



DRAFT DECISION: PROPOSED ACCESS ARRANGEMENT DAMPIER TO BUNBURY NATURAL GAS PIPELINE

Submitted by
Epic Energy (WA) Transmission Pty Ltd

Part A
Draft Decision

**INDEPENDENT GAS PIPELINES ACCESS REGULATOR
WESTERN AUSTRALIA**

21 June 2001

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PREFACE

On 15 December 1999 Epic Energy (WA) Transmission Pty Ltd (Epic Energy) submitted a proposed Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline (DBNGP) to the Western Australian Independent Gas Pipelines Access Regulator (the Regulator) for approval under the *National Third Party Access Code for Natural Gas Pipeline Systems* (the Code).

The proposed Access Arrangement describes the terms and conditions under which Epic Energy will make the DBNGP available for use by third parties.

The Regulator assessed the proposed Access Arrangement against the requirements and principles of the *Gas Pipelines Access (Western Australia) Act 1998*, which gives effect to the *Gas Pipelines Access (Western Australia) Law*, including the Code. In addition, the Regulator considered issues raised in submissions made on the proposed Access Arrangement by interested parties. The Regulator has issued this Draft Decision in accordance with the requirements of the Code.

The Draft Decision is issued as two documents: Part A being the Draft Decision, and Part B being supporting information for the Draft Decision. Copies of both Parts A and B of the Draft Decision are available from the Office of Gas Access Regulation at a cost of \$25.00 (including GST) by contacting Mr Robert Pullella on telephone +61 8 9213 1944 or facsimile +61 8 9213 1999. Copies are also available from the Office of Gas Access Regulation (OffGAR) web site (<http://www.offgar.wa.gov.au/>) free of charge.

Submissions

Further submissions are now invited from interested parties, particularly in relation to this Draft Decision.

In general, all submissions from interested parties will be treated as in the public domain and placed on the OffGAR web site. The receipt and publication of any submission lodged for the purposes of the Code shall not be taken as indicating that the Regulator has formed an opinion as to whether or not any particular submission contains any information of a confidential nature.

Where an interested party wishes to make a submission in confidence, it should clearly indicate the parts of the submission in respect of which confidentiality is claimed. Any claim of confidentiality will be considered in accordance with the provisions of section 7 of the Code.

Submissions must be delivered to the Office of Gas Access Regulation by 5 pm WST 10 August 2001 and should be addressed to:

Mr Robert Pullella
Office of Gas Access Regulation
6th Floor
197 St Georges Terrace
PERTH WA 6000

All submissions must be in writing and should be provided in both hard copy and in electronic format.

KEN MICHAEL
GAS ACCESS REGULATOR

DRAFT DECISION

On 15 December 1999 Epic Energy (WA) Transmission Pty Ltd (Epic Energy) submitted a proposed Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline (DBNGP) to the Western Australian Independent Gas Pipelines Access Regulator (the Regulator) for approval under the *National Third Party Access Code for Natural Gas Pipeline Systems* (the Code). The Regulator assessed the proposed Access Arrangement against the requirements and principles of the *Gas Pipelines Access (Western Australia) Law*, which incorporates the Code, as set out in the *Gas Pipelines Access (Western Australia) Act 1998*. In assessing the proposed Access Arrangement, the Regulator also considered issues raised in submissions from interested parties.

The Draft Decision of the Regulator is to not approve the proposed Access Arrangement in its current form. The reasons for this decision are summarised in this part and detailed in Part B of this Draft Decision.

In order for the proposed Access Arrangement to be approved, the Regulator will require it to be amended and further information to be provided for inclusion in the Access Arrangement Information. The requirements of the Regulator are summarised below under the following headings:

- Non-tariff matters.
- Reference Tariff.
- Fees and Charges other than the Reference Tariff.

NON-TARIFF MATTERS

Sections 3.1 to 3.20 of the Code require that an Access Arrangement address the following non-tariff matters:

- A **Services Policy**, describing services to be offered, including Reference Services (section 3.1).
- **Terms and Conditions** for the provision of Reference Services (section 3.6).
- A **Capacity Management Policy**, indicating whether the Covered Pipeline is to be administered as a Contract Carriage Pipeline or a Market Carriage Pipeline (section 3.7).
- A **Trading Policy**, addressing the transfer of contracted capacity between Users (section 3.9).
- A **Queuing Policy**, defining the priority that Prospective Users have to negotiate for specific capacity (section 3.12).
- An **Extensions/Expansions Policy**, setting out a method for determining whether an extension or expansion to the Covered Pipeline is or is not to be treated as part of the Covered Pipeline for the purposes of the Code (section 3.16).
- A **Review Date**, indicating a date on or by which revisions to the Access Arrangement must be submitted and a date on which the revised Access Arrangement is intended to commence (section 3.17).

The Regulator may refuse to approve an Access Arrangement if it includes matters in addition to those listed above that are considered not to be reasonable.

The Regulator's assessment of the proposed Access Arrangement and Access Arrangement Information in respect of non-tariff matters is summarised below together with statements of amendments that are required to be made before the Regulator will approve the proposed Access Arrangement.

Services Policy

Section 3.1 of the Code requires that an Access Arrangement include a policy on the Service or Services to be offered (a Services Policy). Section 3.2 of the Code requires that the Services Policy comply with the following principles:

- (a) The Access Arrangement must include a description of one or more Services that the Service Provider will make available to Users or Prospective Users, including:
 - (i) one or more Services that are likely to be sought by a significant part of the market; and
 - (ii) any Service or Services which in the Relevant Regulator's opinion should be included in the Services Policy.
- (b) To the extent practicable and reasonable, a User or Prospective User must be able to obtain a Service that includes only those elements that the User or Prospective User wishes to be included in the Service.
- (c) To the extent practicable and reasonable, a Service Provider must provide a separate Tariff for an element of a Service if this is requested by a User or Prospective User.

A Services Policy is provided in section 6 of the proposed Access Arrangement. The Services Policy commits Epic Energy to making available a Reference Service to Prospective Users, and negotiating in good faith (subject to operational availability) for the provision of Non-Reference Services to Prospective Users.

A single Reference Service is offered: the "Firm Service". The Firm Service has the following general characteristics:

- The service can involve either forward haul or back haul of gas.
- Receipt of gas must be at one or more Receipt Points in a limited section of the Pipeline (Zone 1).
- The service is not subject to interruption or curtailment except within a permissible limit or as a result of force majeure events.
- The minimum contract term is five years unless otherwise agreed to by Epic Energy.

Paragraph 6.1(b) of the proposed Access Arrangement provides a non-exhaustive list of Non-Reference Services, as follows:

- Secondary Market Service, comprising a trading system to be operated by Epic Energy for trading Firm Service capacity on a daily 'spot' basis. Epic Energy has proposed 'Secondary Market Rules' and 'Secondary Market Terms and Conditions' for this system, which were submitted to the Regulator as part of the Access Arrangement documentation.
- Park and Loan Service, proposed as a negotiated, interruptible Non-Reference Service to allow Users to remedy imbalances (between capacity shipped and delivered) in excess of the Firm Service imbalance limits.
- Seasonal Service, proposed to comprise capacity made available by Epic Energy out of capacity over and above Firm Service capacity that becomes available due to seasonal factors. The Seasonal Service is proposed as a negotiated Non-Reference Service to allow Shippers to contract additional capacity on a monthly basis to supplement their contracted Firm Service capacity.

- Peaking Service, which is understood to cater for hourly capacity demands at a Delivery Point in excess of 120 percent of Maximum Hourly Quantity (MHQ; equal to one twenty-fourth of the Delivery Point MDQ).
- Metering Information Service.
- Pressure and Temperature Control Service.
- Odourisation Service.
- Co-mingling Service.

No descriptive information is provided in the proposed Access Arrangement on the Metering Information Service, the Pressure and Temperature Control Service, the Odourisation Service or the Co-mingling Service.

Non-Reference Services are also defined to include services provided by Epic Energy under contracts entered into prior to commencement of the Access Arrangement Period.

In responding to submissions relating to the proposed Services Policy, the Regulator addressed representations that Epic Energy is under an obligation to provide a Reference Service that is precisely the same as the T1 Service as defined under the *Dampier to Bunbury Pipeline Act 1997* and *Dampier to Bunbury Pipeline Regulations 1998*. The T1 Service is the basic non-interruptible haulage service first established under the *Gas Transmission Regulations 1994* and carried through to the *Dampier to Bunbury Pipeline Regulations 1998*. Most existing contracts for gas transmission through the DBNGP are for the T1 Service.

The following conclusions were in regard to the whether Epic Energy is required to provide a Reference Service that is precisely the same as the T1 Service.

- Epic Energy is not obliged by either statute or by the conditions of sale of the DBNGP to offer a Reference Service that is precisely the same as the T1 Service.
- While there is a demonstrated demand for the T1 Service by virtue of existing contracts for this service, the Regulator has taken the view that the existing contracts only demonstrate demand for a service of the general type of the T1 Service rather than specifically for a service that is precisely the same as the T1 Service. Noting that paragraph 3.2(a) of the Code only requires a general description of the services to be offered rather than a detailed specification of the terms and conditions of services, the evidence of demand for a service of the same general type as the T1 Service is not due cause to require that Epic Energy provide a Reference Service that is precisely the same as the T1 Service.

In view of the above, the Regulator considers that it is neither necessary nor appropriate to require that Epic Energy provide a Reference Service that is precisely the same as the T1 Service.

The Regulator also considered characteristics of the proposed Firm Service independently of the similarity or otherwise to the T1 Service. In this regard, the Regulator considers that the Firm Service is generally acceptable as the sole Reference Service under the Access Arrangement, subject to the following amendments.

- The proposed (Non-Reference) Seasonal Service should be incorporated into the Firm Service, to be achieved by providing in the Access Arrangement and/or Access Contract Terms and Conditions for a User to be able to contract (as part of the Firm Service) for different capacity (MDQ) in different months of the year.

- The Firm Service should make provision for receipt of gas into the DBNGP at any location on the DBNGP.
- The Firm Service should incorporate a back haul service that is unencumbered by restrictions on upstream deliveries.
- The Firm Service should include the timely provision to Users of metering information necessary to assess potential liabilities for penalty charges and enable Users to take actions to avoid those charges.
- The minimum contract duration for the Firm Service should be no greater than one year.

Also in response to submissions, the Regulator considered the proposed Non-Reference Services described in the Services Policy. Subject to the amendments that the Regulator requires to be made to the proposed Access Arrangement to describe more fully the proposed Non-Reference Services, the Regulator is of the view that the Services Policy proposed by Epic Energy is adequate in respect of the Non-Reference Services. The Regulator notes provision in the Access Arrangement of a list of Non-Reference Services does not preclude Prospective Users from negotiating with Epic Energy for provision of services that are different from the listed Reference Service or Non-Reference Services. This could include services precisely the same as the T1 Service, or services in the nature of interruptible services.

The following amendments are required before the proposed Access Arrangement will be approved.

Amendment 1

The proposed Access Arrangement and/or Access Contract Terms and Conditions should be amended to combine seasonal capacity attributable to temperature variations with firm capacity, and to allow Users of the Firm Service to contract for the provision of this combined capacity (as part of the Firm Service) thus allowing for different reserved capacity or MDQ in different months of the year.

Amendment 2

Clause 6 of the proposed Access Arrangement should be amended to make provision as part of the Firm Service for receipt of gas into the DBNGP at any location on the DBNGP.

Amendment 3

Clause 6.3 of the proposed Access Arrangement, relating to back haul of gas under the Firm Service, should be deleted.

Amendment 4

The Access Arrangement Information should be amended to include a detailed description of the type contained in clause 5 of the Access Guide for each of the Non-Reference Services proposed in paragraphs 6.1(b)(i)(A) to (H) of the proposed Access Arrangement.

Amendment 5

The proposed Access Arrangement and/or Access Contract Terms and Conditions should be amended to include, as part of the Firm Service, the timely provision to Users of metering information necessary to assess potential liabilities for penalty charges and enable Users to take actions to avoid those charges.

Amendment 6

The proposed Access Arrangement should be amended to provide for a minimum contract term of no greater than one year for the Firm Service.

Terms and Conditions

Section 3.6 of the Code requires that an Access Arrangement include the Terms and Conditions on which the Service Provider will supply each Reference Service. The Terms and Conditions included must, in the Relevant Regulator's opinion, be reasonable.

Epic Energy has provided Terms and Conditions for the Firm Service in a single document as Annexure B of the proposed Access Arrangement: the Access Contract Terms and Conditions.

Although the Access Contract Terms and Conditions for the Firm Service are mostly considered reasonable, there are a number of terms and conditions that are considered as not being reasonable.

The following amendments are required before the proposed Access Arrangement will be approved.

Amendment 7

Clauses 10.3 and 10.4 of the proposed Access Arrangement should be amended to remove the ability of Epic Energy to change the Access Contract Terms and Conditions without revision of the Access Arrangement in accordance with part 2 of the Code.

Amendment 8

The proposed Access Arrangement and/or Access Contract Terms and Conditions should be amended to include a provision that expressly states that Epic Energy is under an obligation to accept gas and to deliver gas, subject to the limitations of the terms and conditions that apply to any Access Contract entered into with the Shipper, including the occurrence of any force majeure event.

Amendment 9

The Access Contract Terms and Conditions should be amended to include a gas quality specification to apply from 1 July 2005, where that gas quality specification is no more restrictive than the broadest specification currently set out in Schedule 1 of the *Dampier to Bunbury Pipeline Regulations 1998*.

Amendment 10

Sub-clause 2.3 of the Access Contract Terms and Conditions should be amended to provide that the terms and conditions acceptable to Epic Energy on which it may accept out of specification gas must be reasonable.

Amendment 11

Clause 4 of the Access Contract Terms and Conditions should be amended to provide for re-nominations during a gas Day.

Amendment 12

Paragraph 5.3(b) of the Access Contract Terms and Conditions should be amended such that the offending Shipper's liability is not be unlimited, but rather Epic Energy and other Shippers should be obliged to take all reasonable steps possible to mitigate any losses occurring in the event of a Shipper taking gas in excess of their contracted capacity, i.e. an Overrun.

Amendment 13

Sub-clause 11.5 of the Access Contract Terms and Conditions should be amended to clearly describe the meaning of and scope of "arrangements between Epic Energy, that other gas distribution system and the operator of that network".

Amendment 14

Sub-clause 11.5 of the Access Contract Terms and Conditions, relating to interconnection of multiple transmission systems with a distribution network, should be amended to provide that Shippers will be notified of any arrangements between Epic Energy, the other gas transmission system and the operator of that distribution network prior to the time the Shipper becomes subject to any contractual obligation that may be affected by those arrangements.

Amendment 15

Sub-clause 12.6 of the Access Contract Terms and Conditions, relating to correction of meter readings in instances of metering inaccuracy, should be amended to remove the limitation on the Correction Period (being that the Correction Period will not extend beyond one half of the time elapsed since the date of the Previous Verification), except in circumstances where the period of inaccuracy cannot be known or agreed upon between Epic Energy and the Shipper.

Amendment 16

Paragraph 13.4(a) of the Access Contract Terms and Conditions should be amended to limit the liability of the Shipper to situations where loss or damage occurs and is directly caused by the Shipper's actions.

Amendment 17

Paragraph 13.4(b) of the Access Contract Terms and Conditions should be amended so as to remove liability of the User to parties other than Epic Energy by deleting the reference to "any person contracting with Epic Energy".

Amendment 18

Sub-clause 13.4 of the Access Contract Terms and Conditions should be amended such that the liability of each party to an Access Contract is limited to the plant, equipment, pipelines and facilities owned by each and to the sections of the DBNGP between the relevant Receipt and Delivery Points, in accordance with paragraph 28(a) of the Access Contract Terms and Conditions.

Amendment 19

Clause 14 of the Access Contract Terms and Conditions should be amended to provide for Shippers to be given not less than 30 days prior notice of all planned maintenance activity to be carried out on or in relation to the DBNGP which may reasonably be considered likely to interrupt normal gas transmission.

Amendment 20

The proposed Access Arrangement documents should be amended to include a definition of the term “Receipt Charge” or, alternatively, the term “Gas Receipt Charge” may be used instead if that term, as defined in the Access Contract Terms and Conditions, was intended to be used.

Amendment 21

The definition of “force majeure” in sub-clause 1.1 of the Access Contract Terms and Conditions should be amended to specify particular events that will constitute force majeure, including industrial action.

Amendment 22

Paragraph 15(d) of the Access Contract Terms and Conditions should be amended to state that Epic Energy will waive charges that are based on capacity reservation (MDQ) where it claims the benefit of force majeure under clause 15, to the extent that it fails to provide the Service that is the subject of the Access Contract.

Amendment 23

Sub-clause 21.4 of the Access Contract Terms and Conditions should be amended to read “If Epic Energy is not satisfied that the Shipper is in a position to meet or continue to meet its obligations under an Access Contract, Epic Energy may require and the Shipper shall provide such security as may objectively be considered reasonably necessary to secure those obligations”.

Amendment 24

The definition of “independent expert” in sub-clause 1.1 of the Access Contract Terms and Conditions should be amended to refer to sub-clause 18.2 of the Access Contract Terms and Conditions and not sub-clause 16.2, which appears to have been referenced unintentionally.

Amendment 25

Sub-clause 3.6 of the Access Contract Terms and Conditions should be amended to provide for agreement between the Shipper and any Other Shipper as to the proportion of gas supplied and for proportional allocation by Epic Energy of gas supplied to a Delivery Point in the absence of any agreement or due notification, consistent with sub-clause 3.7.

Amendment 26

Sub-clause 16.4 of the Access Contract Terms and Conditions is required to be amended to make it clear that any adjustment of Charges will be submitted for review in accordance with the provisions of the Code relating to review of an Access Arrangement.

Amendment 27

Paragraph 17.1(c) of the Access Contract Terms and Conditions should be amended to clarify whether default arising from a failure to pay any amount that is due to Epic Energy arises seven days after the date of posting of a notice of demand or the date of its receipt by the Shipper.

Amendment 28

Paragraphs 5(a) and (d) of schedule 3 of the Access Contract Terms and Conditions should be amended to refer to sub-clauses 12.5 and 12.6 of the Access Contract Terms and Conditions as appropriate and not sub-clauses 11.5 and 11.6, which appear to have been referenced unintentionally.

Capacity Management Policy

Section 3.7 of the Code requires that an Access Arrangement include a statement (a Capacity Management Policy) that the Covered Pipeline is either a Contract Carriage Pipeline or a Market Carriage Pipeline. Epic Energy proposes to manage the DBNGP as a Contract Carriage Pipeline. This proposal is considered to meet the requirements of the Code.

Trading Policy

Section 3.9 of the Code requires that an Access Arrangement for a Covered Pipeline, which is described in the Access Arrangement as a Contract Carriage Pipeline, must include a policy that explains the rights of a User to transfer contacted capacity between Receipt Points and between Delivery Points and to trade its right to obtain a service to another person (a Trading Policy).

A Trading Policy is provided by Epic Energy in section 11 of the proposed Access Arrangement. The Trading Policy provides for three mechanisms for trading in pipeline capacity:

- bare transfers in accordance with section 3.10 of the Code;
- conditional transfers in accordance with provisions set out in sub-clause 19.2 of the Access Contract Terms and Conditions to the effect that, subject to a User's rights to trade capacity in the Secondary Market, the User shall not otherwise assign or encumber its right or interest under the Access Contract without obtaining the prior written consent of Epic Energy, which consent shall not be unreasonably withheld; and
- transfers via a Secondary Market administered by Epic Energy.

The Secondary Market constitutes a spot market for capacity contracted under a Firm Service contract and traded for periods of one “Day” as defined in the proposed Access Arrangement.

Provisions for a User of the Firm Service to transfer contracted delivery capacity between Receipt Points and between Delivery Points are set out in sub-clause 3.3 of the Access Contract Terms and Conditions.

The Regulator is of the view that the Trading Policy proposed by Epic Energy and relevant provisions of the Access Contract Terms and Conditions generally meet the relevant requirements of the Code. However, the Regulator had some concerns with specific provisions of the Trading Policy that are required to be addressed.

The following amendments are required before the proposed Access Arrangement will be approved.

Amendment 29

Sub-clause 3.3 of the Access Contract Terms and Conditions should be amended to enable Shippers to relocate capacity across Receipt Points and Delivery Points upstream and downstream of the relevant contracted Receipt or Delivery Point and over a short term or long term basis where technically and commercially feasible and with the prior written consent of Epic Energy, that may only be withheld or made conditional on reasonable technical or commercial grounds.

Amendment 30

Sub-clause 11.2 of the proposed Access Arrangement should be amended to provide for Users of Services to change the Receipt Point or Delivery Point for a Service from that specified in any contract for that Service, subject to the User providing notice to the Service Provider and subject to the Service Provider being able to withhold consent to the change in Receipt Point or Delivery Point on reasonable commercial or technical grounds, in accordance with the requirements set out in paragraph 3.10(c) of the Code.

Amendment 31

Clause 11.3 of the proposed Access Arrangement should be amended to clearly specify whether the Secondary Market Service is a service providing actual pipeline capacity, or is a brokerage service for facilitating the exchange of capacity between Shippers or between Epic Energy and Shippers, or both. In the event the Secondary Market Service is, or includes, a brokerage service, paragraph 11.3(e) of the proposed Access Arrangement should be amended to indicate to which type of service (pipeline capacity or a brokerage service), and the means by which, the “market price” applies.

Queuing Policy

Section 3.12 of the Code requires that an Access Arrangement must include a policy for determining the priority that a Prospective User has, as against any other Prospective User, to obtain access to spare capacity and developable capacity (a Queuing Policy). The Code also provides that dispute resolution must be available under section 6 of the

Code where difficulties arise in defining the priority that Prospective Users have in respect of negotiation for specific capacity.

Epic Energy has provided a Queuing Policy as clause 5.3 of the proposed Access Arrangement. The Queuing Policy provides generally for Access Requests to have priority determined by the order of receipt by Epic Energy, subject to several qualifications:

- Epic Energy may deal with Access Requests out of order provided that the Access Requests that were first in time are not ultimately disadvantaged;
- an Access Request may be rejected at any stage prior to its acceptance by Epic Energy, in which case the priority of the Access Request is lost; and
- the Queuing Policy is subject to any Capacity Expansion Options which may be granted by Epic Energy from time to time – Capacity Expansion Options will be processed independently of and stand apart from any other Access Requests which have been received, and will receive priority to Prospective Shippers in the queue.

The Regulator is of the view that the Queuing Policy proposed by Epic Energy generally meets the relevant requirements of the Code. However, the Regulator had several concerns with specific provisions of the Queuing Policy that are required to be addressed.

The following amendments are required before the proposed Access Arrangement will be approved.

Amendment 32

Clause 5.3 of the proposed Access Arrangement should be amended to provide for Prospective Users to be notified at the time an Access Request is made of the time when that Access Request may be met, including details of the position in the queue of that Access Request, but subject to Epic Energy complying with any confidentiality obligations to other Prospective Users.

Amendment 33

Clause 5.3 of the proposed Access Arrangement should be amended to provide for a Prospective User to be notified of any material change (in the context of the relevant Prospective User's application) in the expected timing of when the Prospective User's Access Request in the queue will be satisfied.

Amendment 34

Clause 5.3 of the proposed Access Arrangement should be amended to define in detail what is meant by "ultimately disadvantaged", and to provide for all affected Prospective Users with Access Requests in the queue to be notified if any Access Requests are to be dealt with out of order.

Amendment 35

Clause 5.3 of the proposed Access Arrangement should be amended to state the circumstances in which an Access Request may be rejected.

Amendment 36

Clause 5.3 of the proposed Access Arrangement is required to be amended to provide for the establishment and operation, in accordance with the provisions of clause 5.3 (as amended), of separate queues for Access Requests to the extent the different services described in the proposed Access Arrangement are independent in their use of pipeline capacity.

Amendment 37

Clause 12.3 of the proposed Access Arrangement should be amended to state that a Capacity Expansion Option is only capable of being exercised to secure capacity which becomes available as a result of an expansion or extension of the DBNGP to which the Capacity Expansion Option expressly relates.

Amendment 38

Clause 5.3 of the proposed Access Arrangement should be amended to describe priority as between Capacity Expansion Options.

Amendment 39

Clause 12 of the proposed Access Arrangement should be amended to provide for a Service Agreement for a Reference Service to be capable of including an option to extend the term of the Service Agreement for the capacity contracted for under that agreement, without being subject to reallocation on the basis of the Queuing Policy.

Amendment 40

Clause 5.3 of the proposed Access Arrangement should be amended to describe the effect on the position in the queue of withdrawing an Access Request and re-submitting it, or amending an Access Request.

Extensions/Expansions Policy

Section 3.16 of the Code requires that an Access Arrangement include a policy (an Extensions/Expansions Policy) which sets out:

- the method to be applied to determine whether any extension to, or expansion of the Capacity of, the Covered Pipeline should or should not be treated as part of the Covered Pipeline for all purposes under the Code;
- how any extension or expansion, which is to be treated as part of the Covered Pipeline, will affect Reference Tariffs; and
- a description of the New Facilities that will be funded by the Service Provider and the conditions on which the Service Provider will fund the New Facilities.

Epic Energy has provided an Extensions/Expansion Policy in section 12 of the proposed Access Arrangement. Under the policy, Epic Energy will enhance or expand the capacity of the DBNGP where it considers the requirements of section 6.22 of the Code are satisfied. It will otherwise enhance or expand capacity as it sees fit.

Under the policy, Epic Energy may from time to time offer Capacity Expansion Options which are for Firm Service Capacity on the DBNGP. A Capacity Expansion Option gives a Prospective Shipper a right to a specified quantity of capacity on particular terms and conditions. Capacity Expansion Options will have a particular purchase price determined by Epic Energy and are capable of being traded with other Prospective Shippers. Expansions of the DBNGP pursuant to Capacity Expansion Options will be treated as part of the Covered Pipeline unless Epic Energy states otherwise.

Any expansion or extension not made for the purposes of fulfilling obligations under a Capacity Expansion Option will only become part of the Covered Pipeline where Epic Energy so elects and submits notice to the Regulator. Expansions or extensions of the DBNGP that become part of the Covered Pipeline will not affect Reference Tariffs in the first Access Arrangement Period.

Epic Energy may from time to time seek surcharges or capital contributions in respect of New Facilities Investment. Where it does not do so, a Shipper using incremental capacity will pay the Reference Tariff.

The Regulator had concerns with the proposed Extensions/Expansions Policy in respect of matters relating to Capacity Expansion Options, the operation of Capital Contributions, decisions for an Extension/Expansion to become part of the Covered Pipeline, and impacts of Extensions/Expansions on the Reference Tariff.

The following amendments are required before the proposed Access Arrangement will be approved.

Amendment 41

Clause 12 of the proposed Access Arrangement should be amended to clearly explain whether the purchase price of a Capacity Expansion Option represents a capital contribution by the relevant User to the cost of the extension or expansion pertaining to the option, or whether the purchase price of a Capacity Expansion Option represents no more than a price for the facility given by the option itself.

Amendment 42

The Access Arrangement should be amended to describe the circumstances in which capital contributions will be sought under clause 12.7 of the proposed Access Arrangement.

Amendment 43

Clause 12.7 of the proposed Access Arrangement, relating to the imposition of surcharges, should be amended to be subject to Epic Energy providing written notice to the Regulator of an intent to impose surcharges.

Amendment 44

The proposed Access Arrangement should be amended to include a description of the circumstances in which surcharges are likely to be sought under clause 12.7 of the proposed Access Arrangement.

Amendment 45

Clause 12.4 of the proposed Access Arrangement should be amended to state that Epic Energy will provide written notice to the Regulator of any decision not to include in the Covered Pipeline any expansion or extension which results from the exercise of a Capacity Expansion Option.

Amendment 46

Clause 12.7 of the proposed Access Arrangement should be amended to state that Epic Energy will only seek and will recognise (for the purpose of determining rebates) surcharges and capital contributions in accordance with the Code.

Review Date

Section 3.17 of the Code requires that an Access Arrangement include a date upon which the Service Provider must submit revisions to the Access Arrangement (a Revisions Submission Date), and a date upon which the next revisions to the Access Arrangement are intended to commence (a Revisions Commencement Date).

In approving the Revisions Submissions Date and Revisions Commencement Date, the Regulator must have regard to the objectives for Reference Tariffs and Reference Tariff Policy in section 8.1 of the Code.

In making its decision on an Access Arrangement (or revisions to an Access Arrangement) and if considered necessary having had regard to the objectives in section 8.1 of the Code, the Regulator may:

- (i) require an earlier or later Revisions Submission Date and Revisions Commencement Date than proposed by the Service Provider in its proposed Access Arrangement; and
- (ii) require that specific major events be defined that trigger an obligation on the Service Provider to submit revisions prior to the Revisions Submission Date.

Section 13 of the proposed Access Arrangement specifies the date on which Epic Energy will submit revisions to the Regulator and the date Epic Energy intends those revisions to commence.

- Epic Energy proposes that the Revisions Submission Date is 1 July 2004.
- Epic Energy proposes that the Revisions Commencement Date is 1 January 2005.

In regard to the Revisions Submission Date and Revisions Commencement Date, Epic Energy has proposed a Revisions Submission Date that is six months prior to the proposed Revisions Commencement Date. In view of regulatory experience throughout Australia, the Regulator considers that a six-month period is inadequate for assessment of a proposed Access Arrangement and will require that the revisions submission date be brought forward to allow a nine-month period for assessment.

The following amendment is required before the proposed Access Arrangement will be approved.

Amendment 47

Clause 13 of the proposed Access Arrangement should be amended to provide for a Revisions Submission Date of at least nine months prior to the Revisions Commencement Date.

In regard to specification of specific major events that trigger an obligation on the Service Provider to submit revisions prior to the Revisions Submission, the Regulator gave attention to the following types of major events that could justify a review for the purposes of section 3.17 of the Code:

- realised quantities of gas throughput significantly exceeding forecast quantities that were the basis for determining the Reference Tariff;
- significant changes in taxation liabilities of the Service Provider arising from a change in law; and
- significant changes in costs to the Service Provider arising from changes in regulatory arrangements affecting the provision of services.

In regard to a trigger mechanism in respect of gas throughput, the Regulator notes that for the DBNGP a 25 percent increase in pipeline throughput would not be possible without substantial New Facilities Investment, which has not been taken into account in determination of Reference Tariffs. Given this, the Regulator does not consider that it is necessary to make provision for triggering of a review of the Access Arrangement on the basis of realised gas throughput.

In regard to taxation and regulatory changes, the Regulator has taken into account the objective set out in section 8.1(b) of the Code that Reference Tariffs should replicate the outcome of a competitive market, which would see any cost reductions from changes in taxation or regulatory arrangements passed through to consumers in lower prices. However, the Regulator also took into account that as these changes in costs may only be passed through to changes in Reference Tariffs by way of a review of the Access Arrangement, the changes in costs to trigger a review must be of a sufficiently high magnitude that the benefits of review of the Access Arrangement, and reductions to Reference Tariffs should exceed the costs of a review. The Regulator concluded that an appropriate magnitude of a change in total costs would be 5 percent of forecast revenue

for any given year of the Access Arrangement Period (amounting to approximately \$8.25 million, refer to section 5.8 of this Draft Decision).

The following amendment is required before the proposed Access Arrangement will be approved.

Amendment 48

The proposed Access Arrangement should be amended to specify that Epic Energy will submit revisions of the Access Arrangement to the Regulator:

- within three months of the day on which a change in regulation that arises from a change in law takes effect, or the day on which it becomes sufficiently certain that the change will take effect, whichever is earlier, that has the effect of reducing the costs that Epic Energy is required to pay, or is likely to be required to pay, in the subsequent calendar year of the Access Arrangement Period in relation to its supply of one or more services by an amount of 5 percent or more of the Total Revenue for that calendar year; and
- within three months of a change in taxation that arises from a change in law takes effect, or the day on which it becomes sufficiently certain that the change will take effect, whichever is earlier, that has the effect of reducing the costs that Epic Energy is required to pay, or is likely to be required to pay, in the subsequent calendar year of the Access Arrangement Period in relation to its supply of one or more services by an amount of 5 percent or more of the Total Revenue for that calendar year.

Other Matters Addressed in the Access Arrangement

Section 2.24 of the Code requires that an Access Arrangement contain the elements and satisfy the principles set out in sections 3.1 to 3.20 of the Code. An Access Arrangement may, however, address matters or provide information beyond the requirements of sections 3.1 to 3.20 of the Code.

The Regulator may not refuse to approve a proposed Access Arrangement solely for the reason that the proposed Access Arrangement does not address a matter that sections 3.1 to 3.20 do not require an Access Arrangement to address. However, should an Access Arrangement address matters in addition to the requirements of sections 3.1 to 3.20 of the Code, then the Regulator has broad discretion to refuse to accept the proposed Access Arrangement if the additional matters are considered not reasonable. In assessing any additional matters included in a proposed Access Arrangement, the Regulator may take into account the factors listed in section 2.24 of the Code.

Public submissions on the proposed Access Arrangement raised concerns in regard to provisions of the proposed Access Arrangement relating to:

- information that may be required by Epic Energy in support of an Access Request;
- the absence of provision in the proposed Access Arrangement for consideration by Epic Energy of conditional Access Requests; and
- provision for the Initial Capital Base to be a fixed principle under section 8.48 of the Code.

The Regulator considered these matters and will require the proposed Access Arrangement to be amended to address the concerns raised.

The following amendments are required before the proposed Access Arrangement will be approved.

Amendment 49

Sub-clause 5.2(b) of the proposed Access Arrangement, relating to provision for Epic Energy to obtain further information from a Prospective User in relation to an Access Request, should be amended to state that “the further detail and information” may only be requested by Epic Energy where it may be objectively considered reasonably necessary for the purpose of assessing the corresponding Access Request and any request for information is in accordance with the Information Package.

Amendment 50

The proposed Access Arrangement should be amended to set out a mechanism substantially similar to clause 43 of the Access Manual for the making of Access Requests that are conditional upon fulfilment of conditions precedent specified in the request.

Amendment 51

Clause 7.15 of the proposed Access Arrangement should be deleted to remove provision for the Initial Capital Base to comprise a fixed principle within the meaning of section 8.48 of the Code.

REFERENCE TARIFF

The Code requires that an Access Arrangement include a Reference Tariff for:

- (a) at least one Service that is likely to be sought by a significant part of the market; and
- (b) each Service that is likely to be sought by a significant part of the market and for which the Relevant Regulator considers a Reference Tariff should be included.

The principles used to determine Reference Tariffs are to be stated as a Reference Tariff Policy. Both the Reference Tariff Policy and the Reference Tariffs should be designed with a view to achieving the objectives set out in section 8.1 of the Code:

- (a) providing the Service Provider with the opportunity to earn a stream of revenue that recovers the efficient costs of delivering the Reference Service over the expected life of assets used in delivering that Service;
- (b) replicating the outcome of a competitive market;
- (c) ensuring the safe and reliable operation of the Pipeline;
- (d) not distorting investment decisions in pipeline transportation systems or in upstream or downstream industries;
- (e) efficiency in the level and structure of the Reference Tariff; and
- (f) providing an incentive to the Service Provider to reduce costs and to develop the market for Reference and other services.

To the extent that any of these objectives conflict in their application to a particular Reference Tariff determination, the Relevant Regulator may determine the manner in which they can best be reconciled or which of them should prevail.

Epic Energy has proposed a Reference Tariff for the Firm Service. In accordance with the principles established by the Code, Epic Energy used a price path methodology for the determination of the Reference Tariff. With this approach, a Reference Tariff is determined in advance for the Access Arrangement Period. The Reference Tariff follows a path that is forecast to deliver predetermined revenue, but is not adjusted to account for subsequent events until the commencement of the next Access Arrangement Period.

The Code provides a general procedure for the application of the price path methodology to the determination of Reference Tariffs. The steps in this general procedure are:

- estimation of an Initial Capital Base;
- estimation of Capital Expenditure;
- estimation of Non-Capital Costs;
- estimation of an appropriate Rate of Return;
- specification of a Depreciation Schedule;
- determination of Total Revenue;
- determination of a cost/revenue allocation across services;
- determination of Reference Tariffs; and
- specification of Incentive Mechanisms.

The Regulator considered the Reference Tariff proposed by Epic Energy in light of each of these steps. The Regulator's conclusions and required amendments to the proposed Access Arrangement in respect of each of these steps are indicated below.

Initial Capital Base

Epic Energy has proposed an Initial Capital Base of \$2,570.34 million as at 31 December 1999. This value was derived as follows:

- Summation of the 1998 DBNGP purchase price of \$2,407 million and \$42.49 million of associated acquisition costs to obtain a total acquisition cost of \$2,449.49 million.
- Allocation of the total acquisition cost across classes of assets on the basis of assessed market values of individual assets.
- Adjustment of the asset value in each asset class to reflect depreciation and capital expenditure to 31 December 1999, giving a value for each asset class as at 31 December 1999, and a total value across all asset classes of \$2,570.34 million.

In making a determination on an appropriate value of the Initial Capital Base for the DBNGP, the Regulator has given consideration to the guidelines provided by the relevant sections of the Code (sections 8.10 and 8.11), and to the specific circumstances of the DBNGP.

The Regulator does not consider there to be any reason to value the Initial Capital Base outside of the range of values contemplated by section 8.11 of the Code, that is the range of values between Depreciated Actual Cost (DAC) and Depreciated Optimised Replacement Cost (DORC). In particular, the Regulator does not consider there to be any reason to value the Initial Capital Base in excess of a DORC value. The Regulator's reasons for this position are the economic arguments for the Initial Capital Base to not be in excess of the DORC value, and also that the sale process for the DBNGP, as evidenced by the Information Memorandum (provided to potential buyers of the DBNGP), would in

the Regulator's view have led to the reasonable expectation that the asset valuation for the DBNGP under the Code would not be in excess of a DORC value.

In considering possible values for the DBNGP Initial Capital Base, the Regulator noted that the Information Memorandum gave particular attention to a DORC valuation of the DBNGP in providing an indication of the tariffs that may apply under the Code. It is the Regulator's view that, despite disclaimers in the Information Memorandum that no representation was being made as to the likely values of the Initial Capital Base or tariffs under the Code, this may have led to reasonable expectations of such a valuation under the Code being likely. It is noted that at the time of the sale of the DBNGP, there were no precedents for valuation of assets under the Code. Given this, the Regulator determined that a reasonable value of the Initial Capital Base for the DBNGP is a DORC value of \$1,233.66 million as at 31 December 1999, taking into account the DORC valuation presented in the Information Memorandum, inflation, capital expenditure¹ and depreciation in the period to 31 December 1999.

For the purposes of assessing the Reference Tariff proposed by Epic Energy, the Regulator has contemplated an allocation of this asset value across asset classes in the same manner and proportions as proposed by Epic Energy. The Regulator's revised allocation of asset value across assets is as follows.

¹ Capital expenditure includes all expenditure for the Stage 3A enhancement, even though Epic Energy considered some of this expenditure to occur in 2000. Refer to section 5.4.4 of this Draft Decision for a discussion of the Regulator's considerations in respect of Epic Energy's forecast Capital Expenditure.

Revised Initial Capital Base by asset class

Asset	Asset Value at 31 December 1999 (\$ million)
Pipeline assets	
Zone 1a	15.84
Zone 1b	143.52
Zone 2	77.59
Zone 3	77.85
Zone 4	78.05
Zone 4a	32.20
Zone 5	79.28
Zone 6	80.14
Zone 7	90.40
Zone 8	80.77
Zone 9	109.44
Zone 10	138.56
Compression assets	
Compressor station 1	11.59
Compressor station 2	12.57
Compressor station 3	21.42
Compressor station 4	12.20
Compressor station 5	21.65
Compressor station 6	23.83
Compressor station 7	11.73
Compressor station 8	22.09
Compressor station 9	24.40
Compressor station 10	6.64
Metering assets	13.79
Other assets	
Depreciable	37.87
Non-depreciable (land and pipeline linepack)	10.24
Total	1,233.66

The following amendment is required before the proposed Access Arrangement will be approved.

Amendment 52

The proposed Access Arrangement and Access Arrangement Information should be amended to reflect an Initial Capital Base of \$1,233.66 million as at 31 December 1999.

Capital Expenditure

Sections 8.15 to 8.21 of the Code provide for forecast Capital Expenditure on a Covered Pipeline and associated regulated assets to be incorporated into the Capital Base of the pipeline, and for forecast Capital Expenditure to be considered in determination of Reference Tariffs.

Epic Energy provided details of planned Capital Expenditure in sections 3.6 and 3.7 of the Access Arrangement Information – summarised as follows with values converted to real dollar values.

Epic Energy forecast Capital Expenditure (1999 \$million, year ending 31 December)

Type of Investment	2000	2001	2002	2003	2004	Total
Pipeline Expenditure						
Flood damage mitigation	0	0.05	0.05	0.05	0.05	0.20
Pipeline protection	0	0.20	0	0.20	0	0.40
Mainline valve CCVT upgrade	0	0	0.08	0.08	0.08	0.24
Mainline valve GEA upgrades	0	0.04	0.04	0.04	0	0.12
Mainline valve and repeater earthing	0.03	0.03	0.03	0.03	0.03	0.15
WLPG heat exchanger	0.40	0	0	0	0	0.40
Total Pipeline Expenditure	0.43	0.32	0.20	0.40	0.16	1.50
Compression Expenditure						
Turbine/Compressor Upgrades	20.19	1.3	1.40	0	0	22.89
UPS upgrade	0	0.15	0.15	0.15	0.15	0.60
Airstrip upgrade	0.15	0.20	0.20	0	0	0.55
Water treatment plants	0	0.05	0.05	0.05	0.05	0.20
Air conditioning units	0	0.05	0.05	0.05	0.05	0.20
Compressor station facilities	0.11	0.05	0	0	0	0.16
Station MMI upgrades	0	0.03	0.10	0.08	0.10	0.31
Portable flares	0	0.02	0	0	0	0.02
Sulphur deposition mitigation	0	1.00	1.00	0	0	2.00
Greenhouse NOx/SOx control	0	1.50	1.50	1.50	1.50	6.00
Total Compression Expenditure	20.45	4.35	4.45	1.83	1.85	32.93
Metering Expenditure						
Meter Station noise control	0	0.05	0.05	0.05	0.05	0.20
Other Expenditure						
Microwave system upgrade	0.25	3.80	4.70	3.80	0	12.55
VHF communications upgrade	0	0.20	0.25	0.20	0	0.65
SCADA upgrade	0	0.30	0.25	0.20	0	0.75
Customer reporting system	2.40	0	0	0	0	2.40
Computer system upgrades	0.62	0.15	0.15	0.15	0.15	1.22
Information management system	0.50	0	0	0	0	0.50
SCADA master station protocols	0	0.08	0	0	0	0.08
SCADA master station CS6, 9 visibility	0.10	0	0	0	0	0.10

Epic Energy forecast Capital Expenditure (1999 \$million, year ending 31 December)

Type of Investment	2000	2001	2002	2003	2004	Total
Motor vehicles	0	0.25	0.25	0.25	0.25	1.00
Tools and equipment	0.28	0.05	0.05	0.05	0.05	0.48
Inventory management	0.20	0.20	0.20	0.20	0.20	1.00
Emergency response caravan	0	0.06	0	0	0	0.06
Buildings	0.30	0.10	0.10	0.10	0.10	0.70
Security systems	0	0.10	0	0	0	0.10
Fitness for purpose project	0.60	0	0	0	0	0.60
Corrosion protection upgrades	0	0	0.02	0.02	0.02	0.06
Land management (GIS)	0.06	0	0	0	0	0.06
Total Other Expenditure	5.31	5.29	5.97	4.97	0.77	22.31
Total	26.19	10.01	10.67	7.25	2.83	56.95

The Regulator considered the forecast Capital Expenditure in terms of whether or not particular items of New Facilities Investment could reasonably be expected to pass the tests of section 8.16 of the Code. Following from this assessment, the Regulator will require the following amounts to be removed from the forecasts of Capital Expenditure taken into account in the determination of the Reference Tariff and transferred to either Non-Capital Costs or the Initial Capital Base.

Reductions to Forecast Capital Expenditure (1999 \$million, year ending 31 December)

Type of Investment	2000	2001	2002	2003	2004	Total
Items transferred to Non-Capital Cost						
Flood damage mitigation	0	0.05	0.05	0.05	0.05	0.20
Mainline valve GEA upgrades	0	0.04	0.04	0.04	0	0.12
Tools and equipment	0.05	0.05	0.05	0.05	0.05	0.25
Inventory management	0.20	0.20	0.20	0.20	0.20	1.00
Items transferred to ICB						
Stage 3A enhancement	19.49	0	0	0	0	19.49
Total	19.74	0.34	0.34	0.34	0.30	21.06

Of the above reductions, amounts indicated for the cost classifications of flood damage mitigation, GEAs upgrade, tools and equipment and inventory management should be incorporated in Non-Capital Costs for the respective years of the Access Arrangement Period. The amount of expenditure designated for Stage 3A compression enhancement has been added to the 1999 valuation of the Initial Capital Base rather than being considered as Capital Expenditure in 2000.

The following amendment is required before the proposed Access Arrangement will be approved.

Amendment 53

The proposed Access Arrangement and Access Arrangement Information should be amended to reflect Capital Expenditure as follows (31 December 1999 \$million).

Year ending 31 December	2000	2001	2002	2003	2004	Total
Pipeline	0.43	0.23	0.11	0.31	0.11	1.18
Compression	0.96	4.35	4.45	1.83	1.85	13.44
Metering	0.00	0.05	0.05	0.05	0.05	0.20
Other	5.06	5.04	5.72	4.72	0.52	21.06
Total	6.45	9.67	10.33	6.91	2.53	35.89

In the assessment of proposed Capital Expenditure, the Regulator noted that expenditure on several projects was poorly justified and that while the expenditure would be deemed likely to satisfy the requirements of section 8.16 of the Code for the purposes of this Draft Decision, more rigorous justification of the expenditure would be required before the associated New Facilities Investment would be rolled into the Capital Base. The expenditure items in question are:

- WLPG heat exchanger;
- compressor station computer facilities and software;
- sulphur deposition mitigation programme;
- microwave system upgrade;
- replacement of remote terminal units;
- customer reporting system;
- computer system upgrades; and
- information management system.

Epic Energy may wish to consider providing the Regulator with more rigorous justification for these projects before undertaking the associated expenditure (in accordance with provisions of section 8.21 of the Code).

Non-Capital Costs

Section 8.36 of the Code defines Non-Capital Costs as the operating, maintenance and other costs incurred in the delivery of a Reference Service.

Section 8.37 of the Code provides for a Reference Tariff to recover all Non-Capital Costs (or forecast Non-Capital Costs, as relevant) except for any such costs that would not be incurred by a prudent Service Provider, acting efficiently, in accordance with accepted and good industry practice, and to achieve the lowest sustainable cost of delivering the Reference Service.

Epic Energy forecast Non-Capital Costs for the Access Arrangement Period as follows (converted to real 31 December 1999 dollar values).

Epic Energy forecast Non-Capital Costs (1999 \$million, year ending 31 December)

Type of Investment	2000	2001	2002	2003	2004	Total
Wages and salaries	9.68	9.68	9.68	9.68	9.68	48.38
Materials and services	10.58	11.29	13.18	12.82	12.23	60.09
Property taxes	0.05	0.05	0.05	0.05	0.05	0.25
Marketing	0.44	0.44	0.44	0.44	0.44	2.19
Corporate overheads	3.85	3.75	3.91	3.87	3.80	19.18
Gas used in operations	13.56	14.09	14.30	14.95	15.20	72.10
Total	38.15	39.29	41.55	41.80	41.40	202.19

The Regulator indicated in the discussion of Capital Expenditure in this Draft Decision (section 5.4) that several cost line items included in the forecast of Capital Expenditure should be regarded as Non-Capital Costs and addressed as such for the purposes of determination of Reference Tariffs. These costs were as follows.

Forecast Capital Expenditure reallocated to Non-Capital Costs (1999 \$million, year ending 31 December)

Type of Investment	2000	2001	2002	2003	2004	Total
Flood damage mitigation	0	0.05	0.05	0.05	0.05	0.20
Mainline valve GEA upgrades	0	0.04	0.04	0.04	0	0.12
Tools and equipment	0.05	0.05	0.05	0.05	0.05	0.25
Inventory management	0.20	0.20	0.20	0.20	0.20	1.00
Total	0.25	0.34	0.34	0.34	0.30	1.57

Addition of these cost items to Epic Energy's forecast Non-Capital Costs gives the following revised Non Capital Costs.

Epic Energy forecast Non-Capital Costs with reallocated Capital Costs (1999 \$million, year ending 31 December)

Expenditure category	2000	2001	2002	2003	2004	Total
Wages and salaries	9.68	9.68	9.68	9.68	9.68	48.38
Materials and services	10.58	11.29	13.18	12.82	12.23	60.09
Property taxes	0.05	0.05	0.05	0.05	0.05	0.25
Marketing	0.44	0.44	0.44	0.44	0.44	2.19
Corporate overheads	3.85	3.75	3.91	3.87	3.80	19.18
Gas used in operations	13.56	14.09	14.30	14.95	15.20	72.10
Transferred from Capital Expenditure	0.25	0.34	0.34	0.34	0.30	1.57
Total	38.41	39.63	41.88	42.14	41.70	203.76

In considering the Non-Capital Costs proposed by Epic Energy, the Regulator is required to make a determination on whether these costs meet the requirements of section 8.37 of the Code. No information was provided by Epic Energy in the Access Arrangement Information, or otherwise to the Regulator, to support such a determination.

In undertaking the assessment, the Regulator noted that the forecasts of Non-Capital Costs do not limit or constrain Epic Energy as to the level or composition of Non-Capital Costs actually realised over the Access Arrangement Period. For this reason, the Regulator gave attention to both the total level of Non-Capital Costs that will be recognised in the derivation of the Reference tariff, and individual cost components.

The Regulator's assessment of the forecast Non-Capital Costs comprised:

- an assessment of time trends in the total Non-Capital Costs;
- a comparison of Non-Capital Costs across different transmission pipelines; and
- an assessment of individual cost components and the assumptions for cost forecasts.

The Regulator notes that Epic Energy has not included in the Access Arrangement Information more detailed information on performance indicators that would enable a more detailed assessment of time trends in Non-Capital Costs both at the current time and upon future reviews of the Access Arrangement. Category 6 of Attachment A to the Code requires the inclusion of performance indicators in an Access Arrangement Information for a Covered Pipeline.

While work is still progressing in Australia toward the development of appropriate benchmarks for the gas pipeline and other regulated industries,² the Regulator considers that the Access Arrangement Information for the DBNGP should be amended to include additional information on performance indicators.

² Two discussion papers on benchmarking and incentive regulation have in recent times been prepared through the Utility Regulators Forum chaired by the ACCC:

- (1) ACCC "The role of benchmarking in incentive regulation: An ACCC perspective", 22 July 1999; and
- (2) ACCC "Incentive regulation, benchmarking and utility performance", November 2000.

In assessing Epic Energy's forecast Non-Capital Costs for the DBNGP, the Regulator has noted that the forecasts have not been substantiated or supported to indicate that the forecast costs are consistent with the requirements of section 8.37 of the Code. That is, to indicate that the costs are consistent with those that would be incurred by a prudent operator, acting efficiently, in accordance with accepted and good industry practice, and to achieve the lowest sustainable cost of delivering the Reference Service.

The Regulator notes that the forecast costs appear high relative to historical Non-Capital Costs and the Non-Capital Costs of comparable transmission pipelines. Further, Non-Capital Costs are forecast to increase at a rate greater than Epic Energy's assumed rate of inflation for the Access Arrangement Period.

The Regulator gave attention to individual components of Non-Capital Costs. The Regulator noted that the forecast cost of compressor-fuel gas increases by \$3.33 million or 26 percent between 2000 and 2004, corresponding to an increase in quantity of fuel gas use by a similar proportion. Given that gas throughput in the DBNGP is only forecast to increase by five percent over the same period, the Regulator is concerned that the increase in costs of fuel gas may be excessive. However, after review of information provided by Epic Energy in relation to the estimation of fuel gas use, the Regulator considers that there is not sufficient technical justification to require amendment of the forecast quantities and costs of fuel gas.

The Regulator notes, however, that while recognising the current contractual commitments of Epic Energy for the purchase of gas for use in pipeline operations, these contracts will expire from 2005. The Regulator considers that it is reasonable that Users should be able to provide their own fuel gas after that time.

In total, the Regulator notes the concerns indicated above in relation to Non-Capital Costs but does not consider that there is sufficient technical justification at the current time to seek amendment of these costs on the basis of these concerns. As such, the Regulator's required amendments to Non-Capital Costs are limited to the transfer of costs from Capital Expenditure, indicated as follows.

Revisions to forecast Non-Capital Costs (1999 \$million, year ending 31 December)

	2000	2001	2002	2003	2004	Total
Epic Energy proposed costs	38.15	39.29	41.55	41.80	41.40	202.19
<i>plus</i>						
Costs transferred from Capital Expenditure	0.25	0.34	0.34	0.34	0.30	1.57
Revised Non Capital Costs	38.41	39.63	41.88	42.14	41.70	203.76

The following amendments are required before the proposed Access Arrangement will be approved.

Amendment 54

The proposed Access Arrangement and/or Access Contract Terms and Conditions should be amended to make provision after 2005 for Users of the Firm Service to provide fuel gas in lieu of payment of the Compressor Fuel Charge.

Amendment 55

The Access Arrangement Information should be amended to include the following Key Performance Indicators for the Access Arrangement Period.

Pipeline maintenance cost (\$ per km of pipeline).

Compression maintenance cost (\$ per MW installed).

Compression unit reliability (ratio of out of service hours to total hours).

Compressor unit utilisation (ratio of run hours to total hours).

Pipeline utilisation (ratio of average throughput to maximum capacity).

Capacity reservation utilisation (ratio of average throughput to capacity reservation).

Compressor fuel usage (ratio of compressor fuel to throughput).

Maintenance cost ratio (ratio of operation and maintenance cost to total operating expenditure excluding fuel).

Overhead cost ratio (ratio of overheads to total operating costs excluding fuel).

Delivery cost (ratio of total operating costs excluding fuel to total quantity delivered).

Gas unaccounted for (volume of gas unaccounted for as a percentage of total delivery).

Delivery disruption (disrupted quantity as a percentage of total MDQ).

Amendment 56

The proposed Access Arrangement and Access Arrangement Information should be amended to reflect Non-Capital Costs as follows (31 December 1999 \$million).

Year ending 31 December	2000	2001	2002	2003	2004	Total
Total Non-Capital Costs	38.41	39.63	41.88	42.14	41.70	203.76

Rate of Return

For the purposes of determining Total Revenue, Epic Energy calculated an annual return on the Capital Base for the DBNGP by applying a pre-tax nominal rate of return to the sum of the physical asset account balance and a deferred recovery account balance at the end of the preceding year. The rate of return used in these calculations was determined as a weighted average of the returns (weighted average cost of capital or WACC) applicable to the assumed levels of equity and debt used to finance the DBNGP.

Epic Energy's determination of the WACC is described in Appendix 2 of the Access Arrangement Information. Capital asset pricing model (CAPM) theory was used to derive the WACC. The parameter values used by Epic Energy in the calculation of the WACC are indicated in the table below. On the basis of these parameter values, Epic Energy has proposed a real pre-tax WACC of 8.5 percent, corresponding to a nominal post-tax WACC of 11.2 percent.

The Regulator drew conclusions as to an appropriate method of calculation of the WACC, values of input variables to the calculation, and the value of the WACC. In regard to the method of calculation, the Regulator used CAPM theory, but with some differences from the application by Epic Energy, particularly in response to the treatment of taxation. A

comparison of the values of input variables used by Epic Energy and the revised values of the Regulator is as follows.

Proposed and revised CAPM parameter values for estimation of the rate of return

Parameter	Parameter symbol	Value used by the Epic Energy	Value proposed by the Regulator
Risk free rate (nominal)	R_f	6.40%	5.96%
Market risk premium	–	6.50%	6.0%
Asset beta	b_a	0.58	0.60
Equity beta	b_e	1.15	1.20
Debt beta	b_d	0.12	0.20
Cost of debt margin		1.20%	1.20%
Corporate tax rate	T	36%	31.4%
Franking credit value	g	0.308%	50%
Debt to total assets ratio	D/V	55%	60%
Equity to total assets ratio	E/V	45%	40%
Expected inflation	p_e	2.5%	2.48%

On the basis of the revised parameter values, the Regulator has adopted a real pre-tax WACC of 7.85 percent for the purposes of assessing Epic Energy's proposed Reference Tariff.

The returns to equity that are implied by this WACC estimate are as follows.

Returns on equity implicit in the revised pre-tax WACC

Returns on Equity	Nominal	Real
Post-Tax	13.16%	10.42%
Pre-tax	15.61%	12.81%

The Regulator's estimate of the cost of capital associated with regulated activities of the DBNGP, based on estimates of the risk free rate and inflation as of 31 May 2001, is at the higher end of the range of Rates of Return that have been approved for comparable regulated pipelines in Australia. While the Regulator has used different assumptions for the various inputs to those adopted by Epic Energy, it should be noted the Regulator's and Epic Energy's estimates of the cost of capital associated with the DBNGP are very similar once account is taken of the changes in interest rates and the statutory tax rate that have occurred since Epic Energy submitted its Access Arrangement. That is, had the Regulator adopted the interest rates and tax rate that prevailed at the time of Epic Energy's submission, it would have estimated a WACC comparable to that calculated by Epic Energy.

The following amendment is required before the proposed Access Arrangement will be approved.

Amendment 57

The Access Arrangement and Access Arrangement Information should be amended to reflect a pre-tax real rate of return of 7.85 percent.

Depreciation Schedule

The Depreciation Schedule proposed by Epic Energy is described in section 3.4 of the Access Arrangement Information.

Epic Energy has determined depreciation schedules for each of four classes of assets that form the DBNGP:

- pipeline assets, with depreciation schedules constructed for each pipeline zone;
- compression assets, with depreciation schedules determined for each compressor station;
- metering assets, with depreciation schedules constructed for each Delivery Point; and
- other assets, depreciated as a single homogenous class of assets.

Capital values ascribed to two components of the Capital Base – land and linepack – are not depreciated.

Depreciation of values ascribed to physical assets (the physical asset account) was determined using the annuity method. In general terms, the annuity methodology involves determining a depreciation schedule over the expected lives of assets such that the total annual capital costs (return on capital plus depreciation) are held at a constant value (the “annuity”) but assets are fully depreciated over the period of assumed asset lives. By this methodology, the composition of capital costs changes over time with the return-on-capital component decreasing over time and the depreciation component increasing over time.

Epic Energy has proposed depreciation of assets over the following asset lives.

Epic Energy assumptions as to asset life

Asset class	Economic life (years)	Average remaining life as at 1 January 2000 (years)
Pipeline assets	100	86
Compression assets	57	49
Metering assets	71	63
Other assets	50	39

In the calculation of depreciation schedules, Capital Expenditure on new facilities is added to the physical asset account and subsequently depreciated by the annuity method over the assumed economic lives for relevant asset classes.

With Epic Energy's proposed value of the Initial Capital Base and the proposed Reference Tariff, the expected revenue from the DBNGP over the Access Arrangement Period is insufficient to cover the annuity charges. Epic Energy has proposed treating the shortfall in capital charges by way of "economic depreciation".

Economic depreciation for a year is defined as the difference between the expected revenue from the DBNGP in that year (given the Reference Tariff) and the sum of physical asset depreciation, return on the Capital Base, and Non-Capital Costs. Where economic depreciation is negative (revenue is less than the sum of physical asset depreciation, return on the Capital Base, and Non-Capital Costs) the difference is added to a deferred recovery account and the balance of this account increases. Where economic depreciation is positive (revenue is in excess of the sum of physical asset depreciation, return on the Capital Base, and Non-Capital Costs) the difference is subtracted from the deferred recovery account and the balance of this account decreases. For the purposes of determining the return on capital, the Capital Base comprises the sum of the balances of the physical asset account and the deferred recovery account.

After considering Epic Energy's proposed Depreciation Schedule, the Regulator concluded that:

- the asset lives assumed by Epic Energy for depreciation purposes are excessively long and should be revised to be consistent with common industry assumptions for gas transmission pipelines;
- the annuity method of depreciation is consistent with the principles set out in the Code for a Depreciation Schedule and is therefore acceptable under the Code for the purposes of setting the Reference Tariff; and
- for the DBNGP at present, there is no reasonable justification for economic depreciation and deferred recovery of capital costs.

The Regulator has revised the Depreciation Schedule proposed by Epic Energy to reflect the Regulator's determinations on the Initial Capital Base and Capital Expenditure, and reasonable assumptions as to asset lives. For the purposes of this Draft Decision, the Regulator has considered both the annuity method of depreciation as proposed by Epic Energy, and the straight-line method. The revised Depreciation Schedules under each of these methodologies are as follows.

Revised Depreciation Schedule (annuity method, 1999 \$million, year ending 31 December)

	2000	2001	2002	2003	2004
Pipeline Assets	1.35	1.46	1.57	1.69	1.83
Compression Assets	4.34	4.68	5.07	5.50	5.92
Metering Assets	0.07	0.07	0.08	0.09	0.09
Other Assets	1.17	1.27	1.38	1.49	1.61
Total	6.92	7.48	8.10	8.77	9.45

Revised Depreciation Schedule (straight-line method, 1999 \$million, year ending 31 December)

	2000	2001	2002	2003	2004
Pipeline Assets	18.42	18.42	18.43	18.43	18.44
Compression Assets	8.98	9.03	9.29	9.53	9.63
Metering Assets	0.36	0.36	0.36	0.37	0.37
Other Assets	2.25	2.55	2.85	3.19	3.47
Total	30.00	30.36	30.92	31.51	31.90

The following amendment is required before the proposed Access Arrangement will be approved.

Amendment 58

The proposed Access Arrangement and Access Arrangement Information should be amended to reflect a Depreciation Schedule determined by either annuity or straight-line depreciation methodologies as follows (31 December 1999 \$million).

Year ending 31 December	2000	2001	2002	2003	2004
Annuity Depreciation	6.92	7.48	8.10	8.77	9.45
Straight-Line Depreciation	30.00	30.36	30.92	31.51	31.90

Given the revisions required to be made to the proposed Access Arrangement, the Regulator assumes that Epic Energy will wish to base tariffs on straight-line depreciation. For this reason, the Regulator has based the remainder of the assessment of Reference Tariffs on straight-line depreciation of assets as discussed above.

Total Revenue

Epic Energy has calculated a Total Revenue requirement using the “cost of service” methodology described in section 8.4 of the Code. The forecast total costs of providing services are indicated in Table 2.2 of the Access Arrangement Information, as follows.

Epic Energy forecast total costs of providing services (nominal \$million, year ending 31 December)

	2000	2001	2002	2003	2004
Return on Capital Base					
Physical asset account					
Pipeline	235.89	235.94	235.97	235.99	236.04
Compressor stations	39.51	41.80	42.27	42.75	42.93
Metering assets	3.24	3.24	3.25	3.25	3.26
Other assets	9.55	10.15	10.76	11.47	12.07
Deferred recovery account	0.00	14.89	29.88	46.68	64.46
Depreciation					
Physical asset account					
Pipeline assets	0.03	0.03	0.04	0.04	0.05
Compressor stations	0.32	0.36	0.40	0.45	0.50
Metering assets	0.01	0.01	0.01	0.01	0.01
Other assets	0.03	0.04	0.05	0.06	0.06
Non-Capital Costs					
Pipeline maintenance	10.64	10.49	10.77	11.08	11.43
Compressor maintenance	3.63	3.73	5.83	6.39	5.77
Compressor fuel	13.05	13.95	14.28	15.47	16.34
Other costs	11.80	13.11	13.85	13.20	13.29
Total	327.70	347.74	367.36	386.83	406.20

The Regulator noted that by including in Total Revenue the cost of a return on the balance of the deferred recovery account, Epic Energy has not provided an indication of the total cost of service provision that would be derived in a more conventional “building-block” approach to determination of Total Revenue. The Total Revenue requirement consistent with Epic Energy’s assumptions and calculations for Reference Tariffs but without deferred depreciation is as follows.

Epic Energy forecast total costs of providing services, without costs of deferred depreciation (nominal \$million, year ending 31 December)

	2000	2001	2002	2003	2004
Return on Capital Base					
Physical asset account					
Pipeline	235.89	235.94	235.97	235.99	236.04
Compressor stations	39.51	41.80	42.27	42.75	42.93
Metering assets	3.24	3.24	3.25	3.25	3.26
Other assets	9.55	10.15	10.76	11.47	12.07
Depreciation					
Physical asset account					
Pipeline assets	0.03	0.03	0.04	0.04	0.05
Compressor stations	0.32	0.36	0.40	0.45	0.50
Metering assets	0.01	0.01	0.01	0.01	0.01
Other assets	0.03	0.04	0.05	0.06	0.06
Non-Capital Costs					
Pipeline maintenance	10.64	10.49	10.77	11.08	11.43
Compressor maintenance	3.63	3.73	5.83	6.39	5.77
Compressor fuel	13.05	13.95	14.28	15.47	16.34
Other costs	11.80	13.11	13.85	13.20	13.29
Total	327.70	332.85	337.48	340.15	341.74

On the basis of analysis of the information provided by Epic Energy, the Regulator considers that the Total Revenue proposed by Epic Energy needs to be revised to reflect:

- revisions to capital costs arising from the Regulator's determinations on the Initial Capital Base, Capital Expenditure, Rate of Return and Depreciation Schedule; and
- revisions to Non-Capital Costs.

The revised Total Revenue, which excludes any allowance for deferred recovery of capital costs, is as follows, assuming straight-line depreciation of assets.

Revised Total Revenue (straight-line depreciation, 1999 \$million, year ending 31 December)

	2000	2001	2002	2003	2004
Return on Capital					
Pipeline	78.79	77.37	75.95	74.51	73.09
Compressor stations	13.20	12.57	12.20	11.82	11.22
Metering assets	1.08	1.05	1.03	1.00	0.98
Other assets	3.78	4.00	4.19	4.42	4.54
Depreciation					
Pipeline assets	18.42	18.42	18.43	18.43	18.44
Compressor stations	8.98	9.03	9.29	9.53	9.63
Metering assets	0.36	0.36	0.36	0.37	0.37
Other assets	2.25	2.55	2.85	3.19	3.47
Non-Capital Costs					
Pipeline maintenance	10.63	10.32	10.34	10.38	10.40
Compressor maintenance	3.54	3.55	5.41	5.79	5.10
Compressor fuel	12.45	13.07	13.30	13.92	14.22
Other costs	11.79	12.69	12.83	12.06	11.97
Total	165.26	164.99	166.18	165.40	163.42

The following amendment is required before the proposed Access Arrangement will be approved.

Amendment 59:

The proposed Access Arrangement and Access Arrangement Information should be amended to reflect a Total Revenue as follows for a straight-line depreciation methodology (31 December 1999 \$million).

Year ending 31 December	2000	2001	2002	2003	2004
Total Revenue (straight-line depreciation)	165.26	164.99	166.18	165.40	163.42

Cost/Revenue Allocation and Reference Tariff

In determining Reference Tariffs, a Service Provider must determine (explicitly or implicitly) the costs or share of costs of pipeline operation that will be recovered from revenues from Reference Services and other services.

For the purposes of determining the Reference Tariff, Epic Energy assumed that the total costs of providing services (i.e. Total Revenue) would be recovered from Users of firm capacity as if those Users are Users of the Reference Service that pay the Reference Tariff. No costs were allocated to Non-Reference Services, some of which are proposed to be treated as Rebutable Services. The derivation of the Reference Tariff and provisions

of the proposed Access Arrangement in respect of Rebatable Services are described below.

Reference Tariff

The Reference Tariff proposed by Epic Energy comprises multiple charges:

- Pipeline Capacity Charge;
- Compression Capacity Charge;
- Compressor Fuel Charge;
- Gas Receipt Charge; and
- Delivery Point Charge.

In developing a Reference Tariff, components of the total cost of providing services in the first year of the Access Arrangement Period (2000) were allocated to various charges that make up the Reference Tariff. The allocation was determined so that a User pays a share of total costs reflecting pipeline assets used and the costs incurred in providing the service to the User. The basis for allocation of forecast total costs to charges is described in Table 2.3 of the Access Arrangement Information and interpreted by the Regulator as follows.

Epic Energy proposed cost allocation to Reference Tariff charges

Reference Tariff Charge	Costs Recovered	Basis of Charge
Pipeline Capacity Charge	Return on pipeline asset value by pipeline zone. Depreciation of pipeline asset value by pipeline zone. Pipeline maintenance costs by pipeline zone.	Charge per unit of contracted MDQ in each zone.
Compression Capacity Charge	Return on compressor station asset value for each compressor station. Depreciation of compressor station asset value for each compressor station. Compressor station maintenance costs for each compressor station.	Charge per unit of contracted MDQ transported to pipeline downstream of the relevant compressor station.
Compressor Fuel Charge	Compressor fuel costs for each compressor station.	Charge per unit of gas throughput transported to pipeline downstream of the relevant compressor station.
Gas Receipt Charge	Return on asset value for “other” assets. Depreciation of asset value for “other” assets. Non-Capital Costs other than pipeline and compressor station maintenance costs.	Charge per unit of contracted Delivery Point MDQ.
Delivery Point Charge	Return on asset value for metering assets at Delivery Points. Depreciation of asset value for metering assets at Delivery Points.	Fixed charge for each Delivery Point.

The allocation of costs to charges of the Reference Tariff arises from an attribution of the Initial Capital Base, Capital Expenditure and Non-Capital Costs to particular assets or activities and to particular zones of the Pipeline. Consequently costs of return on capital, depreciation and the Non-Capital Costs are attributed to particular zones of the pipeline and particular assets. Epic Energy has indicated that this attribution of costs allows charges to be set accordingly to recover costs from Users according to the parts of the DBNGP nominally utilised by each User. Accordingly, Epic Energy has described each charge as follows.

- The Pipeline Capacity Charge is payable for each zone between a Shipper’s Receipt Point and Delivery Point (including the zones in which the Receipt Point and Delivery Point are located).
- The Compression Capacity Charge is payable by a Shipper for each compressor station located between the Shipper’s Receipt Point and Delivery Point.

- The Compressor Fuel Charge is payable by a Shipper in respect of each compressor station located between the Shipper's Receipt Point and Delivery Point.
- The Gas Receipt Charge is a fixed charge payable by each Shipper in respect of costs not assigned to sections of the pipeline or particular assets.
- The Delivery Point Charge is a fixed charge in respect of costs assigned to assets of Delivery Point facilities.

On the basis of the Total Revenue derived by Epic Energy for 2000, the Reference Tariff charges would be as follows.³

**Proposed Pipeline Capacity Charges (\$/GJ MDQ)
Gas Receipt Point Located in Zone 1a or Zone 1b**

Delivery point located in:

Zone 1a	Zone 1b	Zone 2	Zone 3	Zone 4	Zone 4a	Zone 5	Zone 6	Zone 7	Zone 8	Zone 9	Zone 10
0.0181	0.2272	0.3236	0.4185	0.5137	15.7987	0.6106	0.7086	0.8220	0.9264	1.0657	1.2615

Compression Capacity Charges Derived from Epic Energy 2000 Total Revenue (\$/GJ MDQ)

Delivery point located between:

Dampier & Zone 1a	Zone 1a & CS2	CS2 & CS3	CS3 and CS4	CS4 & CS5	CS5 & CS6	CS6 & CS7	CS7 & CS8	CS8 & CS9	CS9 & CS10	CS10 & MLV157
0.0000	0.0000	0.0000	0.0268	0.0422	0.0762	0.1056	0.1205	0.1488	0.1799	0.1904

Compressor Fuel Charges Derived from Epic Energy 2000 Total Revenue (\$/GJ)

Delivery point located between:

Dampier & Zone 1a	Zone 1a & CS2	CS2 & CS3	CS3 and CS4	CS4 & CS5	CS5 & CS6	CS6 & CS7	CS7 & CS8	CS8 & CS9	CS9 & CS10	CS10 & MLV157
0.0000	0.0145	0.0145	0.0221	0.0297	0.0374	0.0450	0.0527	0.0606	0.0685	0.0718

Gas Receipt Charge Derived from Epic Energy 2000 Total Revenue (\$/GJ MDQ)

Delivery point located in:

Zone 1a	Zone 1b	Zone 2	Zone 3	Zone 4	Zone 4a	Zone 5	Zone 6	Zone 7	Zone 8	Zone 9	Zone 10
0.0985	0.0985	0.0985	0.0985	0.0985	0.0985	0.0985	0.0985	0.0985	0.0985	0.0985	0.0985

³ Determined using a tariff model provided to the Regulator by Epic Energy.

Delivery Point Charge Derived from Epic Energy 2000 Total Revenue (\$/day)

Delivery Zone	Delivery Point	Charge
Zone 1a	Hamersley Iron	303.36
	Robe River	193.57
Zone 4	Carnarvon	177.77
Zone 7	Geraldton (Nangetty Road)	167.68
	Eradu Road	136.10
	Mungarra	263.27
	Pye Road	165.96
	Mondarra	152.11
	Mount Adams Road	161.65
	Eneabba	174.17
Zone 9	Muchea	219.80
	Della Road	117.81
	Pinjar	676.79
	Ellenbrook	153.66
	Harrow Street	237.03
	Caversham	171.15
	Welshpool	255.72
	Forrestdale	255.72
	Russell Road	171.03
Zone 10	Wesfarmers LPG	0.00
	Australian Gold Reagents	144.72
	Alcoa Kwinana	415.20
	Kwinana Power Station	758.51
	Barter Road/HiSmelt	329.18
	Mission Energy Cogeneration	143.48
	Thomas Road	222.35
	Kwinana Beach Road	184.94
	WMC	148.38
	Rockingham	167.31
	Pinjarra	165.70
	Alcoa Pinjarra	543.18
	Oakley Road	143.00
	Alcoa Wagerup	382.63
	Harvey	179.26
	Worsley	358.54
	South West Cogeneration	118.59
	Kemerton	156.83
	Clifton Road	179.43

For gas transmission with a 100 percent load factor, Epic Energy has indicated that the total of charges excluding the Delivery Point Charge would amount to \$1.41/GJ for delivery to from Zone 1a to Zone 9, and \$1.62/GJ for delivery from Zone 1a to Zone 10. For most Users, the proposed Delivery Point Charge would add a further 0.3 to 8.5 cents per gigajoule to the Reference Tariff, although for some Users this is up to 30 cents per gigajoule, and for one user \$1.26 per gigajoule.

Epic Energy has noted in section 2.5 of the Access Arrangement Information that a Reference Tariff derived from the forecast total costs of services (Total Revenue) would be significantly higher than the gas transmission tariffs to which Epic Energy purportedly gave a commitment to implementing in Schedule 39 of the DBNGP Asset Sale Agreement, that is, \$1.00/GJ to Kwinana Junction and a greater tariff for Delivery Points downstream of Kwinana Junction. Epic Energy goes on to indicate that in order to satisfy commitments that it made at the time the DBNGP was sold, pro-rata adjustments were

made to the charges, other than the Delivery Point Charge, to derive a Reference Tariff with the following attributes.

- for gas transportation from a Receipt Point in Zone 1 to a Delivery Point in Zone 9 (for a Shipper with a load factor of 100 percent), the aggregate of the tariff components excluding the Delivery Point charge, is \$1.00/GJ as at 1 January 2000; and
- for gas transportation from a Receipt Point in Zone 1 to a Delivery Point in Zone 10 (for a Shipper with a load factor of 100 percent), the aggregate of the tariff components excluding the Delivery Point charge is \$1.08/GJ as at 1 January 2000.

The tariff adjustments were made by multiplying the Pipeline Capacity Charges, Compression Capacity Charges, Compressor Fuel Charges and Gas Receipt Charges derived from the total cost of services by the following scaling factors.

- Charges for Zones 1 to 9 – scaling factor of 0.7078
- Charges for Zone 10 – scaling factor of 0.3817.

The adjusted charges of the Reference Tariff are as follows.

**Pipeline Capacity Charges Derived from Epic Energy 2000 Total Revenue (\$/GJ MDQ)
Gas Receipt Point Located in Zone 1a or Zone 1b**

Delivery point located in:

Zone 1a	Zone 1b	Zone 2	Zone 3	Zone 4	Zone 4a	Zone 5	Zone 6	Zone 7	Zone 8	Zone 9	Zone 10
0.0129	0.1610	0.2292	0.2965	0.3639	11.1924	0.4326	0.5020	0.5816	0.6556	0.7543	0.8290

Compression Capacity Charges Derived from Epic Energy 2000 Total Revenue (\$/GJ MDQ)

Delivery point located between:

Dampier & Zone 1a	Zone 1a & CS2	CS2 & CS3	CS3 and CS4	CS4 & CS5	CS5 & CS6	CS6 & CS7	CS7 & CS8	CS8 & CS9	CS9 & CS10	CS10 & MLV157
0.0000	0.0000	0.0000	0.0190	0.0299	0.0540	0.0748	0.0854	0.1054	0.1274	0.1314

Compressor Fuel Charges Derived from Epic Energy 2000 Total Revenue (\$/GJ)

Delivery point located between:

Dampier & Zone 1a	Zone 1a & CS2	CS2 & CS3	CS3 and CS4	CS4 & CS5	CS5 & CS6	CS6 & CS7	CS7 & CS8	CS8 & CS9	CS9 & CS10	CS10 & MLV157
0.0000	0.0103	0.0103	0.0157	0.0211	0.0265	0.0319	0.0373	0.0429	0.0486	0.0498

Gas Receipt Charge Derived from Epic Energy 2000 Total Revenue (\$/GJ MDQ)

Delivery point located in:

Zone 1a	Zone 1b	Zone 2	Zone 3	Zone 4	Zone 4a	Zone 5	Zone 6	Zone 7	Zone 8	Zone 9	Zone 10
0.0698	0.0698	0.0698	0.0698	0.0698	0.0698	0.0698	0.0698	0.0698	0.0698	0.0698	0.0698

Epic Energy has proposed that some Non-Reference Services be deemed Rebatable Services. The relevant Non-Reference Services are indicated in clause 9.1 of the proposed Access Arrangement to be the Seasonal Service, the Park and Loan Service, the Secondary Market Service and any other service nominated by Epic Energy. Additionally, Epic Energy has also proposed that revenue (less the Compressor Fuel Charge) obtained by Epic Energy from Overrun charges under sub-clause 5.2 of the Access Contract Terms and Conditions is Rebatable Revenue.

In addressing concerns expressed in public submissions in regard to the proposed cost allocation and the Reference Tariff, the Regulator drew the following conclusions:

- Epic Energy's proposal to calculate the Reference Tariff on the basis of an assumption that all forecast throughput under contracts for firm capacity occurs as the proposed Reference Service is a reasonable basis for cost allocation. It is neither necessary nor appropriate in the allocation of costs to consider the expected revenue to be received from existing contracts.
- Epic Energy's throughput forecast appears reasonable if major industrial projects such as the Kingstream and Mt Gibson projects are not taken into consideration. The Regulator regards such an approach to throughput forecasts to be appropriate at this time.
- The zonal basis for setting and levying the Pipeline Capacity Charge is consistent with broad criteria of efficiency and equity in a tariff structure, and the Regulator sees no reason to reject this proposed structure of the Pipeline Capacity Charges. However, the Regulator will require that the specification of the Reference Tariff be amended to remove some inconsistencies in the specification of charges for zones, particularly in respect of the application of charges for the Eradu Road Delivery Point.
- It is not appropriate to determine compression-related charges on a basis of pipeline zones. For the purposes of ensuring an efficient structure of the Reference Tariff, the Regulator will require that the compression charges be clearly distinguished from the Pipeline Capacity Charge and from the zonal basis of the Pipeline Capacity Charge, and that the compression charges be determined on a pass through basis rather than on a zone basis.
- While the pipeline zones remain relevant to the Pipeline Capacity Charge, they become irrelevant to the determination or specification of the Compression Capacity Charge. The consequence of this is that for forward-haul of gas, users should only pay compression charges on a pass through basis, that is, in relation only to compressor located between the relevant gas Receipt Point(s) and gas Delivery Point(s). Moreover, compressor fuel charges should not apply to the back haul of gas.
- The Regulator sees no reason to reject Epic Energy's proposed cost allocation or tariff structure, but will require that some amendment be made of the cost allocation and/or tariff structure to ensure that for Users or Prospective Users with Delivery Points in

Zone 1a and Zone 4a there is no increase in gas transmission costs under the Reference Tariff relative to the tariff that Users would have paid under a contract entered into under the *Dampier to Bunbury Pipeline Regulations 1998*. The reason for this is while revision of the Reference Tariff to reflect the required revisions to the Initial Capital Base, Capital Expenditure, Operating Expenditure, Rate of Return and Depreciation Schedule will result in a general reduction in tariffs, an increase in tariffs would occur in respect of gas delivery to Delivery Points in Zones 1a and 4a. The Regulator considers these increases in tariffs to be inequitable given the reduction in tariffs for Delivery Points at other locations on the pipeline.

- There are no reasons, based on criteria of efficiency or equity, to reject Epic Energy's proposal for the Reference Tariff to include throughput charges that recover only costs of compressor fuel and that amount to only a relatively small proportion of the 100 percent load factor tariff.
- There is no reason to reject Epic Energy's proposal for a Delivery Point Charge. However, the Regulator will require that the proposed Access Arrangement be amended to set out mechanisms by which any recovery of capital costs in respect of Delivery Point facilities that have been financed by Users are returned to the Users that have financed those facilities, and that Users capture the benefits of any upward revaluation of Delivery Point facilities that were financed by Users.
- The provisions of the proposed Access Arrangement in respect of Rebatable Revenue are considered to be consistent with the relevant requirements and objectives of the Code. The Regulator will however require that the proposed Access Arrangement be amended to provide for the distribution of Distributable Revenue as 15 percent to be retained by Epic Energy, and 85 percent to be distributed to Rebate Sharing Shippers and to provide for the determination of "Threshold Revenue" to include revenue from the sale of both the Firm Service as well as other services in the nature of the Firm Service.

Notwithstanding the general acceptance of the proposed cost allocation and tariff structure, the Regulator will require that the Reference Tariff be revised to reflect the required revisions to the Initial Capital Base, Capital Expenditure, Operating Expenditure, Rate of Return and Depreciation Schedule as described in this Draft Decision. The Regulator has determined the Reference Tariff that would result from these revisions as being consistent with the general tariff determination methodology, cost allocation and tariff structure proposed by Epic Energy.

The Regulator's revised Reference Tariff presented in this Draft Decision is based on a number of methodological assumptions as follows:

- Straight-line depreciation of assets.
- In order to ensure that the Reference Tariff that would apply to Users with Delivery Points in Zone 1a of the pipeline would be closer in value to the tariff that would apply under the *Dampier to Bunbury Pipeline Regulations 1998*, the Regulator has re-allocated the costs that would have been recovered by the Gas Receipt Charge to recovery through the Pipeline Capacity Charge. It is, however, recognised that this is not the only means by which Epic Energy may meet this requirement of the Regulator. No cost reallocation was undertaken for Zone 4a but this will need to be addressed by Epic Energy to achieve the stated objective of there being no increase in gas transmission costs under the Reference Tariff relative to the tariff that Users

taking delivery of gas would have paid under a contract entered into under the *Dampier to Bunbury Pipeline Regulations 1998*.

- The revised Reference Tariff provides for full compensation of Epic Energy for inflation over the Access Arrangement Period. The revised Reference Tariff is presented in dollar values as at 1 July 2000, which would have been the tariff applying for 2000 and that includes a half-year inflation adjustment. For the purposes of tariff smoothing over the Access Arrangement Period, the Regulator has assumed a tariff path involving annual adjustment of tariffs by 67 percent of the change in the Consumer Price Index (CPI), as proposed by Epic Energy. This has the effect of providing Epic Energy with a higher Reference Tariff in at the beginning of the Access Arrangement Period (and a lower tariff in the final year) than would apply if full CPI adjustment was assumed, but provides for the same return of Total Revenue in net present value terms.

The Regulator's revised Reference Tariff excludes goods and services tax. The Regulator is of the view that it is appropriate to accommodate the pass through of the goods and services tax in the Reference Tariff, as it will be set out in the Access Arrangement. The Regulator will, however, require Epic Energy to propose the rate of pass through of the goods and services tax. This rate will need to be substantiated by an independent audit certificate verifying that the percentage increase in the Reference Tariff to account for the net effect of the goods and services tax and related taxation changes has been calculated according to generally accepted accounting principles and/or accounting standards.

As noted in section 4.2.3 of this Draft Decision, the Regulator requires that the Reference Tariff be structured in such a way as to provide for distance-based charging for gas received into the pipeline at points in pipeline zones other than Zone 1. This may be achieved by specifying the Pipeline Capacity Charge, Compression Capacity Charge and Compressor Fuel Charge in incremental amounts for each zone rather than as cumulative values from Zone 1. The incremental values for these charges corresponding to the indicative Reference Tariff set out above are as follows. Note the charges that would apply are calculated by adding the individual zone charges between and inclusive of the gas Receipt Point location and the gas Delivery Point. No Gas Receipt Charge is shown as the Regulator, for the purposes of this Draft Decision, has recovered costs formally allocated to this charge through the Pipeline Capacity Charge.

**Revised Pipeline Capacity Charges expressed as zonal increments with straight-line depreciation
(1 July 2000 \$/GJ MDQ, excluding goods and services tax)**

Individual zone pipeline capacity charge for each zone gas passes through (partially or fully)

Zone 1a	Zone 1b	Zone 2	Zone 3	Zone 4	Zone 4a	Zone 5	Zone 6	Zone 7	Zone 8	Zone 9	Zone 10
0.0120	0.0893	0.0484	0.0497	0.0498	8.9280	0.0507	0.0513	0.0579	0.0533	0.0705	0.0983

Revised Compression Capacity Charges expressed as increments for each compressor station with straight-line depreciation (1 July 2000 \$/GJ MDQ, excluding goods and services tax)

Individual zone compression capacity charge for each compressor station gas passes through

CS1	CS2	CS3	CS4	CS5	CS6	CS7	CS8	CS9	CS10
0.0118	0.0132	0.0175	0.0098	0.0174	0.0175	0.0112	0.0178	0.0154	0.0111

**Revised Compressor Fuel Charges expressed as increments for each compressor station
(1 July 2000 \$/GJ throughput, excluding goods and services tax)**

Individual compressor fuel charge for each compressor station gas passes through

CS1	CS2	CS3	CS4	CS5	CS6	CS7	CS8	CS9	CS10
0.0074	0.0082	0.0078	0.0078	0.0079	0.0079	0.0079	0.0081	0.0081	0.0066

For purposes of comparison with the Reference Tariff set out by Epic Energy in the proposed Access Arrangement, the following tables set out the Reference Tariff as accumulated charges applicable to transportation services between North West Shelf Gas–Woodside, located in Zone 1a, and a Delivery Point located in any zone south of this Receipt Point. These numbers are directly comparable with the tariffs proposed by Epic Energy in the proposed Access Arrangement. If gas is sourced from a supplier located in any other zone the applicable tariff will differ from that shown below.

Revised Pipeline Capacity Charges with straight-line depreciation and gas Receipt Point located in Zone 1a (1 July 2000 \$/GJ MDQ, excluding goods and services tax)

Delivery point located in:

Zone 1a	Zone 1b	Zone 2	Zone 3	Zone 4	Zone 4a	Zone 5	Zone 6	Zone 7	Zone 8	Zone 9	Zone 10
0.0120	0.1012	0.1496	0.1993	0.2491	9.1771	0.2998	0.3511	0.4090	0.4623	0.5328	0.6311

Revised Compression Capacity Charges with straight-line depreciation and gas Receipt Point located in Zone 1a (1 July 2000 \$/GJ MDQ, excluding goods and services tax)

Delivery point located between:

Dampier & CS1	CS1 & CS2	CS2 & CS3	CS3 and CS4	CS4 & CS5	CS5 & CS6	CS6 & CS7	CS7 & CS8	CS8 & CS9	CS9 & CS10	CS10 & MLV157
–	0.0118	0.0250	0.0425	0.0523	0.0697	0.0872	0.0984	0.1162	0.1316	0.1426

Revised Compressor Fuel Charges with straight-line depreciation and gas Receipt Point located in Zone 1a (1 July 2000 \$/GJ, excluding goods and services tax)

Delivery point located between:

Dampier & Zone 1a	Zone 1a & CS2	CS2 & CS3	CS3 and CS4	CS4 & CS5	CS5 & CS6	CS6 & CS7	CS7 & CS8	CS8 & CS9	CS9 & CS10	CS10 & MLV157
–	0.0074	0.0157	0.0235	0.0313	0.0392	0.0471	0.0549	0.0631	0.0712	0.0778

In addition to the charges set out above, the Reference Tariff includes the Delivery Point Charge, as set out below.

Revised Delivery Point Charge
(1 July 2000 \$/day excluding goods and services tax)

Delivery Zone	Delivery Point	Charge
Zone 1a	Hamersley Iron	135
	Robe River	87
Zone 4	Carnarvon	78
Zone 6	Eradu Road	57
Zone 7	Geraldton (Nangetty Road)	74
	Mungarra	114
	Pye Road	70
	Mondarra	64
	Mount Adams Road	68
	Eneabba	77
Zone 9	Muchea	95
	Della Road	49
	Pinjar	293
	Ellenbrook	65
	Harrow Street	115
	Caversham	76
	Welshpool	120
	Forrestdale	117
	Russell Road	76
Zone 10	Wesfarmers LPG	
	Australian Gold Reagents	61
	Alcoa Kwinana	186
	Kwinana Power Station	339
	Barter Road/HiSmelt	146
	Mission Energy Cogeneration	60
	Thomas Road	82
	Kwinana Beach Road	93
	WMC	66
	Rockingham	73
	Pinjarra	71
	Alcoa Pinjarra	243
	Oakley Road	62
	Alcoa Wagerup	171
	Harvey	78
	Worsley	160
	South West Cogeneration	52
	Kemerton	66
	Clifton Road	80

The Delivery Point Charge would add, on average, a further 3.4 cents per gigajoule to the Reference Tariff, based on current throughput to Delivery Points, although this varies between 0.2 cents and 15.4 cents per gigajoule.

For gas transmission with a 100 percent load factor and the average value for the Delivery Point Charge, the total tariff charge for gas transmission from Receipt Points in Zone 1a to Delivery Points in each zone would be as follows.

Indicative Tariffs under the revised Reference Tariff for pipeline zones with existing Delivery Points, with 100 percent load factor delivery and average value of Delivery Point Charge (1 July 2000 dollar values, excluding goods and services tax)

Delivery Point Location	Total charges excluding Delivery Point Charge (\$/GJ)	Average Delivery Point charge for zone (\$/GJ)	Total tariff (\$/GJ)
Zone 1a	0.0120	0.0047	0.0166
Zone 4a	9.2608	0.0519	9.3127
Zone 6	0.4854	0.0114	0.4968
Zone 7	0.5623	0.0701	0.6324
Zone 9	0.7356	0.0432	0.7788
Zone 10 (Kwinana industry and Rockingham laterals)	0.8339	0.0116	0.8455
Zone 10 (Pipeline South)	0.8515	0.0393	0.8909

The Regulator notes that the above tariff has been calculated as an indicative Reference Tariff for the purposes of this Draft Decision. The Regulator has intentionally left Epic Energy with some discretion in determining how to go about meeting the Regulator's required amendments to the proposed Access Arrangement and Reference Tariff, and as such Epic Energy may propose a revised Reference Tariff that differs in some respects from that indicated above.

The following amendments are required before the proposed Access Arrangement will be approved.

Amendment 60

The proposed Access Arrangement should be amended such that the Reference Tariff reflects a location of the Eradu Road Delivery Point in Zone 6 of the pipeline.

Amendment 61

The proposed Access Arrangement should be amended such that compression charges are determined and levied on Users on a strictly "pass through" basis such that Users only pay compression charges associated with compressor stations located between the gas Receipt Point(s) and gas Delivery Point(s) for each gas transmission contract.

Amendment 62

The proposed Access Arrangement should be amended such that compressor fuel charges do not comprise part of the Reference Tariff for the back haul of gas.

Amendment 63

The cost allocation and tariff structure should be amended to ensure that for Users or Prospective Users with Delivery Points in any zone of the DBNGP, there is no increase in the total gas transmission charges under the Reference Tariff relative to the total charge that Users or Prospective Users would have paid under a contract for the T1 Service entered into under the *Gas Transmission Regulations 1994* or *Dampier to Bunbury Pipeline Regulations 1998*.

Amendment 64

The proposed Access Arrangement should be amended to include a mechanism to ensure that revenues from the Delivery Point Charge are not retained by Epic Energy where those revenues recover capital costs attributed to capital assets that were financed by Users.

Amendment 65

The proposed Access Arrangement and/or Access Contract Terms and Conditions should be amended to describe how the Delivery Point Charge will be determined for Users where those Users share Delivery Point facilities and where Users take delivery of gas from Nominal Delivery Points.

Amendment 66

Paragraph 9.2(b) of the proposed Access Arrangement should be amended to provide for distribution of Distributable Revenue in proportions of 15 percent to be retained by Epic Energy and 85 percent to be distributed to Rebate Sharing Shippers.

Amendment 67

Clause 9.2 of the proposed Access Arrangement should be amended such that the Threshold Revenue is the amount by which actual revenue from the sale of the Firm Service, and other services in the nature of the Firm Service, falls short of that component of Total Revenue attributable to the provision of Firm Service, plus the cost of providing those services from which Rebateable Revenue was obtained.

Amendment 68

The Reference Tariff should be revised to reflect the required revisions to the Initial Capital Base, Capital Expenditure, Non-Capital Costs, Rate of Return and the Depreciation Schedule as described in this Draft Decision.

Amendment 69

The Reference Tariff should be revised to make provision for distanced based (i.e. zonal) charging for gas transmission in respect of gas received into the pipeline at points in pipeline zones other than Zone 1.

Reference Tariff Variation and Incentive Mechanisms

The Code addresses variation in Reference Tariffs over the Access Arrangement Period in terms of two general matters:

- i. variation in Reference Tariffs at the discretion of the Service Provider and according to principles such as a predetermined price path or realised cost and sales outcomes for the Service Provider; and
- ii. within the scope of (i), variation of Reference Tariffs according to principles of an Incentive Mechanism.

Under clause 7.14 of the proposed Access Arrangement and clause 16 of the Access Contract Terms and Conditions, Epic Energy makes provision for the Reference Tariff to be varied in three ways:

- pass through of the goods and services tax;
- annual adjustment in proportion to movements in the Consumer Price Index; and
- adjustment to take into account additional costs incurred by Epic Energy as a result of changes in the regulatory environment.

Clause 7.12 of the proposed Access Arrangement describes two incentive mechanisms:

- the adoption of the “price path” approach in the setting of the Reference Tariff; and
- the method for distribution of Rebatable Revenue derived from sale of Non-Reference Services.

The Regulator addressed the pass through of the goods and services tax in relation to specification of the Reference Tariff. The Regulator is of the view that it is appropriate to accommodate the pass through of the goods and services tax in the Reference Tariff, as it will be set out in the Access Arrangement, and will require Epic Energy to propose to the Regulator the rate of pass through of the goods and services tax. In view of this, the provisions of the proposed Access Contract Terms and Conditions relating to the pass through of a goods and services tax or other supply tax are considered to be redundant and the Regulator requires that the Access Contract Terms and Conditions be amended to remove the provision to pass through the cost of the goods and services tax.

In revising the Reference Tariff for the purposes of this Draft Decision, the Regulator has provided for full compensation of Epic Energy for forecast inflation over the Access Arrangement Period. While a tariff path involving inflation of tariffs at a rate of 67 percent of the change in the Consumer Price Index (CPI) has been assumed, as proposed by Epic Energy, this relates only to determination of a smooth tariff path and not the extent to which Epic Energy is compensated for inflation.

The Regulator considers that for the purpose of annual tariff adjustments, the most appropriate inflation measure is the Eight Capital City, All-Groups CPI measure as published by the Australian Bureau of Statistics and not the All-Groups Perth measure as

proposed by Epic Energy. The Regulator is also of the view that the CPI measure used for the inflation escalation of the Reference Tariff should be exclusive of the inflationary effect of the goods and services tax. The Regulator's preferred method for adjusting for the inflation effects of the goods and services tax is to correct the CPI measure by a forecast of the inflationary effect previously made by the Commonwealth Treasury of 2.75 percent of the CPI.

In regard to the provision for Epic Energy to apply to the Regulator for an adjustment of the Reference Tariff to accommodate additional costs incurred by Epic Energy as a result of a change in the regulatory environment, the Regulator notes that while Epic Energy may apply at any time for an adjustment of the Reference Tariff. The process for application, and for the Regulator's consideration of the application, would be a review of the Access Arrangement in accordance with the relevant provisions of the Code.

The Regulator accepts the Incentive Mechanisms indicated by Epic Energy to be provided for in the Access Arrangement.

The following amendments are required before the proposed Access Arrangement will be approved.

Amendment 70

The Access Contract Terms and Conditions should be amended to remove sub-clause 16.3 relating to the recovery of imposts and goods and services tax liabilities through charges levied on Users in addition to the Reference Tariff.

Amendment 71

The proposed Access Arrangement should be amended to provide for annual escalation of Reference Tariff charges on the basis of 67 percent of the annual rate of change in the Eight Capital City, All-Groups Consumer Price Index as published by the Australian Bureau of Statistics and not the All-Groups Perth measure as proposed by Epic Energy. In escalating the Reference Tariff for 2001, the CPI for 2000 should be reduced by 2.75 percent of the CPI to account for the inflationary impact of the goods and services tax.

Fees and Charges Other than the Reference Tariff

The proposed Access Arrangement provides for Epic Energy to levy a range of fees and charges on Users and Prospective Users of services. These fees and charges (referred to collectively as penalty charges) are as follows:

- Prescribed Fee for an Access Request

Paragraph 5.1(c) of the proposed Access Arrangement requires that a Prescribed Fee of \$5,000 accompany an Access Request for a service.

- Out of Specification Gas Charge

Paragraph 2.4(c) of the Access Contract Terms and Conditions provides for a Shipper to be liable to pay a surcharge of \$15 for each gigajoule of out of specification gas.

- Nomination Surcharge

Paragraph 4.4(b) of the Access Contract Terms and Conditions provides for Epic Energy to issue a Variance Notice to a Shipper if Epic Energy as a reasonable and prudent pipeline operator believes that the Shipper is not making nominations in good faith. A Variance Notice requires the Shipper to nominate in good faith. Paragraph 4.4(c) of the Access Contract Terms and Conditions provides for the Shipper to pay the Nomination Surcharge in the event that after 21 days from the issue of the Variance Notice, the quantities of gas received or delivered into or from the DBNGP on behalf of the Shipper varies by more than 10 percent of the Shipper's relevant nominations. The Nominations Surcharge is levied at a rate of \$15/GJ of the difference between the nomination and the relevant quantity of gas received or delivered. The Nominations Surcharge remains in force until the Variance Notice is withdrawn, which may be at a time at Epic Energy's discretion, or after the lapse of three consecutive months without the Shipper incurring the Nomination Surcharge.

- **Overrun Charge**

Sub-clause 5.2 of the Access Contract Terms and Conditions provides for a Shipper to pay Overrun Charges in certain circumstances where the quantity of gas delivered to a Shipper exceeds that Shipper's MDQ. The Overrun Charge comprises:

- 110 percent of additional Capacity Charges where overrun at one Delivery Point is deemed to constitute a relocation of capacity to a Delivery Point in a pipeline zone downstream of the Delivery Point at which the overrun occurs (paragraph 5.2(a)(ii) of the Access Contract Terms and Conditions);
- the greater of 110 percent of the Capacity Charges and Gas Receipt Charges or the highest price paid on the Secondary Market for the day in which the overrun occurs in the event that the aggregate quantity of gas delivered to a Shipper exceeds the Shipper's aggregate MDQ (paragraph 5.2(b) of the Access Contract Terms and Conditions).⁴

- **Excess Imbalance Charge**

Sub-clause 6.4 of the Access Contract Terms and Conditions provides for a Shipper to pay an Excess Imbalance Charge where the Shipper's Imbalance at the end of a day exceeds the Shipper's Imbalance Limit, which is two percent of the Shipper's MDQ. The Excess Imbalance Charge is levied at a rate of \$15 for each gigajoule by which the absolute value of the Shipper's Imbalance exceeds the Imbalance Limit.

- **Peaking Surcharge**

Paragraph 7.1(b) of the Access Contract Terms and Conditions provides for Epic Energy to charge a Shipper a Peaking Surcharge of \$15 for each gigajoule of gas by which the Shipper has exceeded the Shipper's maximum hourly quantity.

- **Unavailability Charge**

⁴ The Regulator notes that the example given for calculation of Overrun Charges immediately after paragraph 5.2(b) of the Access Contract Terms and Conditions indicates that the Overrun Charge may be calculated as 110 percent of the sum of Capacity Charges and Compressor Fuel Charges, which is contrary to the statement in paragraph 5.2(b)(i) which states that the Overrun Charge may be calculated as 110 percent of the sum of Capacity Charges and Gas Receipt Charges. For the purposes of this Draft Decision, the Regulator has considered the calculation of the Overrun Charge as described in paragraph 5.2(b)(i), but draws Epic Energy's attention to this apparent discrepancy.

Sub-clause 5.4 of the Access Contract Terms and Conditions provides for Epic Energy to charge a Shipper an Unavailability Charge of \$15 for each gigajoule of gas delivered to the Shipper at a Delivery Point, or in aggregate, as the case may be, in excess of a quantity specified for that Shipper in a relevant Unavailability Notice. An Unavailability Notice would be issued to a Shipper where, for one reason or another, Epic Energy deemed it necessary to restrict the delivery of gas to a Delivery Point.

Submissions to the Regulator on the proposed Access Arrangement addressed the following matters in relation to fees and charges.

- The reasonableness of the Prescribed Fee for an Access Request.
- The provision for and general level of charges and surcharges.
- The reasonableness of proposed imbalance limits.
- The inability to make re-nomination within a gas day to mitigate the impact of the Nomination Surcharge.
- The magnitude of the Overrun Charge.
- The appropriateness of the hourly Peaking Surcharge.
- The rebate of revenue derived from penalty charges.

The Regulator addressed the issues raised in submissions as well as the reasonableness of the fees and charges more generally.

The Regulator examined the reasonableness of these fees and charges and will require the following amendments before the proposed Access Arrangement will be approved.

Amendment 72

Clause 5.1 and the definitions of the proposed Access Arrangement should be amended such that the Prescribed Fee to accompany an Access Request is of an amount no greater than \$1,000.

Amendment 73

The proposed Access Arrangement should be amended to describe the nature of contractual arrangements under which a User might utilise the Secondary Market Service or other spot services and how the Prescribed Fee will apply to a request to enter into such arrangements.

Amendment 74

The proposed Access Arrangement should be amended to provide for maximum rates of the Out of Specification Gas Charge, Nomination Surcharge, Excess Imbalance Charge and Peaking Surcharge to be 350 percent of the relevant 100 percent load factor Reference Tariff.

Amendment 75

Clause 6 of the Access Contract Terms and Conditions should be amended such that a User is not liable for an Excess Imbalance Charge in respect of any imbalance arising from an action of Epic Energy.

Amendment 76

Sub-clause 1.1 of the Access Contract Terms and Conditions should be amended to define the imbalance limit as eight percent of the Shipper's MDQ.

Amendment 77

The proposed Access Arrangement should be amended to provide for Users to trade imbalances and thereby reduce potential liabilities to the Excess Imbalance Charge.

Amendment 78

Clause 7 of the Access Contract Terms and Conditions should be amended to provide for a User's liability for the Peaking Surcharge to be assessed on the basis of that User's Maximum Hourly Quantity and hourly delivery of gas in aggregate across all of that User's Delivery Points in a pipeline zone.

Amendment 79

The proposed Access Arrangement and Access Contract Terms and Conditions should be amended to provide for revenue from the Out of Specification Gas Charge, Nomination Surcharge, Overrun Charge, Excess Imbalance Charge, Peaking Surcharge and Unavailability Charge to be rebatable as if the activities or events to which the charges relate were Rebatable Services within the meaning of the Code. The mechanism for rebate of revenue should provide for rebate of a minimum of 95 percent of revenue from these charges to Users of the Firm Service, without any provision for a threshold revenue to be achieved prior to any rebate being paid.