

20 July 2005

Mr Warwick Anderson
Acting General Manager
Access Branch
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

Dear Mr Anderson

Roma-Brisbane Pipeline Access Arrangement – Application for extension of time for lodgement

I refer to your letter dated 21 June 2005 regarding an application by APT Petroleum Pipelines (APTPP) to defer lodgement of revisions to its Access Arrangement for the Roma to Brisbane Pipeline (RBP). ENERGEX Retail welcomes the opportunity to comment on this issue.

ENERGEX Retail considers that a delay in implementing a revised Access Arrangement for the RBP will deny third parties an appropriate benchmark as a 'workable platform' to enter negotiations.

In assessing this issue, it is necessary to consider the impact of a delay in providing third parties with an appropriate benchmark, on negotiations on the delivered cost of gas to South East Queensland users over the short to medium term. As a major user of gas in south east Queensland, ENERGEX Retail is particularly interested in ensuring that the tariff paid by users for gas transportation on the RBP is one that is fair and reasonable.

It is well recognised that third parties lack sufficient information to negotiate reasonable terms and conditions for access to monopoly infrastructure where there is an incentive for the asset owner to exert monopoly power. Regulatory processes, such as the implementation of an access arrangement, address the information asymmetry to provide third parties with an appropriate starting point to enter negotiations.

It could be argued that the existing access arrangement provides third parties with this necessary guidance. However, ENERGEX Retail considers that the current 'derogated' reference tariffs are not an appropriate benchmark. These derogated tariffs were established prior to the implementation of the National Gas Code. Further, whilst consultation occurred at the time of setting the current reference tariffs, third parties lacked sufficient information to enable them to participate in the process in an informed manner.

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The deferral of a revised Access Arrangement has practical implications for third parties attempting to negotiate for future access on the RBP. For example, a number of the projects currently being considered by ENERGEX Retail will require gas transportation via the RBP.

ENERGEX Retail expects to be in a position to commence negotiation with APTPP for this future gas transportation during the first half of 2006, and had anticipated that the Access Arrangement review process would be well under way by this time to provide a starting point for these negotiations. A delay in the Access Arrangement review will potentially result in higher gas transmission tariffs and/or less reasonable terms and conditions for these projects than would have otherwise resulted.

In addition, whilst APTPP states that the RBP is currently fully contracted, users are able to negotiate access to unutilised contracted capacity. Access to a benchmark tariff is necessary as an entry point for such negotiations. Further, an appropriate reference tariff is also necessary during discussions associated with potential capacity expansions of the RBP, such as the current Expression of Interest currently being undertaken by APTPP. Without a benchmark, third parties face asymmetry of information in such negotiations.

In its correspondence to the ACCC dated 14 June 2005 (copy attached to your letter dated 21 June 2005), APTPP have requested that the due date for the submission of the RBP Access Arrangement revision be extended to a date six months after the Federal Court releases its decision, consequent to the ACCC's appeal of the Australian Competition Tribunal's determination regarding the Moomba to Sydney Pipeline Access Arrangement. It is unclear to ENERGEX Retail how long this process is likely to take, and whether the outcome of this Federal Court appeal will have a material impact on the outcome of the revised Access Arrangement.

ENERGEX Retail considers that the net benefits to users in reviewing the Access Arrangement for the RBP outweighs any potential regulatory cost that may result from the outcome of the Federal Court decision in relation to the Moomba to Sydney Pipeline.

In conclusion, ENERGEX Retail considers that there should be no delay in implementing a revised Access Arrangement for the RBP, and we submit this information to the ACCC for their consideration of this matter.

If you have any questions or require further information, Ms Louise Dwyer, A/Group Manager Regulatory Affairs is available on (07) 3407 4161.

Yours sincerely

Bruno Bertolo
A/General Manager Retail