

The Hon Patrick Conlon MP
Member for Elder



**Government
of South Australia**

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Mr David Crawford
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Dear Mr Crawford

On 15 March 2005, Epic Energy South Australia Pty Ltd (Epic Energy) applied to the National Competition Council (NCC) to revoke coverage of the entire Moomba to Adelaide Pipeline System (MAPS) under the *Gas Pipelines Access (South Australia) Act 1998*, which incorporates the National Third Party Access Code for Natural Gas Pipeline Systems (the Code).

In accordance with the provisions of the Code, the NCC conducted a review of the application and prepared a final recommendation, which was submitted to me on 14 December 2005. The NCC recommended that coverage of the MAPS be revoked.

Under Section 1.34 of the Code, I, as the relevant Minister, am required to decide whether to revoke or not revoke coverage of the MAPS based on consideration of the matters under sections 1.9 of the Code. I have now considered these matters and the NCC's recommendation and have decided to revoke coverage of the MAPS. In accordance with the Code, the reasons for my decision are provided in the enclosed attachment.

My decision to revoke coverage of the MAPS take effect 14 days after the date of this letter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Patrick Conlon'.

HON PATRICK CONLON MP
MINISTER FOR ENERGY

16 September 2007

DECISION ON COVERAGE

I, Patrick Conlon MP, South Australian Minister for Energy as South Australia's Relevant Minister for the purposes of the National Third Party Access Code for Natural Gas Pipeline Systems Code (the Code), have decided, in accordance with section 1.34 of the Code, to revoke coverage of the Moomba to Adelaide Pipeline System (MAPS), based on consideration of the matters set out in section 1.9 of the Code.

Statement of Reasons

Background

The MAPS is a gas transmission pipeline system owned and operated by Epic Energy. It connects the Cooper Basin production and processing facilities at Moomba to markets for natural gas in Adelaide, Port Augusta, Whyalla and other off-take points, including Angaston, that are connected to the trunkline by laterals. Gas from the MAPS supplies the Torrens Island, Pelican Point, Quarantine, Osborne, Dry Creek, Mintaro and Hallett power stations.

The MAPS is approximately 1184km in length, consisting of a mainline of 858km and laterals of 326km. The maximum allowable operating pressure is 7.3MPa, with a capacity having been up to 418TJ/day, fully compressed. A description of the pipeline to which this decision relates is contained in Table 1 below:

Table 1: The covered pipeline system of the MAPS

Location/Route	Pipeline length (kilometres)	Pipeline diameter (millimetres)
MAPS mainline		
Moomba to Adelaide	781.0	559
Taperoo lateral	1.2	323
Dry Creek lateral	1.3	323
Peterborough lateral	1.9	89
Nurioopta lateral	1.6	114
Burra lateral	15.0	89
Mintaro lateral	0.3	219
Wasleys to Torrens Island Loop	42.0	508
Port Bonython lateral	5.5	114
Tarac	0.4	89
Port Douglas lateral	11.5	114
Osborne lateral	1.3	273
Major laterals		
Angaston lateral	38.7	219
<i>Port Pirie/Whyalla lateral</i>		
Port Pirie lateral	77.8	168
Whyalla lateral	87.7	219

Source: Schedule A to the Gas Code

In June 2004, Hastings Funds Management acquired 100% ownership of the MAPS. As part of the sale agreement, Hastings retained the name Epic Energy.

Introduction

On 15 March 2005, Epic Energy submitted an application to the NCC to revoke coverage of the entire MAPS under the *Gas Pipelines Access (South Australia) Act 1998*, which incorporates the Code.

Following a draft recommendation and public consultation, the NCC made its final recommendation 14 December 2005, recommending that coverage of the MAPS be revoked.

While the NCC was satisfied that coverage criteria (b) and (c) were met, it was not satisfied that coverage criteria (a) and (d) were met.

As the relevant Minister, I am required by Section 1.36 of the Code to revoke coverage if the covered pipeline does not meet one or more of the matters set out in Section 1.9 of the Code.

Reasons for the Decision

I have reached my decision to revoke coverage of the MAPS after consideration of Epic Energy's application, submissions to the National Competition Council (NCC) and the NCC's final recommendation.

My consideration of each of the criteria is contained below, and I am not satisfied that the MAPS meets coverage criteria (a) and (d).

Criterion (a)

that access (or increased access) to Services provided by means of the Pipeline would promote competition in at least one market (whether or not in Australia), other than the market for the Services provided by means of the Pipeline

- 1.1 The NCC was not satisfied that access (or increased access) to services provided by means of the MAPS would promote competition in a dependent market.
- 1.2 In assessing whether criterion (a) is satisfied, the NCC determined whether the access (or the increased access) facilitated by coverage would promote a more competitive environment in one or more of the dependent markets.
- 1.3 In making its recommendation to me, the NCC concluded that:
 - 1.3.1 While Epic Energy has a monopoly over the transport of Cooper Basin gas from Moomba to Adelaide, its ability and incentive to exploit its market power is constrained;

¹ Sydney Airport Corporation Limited v Australian Competition Tribunal [2006] FCAFC 146

- 1.3.2 Gas reserves in the Otway and Gippsland basins can substitute for Cooper basin gas, and appear to be capable of satisfying a substantial portion of Adelaide's demand over the next 10 to 15 years;
 - 1.3.3 Epic Energy generally faces only a few well informed large shippers and producers, some of which are able to divert gas away from the MAPS;
 - 1.3.4 The entry of SEA Gas has increased the market's capacity to supply gas into Adelaide. This will likely provide an incentive for Epic Energy to behave competitively so as to maintain throughput and capture market share;
 - 1.3.5 Gas swaps may also expand opportunities for gas retailers and users in Adelaide to bypass the MAPS.
 - 1.3.6 Even in the markets along the mainline north of Adelaide and the two major laterals (that depend solely on services provided by the MAPS) the scope for Epic Energy to apply its market power to the detriment of competition is constrained by the bargaining strength of its major customers, such as Origin Energy.
 - 1.3.7 The threat of re-regulation also provides some disincentive for Epic Energy to use its market power to adversely affect competition.
- 1.4 Further, I note that, on 13 July 2007, AGL Energy Ltd (AGL) announced that it had signed a foundation gas transportation agreement with Epic Energy under which Epic Energy will build, own and operate a gas pipeline to link the Queensland, South Australia and New South Wales gas markets.
 - 1.5 The pipeline, to be known as the QSN Link, will transport gas from Ballera in Queensland to connect with the MAPS and the Moomba-Sydney Pipeline. The Pipeline will deliver gas into the wholesale gas hub at Moomba and provide downward pressure on prices as competitive sources of gas are brought to the market.
 - 1.6 The pipeline will permit the flow of gas to entirely avoid the existing Moomba and Ballera gas plants, providing an increased level of security of gas supply for South Australia. The pipeline is expected to be completed by December 2008.
 - 1.7 Having regard to Epic Energy's application, submissions to the NCC, the NCC's recommendation and the recent announcement by AGL of the construction of the QSN Link, I am not satisfied that access (or increased access) to Services provided by means of the MAPS would promote competition in at least one market (whether or not in Australia), other than the market for the Services provided by means of the MAPS.

Criterion (b)

that it would be uneconomic for anyone to develop another Pipeline to provide the services provided by means of the Pipeline

- 2.1 The NCC was satisfied that it would be uneconomic for anyone to develop another Pipeline to provide the services provided by means of the MAPS.
- 2.2 The NCC's reasoning is contained below:
 - 2.2.1 The capacity of the MAPS is currently about 143PJ per year. The maximum foreseeable demand for the MAPS services to 2019-20 is reasonably estimated at 120PJ per year.
 - 2.2.2 Based on these figures Epic Energy should be able to satisfy the demand for the services of the MAPS without reconfiguring the pipeline.
 - 2.2.3 Epic Energy does not expect significant growth in demand for gas on the two major laterals. It is likely to have sufficient capacity to meet the demand for gas transmission services to the regions served by the laterals over the period to 2019-20.
- 2.3 Having regard to Epic Energy's application, submissions to the NCC and the NCC's final recommendation, I am satisfied that it would be uneconomic for anyone to develop another Pipeline to provide the services provided by means of the MAPS.

Criterion (c)

that access (or increased access) to the Services provided by means of the Pipeline can be provided without undue risk to human health or safety

- 3.1 The NCC was satisfied that access (or increased access) to the Services provided by means of the MAPS can be provided without undue risk to human health or safety.
- 3.2 The NCC indicated that it was unaware of any human health or safety concerns resulting from access (or increased access) in the past. Similarly, no submissions argued that access or increased access to the Services provided by means of the MAPS would compromise human health or safety.
- 3.3 Having regard to Epic Energy's application, submissions to the NCC and the NCC's final recommendation, I am satisfied that access (or increased access) to the Services provided by means of the MAPS can be provided without undue risk to human health or safety.

Criterion (d)

that access (or increased access) to the Services provided by means of the Pipeline would not be contrary to the public interest

- 4.1 The NCC was not satisfied that access (or increased access) to the Services provided by means of the MAPS would not be contrary to the public interest.
- 4.2 In making its decision, the NCC considered whether any benefits of coverage, such as cheaper prices and more efficient use of resources, are outweighed by regulatory costs. The NCC considered, in particular, whether coverage may have adverse incentives for investment on gas pipelines.
- 4.3 Having regard to Epic Energy's application, submissions to the NCC and the NCC's final recommendation, I am not satisfied that the overall benefit of regulated access to the Services provided by means of the MAPS outweighs the cost, and therefore I am not satisfied that access (or increased access) to the Services provided by means of the MAPS would not be contrary to the public interest.

DATE OF DECISION

This decision has effect 14 days after the date shown below.



**HON PATRICK CONLON MP
MINISTER FOR ENERGY**

16 September 2007