done the review date is irrelevant. It should also be made clear that the Code does not require the listing of all services that might be available, but simply provides for the relevant benchmarks around which negotiation could be conducted.

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<sup>1</sup> Pipeline Licence No. 24 – Amended Access Principles dated 12 Jan 96

<sup>2</sup> A forerunner company to Epic Energy.

<sup>3</sup> See Footnote 1.