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Our Ref: DBNGP:AA
Your Ref: 3020/10/04

12 November 2004

Mr L Rowe
Chairman
Economic Regulation Authority
Gas Division
Level 6
197 St Georges Terrace
PERTH WA 6000

By facsimile: 08 9213 1999

Dear Lyndon

DBNGP ACCESS ARRANGEMENT – REVISIONS SUBMISSION DATE

The purpose of this letter is to outline to you the new ownership structure of the DBNGP and to request a further extension of time for the lodgement of the proposed revised access arrangement for the DBNGP

DBNGP Ownership Change

As you would be aware, the acquisition of the DBNGP business was completed on 27 October 2004 by a consortium ("**DBNGP Consortium**") comprising:

- Diversified Utilities & Energy Trust ("DUET");
- Alcoa of Australia Limited; and
- Alinta Limited.

The acquisition by the DBNGP Consortium (through a Trust structure) involved the acquisition of:

- All of the units in the Epic Energy WA Pipeline Trust ("**EEWAPT**") now called DBNGP Pipeline Trust;
- All of the shares in Epic Energy (WA) Nominees Pty Limited ("**EEWAN**") now called DBNGP (WA) Nominees Pty Ltd; and

- All of the shares in Epic Energy (WA) Transmission Pty Limited (“**EEWAT**”) now called DBNGP (WA) Transmission Pty Ltd.

While the ultimate ownership has changed, EEWAN and EEWAT remain the Service Providers for the DBNGP in accordance with the provisions of the Gas Code.

In conjunction with the acquisition, EEWAN and EEWAT have continued in place a transitional service agreement pursuant to which Epic Energy Corporate Shared Services Pty Ltd (“EECSS”), a subsidiary of the Hastings Group and the provider of services to the DBNGP owner during the receivership process, is to assist the Service Providers of the DBNGP, on a transitional basis, to meet the ongoing requirements of the DBNGP business (including but not limited to regulatory requirements).

Revisions Submission Date

One of the more significant requirements for the business relates to the requirement to lodge a revised access arrangement. It is noted that on 30 June 2004, the Regulator decided to grant the following further extensions of time under section 2.28 of the Code:

- the time for submission of proposed revisions under section 2.28 is 1 December 2004.
- the time for commencement of the next revisions to the Access Arrangement is 1 July 2005.

This letter formally requests that the Regulator exercise its discretion under section 7.19 of the Gas Code and grant further extensions as follows:

- the time for submission of proposed revisions under section 2.28 be extended until 31 January 2005.
- the time for commencement of the next revisions to the Access Arrangement be extended until 1 September 2005.

There are a number of reasons why it is considered appropriate for the Regulator to exercise its discretion and grant the further extensions. They are outlined in this letter.

First, as outlined above, completion of the sale of the DBNGP business was effected on 27 October 2004. Without an extension of time, this only allows the DBNGP Consortium 5 weeks in which to develop and approve the content of a revised access arrangement before it must be lodged with the Regulator. While it is in the DBNGP Consortium’s interests to lodge a revised access arrangement as soon as possible (this is explained in the second reason below), the following practical circumstances make it very difficult for EEWAT and EEWAN to lodge a revised access arrangement within that time frame:

- up until 27 October, there was significant focus by the DBNGP Consortium on securing new shipper contracts and achieving completion of the sale.
- While the shipper contracts that have been entered into do outline the broad principles to be included in a revised access arrangement, these principles differ significantly from the content of the access arrangement approved by the Regulator. Accordingly, it will take longer than would ordinarily be the case to prepare a revised access arrangement.
- since completion, there have been a number of regulatory matters that the DBNGP Consortium members have been required by law to attend to as a matter of priority which has not enabled them to focus on developing the revised access arrangement. These include:
 - the implementation of operational arrangements in order to ensure compliance with enforceable undertakings the DBNGP Consortium and others provided to the ACCC pursuant to the *Trade Practices Act 1974*.
 - The preparation and provision by DUET to the Australian Securities and Investment Commission of a Public Disclosure Statement to enable DUET to raise funds for its share of the acquisition of the DBNGP.

- Even leaving aside the above issues, a revised access arrangement will need to be developed and approved by the board of the Trustee of the DBNGP Trust and approved by the Trust's banks. This will take time.

Secondly, [deleted – confidential and commercial in confidence]. Clause 20.5 of the standard shipper contract outlines these key principles. These principles are substantially different from the terms of the current access arrangement, in particular the reference service. [deleted – confidential and commercial in confidence]. While EEWAT and the DBNGP Consortium will need to act expeditiously in preparing a revised access arrangement and having it approved by the Regulator, given the significant differences between the key principles and the content of the existing access arrangement, it will be difficult to have the access arrangement in a position where it can be lodged by 1 December 2004.

Thirdly, as the Regulator is aware, the DBNGP Consortium and EEWAT provided undertakings to the ACCC pursuant to the *Trade Practices Act 1974* to withdraw the application for review of the Regulator's decision that EEWAT and EEWAN's previous owners had made to the Gas Review Board (application #1 of 2004). Notwithstanding EECSS continuing to provide regulatory services to EEWAT and EEWAN following completion, EECSS had been under direction from the receivers and managers of the DBNGP to only progress the GRB proceedings. Given this and the fact that the DBNGP Consortium's agreement with the receivers and managers only became unconditional on the date for completion, EECSS had been proceeding on the basis that the Gas Review Board proceedings would be continued. Further, as EECSS was not privy to the contractual negotiations the DBNGP Consortium had with shippers, there was no ability for EECSS to commence preparation of the revised access arrangement prior to completion.

Fourthly, it is understood that one of the Regulator's prime concerns in not extending the revisions commencement date beyond 1 July 2005 is to enable the gas specification to be broadened (particularly in relation to the minimum LPG content) at the earliest opportunity without affecting pre-existing contractual rights which expire on 30 June 2005. It is submitted that this is no longer a concern for the Regulator for the following reasons:

- Almost all of the existing shippers have agreed to amend their existing contracts in relation to gas specification so that from 1 July 2005, the minimum LPG content for gas will be set at zero. [deleted – confidential and commercial in confidence]
- There is currently no uncontracted firm capacity available on the DBNGP (nor is there envisaged to be any available prior to 1 July 2005) so that a prospective shipper or the service provider could insist on a reference service access contract on the terms and conditions (including gas specification) as set out in the access arrangement.
- The Service Providers will not be requiring prospective shippers to enter into access contracts for the Firm Service reference service. Rather, they will be offering a T1 Service containing the terms and conditions as set out in the standard shipper contract, [deleted – confidential and commercial in confidence].
- In relation to interruptible capacity that could become available prior to 1 July 2005, EEWAT and EEWAN are prepared to not require a gas quality specification for any capacity after 1 July 2005 with a minimum LPG content greater than zero

Fifthly, Epic Energy is aware of 2 previous occasions where a relevant regulator of transmission pipelines has granted an extension of time under the Code for the lodgment of revisions to an access arrangement:

- In the case of the Moomba to Sydney Pipeline; and
- In the case of the South West Queensland Pipeline.

Given the obligations the Service Providers owe to shippers, the Service Providers are proceeding to lodge a revised access arrangement as quickly as is possible in the circumstances. It is hopeful that the revised access arrangement can be lodged well before 31 January 2005 but given that this is the third application that has been made, it is concerned to ensure that the Regulator is not further

inconvenienced. Given the submissions above, it is submitted that no shipper will be prejudiced by the further delay in assessing the revised access arrangement.

I understand that the Regulator is considering whether it should undertake a short period of public consultation before deciding whether to grant an extension to the revisions submission date and the revisions commencement date. In this regard, EEWAT has no objection to this letter being placed on the Regulator's website.

In the meantime, I would be grateful if you would be able to let me know as soon as possible whether the Regulator is prepared to grant the requested extension of time.

Yours sincerely

Peter Barry
Chief Executive Officer of DUET
Director of DBNGP (WA) Transmission Pty Ltd

cc: Ian Devenish, Alinta Limited