

1 Terms and conditions – Reference Service

1.1 Summary of TXU position

Section 5.1 of EAPL's access arrangement provides for a Firm Service and a Negotiable Service. Section 9 allows for negotiation (which is in accordance with the Code intent) but section 9.2¹ restricts Negotiable Services to a lower priority than Firm Service, in the event of any supply disruption.

TXU accepts that a Negotiable Service cannot undermine pre-existing contractual rights. However, TXU believes that, in accordance with the Code intent, EAPL should not be able to restrict the prioritisation of a Negotiable Service, and that any potential user should be able to negotiate terms equal to existing services.

TXU notes that, based on discussions with EAPL, the arrangements were not intended to preclude negotiable contracts for a firm service.

2 FRC impact

2.1 Summary of TXU position

EAPL has included a provision (section 6.13 of its access arrangement) to address the possible impact of FRC. TXU supports the pass through of costs; however, TXU believes that such a mechanism should not be dealt with under an access arrangement.

In the event that EAPL is required to incur costs associated with FRC and the Commission agrees with pass through under the access arrangement, TXU believes that there should be some oversight by the Commission of the necessity and reasonableness of those costs. Further, EAPL should confirm when such costs are to be imposed.

2.2 Detailed discussion

Section 6.13 of EAPL's access arrangement provides for the effective pass-through of costs incurred by EAPL in complying with the introduction of new legal or procedural requirements associated with FRC affecting the management or operation of the pipeline.

TXU notes that inclusion of pass through mechanisms is more consistent with rate of return regulation rather than incentive based regulation as encouraged by the Code.

¹ Also, conditions 54 and 55 in Attachment D: Principles for Terms and Conditions

TXU supports the pass through of costs; however, TXU believes that it is unlikely that such costs will be incurred given that FRC has already been implemented in New South Wales and that the affect of FRC is mostly downstream from the city-gate. Also, TXU believes that such a mechanism should be not be dealt with under an access arrangement. For example, in Victoria an Order in Council was created dealing with the recovery of FRC costs for distributors.

Consistent with our comments in relation to pass-through below, in the event that the Commission agrees with EAPL's proposal, TXU considers that the Commission should require EAPL to amend the pass through to allow for:

1. confirmation by an independent party that the costs incurred are necessary for EAPL to perform its services
2. confirmation by an independent party of the reasonableness of the costs incurred
3. clarity as to the effective date of the pass through mechanism
4. appropriate notification of when such costs are to be imposed.

3 Reference Tariffs

3.1 Summary of TXU position

Section 7.6 of EAPL's access arrangement provides for four attachments setting out the Capacity Reference Tariffs and Throughput Tariffs payable based on the combination of possible options for pipeline coverage. TXU notes that section 7.8 and attachments C2, C3 and C4 provide that, where the access arrangement ceases to apply for any part of the Covered Pipeline, an adjustment is to be made to the tariffs to reflect the competitively derived prices for transportation. However, the exact basis for the adjustment is not clear, nor whether the resulting access arrangement tariff is efficient and consistent with the section 8 Code requirements.

TXU request that the Commission confirm that:

1. charges proposed under each option are correct based on satisfying the section 8 Code requirements
2. there is an appropriate adjustment mechanism proposed by EAPL which results in efficient tariffs consistent with the Code requirements.

3.2 Detailed discussion

TXU accepts that it is difficult for EAPL to develop an access arrangement to accommodate the variety of possible coverage scenarios for the pipelines comprising the MSP. Nevertheless, TXU is keen to ensure that any adjustment process adopted is appropriate.

Section 7.6 provides for four attachments (attachment C1, C2, C3 and C4) setting out the Capacity Reference Tariffs and Throughput Tariffs payable based on the combination of possible options for pipeline coverage.

TXU notes that section 7.8 and attachments C2, C3 and C4 of EAPL's access arrangement provide that, where the access arrangement ceases to apply for any part of the Covered Pipeline, an adjustment is to be made to the tariffs to reflect the competitively derived prices for transportation. Conceptually, it is difficult to contemplate a reference tariff policy which includes a mechanism to move from a regulated reference tariff, to a competitive tariff. Also, EAPL has not proposed a mechanism for such an amendment. It is not clear:

1. What is the exact form of the adjustment (i.e. is the revenue derived from the competitive services to be deducted in deriving the tariffs under the access arrangement)?
2. Will the deduction of competitive tariffs result in an efficient outcome, consistent with the section 8 Code requirements including:
 - a. Is the proposal consistent with the form of regulation options set out in section 8.3 of the Code?
 - b. Does it meet the section 8.1(a), (e) and (f) Code objectives?

The Commission may wish to consider whether EAPL's proposal is consistent with the section 8 Code requirements to set out a tariff price path over the access arrangement period. If significant tariff increases are possible for those pipelines which remain covered, then it may be more appropriate to trigger the section 2.49 Code process for changes to an approved access arrangement between reviews. In making this suggestion, we do ask that the Commission balances the regulatory costs involved against the likely benefits.

4 Pass through

4.1 Summary of TXU position

In relation to EAPL's proposed "pass through" mechanism whereby tariffs could be increased to reflect higher costs incurred during a regulatory period for government taxes, charges, levies, imposts and fees applying at 30 April 2002, TXU submits that:

1. Pass through for tax increases and licence fees seem reasonable.
2. However, pass through of such a broad definition of costs is inconsistent with incentive regulation and the intention of the Code.

Further, to the extent that the Commission allows such a mechanism for any or all of the elements proposed by EAPL, TXU submits that at the very least:

1. appropriate consultation be undertaken by EAPL with affected Users
2. EAPL only be allowed to pass through the net cumulative impact.

4.2 Detailed discussion

In section 8.7 of its draft access arrangement, EAPL proposes a pass through mechanism whereby tariffs could be increased to reflect higher costs associated with government taxes, charges, levies, imposts and fees applying at 30 April 2002. The definition of what constitutes a tax pass through seems very broad, and TXU notes that to date, most approved access arrangements have limited pass through to tax and licence fee events.

The section 8.7 mechanism states that EAPL will pass through decreases in pass through costs. However, the wording is ambiguous; it is provided in the context of EAPL making an adjustment to “recover such costs”, which seems inconsistent with decreases.

EAPL’s proposal does not specify the process or basis for any pass through. Will the Commission be notified? Will Users be consulted? TXU is concerned that such a mechanism may occur in a non-transparent manner, and potentially result in cost shifting to Users.

TXU requests that the Commission:

1. consider the appropriateness of costs to be passed through
2. consider whether such a mechanism is inconsistent with the operation of incentive based regulation (as intended by the Code)
3. ensure best regulatory practice through:
 - a. appropriate consultation with affected Users
 - b. requiring EAPL to submit any proposed pass-throughs to the Commission for approval prior to on-charging Users

- c. only allowing the net cumulative impact before an adjustment is made.

5 Prices, terms and conditions of access

5.1 Summary of TXU position

TXU notes EAPL's proposal that agreements for firm transportation at the commencement of the access arrangement will be accorded priority equivalent to Firm Service (section 10.2 of EAPL's access arrangement). TXU assumes that this reflects a requirement of EAPL's current contractual obligations and notes that under section 2.47 of the Code, the Commission must not approve revisions to an access arrangement if a provision of the access arrangement would deprive any person of an existing contractual right.

Therefore, on this basis TXU supports EAPL's proposal.

However, TXU is concerned that AGLWG and other existing users obtain preferential treatment and prices for access to MSP. TXU requests that in making its decision on the terms and conditions of access (including pricing), the Commission considers existing contracts to ensure, as far as reasonably practicable, that new users of MSP will be accorded equivalent rights of access.

6 Terms and conditions – applying for access and queuing policy

6.1 Summary of TXU position

TXU believes that EAPL's queuing policy is simplistic and that it is unlikely to result in the most efficient outcome or meet the section 8 Code requirements.

TXU submits that there are other more appropriate policies available, such as the queuing policy contained in EPIC Energy South Australia Pty Ltd's revised access arrangement for Moomba to Adelaide Pipeline System dated 22 January 2002 (refer detail below).

Therefore, TXU submits that the Commission should request EAPL to revise its queuing policy. One option would be to make the policy consistent with the principles outlined below.

6.2 Detailed discussion

In relation to queuing, section 12 of EAPL's access arrangement effectively states that the priority date of a request is determined by the date a completed Request is received by EAPL. EAPL's queuing policy states the process for moving out of the queue. However, TXU believes that this simple approach is unlikely to result in the most efficient outcome - particularly in situations where

a commercial scenario arises which triggers significant demand for capacity - and meet the section 8 Code requirements.

There are a number of ways this could be improved. One alternate model is the queuing policy contained in EPIC Energy South Australia Pty Ltd's revised access arrangement for Moomba to Adelaide Pipeline System dated 22 January 2002. In particular, TXU submits that EAPL's queuing policy should be amended to include at least the following principles:

1. Upon receipt of a Request, provide all users and prospective users with a spare capacity notice and publish in a national daily newspaper a copy of the notice.
2. The spare capacity notice must advise that complying requests are to be received not less than 30 days from the date of publication.
3. Within 10 days of the closing date, notify each person submitting a complying request and the person submitting the original request that the complying request has been included in the queue, the aggregate capacity being sought and whether or not the aggregate of all complying requests in the queue exceed the spare capacity.
4. If the complying requests cannot be satisfied by the spare capacity, then:
 - a. the spare capacity is to be allocated equally amongst the applicants on a pro rata basis
 - b. an applicant is to be given time to notify the provider if it disagrees with the allocation
 - c. a dispute resolution mechanism is to be included for such events
 - d. any part of the complying requests not satisfied by the spare capacity is to be entered into a developable capacity queue.
5. A complying request entered into a developable capacity queue will:
 - a. have priority according to the date and time it was entered
 - b. be notified of the process to determine the cost of developing the capacity and provide a non-binding cost indication.

Further, EAPL needs to develop a policy for dealing with non-firm transportation capacity requests.

TXU notes that the above is a high level outline of suggested principles for inclusion in EAPL's queuing policy. Clearly, more detail is required. TXU submits that the Commission request EAPL to revise its queuing policy to include the above principles.

7 Extensions and expansions

7.1 Summary of TXU position

EAPL's Extensions and Expansions Policy states that it "will decide in the future, with consent of the Regulator, whether any new extension or expansion of the MSP will be part of the Covered Pipeline" (section 14.1 of EAPL's access arrangement).

TXU believes that all **expansions** must be covered by EAPL's access arrangement for the MSP. To have a situation whereby an expansion is not covered by EAPL's access arrangement may lead to operational issues. In particular, if capacity were upgraded, it would be very difficult to distinguish between that part of the facility or pipeline that is providing the original capacity, and that which is providing the expanded capacity.

TXU requests that the Commission review EAPL's extension and expansion policy to cover expansions.

8 Terms and conditions – over-run charges

8.1 Summary of TXU position

EAPL sets out in Attachment C5 its proposed over-run charges which range from 100% of the Capacity Reference Tariff for authorised over-runs up to 5% of MDQ up to 350% for unauthorised over-run of quantity greater than 5% of MDQ.

TXU accepts the potential for high costs to EAPL of overruns which occur when the system operates at full capacity, and EAPL's desire to set charges at a level to discourage overruns. However, TXU submits that the over-run charges proposed are excessive and inappropriate where excess capacity exists. TXU believes that the following over-run charges are more appropriate:

	Authorised Over-run	Unauthorised Over-run
0-5% of MDQ	100%	130%
Quantities greater than 5% of MDQ	130%	150%

TXU has based the above charges on those charged by Duke on the Eastern Gas Pipeline.

TXU requests that the Commission review the reasonableness of the proposed over-run charges, particularly given the spare capacity on the MSP.

9 Terms and conditions – Balancing charges

9.1 Summary of TXU position

EAPL sets out in Attachment C5 its proposed balancing charge of 120% of the Capacity Reference Tariff payable by the User on the Day on which the variance occurred.

TXU submits that the proposed charge is excessive, and believes an imbalance charge in the order of 30% of the Capacity Reference Tariff payable by the User on the day on which the variance occurred is more appropriate and consistent with industry practice. TXU bases this submission on corresponding charges by Duke for Eastern Gas Pipeline. Therefore, TXU requests that the Commission review the reasonableness of the proposed imbalance charge.

As a final point, we understand that EAPL is supportive of meeting with shippers and potential shippers to review balancing and nomination processes in the near future. TXU supports this.

10 System Use Gas

10.1 Summary of TXU position

Section 39 of Attachment D “Principles for terms and conditions of services” states “Users will supply gas for use as System Use Gas at their own cost.” TXU notes that the access arrangement is silent on the treatment of system use gas.

TXU has two comments:

1. In EAPL’s May 1999 access arrangement information, the operating costs included costs for system use gas. EAPL has not provided enough information in the revised access arrangement information to confirm whether or not the revised operating expenditures have been revised to delete such costs.
2. TXU believes that in principle, the service provider should be made accountable for such costs. Passing through such costs to users does not provide a service provider with an incentive to minimise costs.

Therefore, TXU submits that the Commission consider imposing such costs on EAPL. In the event the Commission agrees with EAPL's proposed treatment, TXU requests that the Commission:

1. confirm that EAPL's forecast operating expenditure excludes the cost of system use gas
2. require EAPL to provide clarification in its access arrangement as to the treatment.

11 Definitions

11.1 Summary of TXU position

TXU believes that EAPL's force majeure clause is too broad and unreasonably passes risks which are within the control of the service provider onto users. Therefore, TXU proposes the following amendments to limit the risk allocation to that expected within the industry:

"Force Majeure means any cause not reasonably within the control of the party claiming Force Majeure which results in or causes a failure by such party in the performance of any one or more of its obligations under the Transportation Agreement notwithstanding the exercise by such party of due diligence including, but not limited to:

1. lightning storms, earthquakes, landslides, floods, washouts and other acts of God;
2. fires, explosions, ruptures, breakages, breakdowns of or accidents to the pipeline;
3. strikes, lockouts or other industrial disturbances, other than a strike, lockout or other industrial disturbance involving a party to this Transport Agreement;
4. civil disturbances, sabotage, acts of public enemies, war, blockades, insurrections, vandalism, riots, epidemics;
5. the order of any court, government body or regulatory body;
6. inability to obtain or curtailment of supplies of electric power, water, fuel or other utilities or services or any other materials or equipment necessary for the continued provision of the Services, other than where the inability to obtain or curtailment of supplies occurs due to the action or lack of action by EAPL;
7. inability to obtain or revocation or amendment of any permit, licence, certificate of authorisation of any government or regulatory body, other than where the inability to obtain or revocation or amendment occurs due to the action or lack of action by EAPL;
8. inability to fulfil obligations under the Transportation Agreement in regard to receipt or delivery of gas from or to interconnecting pipelines (respectively) when an event of Force Majeure occurs or any curtailment or interruption occurs in relation to that interconnecting pipeline;

but does not include a lack of funds or other financial cause.”

TXU requests the Commission consider the amendments proposed above to the force majeure clause.

12 Operating costs

12.1 Summary of TXU position

TXU notes that, since EAPL first lodged access arrangement information in May 1999, it has increased operating expenditure estimates from approximately \$12m to \$23m, without detailed explanation. As it is difficult to make meaningful comment in these areas without additional explanatory material, we ask that the Commission carefully review EAPL’s proposals and confirm that it is satisfied that the proposed operating expenditure estimates are fair and reasonable.