

25 July 2000

Ms Julie King  
NGPAC Executive Officer  
Level 19, Wakefield House  
30 Wakefield Street  
ADELAIDE SA 5000

Dear Ms King

**Re: Across Access Period Incentive Mechanisms – NGPAC Review**

I refer to your request for public submissions dated 12 July 2000 in relation to the proposed inclusion of across-period incentive mechanisms within the *National Third Party Access Code for Natural Gas Pipeline Systems* ("the Code").

The Epic Energy Australian Trust ("Epic Energy") is a national gas transmission business with interests in Western Australia, South Australia and Queensland. Three of Epic Energy's pipelines are covered by the Code and proposed Access Arrangements are currently being considered by Regulators. Clearly any change to the Code will impact upon Epic Energy's business. Epic Energy makes the following comments on the proposed changes to the Code as set out in the Information Memorandum produced by the Natural Gas Pipelines Advisory Committee ("NGPAC") dated June 2000.

Epic Energy strongly supports amendments to the Code which make it clear that an approved Access Arrangement can adopt a tariff path which extends beyond one review period and which can thus provide a far more certain environment for the Service Provider and users in appropriate circumstances. Of the two options the Information Paper puts forward, Epic Energy would favour **Option A**. Epic Energy is opposed to any change to the Code that will tend to fetter the discretion of the Regulator to structure an Access Arrangement to fit particular circumstances.

On this point, Epic Energy is concerned by the statement made in the Information Paper which indicated that, regardless of the accepted option, Regulators would, in practice, restrict the period over which the incentive is to be applied. Epic Energy believes that, if this principle is adhered to, Regulators would not be applying the Code properly to each particular regulated pipeline, nor would they be following the original Code objective of flexible regulation. The decision over whether to include an incentive mechanism in the Access Arrangement for a regulated pipeline, and for how long that mechanism should apply, is one that must be made on the circumstances of

each individual pipeline. Regulators who do otherwise are failing in their duty to properly administer the Code.

Regulatory risk tends to be minimised by allowing a Service Provider to adopt a price path over a fairly substantial period of time. This permits the Service Provider to effectively take the good and the bad, rather than have efficiency gains made by management effort eroded at the end of one or two review periods, as in the proposed option B. It is important that there is a balancing of risk.

This is particularly so in the case of greenfields investment or the investment in a pipeline that is generally considered to have significant dynamic potential. In such cases, Service Providers will be prepared to take the risk in making investment associated with whether the expected volumes will materialise if they know that over a long period (which could be up to 20 years), they can operate to a known tariff. Hence if the Service Provider is able to attract the new volumes then they will be able to achieve their expected returns – if they can obtain more then they may achieve greater returns. This is true incentive regulation.

If a Service Provider is going to run the risk of losing such returns, they may not invest. This could have a significant impact on future pipeline development and expansion.

Epic Energy is firmly of the view that any change to the Code that retains the original objective of flexible, and particularly, light-handed, regulation is positive. With the avowed objective of the Code to be a flexible regulatory device, it would not be logical to limit the application of the proposed across period incentive mechanism to only 10 years which, in the current regulatory practice, represents only two review periods.

Consequently, the benefits of allowing a Service Provider to retain any gain for effort would outweigh any costs of deferring the return of the gain to users. The Service Provider is given an incentive to be innovative in providing the needs of the market and this can only serve to develop infrastructure to enhance competition and to provide greater benefit to end-users, in the longer term.

In summary, Epic Energy is strongly of the view that a flexible and light-handed approach should be taken to applying the Code. Accordingly, Epic Energy supports the introduction of the less prescriptive approach taken under the proposed Option A, but with a modification – the Service Provider is able to retain all benefits, but must also bear all risk.

Yours sincerely

**Ian MacGillivray**  
**General Manager Commercial Services**