Regulatory issues

Gas

Access arrangement for the Moomba to Sydney gas pipeline—ACCC final approval

On 8 December 2003 the ACCC issued its final approval about the terms and conditions of gas transportation services for the Moomba to Sydney pipeline (MSP).

After considering the revised access arrangement and further submissions from the owner of the MSP, East Australian Pipeline Limited (EAPL), the ACCC was not satisfied that EAPL had incorporated all the amendments specified in the final decision. The ACCC was also not satisfied that EAPL had substantially incorporated or otherwise addressed the reasons for requiring the amendments specified in the final decision.

Accordingly, the ACCC decided not to approve the revised access arrangement proposed by EAPL and in accordance with the National Third Party Access Code for Natural Gas Pipeline Systems the ACCC drafted and approved its own access arrangement. The access arrangement drafted and approved by the ACCC came into effect on 1 January 2004.

While the ACCC decided not to approve the revised access arrangement proposed by EAPL, the final decision incorporated EAPL's:

- decision to remove the interconnect from the asset base
- proposal to adjust tariffs on a financial year basis and to adopt a five and a half year access arrangement period extending to June 2009
- forecast volumes.

As a result of these changes, the starting tariff approved by the ACCC in the final approval for the transportation of gas between Moomba and Wilton is now 50 cents per gigajoule (GST exclusive) which compares to the 52 cents determined by the ACCC in the final decision and the 66 cents proposed by EAPL.

On 19 December 2003 EAPL lodged an application to the Australian Competition Tribunal for review of the ACCC's decision. EAPL has sought review of the following elements of the ACCC's decision:

- adopting a value of $545.4 million for the asset base
- using a 5½ year risk free rate and a benchmark credit rating of BBB+ in the determination of the WACC
- excluding the management fee payable to Agility and the marketing fee payable to Petronas from non-capital costs
- rejecting additional annual allowances of $6.73 million for equity issuance, debt rasing and asymmetric risk.

A hearing date for this application is yet to be determined, however, in the intervening period the ACCC's access arrangement will remain in operation.

Gas access dispute resolution

The ACCC released a consultation paper 'Outline of arbitration guidelines for gas access disputes in November 2003. The paper is based on the Gas Pipelines Access Law and the National Third Party Access Code for Natural Gas Pipeline Systems.

This regime covers disputes between a prospective user and a service provider over proposed terms and conditions for providing a service on a covered pipeline. Only pipelines covered by the code, and with an access arrangement in place, come within the scope of this regime.

The consultation paper outlined a basic dispute resolution procedure and posed a number of questions for comment. The consultation period closed in December 2003. Submissions received are currently under consideration.

A further round of consultation will be undertaken once draft guidelines are developed.

Further information is available from the ACCC website.

Tribunal matters

GasNet

On 31 January 2003 GasNet applied to the Australian Competition Tribunal for review of the ACCC's decision in relation to the GasNet pipeline system. The tribunal heard the matter in Melbourne in mid-August 2003.

GasNet applied to the tribunal for review of the ACCC's decision on five aspects of GasNet's capital and non-capital costs (equity ß, risk-free rate, asymmetric risks, debt-raising costs and inflation) totalling approximately $4 million per year on average over the 2003–07 regulatory period.

GasNet withdrew its application for review of the equity ß before the tribunal hearing and the ACCC subsequently accepted that additional allowances for asymmetric risks and debt-raising costs were warranted.

On 23 December 2003 the tribunal handed down its decision which required that the access arrangement be varied with respect to risk-free rate, asymmetric risks and debt-raising costs. These changes raise GasNet's benchmark revenue by approximately $2 million per annum.

Moomba–Adelaide

On 15 August 2002 Epic Energy applied to the Australian Competition Tribunal for review of the ACCC's decision in relation to the Moomba–Adelaide pipeline. The tribunal heard the matter in Adelaide on 1 and 2 September 2003.

Epic Energy applied to the tribunal for review of a range of aspects of the ACCC's decision including the valuation of the optimised replacement cost, rate of return issues including beta and the market risk premium, the expansions policy and the decision to include a recent expansion as part of the regulated pipeline.

Epic Energy withdrew its application for review of rate of return issues, expansions policy and many of the elements of the optimised replacement cost before the tribunal hearing.

On 10 December 2003 the tribunal handed down its decision allowing a benchmark tariff for the first year of the access arrangement for the Moomba to Adelaide pipeline system (the MAPS) of $0.4436 per GJ. This compares with a tariff of $0.4958 per GJ proposed by Epic Energy and $0.4052 per GJ determined by the ACCC in its final approval of 31 July 2002.

The tribunal's determination accepted EPIC Energy's arguments about the cost of pipe component of the pipeline valuation and the exclusion of the Pelican Point expansion from the access arrangement.