



# **Further Final Decision on the Proposed Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline**

**Submitted by**

**EPIC ENERGY (WA) TRANSMISSION PTY LTD**

**Independent Gas Pipelines Access Regulator  
Western Australia**

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## DECISION

### INTRODUCTION

1. On 15 December 1999 Epic Energy (WA) Transmission Pty Ltd (“**Epic Energy**”) submitted a Proposed Access Arrangement (“**Proposed Access Arrangement**”) for the Dampier to Bunbury Natural Gas Pipeline (“**DBNGP**”) to me in my capacity as the Western Australian Independent Gas Pipelines Access Regulator (“**Regulator**”) for approval under the *National Third Party Access Code for Natural Gas Pipeline Systems* (“**Code**”).
2. I 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 accordance with the requirements of section 2.16 of the Code, I issued a Final Decision on the Proposed Access Arrangement on 23 May 2003<sup>1</sup> (“**Final Decision**”). I issued a supplement to the Final Decision entitled “Supplementary Reasons and Further Amendment” (“**Supplementary Reasons**”) on 18 November 2003.
3. My Final Decision was to not approve the Proposed Access Arrangement. In my Final Decision, I stated 47 amendments that would have to be made to the Proposed Access Arrangement in order for me to approve it and I stated that Epic Energy must submit a revised Access Arrangement by 4 July 2003. At the request of Epic Energy, I subsequently extended the date for resubmission of a revised Access Arrangement to 8 August 2003.<sup>2</sup> In my Supplementary Reasons, I stated a further amendment that would have to be made to the Proposed Access Arrangement and I provided Epic Energy with an opportunity to address this further amendment in revisions to its Access Arrangement, to be submitted to me by 3 December 2003. I subsequently extended this date to 5 December 2003.
4. Epic Energy submitted a revised Proposed Access Arrangement (“**Revised Proposed Access Arrangement**”) and Access Arrangement Information to me on 8 August 2003, together with a submission responding to my Final Decision.<sup>3</sup> I have considered that submission to the extent that it is relevant to my deliberations pursuant to section 2.19 of the Code.
5. Epic Energy did not submit a further revised Access Arrangement to me subsequent to issue of my Supplementary Reasons, but did make a submission to me in regard to the

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<sup>1</sup> On 5 June 2003 I modified my Final Decision by issue of a Notice that made corrections to tables at paragraphs 309 and 724 of the Final Decision.

<sup>2</sup> Notice, 3 July 2003

<sup>3</sup> Epic Energy, 8 August 2003, Post Final Decision Submission #1, PFDS#1, Revised Access Arrangement and Access Arrangement Information.

Supplementary Reasons<sup>4</sup> which I considered to the extent that it was relevant to my deliberations pursuant to section 2.19 of the Code.

6. The documents submitted by Epic Energy and relevant to this further final decision are listed in Annexure A. Non-confidential documents submitted by Epic Energy are available from the Office of Gas Access Regulation (“OffGAR”) or may be downloaded from the OffGAR web site ([www.offgar.wa.gov.au](http://www.offgar.wa.gov.au)).
7. Section 2.19 of the Code sets out the requirements for my consideration of the Revised Proposed Access Arrangement submitted to me by Epic Energy on 8 August 2003:
  - 2.19 If the Service Provider submits a revised Access Arrangement by the date specified by the Relevant Regulator under section 2.16(a)(ii) or (b)(ii) then the Relevant Regulator must issue a further final decision that:
    - (a) if the Relevant Regulator is satisfied that the revised Access Arrangement incorporates the amendments specified by the Relevant Regulator in its final decision under Section 2.16(a)(ii) or (b)(ii), approves the revised Access Arrangement; or
    - (b) if the Relevant Regulator is satisfied that the revised Access Arrangement either substantially incorporates the amendments specified by the Relevant Regulator or otherwise addresses to the Relevant Regulator’s satisfaction the matters the Relevant Regulator identified in its final decision as being the reasons for requiring the amendments specified in its final decision under section 2.16(a)(ii) or (b)(ii), either approves or does not approve the revised Access Arrangement (in the Relevant Regulator’s discretion); or
    - (c) in any other case, does not approve the revised Access Arrangement.
8. In submissions to me, Epic Energy has submitted that my Final Decision contains errors. These submissions go beyond the matters to be addressed under section 2.19 of the Code and seek to challenge the correctness of the amendments required by my Final Decision. For the purposes of this further final decision, I have considered these matters only to the extent that they bear upon the question of whether the revisions proposed by Epic Energy substantially incorporate or otherwise address the amendments required by my Final Decision. I have separately considered whether any of the matters raised in Epic Energy’s submissions identify errors that would affect the validity of my Final Decision. I have concluded that there are no such jurisdictional errors in my Final Decision.

#### **FURTHER FINAL DECISION**

9. My further final decision pursuant to section 2.19 of the Code is to not approve the Revised Proposed Access Arrangement. The detailed reasons for my decision are set out in this document.

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<sup>4</sup> Epic Energy, 5 December 2003, Dampier to Bunbury Natural Gas Pipeline Submission in Response to Supplemental Reasons and Amendment SRAS#1: Behavioural Regime.

## REGULATOR'S ACCESS ARRANGEMENT

10. Section 2.20 of the Code requires that if I do not approve the Revised Proposed Access Arrangement under section 2.19, I must draft and approve my own Access Arrangement:
  - 2.20 If the Service Provider does not submit a revised Access Arrangement by the date specified by the Relevant Regulator under section 2.16(a)(ii) or (b)(ii) or the Relevant Regulator does not approve the revised Access Arrangement under section 2.19, the Relevant Regulator must:
    - (a) in the case of an Access Arrangement submitted under section 2.2, draft and approve its own Access Arrangement, instead of the Access Arrangement proposed by the Service Provider; or
    - (b) in the case of an Access Arrangement submitted voluntarily under section 2.3, not approve the Access Arrangement.
11. Pursuant to section 2.20(a) of the Code, I have drafted my own Access Arrangement for the DBNGP. I hereby approve this Access Arrangement, which becomes effective on 13 January 2004. A copy of this Access Arrangement is available from the Office of Gas Access Regulation or may be downloaded from the OffGAR web site ([www.offgar.wa.gov.au](http://www.offgar.wa.gov.au)).

## REASONS

### SERVICES POLICY

12. A Services Policy is provided in clause 6 of the Proposed Access Arrangement, which 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.
13. Epic Energy proposed a Reference Service termed the "Firm Service" with 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 Zone 1 of the pipeline.
  - The Service is not subject to interruption or curtailment except as permitted by the Access Contract.
  - The minimum contract term is five years unless otherwise agreed to by Epic Energy.
14. Paragraph 6.1(b) of the Proposed Access Arrangement provided 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 me as part of the Proposed 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.
15. No descriptive information was 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.
16. Non-Reference Services were also defined to include services provided by Epic Energy under contracts entered into prior to commencement of the Access Arrangement Period.
17. In my Final Decision I required two amendments to the Proposed Access Arrangement in respect of the Services Policy. These amendments, the revisions made by Epic Energy to the Access Arrangement in response to the required amendments, and my assessment of these revisions are set out as follows.
18. Amendment 1
- Paragraph 6.1(b) of the proposed Access Arrangement should be amended to indicate that Epic Energy will, subject to operational availability, make available to Users the services currently listed in that paragraph as Non-Reference Services.
19. Epic Energy made the following, marked up, revisions to the Access Arrangement in response to Amendment 1.
- 6.1 Services
- ...
- (b) Non-Reference Services
- (i) The Services referred to in this Paragraph are Non Reference Services.

- (ii) Epic Energy will, subject to operational availability and commercial feasibility (as determined by Epic Energy in its absolute discretion), make available to a Prospective Shipper the following Service or Services:~~is prepared to negotiate (subject to operational availability) regarding any other service or element of a service sought by a Prospective Shipper. Non-Reference Services which Epic Energy is prepared to negotiate might include:~~
  - (A) Secondary Market Service;
  - (B) Park and Loan Service;
  - (C) Seasonal Service;
  - (D) peaking service;
- (iii) Epic Energy is prepared to negotiate subject to operational availability and commercial feasibility (as determined by Epic Energy in its absolute discretion) regarding any other Service or element of a Service sought by a Prospective Shipper. Non-Reference Services which Epic Energy is prepared to negotiate might include:
  - ~~(D) — peaking service~~
  - (A) metering information service;
  - (B) pressure and temperature control service;
  - (C) odourisation service; and
  - (D) co-mingling service.

~~Revenue obtained from certain Non-Reference Services is Rebateable Revenue in accordance with Paragraph 9.~~
- (iv) Non-Reference Services also include Services provided by Epic Energy under contracts entered into prior to commencement of the Access Arrangement Period.
- (v) Revenue obtained from certain Non-Reference Services is Rebateable Revenue in accordance with Paragraph 9.

20. Epic Energy revised the Proposed Access Arrangement to provide four of the listed Non-Reference Services subject to “operational and commercial feasibility (as determined by Epic Energy in its absolute discretion)” as indicated in the proposed sub-clause 6(b)(ii).
21. For another four of the Services, Epic Energy has disputed my reasons for requiring Amendment 1 and has limited its revision of the Proposed Access Arrangement to only indicate that Epic Energy might be “prepared to negotiate” for provision of these Services. In a submission made to me in association with the Revised Proposed Access Arrangement, Epic Energy stated that the reason for this stance is that Epic Energy has not, to date, received a request for any of the proposed Services, and hence Epic Energy does not understand why it has been compelled to provide such Services.<sup>5</sup>

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<sup>5</sup> Epic Energy, 8 August 2003, Post Final Decision Submission #1, PFDS#1, Revised Access Arrangement and Access Arrangement Information, para 3.8.

22. These revisions made to the Proposed Access Arrangement are inconsistent with Amendment 1.

23. I am not satisfied that the revisions made to the Proposed Access Arrangement in respect of Amendment 1 incorporate the required amendment. Nor am I satisfied that the revisions either substantially incorporate the amendment or otherwise address my reasons for requiring the amendment.

24. Amendment 2

In addition to the Firm Service proposed by Epic Energy, the proposed Access Arrangement should include a Reference Service with the characteristics of the Firm Service but allowing for:

- receipt of gas into the DBNGP at any location on the DBNGP;
- a minimum contract term of no greater than two years; and
- the timely provision to Users of such metering information as is available to Epic Energy and which is necessary to enable Users to assess their potential liability for penalty charges and enable Users to take actions to avoid those charges.

I envisage that the Reference Tariff for this service will be the same as for the Firm Service.

25. Epic Energy made the following, marked up, revisions to the Proposed Access Arrangement in response to Amendment 2.

6.2 Firm Service

Firm Service is a Service in which Epic Energy (subject to availability of Capacity):

- (a) takes receipt, at one or more Receipt Points in Zone 1 on a Day, of a quantity of the Shipper's gas not exceeding:
  - (i) the sum of the Shipper's MDQ;
  - (ii) plus or minus the quantity of gas required to correct any Imbalance on the preceding Day;
- (b) delivers to the Shipper at one or more Delivery Points on that Day a quantity of gas not exceeding the Shipper's MDQ,

without interruption or curtailment except as permitted by the Access Contract.

Prospective Shippers [seeking access to spare Capacity of the DBNGP as it is configured at the time of approval of this Access Arrangement](#) must nominate a minimum term of 25 years when lodging an Access Request for Firm Service, unless Epic Energy in its absolute discretion agrees otherwise.

[Prospective Shippers seeking access for developable Capacity must nominate a minimum term of 20 years when lodging an Access Request for Firm Service, unless Epic Energy in its absolute discretion agrees otherwise.](#)

26. Epic Energy made the following, marked up, revisions to the Access Contract Terms and Conditions in response to Amendment 2.

12.2 Epic Energy's Responsibility

Epic Energy shall:

- (a) supply, install, operate and maintain Metering Equipment at each Delivery Point in good working order and condition and in accordance with the principles and standards of a reasonable and prudent pipeline operator; and



- (b) calculate and record —
    - (i) the quantity of gas supplied to Epic Energy by the Shipper; and
    - (ii) the quantity of gas delivered to the Shipper by Epic Energy.
  - (c) provide the information referred to in clause 12.2(b) to the Shipper and any other metering information as is available to Epic Energy, which can reasonably be provided to the Shipper and which Epic Energy reasonably determines is necessary to enable the Shipper to assess its potential liability for Charges.
- 27. Epic Energy did not make revisions to the Proposed Access Arrangement to allow for receipt of gas to the pipeline at locations outside of Zone 1 of the pipeline, expressing reasons to me in a confidential submission.<sup>6</sup>
- 28. The revisions made to the Proposed Access Arrangement do not incorporate the requirement under Amendment 2 to make provision for receipt of gas outside of Zone 1 of the pipeline. I am not satisfied from Epic Energy's confidential submission to me that Epic Energy has either substantially incorporated the amendment or otherwise addressed the reasons for requiring the amendment.
- 29. Epic Energy has responded to the requirement for a minimum contract term for the Firm Service of two years by revising the Proposed Access Arrangement to provide for a minimum term of two years where the contract relates to capacity of the DBNGP that was in existence at the time of commencement of the Access Arrangement. Epic Energy has nominated a minimum term of 20 years where an access request is made for developable capacity. In a submission made to me, Epic Energy stated the following reasons for these revisions:<sup>7</sup>
  - 3.14 In light of the Regulator's reasoning in paragraph 45 that, in his view, a shorter minimum term for the Firm Service than five years does not oblige Epic Energy to expand the capacity, Epic Energy considers it has substantially complied with Final Decision Amendment 2b by amending clause 6.2 to state that prospective shippers seeking access to spare capacity of the DBNGP as it is currently configured, must nominate a minimum term of five years when lodging an Access Request for Firm Service.
  - 3.15 Epic Energy reiterates its position as set out in CDS#5 (paragraph 5.6) and CDAP#9 (section 3) as justification for the need for a twenty year minimum term for access requests for developable capacity.
- 30. Subject to my comments below, Epic Energy has addressed part of Amendment 2 by revision of the Proposed Access Arrangement to provide for a minimum contract term of two years where a contract is entered into that utilises spare capacity.
- 31. In my view the inclusion of provision for a minimum contract term of 20 years for a contract that utilises developable capacity exceeds the requirements of Amendment 2. However, subject to the definitional matter I address below, I am satisfied that this revision is a reasonable consequential revision to that required in respect of the minimum contract term for the Firm Service and otherwise addresses the reason I required a minimum contract term in Amendment 2.

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<sup>6</sup> Epic Energy, 8 August 2003, Post Final Decision Submission #1, PFDS#1, Revised Access Arrangement and Access Arrangement Information, Confidential Version.

<sup>7</sup> Epic Energy, 8 August 2003, Post Final Decision Submission #1, PFDS#1, Revised Access Arrangement and Access Arrangement Information.

32. I note that “Spare Capacity” and “Developable Capacity” are defined terms in the Code, but not in the Revised Proposed Access Arrangement. This creates ambiguity and uncertainty. In the absence of these terms having the meaning defined in the Code, I am not satisfied that the Revised Proposed Access Arrangement incorporates the required amendment, substantially incorporates the amendment or otherwise addresses the reasons for requiring the amendment.
33. To meet the requirements of the amendment, these terms would need to be designated as defined terms, and the relevant definitions from the Code included in the “definitions” section of the Revised Proposed Access Arrangement.
34. In regard to the third part of Amendment 2 requiring the timely provision of metering information, Epic Energy made revisions to clause 12.2 of the Access Contract Terms and Conditions. The revisions do not fully incorporate the requirements of Amendment 2 as they do not expressly provide for the “timely” provision of the relevant metering information. I am, however, satisfied that the timely provision of information is implied by the wording of the proposed clause in the revised Access Contract Terms and Conditions. I am therefore satisfied that the revisions substantially incorporate the required amendment.
35. In considering Epic Energy’s Revised Proposed Access Arrangement, I observed that Epic Energy has included additional information in the revised Access Arrangement Information on proposed Non-Reference Services, which is marked up as follows.
2. Information Regarding Access and Pricing Principles
- 2.1 Reference Tariffs
- ...
- (b) Non Reference Services
- ...
- (v) Peaking service
- This service will enable an increase in the MHQ at a Delivery Point for a specified period.
- (vi) Metering Information service
- This service will entail the provision of metering and operational data directly to a third party in addition to the data Epic Energy agrees to provide under an Access Contract for any other Reference Service.
- (vii) Pressure and Temperature Control Service
- This service will entail the provision by Epic Energy of a service to vary the temperature and/or pressure at which Epic Energy shall deliver gas at a Delivery Point.
- (viii) Odourisation Service
- This service will entail the provision of a service by Epic Energy to odourise the gas being delivered at a Delivery Point.

(ix) Co-mingling Service

This service entails the agreement by Epic Energy with a Shipper to blend Out-of-Specification Gas with the main gas stream such that the aggregate of the main gas stream is within specification.

36. These definitions are consistent with my understanding of the meanings given to the listed Services at the time of the Final Decision, as I indicated in my Supplementary Reasons.

**REFERENCE TARIFF AND REFERENCE TARIFF POLICY**

37. Epic Energy provided a Reference Tariff Policy in clause 7 of the Proposed Access Arrangement.

38. The proposed Reference Tariff Policy addresses the following matters.

- *General Principles* – indicating that Reference Tariffs are designed to recover from Users of the Reference Service the avoidable costs attributable to each User and a share of joint costs; and that the Reference Tariff has been determined on the basis of the gas specifications prescribed in the Access Contract Terms and Conditions.
- *Calculation of Total Revenue* – indicating that Total Revenue has been calculated on a cost-of-service basis.
- *Calculation of the Initial Capital Base* – outlining in general terms the operation of Epic Energy’s “deferred recovery account” method of asset depreciation and indicating that the Capital Base for the DBNGP at the beginning of each year of the Access Arrangement is the sum of a physical account balance and a deferred recovery account balance.
- *Return on Assets* – indicating that the return on assets is determined by multiplying the Capital Base at the beginning of each year of the Access Arrangement by the Rate of Return.
- *Calculation of the Rate of Return* – indicating that the Rate of Return is determined as a weighted average of the returns to debt and equity, with the return on equity determined by the CAPM methodology and the return on debt determined as the sum of a risk free rate of return and the estimated corporate debt premium.
- *Depreciation Schedule* – indicating depreciation of the physical asset account by an annuity method, and indicating in general terms the method of capitalisation of “losses” to the deferred recovery account or of depreciation of that account.
- *Non Capital Costs* – indicating that the Reference Tariff provides for the recovery of all Non Capital Costs to the extent permitted under section 8.37 of the Code.
- *Forecast Capital Expenditure* – indicating that New Facilities Investment forecast of the Access Arrangement Period is reasonably expected to pass the requirements of section 8.16 of the Code, and providing for “rolling-in” of New Facilities

Investment into the Capital Base at the commencement of the next Access Arrangement Period.

- *Allocation of Costs between Services* – indicating that costs are allocated across Users of the DBNGP as if all Users are Users of the Reference Services, and that no costs are allocated to the provision of rebatable services.
- *Allocation of Costs between Users* – indicating that costs are allocated to Users of the Firm Service on the basis of use of assets of the DBNGP, that a Reference Tariff is specified on the basis of 11 pipeline zones, and that the Reference Tariff for the Firm Service comprises five components: Gas Receipt Charge, Pipeline Capacity Charge, Compression Capacity Charge, Compressor Fuel Charge and Delivery Point Charge.
- *Form of Regulation* – indicating that the Reference Tariff is specified by a price-path approach, with annual inflation at 67 percent of changes in the CPI.
- *Use of Incentive Mechanisms* – indicating that the price-path approach to the specification of the Reference Tariff provides incentives to develop the market and reduce costs, and that a method for distribution of rebatable revenue provides incentives for Epic Energy to develop a market for that part of the DBNGP capacity which cannot otherwise be made available as Firm Service.
- *New Facilities Investment* – indicating that Epic Energy will observe and comply with Code requirements regarding New Facilities Investment.
- *Adjustment of Tariff* – indicating that the Reference Tariff may be varied pursuant to clause 16 of the Access Contract Terms and Conditions (relating to the pass-through of costs arising from changes in supply taxes and changes in the regulatory environment).
- *Reference Tariff Principles Not Subject to Review* – indicating that the Initial Capital Base is a fixed principle for the purposes of section 7.12 of the Code.<sup>8</sup>

39. In my Final Decision, I did not address the Reference Tariff Policy separately from the Reference Tariff and the cost-of-service components underlying the Reference Tariff. I did not require amendment of the Reference Tariff Policy *per se*, but rather required amendment of the Reference Tariff to reflect revisions to the cost-of-service components underlying the Reference Tariff.

40. Amendment 3

- An Initial Capital Base of \$1,550 million as at 31 December 1999, including the value of capital costs associated with the Stage 3A enhancement of the DBNGP;

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<sup>8</sup> Reference to section 7.12 of the Code is assumed to be a typographical error, with the correct reference assumed to be section 8.47 of the Code.

- Forecast costs of New Facilities Investment as follows (31 December 1999 \$million).

<b>Year ending 31 December</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>Total</b>
Pipeline	0.43	0.28	0.16	0.36	0.16	1.38
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	9.72	10.38	6.96	2.58	36.08

- A real pre-tax Rate of Return of 7.4 percent.
- Forecast Non Capital Costs as follows (31 December 1999 \$million).

<b>Year ending 31 December</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>Total</b>
Total Non Capital Costs	38.41	39.58	41.83	42.09	41.65	203.56

- A Depreciation Schedule that accords with the relevant principles of section 8 of the Code and that is consistent with depreciation of assets over lives of 70 years for pipelines, 30 years for compression assets, 50 years for metering assets and 30 years for other depreciable assets.
- A present value of Total Revenue (with a discount rate equal to real pre-tax Rate of Return of 7.4 percent) of \$768.53 million in dollar values at 31 December 1999.

41. I address each of these elements of Amendment 3 below.

### Initial Capital Base

42. In its Proposed Access Arrangement, Epic Energy proposed an Initial Capital Base of \$2,570.34 million as at 31 December 1999 and indicated that this value was derived as follows.<sup>9</sup>

- Summation of the 1998 DBNGP purchase price of \$2,407 million and \$42.49 million of associated acquisition costs<sup>10</sup> 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.<sup>11</sup>
- 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.

<sup>9</sup> Access Arrangement Information, 28 July 2000, section 3.2.

<sup>10</sup> Indicated by Epic Energy to include borrowing expenses and other costs associated with the acquisition, and net adjustments for spares, linepack and construction work in progress (Epic Energy response to OffGAR Information Request 6, section 3.2).

<sup>11</sup> The valuation of individual assets was undertaken for Epic Energy by Edward Rushton Australia Pty Limited. Epic Energy was unable to provide the Regulator with details of the market valuations of individual assets that formed the basis for allocation of the total asset value to individual assets or the details of the allocation, purportedly for the reason that Epic Energy does not have this information. (Epic Energy, 22 December 2000, Information Request 8: Asset Valuation and Method Used to Assign Values to Specific Pipeline Assets.)

43. In my Final Decision I required amendment of the Proposed Access Arrangement to establish a value of the Initial Capital Base at \$1,550 million as at 31 December 1999, including the value of capital costs associated with the Stage 3A enhancement of the pipeline.

44. Epic Energy addresses the determination and value of the Initial Capital Base in clauses 7.3 and 7.9 of the Revised Proposed Access Arrangement, as follows.

7.3 Calculation of ~~Initial~~ Capital Base - COS Method

- (a) The Capital Base for the DBNGP at the beginning of each year of the Access Arrangement is the sum of:
  - (i) the physical asset account balance at the beginning of that year; and
  - (ii) the deferred recovery account balance at the beginning of that year.
- (b) The physical asset account balance at the beginning of the Access Arrangement Period has been determined after considering the factors set out in section 8.10 of the Code.
- (c) After considering the factors listed in section 8.10 of the Code, Epic Energy has determined the physical asset account balance at the beginning of the Access Arrangement Period (taking into account the factors set out in sections 8.10 (c), (f), (g) and (j) of the Code) to be the value of the purchase price paid by Epic Energy companies to the State of Western Australia for the acquisition of the DBNGP assets, plus acquisition costs, ~~less~~ plus additional capital expenditure less depreciation adjustments after purchase but prior to the start of the Access Arrangement Period.

...

7.9 Application - NPV Method

The initial Capital Base for the DBNGP is \$2,100 million established in accordance with the Code.

45. Epic Energy has revised the Proposed Access Arrangement to specify an Initial Capital Base Value of \$2,100 million. Information in the revised Access Arrangement Information<sup>12</sup> and submitted by Epic Energy<sup>13</sup> indicates that this value was derived as a value consistent with 100 percent load-factor tariffs of \$1.00 to Perth and \$1.08 south of Perth determined under a net-present-value methodology, and that this value is at a date of 31 December 1999. It is variously stated in the revised Access Arrangement Information, however, that the Initial Capital Base is established at a value of \$2,582.38 million at 31 December 1999<sup>14</sup> and \$2,100 million,<sup>15</sup> corresponding respectively to a cost-of-service analysis and net-present-value analysis of Total Revenue and the Reference Tariff. Both of these values of the Initial Capital Base differ from the value of \$2,570.34 million initially proposed.

46. Epic Energy has not revised the Proposed Access Arrangement to reflect a value of the Initial Capital Base of \$1,550 million at 31 December 1999 as required by my

<sup>12</sup> Revised Access Arrangement Information, Table 3.2.

<sup>13</sup> Epic Energy, 8 August 2003, Post Final Decision Submission #1, PFDS#1, Revised Access Arrangement and Access Arrangement Information, para 2.23.

<sup>14</sup> Revised Access Arrangement Information, Table 3.1b.

<sup>15</sup> Revised Access Arrangement Information, Table 3.2.

Final Decision. The revisions made to the Access Arrangement in respect of the first part of Amendment 3 therefore do not incorporate the required amendment. I am not satisfied that the revisions either substantially incorporate the amendment or otherwise address the reasons for requiring the amendment.

47. Epic Energy alleges a number of errors in my Final Decision in respect of my consideration of Epic Energy's proposed Initial Capital Base.<sup>16</sup> For reasons set out in paragraph 8 above, I do not consider that it is appropriate to consider these allegations of error in this further final decision.
48. In the Revised Proposed Access Arrangement and Access Arrangement Information Epic Energy addresses the required amendment of the Initial Capital Base through introducing a second methodology for calculation of Total Revenue (the NPV Method) and through a revised value of the Initial Capital Base. However, the Revised Proposed Access Arrangement and Access Arrangement Information describe both cost-of-service and NPV methodologies and it is not clear which has been used for the determination of Total Revenue. Further, the introduction of the NPV method does not relate to any of the required amendments or my reasons for the required amendments. Therefore, I do not consider that the revisions of the Proposed Access Arrangement relating to the introduction of the NPV methodology either incorporate or substantially incorporate a required amendment into the Proposed Access Arrangement, or otherwise address the reasons for a required amendment.

### Capital Costs

49. Epic Energy addressed New Facilities Investment as part of its Reference Tariff Policy in clause 7.8 of the Proposed Access Arrangement.
- 7.8 (a) New facilities investment during the Access Arrangement Period is reasonably expected to pass the requirements of section 8.16 of the Code when the new facilities investment is forecast to occur.
- (b) for the purposes of calculating the capital base at the commencement of the next Access Arrangement Period in accordance with section 8.9 of the Code, the new facilities investment will consist only of actual new facilities investment that has occurred during this Access Arrangement period.
50. Epic Energy provided details of planned Capital Expenditure for the Access Arrangement Period in sections 3.6 and 3.7 of the Access Arrangement Information – summarised as follows with values converted to real dollar values.

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<sup>16</sup> Epic Energy, 8 August 2003, Post Final Decision Submission #1, PFDS#1, Revised Access Arrangement and Access Arrangement Information, para 2.6 – 2.70 *passim*.

<b>Epic Energy forecast Capital Expenditure (1999 \$million, year ending 31 December)</b>						
<b>Type of Investment</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>Total</b>
<b>Pipeline Expenditure</b>						
Flood damage mitigation		0.05	0.05	0.05	0.05	0.20
Pipeline protection		0.20		0.20		0.40
Mainline valve CCVT upgrade			0.08	0.08	0.08	0.24
Mainline valve GEA upgrades		0.04	0.04	0.04		0.12
Mainline valve and repeater earthing	0.03	0.03	0.03	0.03	0.03	0.15
WLPG heat exchanger	0.40					0.40
<b>Total Pipeline Expenditure</b>	<b>0.43</b>	<b>0.32</b>	<b>0.20</b>	<b>0.40</b>	<b>0.16</b>	<b>1.50</b>
<b>Compression Expenditure</b>						
Turbine/Compressor Upgrades	20.19	1.3	1.40			22.89
UPS upgrade		0.15	0.15	0.15	0.15	0.60
Airstrip upgrade	0.15	0.20	0.20			0.55
Water treatment plants		0.05	0.05	0.05	0.05	0.20
Air conditioning units		0.05	0.05	0.05	0.05	0.20
Compressor station facilities	0.11	0.05				0.16
Station MMI upgrades		0.03	0.10	0.08	0.10	0.31
Portable flares		0.02				0.02
Sulphur deposition mitigation		1.00	1.00			2.00
Greenhouse NOx/SOx control		1.50	1.50	1.50	1.50	6.00
<b>Total Compression Expenditure</b>	<b>20.45</b>	<b>4.35</b>	<b>4.45</b>	<b>1.83</b>	<b>1.85</b>	<b>32.93</b>
<b>Metering Expenditure</b>						
Meter Station noise control		0.05	0.05	0.05	0.05	0.20
<b>Other Expenditure</b>						
Microwave system upgrade	0.25	3.80	4.70	3.80		12.55
VHF communications upgrade		0.20	0.25	0.20		0.65
SCADA upgrade		0.30	0.25	0.20		0.75
Customer reporting system	2.40					2.40
Computer system upgrades	0.62	0.15	0.15	0.15	0.15	1.22
Information management system	0.50					0.50
SCADA master station protocols		0.08				0.08
SCADA master station CS6, 9 visibility	0.10					0.10
Motor vehicles		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		0.06				0.06
Buildings	0.30	0.10	0.10	0.10	0.10	0.70
Security systems		0.10				0.10
Fitness for purpose project	0.60					0.60
Corrosion protection upgrades			0.02	0.02	0.02	0.06
Land management (GIS)	0.06					0.06
<b>Total Other Expenditure</b>	<b>5.31</b>	<b>5.29</b>	<b>5.97</b>	<b>4.97</b>	<b>0.77</b>	<b>22.31</b>
<b>Total</b>	<b>26.19</b>	<b>10.01</b>	<b>10.67</b>	<b>7.25</b>	<b>2.83</b>	<b>56.95</b>

51. In my Final Decision I required that the proposed New Facilities Investment be revised to provide for the consideration of some proposed items of capital expenditure to be regarded, for the purposes of the Access Arrangement, as Non Capital Costs.<sup>17</sup> As a consequence, I required the Proposed Access Arrangement to be amended such that Reference Tariffs reflect a revised forecast of New Facilities Investment as indicated in the second part of Amendment 3.

<sup>17</sup> Final Decision, para 305 – 308.



Forecast costs of New Facilities Investment as follows (31 December 1999 \$million).

Year ending 31 December	2000	2001	2002	2003	2004	Total
Pipeline	0.43	0.28	0.16	0.36	0.16	1.38
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	9.72	10.38	6.96	2.58	36.08

52. Epic Energy has revised the Access Arrangement Information to contain forecasts of New Facilities Investment for the period 2000 to 2009, consistent with a proposal for the Access Arrangement Period to extend to 31 December 2009 (refer paragraph 302 and following of this further final decision). Forecast New Facilities Investment for the period 2000 to 2004 is described on a project-by-project basis in section 3.9 of the revised Access Arrangement Information. Changes to the forecast New Facilities Investment as compared to that presented in the original Access Arrangement Information are as follows.

- Removal of costs in 2000 associated with the Stage 3A expansion of \$19.73 million.
- Removal of costs of \$0.4 million in 2000 associated with capital works on a WLPG heat exchanger.<sup>18</sup>
- Addition of costs of \$0.25 million for the period 2001 to 2004 for maintenance of tools and equipment.

53. In addition to the above capital costs, Epic Energy has forecast costs of \$408 million for expansions in pipeline capacity by a total of 113 TJ/day over the years 2005 to 2009, and “about \$3 million per year” for “stay in business” capital expenditure.<sup>19</sup>

54. The revised forecast of New Facilities Investment is as follows.

**Epic Energy Revised Forecast New Facilities Investment (nominal \$ million)**

Year ending 31 December	2000	2001	2002	2003	2004	Total
Pipeline	<u>0.50</u>	<u>2.55</u>	<u>0.91</u>	<u>0.33</u>	<u>0.12</u>	<u>4.41</u>
Compression	<u>0.89</u>	<u>2.13</u>	<u>3.85</u>	<u>1.96</u>	<u>2.02</u>	<u>10.85</u>
Metering	0.00	0.05	0.05	0.05	<u>0.05</u>	<u>0.20</u>
Other	<u>5.54</u>	<u>5.35</u>	<u>6.19</u>	<u>5.26</u>	<u>0.79</u>	<u>23.13</u>
<b>Total</b>	<b><u>6.93</u></b>	<b><u>10.09</u></b>	<b><u>11.01</u></b>	<b><u>7.60</u></b>	<b><u>2.98</u></b>	<b><u>38.61</u></b>

<sup>18</sup> I note that Epic Energy indicated to me prior to my Final Decision that this item of New Facilities Investment did not occur and Epic Energy no longer requires an allowance for this expenditure. Due to oversight, this was not addressed in the second part of Amendment 3 of my Final Decision. However, as this investment did not occur, the value of the investment will not be rolled into the Capital Base on review of the Access Arrangement.

<sup>19</sup> Revised Access Arrangement Information, section 3.10.

Year ending 31 December	2005	2006	2007	2008	2009	Total
Pipeline	<u>58.34</u>	<u>20.70</u>	<u>0.00</u>	<u>124.63</u>	<u>129.41</u>	<u>333.08</u>
Compression	<u>126.51</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>126.51</u>
Metering	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
Other	<u>2.98</u>	<u>3.05</u>	<u>3.13</u>	<u>3.21</u>	<u>3.29</u>	<u>15.66</u>
<b>Total</b>	<b><u>187.83</u></b>	<b><u>23.76</u></b>	<b><u>3.13</u></b>	<b><u>127.83</u></b>	<b><u>132.70</u></b>	<b><u>475.25</u></b>

55. The Access Arrangement Information has not been revised to indicate a shift of capital costs relating to maintenance of tools and equipment from the forecast of New Facilities Investment to the forecast of Non Capital Costs for the Access Arrangement Period. Moreover, Epic Energy has introduced further costs for the entire period 2001 to 2009 into the forecast of New Facilities Investment under the same cost heading. I am therefore not satisfied that the Revised Proposed Access Arrangement incorporates the second part of Amendment 3. Nor am I satisfied that the revisions either substantially incorporate the amendment or otherwise address my reasons for requiring the amendment.
56. For the reasons indicated in paragraph 302 and following of this further final decision, I am not prepared at this late stage in the process of assessing a proposed Access Arrangement to accept the proposal to extend the length of the initial Access Arrangement Period to the end of 2009. Accordingly, I am not able as part of this further final decision to consider the proposed New Facilities Investment of Epic Energy for the period 2005 to 2009, but I note that the proposed New Facilities Investment for the period 2005 to 2009 may be a relevant consideration for the Access Arrangement Period commencing in 2005.

### Rate of Return

57. Epic Energy addressed the Rate of Return in its Reference Tariff Policy, indicating in clause 7.5 of the Proposed Access Arrangement that:
- (a) The rate of return has been set as a weighted average of the returns applicable to debt and equity.
  - (b) The return on equity referred to in paragraph 7.5(a) has been determined using the capital asset pricing model.
  - (c) The return on debt referred to in Paragraph 7.5(a) has been determined as the sum of a risk free rate of return and the estimated corporate debt premium.
58. Epic Energy's estimate of the weighted average cost of capital (WACC) was described in Appendix 2 of the Proposed Access Arrangement Information. Epic Energy proposed a real pre-tax WACC of 8.5 percent.
59. In my Final Decision, I required, as the third part of Amendment 3, the Proposed Access Arrangement to be amended such that Reference Tariffs reflect a real pre-tax rate of return of 7.4 percent.

60. In the revised Access Arrangement Information, Epic Energy indicates revised parameters to the CAPM calculation of the Rate of Return in the revised Access Arrangement Information, deriving a real pre-tax Rate of Return of 7.78 percent compared with the originally proposed 8.5 percent and 7.4 percent required by my Final Decision.<sup>20</sup>

**Final Decision and Revised CAPM Parameter Values as Proposed by Epic Energy**

Parameter	Parameter symbol	Final Decision	Epic Energy
Risk free rate (nominal)	$R_f$	5.28%	<a href="#">4.80%</a>
Market risk premium	—	6.0%	6.50%
Asset beta	$\beta_a$	0.60	0.58
Equity beta	$\beta_e$	1.20	1.15
Debt beta	$\beta_d$	0.20	0.12
Cost of debt margin		1.20%	1.20%
Corporate tax rate	$T$	31.4%	<a href="#">31.4%</a>
Franking credit value	$\gamma$	50%	44% <sup>21</sup>
Debt to total assets ratio	$D/V$	60%	55%
Equity to total assets ratio	$E/V$	40%	45%
Expected inflation	$\pi_e$	2.25%	<a href="#">1.78%</a>
Estimated Return on Equity			
Nominal post-tax		12.48%	<a href="#">12.30</a>
Real post-tax		10.00%	
Nominal pre-tax		14.80%	
Real pre-tax		12.28%	
Estimated WACC			
Nominal post-tax		6.73%	<a href="#">7.11%</a>
Real post-tax		4.38%	<a href="#">5.24%</a>
Nominal pre-tax		9.81%	<a href="#">10.37%</a>
Real pre-tax		7.39%	<a href="#">7.78%</a>

61. Despite this revision to the determination of the Rate of Return in the relevant tables of the Access Arrangement Information, the text of the revised Access Arrangement

<sup>20</sup> Revised Access Arrangement Information, Tables 3.7, 3.8

<sup>21</sup> Epic Energy stated an assumed franking credit (gamma) value of 0.44. However, in calculating WACC values it scaled this value by a dividend payout ratio of 0.7 to give an effective dividend credit value of 0.308.

Information still indicates that a real pre-tax Rate of Return of 8.5 percent was used in determining the return on the Capital Base of the DBNGP.<sup>22</sup>

62. Epic Energy alleges a number of errors in my Final Decision in respect of my consideration of Epic Energy's proposed Rate of Return.<sup>23</sup> For the reasons set out in paragraph 8 above, I do not consider that it is appropriate to consider in detail these allegations of error in this further final decision.
63. The revisions made to the Proposed Access Arrangement in respect of the third part of Amendment 3 do not incorporate the required amendment. Nor am I satisfied that the revisions either substantially incorporate the amendment or otherwise address the reasons for requiring the amendment.

### Depreciation

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

66. Depreciation of values ascribed to physical assets (the physical asset account) was determined using the annuity method in accordance with the following assumptions as to asset lives.

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<sup>22</sup> Revised Access Arrangement Information, section 3.11, p 92.

<sup>23</sup> Epic Energy, 8 August 2003, Post Final Decision Submission #1, PFDS#1, Revised Access Arrangement and Access Arrangement Information, para 2.6 – 2.70 *passim*.

**Epic Energy Assumptions as to Asset life**

<b>Asset class</b>	<b>Economic life (years)</b>	<b>Average remaining life as at 1 January 2000 (years)</b>
Pipeline assets	100	85
Compression assets	57	46
Metering assets	71	62
Other assets	50	37

67. 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 proposed treating the shortfall in capital charges by way of "economic depreciation".

68. In my Final Decision I determined 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 (70 years for pipelines, 30 years for compression assets, 50 years for metering assets and 30 years for other depreciable assets). As the fifth part of Amendment 3 I required that:

The Reference Tariff for the Firm Service should be revised to reflect the following parameters.

...

- A Depreciation Schedule that accords with the relevant principles of section 8 of the Code and that is consistent with depreciation of assets over lives of 70 years for pipelines, 30 years for compression assets, 50 years for metering assets and 30 years for other depreciable assets.

69. Epic Energy has indicated in its revised Access Arrangement Information that Reference Tariffs have been calculated on the basis of revised assumptions as to asset lives, as follows.

**Epic Energy Assumptions as to Asset Life**

<b>Asset class</b>	<b>Economic life (years)</b>	<b>Average remaining life as at 1 January 2000 (years)</b>
Pipeline assets	70	55
Compression assets	30	19
Metering assets	50	40
Other assets	50	37

70. Epic Energy has maintained use of a depreciation methodology based on annuity depreciation of the asset base over the remaining lives of assets, and use of economic depreciation and a deferred recovery account to accommodate the proposed value of the Initial Capital Base that is higher than that required by Amendment 3.

71. Epic Energy's submitted revisions to the Access Arrangement Information would, if correctly incorporated into the determination of the Reference Tariff, satisfy the requirement of Amendment 3, with the exception of the revised asset lives assumed for "other depreciable assets". Epic Energy has maintained an assumed asset life for these assets of 50 years. Epic Energy has not provided me with reasons for the absence of any revision of the assumed asset life for this class of assets.
72. Epic Energy has also revised the average remaining asset lives in accordance with the changes made to assumed asset lives.
73. For the reasons set out above, I am not satisfied that the revisions made to the Access Arrangement in respect of the fifth part of Amendment 3 incorporate the required amendment. Nor am I satisfied that the revisions either substantially incorporate the amendment or otherwise address the reasons for requiring the amendment.

### Non Capital Costs

74. 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
<b>Total</b>	<b>38.15</b>	<b>39.29</b>	<b>41.55</b>	<b>41.80</b>	<b>41.40</b>	<b>202.18</b>

75. In my Final Decision, I considered that the proposed Non Capital Costs should provide for the consideration of some proposed items of capital expenditure to be regarded, for the purposes of the Access Arrangement, as Non Capital Costs.<sup>24</sup> As a consequence, I required – as the fourth part of Amendment 3 – the Proposed Access Arrangement to be amended such that Reference Tariffs reflect a revised forecast of Non Capital Costs.<sup>25</sup>

<sup>24</sup> Final Decision, para 349.

<sup>25</sup> Final Decision, para 724.

The Reference Tariff for the Firm Service should be revised to reflect the following parameters

...

- Forecast 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	39.58	41.83	42.09	41.65	203.56

76. Epic Energy has revised its Access Arrangement Information to contain forecasts of Non Capital Costs to 2009, consistent with a proposal for the Access Arrangement Period to extend to 31 December 2009. No revisions were made to forecasts of costs for the period 2000 to 2004.

77. The revised forecast of Non Capital Costs is as follows.<sup>26</sup>

**Epic Energy Revised Non Capital Costs (nominal \$ million)**

Year ending 31 December	2000	2001	2002	2003	2004	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Wages and salaries	9.92	10.17	10.42	10.68	10.95	<u>11.22</u>	<u>11.50</u>	<u>11.79</u>	<u>12.09</u>	<u>12.39</u>
Materials and services	10.84	11.86	14.19	14.15	13.84	<u>14.19</u>	<u>14.54</u>	<u>14.90</u>	<u>15.28</u>	<u>15.66</u>
Property taxes	0.05	0.05	0.05	0.06	0.06	<u>0.06</u>	<u>0.06</u>	<u>0.06</u>	<u>0.07</u>	<u>0.07</u>
Marketing	0.45	0.46	0.47	0.48	0.50	<u>0.51</u>	<u>0.53</u>	<u>0.54</u>	<u>0.55</u>	<u>0.57</u>
Corporate overheads	3.95	3.94	4.21	4.27	4.30	<u>4.41</u>	<u>4.52</u>	<u>4.63</u>	<u>4.75</u>	<u>4.86</u>
Gas used in operations	13.90	14.80	15.40	16.50	17.20	<u>16.53</u>	<u>18.41</u>	<u>32.47</u>	<u>26.81</u>	<u>30.33</u>
<b>Total</b>	<b>39.11</b>	<b>41.28</b>	<b>44.74</b>	<b>46.14</b>	<b>46.84</b>	<b><u>46.92</u></b>	<b><u>49.56</u></b>	<b><u>64.39</u></b>	<b><u>59.55</u></b>	<b><u>63.88</u></b>

78. The Revised Proposed Access Arrangement and Access Arrangement Information do not comply with the required amendment to shift capital costs relating to maintenance of tools and equipment from the forecast of New Facilities Investment to the forecast of Non Capital Costs for the Access Arrangement Period.
79. The revisions made to the Access Arrangement in respect of the fourth part of Amendment 3 do not incorporate the required amendment. Nor am I satisfied that the revisions either substantially incorporate the amendment or otherwise address my reasons for requiring the amendment.
80. For the reasons indicated in paragraph 302 and following of this further final decision, I am not prepared at this late stage in the process of assessing the Access Arrangement to accept the proposal to extend the length of the initial Access Arrangement Period to the end of 2009. As such, I have not given consideration to the revised Non Capital Costs of Epic Energy for the period 2005 to 2009, but I note that the proposed Non Capital Costs for the period 2005 to 2009 may be a relevant consideration for the Access Arrangement Period commencing in 2005.

<sup>26</sup> Revised Access Arrangement Information, Table 4.1.

**Total Revenue**

81. Epic Energy proposed a Total Revenue requirement derived 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 originally submitted 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
<b>Total</b>	<b>327.70</b>	<b>347.74</b>	<b>367.36</b>	<b>386.83</b>	<b>406.20</b>

82. In my Final Decision, I considered that the Total Revenue for the DBNGP should reflect required revisions to the Initial Capital Base, forecast New Facilities Investment, the Rate of Return, forecast Non Capital Costs and the Depreciation Schedule. As a consequence, I required – as the sixth part of Amendment 3 – the Proposed Access Arrangement to be amended such that Reference Tariffs reflect a specified present value of Total Revenue:

The Reference Tariff for the Firm Service should be revised to reflect the following parameters

...

- A present value of Total Revenue (with a discount rate equal to real pre-tax Rate of Return of 7.4 percent) of \$768.53 million in dollar values at 31 December 1999.

83. Epic Energy has revised clause 7.2 of the Proposed Access Arrangement which describes the method of calculation of Total Revenue:

7.2 Calculation of Total Revenue

- (a) The Total Revenue has been calculated using the ‘cost of service’ (“COS”) method described in section 8.4 of the Code. [This basis for calculation of the Total Revenue under the COS method is outlined in paragraphs 7.3 to 7.8 of the Access Arrangement. The calculation of the Total Revenue using the COS method is consistent with calculation of the Total Revenue using the “Net Present Value” \(“NPV”\) method also described in section 8.4 of the Code. As applied by Epic Energy, the NPV method yields the same Reference Tariff as the COS method. The](#)



[basis of calculation of the Total Revenue under the NPV method is outlined in paragraphs 7.9 to 7.14 of the Access Arrangement.](#)

[\(b\) The NPV and COS methods have both been applied in accordance with section 8.5A\(a\) of the Code, on a pre-tax nominal basis.](#)

84. This revision introduces a new calculation methodology for the determination of Total Revenue (the NPV method) and introduces a statement that Total Revenue is calculated on a “pre-tax nominal” basis, implying calculation of a return on assets by application of a nominal pre-tax rate of return to a nominal value of the Capital Base.
85. The Revised Proposed Access Arrangement also includes the new statement that “the NPV and COS methods have both been applied in accordance with section 8.5A(a) of the Code, on a pre-tax nominal basis”.
86. Epic Energy has provided details of the revised Total Revenue determined with the revised cost parameters in Tables 2.2 and 2.3 of the revised Access Arrangement Information for two different methodologies of calculation: a cost-of-service calculation and a net-present-value calculation, respectively.

**Epic Energy Revised Total Revenue: Cost-of-Service Calculation (nominal \$ million)**

<b>Year ending 31 December</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
Return on Assets	267.85	267.79	267.55	267.54	267.51	266.97	267.33	285.93	284.45	294.10
Non Capital Costs	37.93	39.43	41.68	41.94	41.50	47.47	50.18	67.32	64.53	64.84
Depreciation	8.88	9.82	10.86	12.01	13.28	14.67	17.16	18.93	20.91	23.09
Total	314.66	316.89	320.20	321.58	321.88	328.15	351.31	370.92	368.45	351.31

**Epic Energy Revised Total Revenue: Net-Present-Value Calculation (nominal \$ million)**

<b>Year ending 31 December</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
Return on Assets	217.74	222.04	227.14	232.80	238.13	259.24	285.68	294.05	300.31	320.79
Non Capital Costs	37.93	40.32	43.58	44.84	45.35	47.47	50.18	67.32	64.53	64.84
Depreciation	-34.50	-39.07	-43.61	-43.80	-43.31	-51.06	-51.97	-53.46	-57.19	-54.88
Total	221.17	223.29	227.1	233.84	240.17	255.65	283.89	307.91	307.64	330.74

87. The present value of Epic Energy’s revised Total Revenue determined by the cost-of-service methodology for the period 2000 to 2004 is \$1,197 million using a discount rate equal to Epic Energy’s nominal pre-tax WACC of 10.37 percent, or \$1,214 million using a discount rate equal to the Final Decision nominal pre-tax WACC of 9.81 percent.
88. The present value of Epic Energy’s revised Total Revenue determined by the NPV methodology for the period 2000 to 2004 is \$857 million using a discount rate equal to Epic Energy’s nominal pre-tax WACC of 10.37 percent, or \$869 million using a discount rate equal to the Final Decision nominal pre-tax WACC of 9.81 percent.

89. In my Final Decision, I required that the Reference Tariff for the Firm Service be revised to reflect a present value of Total Revenue of \$768.53 million for the period 2000 to 2004 in dollar values as at 31 December 1999. The Revised Proposed Access Arrangement does not comply with this requirement, with tariffs reflecting a present value of Total Revenue of \$857 to \$1,214 million depending upon the calculation method used by Epic Energy and whether the annual values are discounted by the Rate of Return proposed by Epic Energy in its Revised Proposed Access Arrangement or the Rate of Return required by me in my Final Decision.
90. The revisions made to the Proposed Access Arrangement in respect of Amendment 3 therefore do not incorporate the sixth part of this amendment. Further for the reasons set out above, I am not satisfied that the revisions either substantially incorporate the amendment or otherwise address my reasons for requiring the amendment.
91. For the reasons previously indicated in relation to revisions of the Access Arrangement in respect of the Initial Capital Base (paragraph 42 and following of this further final decision) I do not consider that the revisions of the Access Arrangement relating to the introduction of the NPV methodology either incorporate a required amendment into the Access Arrangement, or address the reasons for a required amendment.

#### **Cost/Revenue Allocation and the Reference Tariff**

92. 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 Rebatable Services.
93. The Reference Tariff proposed by Epic Energy comprised multiple charges:
- Pipeline Capacity Charge;
  - Compression Capacity Charge;
  - Compressor Fuel Charge;
  - Gas Receipt Charge; and
  - Delivery Point Charge.
94. The allocation of costs to charges of the Reference Tariff arose 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 were attributed to particular zones of the pipeline and particular assets. Epic Energy indicated that this attribution of costs allows charges to be set to recover costs from Users according to the parts of the DBNGP nominally utilised by each User. Accordingly, Epic Energy 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.
95. Epic Energy's Total Revenue under its Proposed Access Arrangement would, in the absence of any deferred recovery of revenue, have given rise to total tariffs (at 100 percent load factor) of \$1.41/GJ for delivery from Zone 1a to Zone 9, and \$1.62/GJ for delivery from Zone 1a to Zone 10. The Delivery Point Charge would be additional to these tariffs. On the basis of throughput forecasts for the Access Arrangement Period, the average value of the Delivery Point Charge across Users would be 8.2c/GJ, although this would vary between 0.3c/GJ and 34.8c/GJ.
96. Epic Energy made pro-rata adjustments 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.
  - 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.
97. In my Final Decision I required several amendments to the cost allocation and resultant charges of the Reference Tariff, designated in my Final Decision as Amendments 5 to 10 and 13. These amendments, the revisions made by Epic Energy to the Proposed Access Arrangement in response to the required amendments, and my assessment of these revisions are described as follows.
98. Amendment 5
- 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.
99. This amendment was addressed in Epic Energy's revised Access Arrangement Information (with Table 2.1 now showing the Eradu Road Delivery Point in Zone 6), and in the Tariff Schedule in Annexure A of the Revised Proposed Access

Arrangement (with the Table of Delivery Point Charges indicating the Eradu Road Delivery Point to be located in Zone 6). However, some parts of the revised Access Arrangement Information still indicate or imply a location of the Eradu Road Delivery Point in Zone 7 (Tables 6.3 and 6.4).

100. I am satisfied that, subject to correction of these errors in the Access Arrangement Information, the revisions substantially incorporate Amendment 5.

101. Amendment 6

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 on the pipeline between the gas Receipt Point(s) and gas Delivery Point(s) for each gas transmission contract.

102. Compliance with this amendment does not require revisions to the Access Arrangement documentation as originally proposed, but rather a re-calculation of the Compression Capacity Charge and Compressor Fuel Charge. For the purposes of the Revised Proposed Access Arrangement, Epic Energy has made revisions to the Access Arrangement Information indicating that costs of compression are recovered on a pass-through basis for all compressor stations other than Compressor Stations 1 and 2 (for which costs are recovered through the Pipeline Capacity Charge) as evident from Table 2.4 of the revised Access Arrangement Information:

Table 2.4 - Allocation of Forecast Total Cost Components to Charge Rates

Charge rate
<b>Pipeline capacity charge rate</b>
<i>Recovers</i>
Pipeline asset return by zone
Pipeline asset depreciation by zone
Pipeline maintenance costs by zone
<a href="#">Compressor station asset return for compressor stations 1 and 2</a>
<a href="#">Compressor station asset depreciation for compressor stations 1 and 2</a>
<a href="#">Compressor station maintenance costs for compressor stations 1 and 2</a>
<a href="#">Other assets return</a>
<a href="#">Other assets depreciation</a>
<a href="#">Other non-capital costs</a>
<i>Recovery basis</i>
Passthrough MDQ in each zone
<a href="#">Delivery point MDQ</a>
<b>Compression capacity charge rate</b>
<i>Recovers</i>
Compressor station asset return by compressor station
Compressor station asset depreciation by compressor station
Compressor station maintenance costs by compressor station
<i>Recovery basis</i>
Passthrough MDQ for each compressor station
<b>Compressor fuel charge rate</b>
<i>Recovers</i>
Compressor fuel costs by compressor station
<i>Recovery basis</i>
Passthrough volume for each compressor station
<b>Delivery point charge</b>
<i>Recovers</i>
Metering assets return by delivery point
Metering assets depreciation by delivery point
<i>Recovery basis</i>
Fixed charge
<b>Regulator's Funding Charge</b>
<i>Recovers</i>
<a href="#">The costs imposed by the Regulator on Epic Energy pursuant to the Gas Pipelines Access (WA) (Funding) Regulations 1999</a>
<i>Recovery basis</i>
<a href="#">Delivery Point MDQ</a>

103. I consider this revision to be contrary to the requirement of Amendment 6. Therefore, the revisions made to the Proposed Access Arrangement do not incorporate the required amendment. Nor am I satisfied that the revisions either substantially incorporate the amendment or otherwise address the reasons for requiring the amendment.
104. Amendment 7
- 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.
105. In the submission made to me on lodgement of the Revised Proposed Access Arrangement, Epic Energy indicated to me that this required amendment is satisfied by a paragraph in sub-clause 7.10(g) of the Proposed Access Arrangement as originally proposed (which appears as 7.14(g) of the Revised Proposed Access

Arrangement). On this basis, it was submitted that the requirement for the amendment would not appear to have been necessary. The relevant paragraph states that:

Firm Service shippers making Upstream Deliveries will not incur the Compressor Fuel Charge unless those Upstream Deliveries cause a change in the normal direction of gas flow in the DBNGP.

106. I am satisfied that Epic Energy has otherwise addressed the reason for Amendment 7 as the paragraph of the Access Arrangement referred to by Epic Energy incorporates the requirement of Amendment 7.

107. Amendment 8

While changes in cost allocations and tariffs may be made over time, the cost allocation and tariff structure proposed for the Firm Service for the Access Arrangement Period should be amended to ensure that for Users or Prospective Users with Delivery Points in any zone of the DBNGP, there is no immediate large 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*.

108. Compliance with this required amendment did not require revisions to the Access Arrangement, but rather a re-allocation of costs to asset classes of the pipeline and/or to component charges of the Reference Tariff.

109. Epic Energy has sought, in part, to meet this amendment through abolition of the Gas Receipt Charge. The Reference Tariff proposed by Epic Energy (at 1 January 2000, for gas delivery at 100 percent load factor and excluding the Delivery Point Charge) is similar to a T1 Service tariff that would have applied under the Dampier to Bunbury Pipeline Regulations 1998 for all proposed zones of the DBNGP with the exception of Zones 1a and 1b (Reference Tariff approximately 170 percent of the T1 Service tariff that would have applied at a Delivery Point at the mid point of the zones) and Zone 4a (Reference Tariff approximately 350 percent of the T1 Service tariff that would have applied). As the tariffs in Zones 1a and 1b are of low values in absolute terms (revised proposed Reference Tariff of less than \$0.18/GJ for Zone 1b at 100 percent load factor and excluding Delivery Point Charges) I am satisfied that a 70 percent increase in the tariff is not large in the context of Amendment 8. I am also aware that for Zone 4a, the lateral pipeline that this zone encompasses is a relatively high value asset used to service only a very small load, and therefore that there is reason for the Reference Tariff to be set at a disproportionately high level in comparison with other pipeline zones. Taking these factors into account, I am satisfied that the Reference Tariff of the Revised Proposed Access Arrangement substantially incorporates Amendment 8.

110. Amendment 9

The proposed Access Arrangement should be amended to include a mechanism to ensure that Epic Energy does not retain revenues from Delivery Point Charges in circumstances where those revenues recover capital costs attributed to capital assets that were financed by Users.

111. Epic Energy addressed Amendment 9 by the new clause 7.20 of the Revised Proposed Access Arrangement as follows.

7.20 Rebate of Delivery Point Charges

- (a) In relation to a Delivery Point for which some or all of the capital costs were provided by a Shipper ('Funding Shipper'), any revenue received by Epic Energy from other Shippers ("Paying Shippers") for the Delivery Point Charge relating to the relevant Delivery Point will be rebated to the Funding Shipper in accordance with the rebate formula contained in the agreement between Epic Energy and the Funding Shipper relating to the funding of that Delivery Point. If there is no rebate mechanism contained in the agreement between Epic Energy and the Funding Shipper, Epic Energy must rebate to the Funding Shipper 95% of the Delivery Point Charge payable by the Paying Shipper.
- (b) A Funding Shipper will not be required to pay the Delivery Point Charge in respect of any Delivery Point it funded.

112. For a User taking delivery of gas at a Delivery Point financed by that User, the revisions provide that the User is not required to pay the Delivery Point Charge.

113. I note that the rebate mechanism that applies where a User makes use of a Delivery Point facility financed by a funding shipper provides for 95 percent of revenue from the Delivery Point Charge paid by the User to be rebated to the funding shipper. Epic Energy has not provided any justification for the rebate being less than 100 percent, and there would not appear to be any ready justification on a cost-recovery basis as the Delivery Point Charge recovers only capital costs (return and depreciation) associated with the facility assets, and no maintenance or operating costs. However, inasmuch as I consider it likely that there may be some administrative cost associated with the rebate mechanism, retention of five percent of the revenue is not unreasonable.

114. I am therefore satisfied that the revisions substantially incorporate Amendment 9.

115. Amendment 10

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

116. Amendment 10 has been addressed by Epic Energy in sub-clause 8.3(d) of the Revised Proposed Access Arrangement:

8.3 Application of Charges

...

- (d) The Delivery Point Charge is an annual fixed charge which recovers the cost of the delivery point facilities used by the Shipper. Where gas is delivered to more than one shipper at a delivery point, the Delivery Point Charge is shared between shippers on the basis of the ~~total volume of gas~~ total Shippers' MDQs at the Delivery Point.

117. Sub-clause 8.3(d) of the Revised Proposed Access Arrangement is a change from the Proposed Access Arrangement, which indicated that "the Delivery Point Charge is shared between shippers on the basis of the total volume of gas delivered at the Delivery Point". This revision to sub-clause 8.3(d) addresses the reasons for Amendment 10, being that apportionment on the basis of volume (as originally proposed) may not be possible or practical where Users themselves do not apportion gas throughput prior to actual gas delivery, and the possibility that in situations where

a User has contracted MDQ but no throughput for a period, the User would not have to pay Delivery Point Charges.<sup>27</sup>

118. Epic Energy has not explicitly addressed the issue of determination of Delivery Point Charges where Users take delivery of gas from Notional Delivery Points. However, I am satisfied that this is implicitly addressed by the revisions to sub-clause 8.3(d), since the apportionment of Delivery Point Charges is based on contracted MDQ and the capital value of actual Delivery Point facilities to which the contracted MDQ relates.
119. For the reasons set out above, I am satisfied that the revisions otherwise address the reasons for requiring the amendment.
120. Amendment 13  
  
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.
121. Amendment 13 is related to Amendment 2, which requires that Epic Energy provide for receipt of gas under the Reference Service at locations on the pipeline other than in Zone 1. Epic Energy has opposed this amendment, as discussed in relation to Amendment 2 and the Services Policy (paragraph 27 and following of this further final decision). Epic Energy has not revised the Proposed Access Arrangement to incorporate or substantially incorporate Amendment 13 or otherwise addressed the reasons for Amendment 13.
122. Although not required under my Final Decision, Epic Energy has revised the proposed structure of the Reference Tariff to remove the Gas Receipt Charge and introduce a “Regulator’s Funding Charge”. The related revisions to the Proposed Access Arrangement are as follows.

#### 7.14 Allocation of Costs between Shippers

...

(d) There are five components to the Reference Tariff for Firm Service:

(i) ~~Gas Receipt Charge;~~

(i) Pipeline Capacity Charge;

(ii) Compression Capacity Charge (for compressor stations other than Compressor Stations 1 and 2);

(iii) Compressor Fuel Charge;

(iv) Delivery Point Charge; and

(v) Regulator’s Funding Charge.

123. The same list of component charges of the Reference Tariff appears in clause 8.1 of the Revised Proposed Access Arrangement.

<sup>27</sup> Draft Decision, Part B p255.



124. While Epic Energy indicates in sub-clause 7.14(d) of the Revised Proposed Access Arrangement that the proposed Regulator's Funding Charge is part of the Reference Tariff, a contrary statement is made in sub-clause 7.14(i):

7.14 Allocation of Costs between Shippers

...

- (i) The Regulator's Funding Charge is the sum of the Regulator's Ongoing Charge and the Regulator's Access Arrangement Charge, as calculated in accordance with clause 16.4 of the Access Contract Terms and Conditions. This charge is in addition to the Reference Tariff.

125. The same description of the Regulator's Funding Charge is contained in clause 8.3 of the Revised Proposed Access Arrangement, which includes revisions in relation to the Gas Receipt Charge, Delivery Point Charge and the Regulator's Funding Charge.

8.3 Application of Charges

- ~~(a) The Gas Receipt Charge is applied to the Shipper's MDQ for the relevant Access Contract Period.~~

- (a) The Pipeline Capacity Charge is the aggregate of the Shipper's Delivery Point MDQ or Delivery Point MDQ's multiplied by the relevant rate set out in the Tariff Schedule for that Delivery Point and associated Receipt Point.

- (b) The Compression Capacity Charge is the aggregate of the Shipper's Delivery Point MDQ or Delivery Point MDQ's multiplied by the relevant rate set out in the Tariff Schedule for that Delivery Point and associated Receipt Point.

- (c) The Compressor Fuel Charge is the aggregate of the quantity of gas delivered to Shipper at a Delivery Point or Delivery Points multiplied by the relevant rate set out in the Tariff Schedule for that Delivery Point and associated Receipt Point.

- (d) The Delivery Point Charge is an annual fixed charge which recovers the cost of the delivery point facilities used by the Shipper. Where gas is delivered to more than one shipper at a delivery point, the Delivery Point Charge is shared between shippers on the basis of the ~~total volume of gas~~ total Shippers' MDQs at the Delivery Point.

- (e) The Regulator's Funding Charge is the sum of the Regulator's Ongoing Charge and the Regulator's Access Arrangement Charge as calculated in accordance with clause 16.4 of the Access Contract Terms and Conditions.

126. In revising the charges that make up the Reference Tariff and in removing provision for the Gas Receipt Charge, Epic Energy changed the allocation of Total Revenue such that the costs that were previously intended to be recovered through the Gas Receipt Charge are now proposed to be recovered through the Pipeline Capacity Charge (i.e. "other assets return", "other assets depreciation" and "other non-capital costs").

127. Epic Energy has indicated in clauses 7.14 and 8.3 of the Revised Proposed Access Arrangement that the Regulator's Funding Charge is:

[T]he sum of the Regulator's Ongoing Charge and the Regulator's Access Arrangement Charge as calculated in accordance with clause 16.4 of the Access Contract Terms and Conditions.

128. Table 2.4 of the revised Access Arrangement Information indicates that the Regulator's Funding Charge recovers the costs imposed by the Regulator on Epic Energy pursuant to the *Gas Pipelines Access (WA) (Funding) Regulations 1999*, and is levied on Users in proportion to MDQ.

129. The component charges of the Regulator's Funding Charge are actually described in new clauses 16.4 to 16.6 of the revised Access Contract Terms and Conditions, as follows.

16.4 Regulator's Funding Charge

- (a) Each quarter, the Shipper must pay Epic Energy the Regulator's Funding Charge.
- (b) The Regulator's Funding Charge is the sum of the Regulator's Ongoing Charge and the Regulator's Access Arrangement Charge.
- (c) The Regulator's Ongoing Charge has the meaning given in clause 16.5.
- (d) The Regulator's Access Arrangement Charge has the meaning given in clause 16.6.

16.5 Regulator's Ongoing Charge

- (a) The Regulator's Ongoing Charge is the Shipper's proportion of all charges imposed by the Regulator on Epic Energy in respect of the DBNGP under the Gas Pipelines Access (Western Australia) (Funding) Regulations 1999 or under any other law or regulation, during the preceding quarter.

- (b) The Regulator's Ongoing Charge is to be calculated pursuant to the following formula:

$$ROC_S = (TROCQ_{EE} + UROC_S) \times (C_S/C_T)$$

where:

ROC<sub>S</sub> means the Regulator's Ongoing Charge.

UROC<sub>S</sub> means the balance of the Regulator's Ongoing Charge that Epic Energy was unable to pass on to Shippers during the quarter immediately prior to the preceding quarter plus a return on that amount equal to the regulated rate of return as contained in the Regulator's Final Approval for the Access Arrangement.

TROCQ<sub>EE</sub> means the total of all charges imposed on Epic Energy by the Regulator during the preceding quarter.

C<sub>S</sub> means the daily average total capacity (expressed in GJ/day) contracted by the Shipper on the DBNGP pursuant to the Shipper's Access Contract, in the preceding quarter.

C<sub>T</sub> means the daily average total of all contracted capacity (expressed in GJ/day) on the DBNGP under the Access Arrangement less the daily average capacity contracted under any Exempt Contract, in the preceding quarter.

16.6 Regulator's Access Arrangement Charges

- (a) The Regulator's Access Arrangement Charge is the Shipper's proportion of all charges imposed by the Regulator on Epic Energy in respect of the DBNGP under the Gas Pipelines Access (Western Australia) (Funding) Regulations 1999 or under any other law or regulation, during the period leading up to the commencement of the Access Arrangement and is to be paid to Epic Energy in quarterly amounts over the term of the Shippers Access Contract.

- (b) The Regulator's Access Arrangement Charge is to be calculated pursuant to the following formula:

$$RAAC_S = [(TRAAC_{EE} + URAAC_S) \times (C_S/C_T)] \div [TCM/4]$$

where:

RAAC<sub>S</sub> means the Regulator's Access Arrangement Charge.

URAAC<sub>S</sub> means the balance of the Regulator's Access Arrangement Charge that Epic Energy was unable to pass on to Shippers during the quarter immediately prior to the preceding quarter plus a return on that amount equal to the regulated rate of return as contained in the Regulator's Final Approval for the Access Arrangement.

TRAAC<sub>FE</sub> means the total of all charges imposed on Epic Energy by the Regulator during the period leading up to the commencement of the Access Arrangement.

C<sub>S</sub> means the daily average total capacity (expressed in GJ/day) contracted by the Shipper on the DBNGP pursuant to the Shipper's Access Contract, in the preceding quarter.

C<sub>T</sub> means the daily average total of all contracted capacity (expressed in GJ/day) on the DBNGP under the Access Arrangement less the daily average capacity contracted under any Exempt Contract, in the preceding quarter.

TCM means the total number of months of the Shipper's Access Contract on the DBNGP.

130. In the originally proposed Access Contract Terms and Conditions, Epic Energy had loosely proposed a mechanism for pass-through of costs of regulation, apparently including charges levied on Epic Energy by the Regulator. In my Final Decision I considered that the proposed Access Contract Terms and Conditions should not provide for this pass-through of costs on the basis that it was not consistent with provisions of the Code for variation of the Reference Tariff.<sup>28</sup> The following Amendment 29 was required.

Amendment 29

Sub-clause 16.4 of the Access Contract Terms and Conditions, relating to adjustment of charges if there is a change in the regulatory environment should be deleted from the Access Contract Terms and Conditions or amended to clarify that any application will be submitted as a revision to the Access Arrangement in accordance with section 2.28 of the Code

131. Epic Energy has deleted clause 16.4 from the Proposed Access Contract Terms and Conditions, although indicating in a submission to me that it is not willing to comply with this required amendment (refer paragraph 224 and following of this further final decision).
132. As an apparently related revision to the deletion of clause 16.4, Epic Energy has introduced a new charge for users of the Reference Service that allows for the pass-through of certain costs arising from the regulatory process under the Code. However, Epic Energy has not indicated in either the Revised Proposed Access Arrangement or associated submissions how it considers that the pass-through of costs in the proposed Regulator's Funding Charge addresses any required amendment under my Final Decision or the reasons for a required amendment. I therefore do not consider that the introduction of the Regulator's Funding Charge incorporates, substantially incorporates or otherwise addresses the reasons for an amendment required in my Final Decision.
133. In any event, I am not satisfied that a pass-through of costs such as proposed through the Regulator's Funding Charge is contemplated or allowed for by the Code, including under the recent revisions to section 8.3 of the Code that provide for

<sup>28</sup> Final Decision, para 630 – 636.

variation of a Reference Tariff in accordance with an Approved Reference Tariff Variation Mechanism. Moreover, the proposed Regulator's Funding Charge was not raised with me prior to my Final Decision and, I am not prepared at this late stage in the process of assessing the Proposed Access Arrangement to accept the proposal for the inclusion in the Access Arrangement of this charge.

### Access Request Fee

134. In the Proposed Access Arrangement, Epic Energy proposed that an Access Request must be accompanied by payment of a Prescribed Fee of \$5000.00.
135. In my Final Decision I took the view that if Epic Energy wishes to charge the proposed fee for an Access Request, the expected value of the revenue from this fee should be excluded from the forecast of Non Capital Costs to avoid over-recovery of costs. This was reflected in Amendment 4 of my Final Decision:

#### Amendment 4

If Epic wishes to charge a fee for submission of an Access Request, the expected value of the revenue from these fees should be excluded from the forecast of Non Capital Costs.

136. Epic Energy has responded to the requirement of Amendment 4 by revision of clause 5.1 of the Access Arrangement providing for a rebate of the Prescribed Fee for an Access Request back to a User in the event that an Access Contract is entered into.

#### 5.1 The Application Form

- (a) Prospective Shippers must apply for access in the form specified by Epic Energy from time to time in the Access Guide (as amended) ("**Access Guide**") the current version of which forms part of the Information Package required by Section 5.1 of the Code.
  - (b) The procedures applying to applications are detailed in the Access Guide.
  - (c) An Access Request must be accompanied by the Prescribed Fee.
  - (d) If an Access Contract is entered into, the applicable tariff will be adjusted over the duration of the Access Contract by an amount equal to the Prescribed Fee.
137. Epic Energy has not purported to incorporate Amendment 4 but has otherwise sought to address the reasons for the amendment. Under Epic Energy's proposed revisions the timing of the rebate is not clear and may be extended for the duration of the Access Contract without recognition of the time value of money in circumstances where an Access Contract may extend for a period of several years. In the circumstances, because of this issue with the timing under the revision, I am not satisfied that the revision incorporates or substantially incorporates Amendment 4, or otherwise addresses my reasons for the amendment.

### Rebatable Services and Rebatable Revenues

138. In section 9 of the Proposed Access Arrangement, Epic Energy proposed that some Non-Reference Services be Rebatable Services. The Non-Reference Services that are to be Rebatable Services are indicated in section 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 proposed that revenue (less the Compressor Fuel Charge) obtained by Epic Energy from Overrun charges under clause 5.2 of the Access Contract Terms and Conditions be Rebateable Revenue.

139. Section 9.2(a) of the Proposed Access Arrangement sets out a mechanism for determining an amount of the Rebateable Revenue that is “Distributable Revenue”. Subsequent to submission of the Proposed Access Arrangement, Epic Energy advised me that the mechanism set out in section 9 of the Proposed Access Arrangement was in need of revision, and submitted a revised, although similar, specification of the mechanism.<sup>29</sup> This is set out as follows.

The Distributable Revenue for a year is defined as the amount by which the Rebateable Revenue for that year exceeds the sum of:

- the difference between that part of Total Revenue attributable to the provision of Firm Service and actual revenue from the sale of Firm Service;
- the difference between forecast revenue from Shippers with Prior Contracts and actual revenue from Shippers with Prior Contracts; and
- the costs of providing the services from which the Rebateable Revenue was obtained.

The Distributable Revenue (“DR”) is then:

$$\begin{aligned} \text{DR} &= \text{RR} - [(\text{TRFS} - \text{RFS}) + (\text{FPR} - \text{PR}) + r \times Q] \\ &= \text{RR} - (\text{TRFS} - \text{RFS} + r \times Q) - \text{FPR} + \text{PR} \\ &= (\text{RR} + \text{PR}) - (\text{TR} + \text{FPR}) \end{aligned}$$

where:

- RR = Rebateable Revenue;
- TR =  $\text{TRFS} - \text{RFS} + r \times Q$ , is Threshold Revenue (the amount by which actual revenue from the sale of Firm Service (RFS) falls short of that component of Total Revenue attributable to the provision of Firm Service (TRFS), plus the cost of providing those services from which Rebateable Revenue was obtained ( $r \times Q$ ));
- FPR = forecast revenue from Shippers with Prior Contracts; and
- PR = actual revenue from Shippers with Prior Contracts.

The amount by which actual revenue from the sale of Firm Service (RFS) falls short of that component of Total Revenue attributable to the provision of Firm Service (TRFS) is approximately equal to:

$$a_1 \times (\text{FSC} - \text{PAC}) \times C_1 + a_2 \times (\text{FSV} - \text{PAV}) \times C_2 - \text{RFS} + r \times Q$$

where:

- $a_1$  = forecast average revenue from capacity related charges (Gas Receipt Charge, Pipeline Capacity Charge, and Compression Capacity Charge) for Firm Service in the first year of the proposed Access Arrangement; and
- $a_2$  = forecast average revenue from the Compressor Fuel Charge for Firm Service in the first year of the proposed Access Arrangement.
- FSC = forecast of contracted capacity for the year used in the modelling to support determination of the proposed DBNGP Reference Tariff assuming all T1 and T2 (full

<sup>29</sup> Epic Energy (WA) Transmission Pty Ltd., 31 January 2001, Additional Paper 6: Rebateable Revenue.

haul and part haul) Shippers, and Alcoa, are Firm Service Shippers, as set out in the table of paragraph 9.2(a) of the proposed Access Arrangement;

$C_1$  = sum of Zone 10 Gas Receipt Charge, Pipeline Capacity Charge and Compression Capacity Charge rates for the Year (that is, the sum of the Zone 10 Capacity Charge rates as escalated from year to year in accordance with the Reference Tariff Policy of the proposed Access Arrangement);

FSV = volume of throughput forecast for the Year used in the modelling to support determination of the proposed DBNGP Reference Tariff assuming all T1 and T2 (full haul and part haul) Shippers, and Alcoa, are Firm Service Shippers, as set out in the table of paragraph 9.2(a) of the proposed Access Arrangement;

$C_2$  = Compressor Fuel Charge rate for a Delivery Point located between Compressor Station 10 and MLV 157A for the year (that is, the Compressor Fuel Charge rate as escalated from year to year in accordance with the Reference Tariff Policy of the proposed Access Arrangement);

PAC = capacity contracted to Shippers under Prior Contracts (other than the Alcoa of Australia Exempt Contract) for the year, plus the use of capacity in the year made by Alcoa of Australia under the Exempt Contract); and

PAV = volume delivered to Shippers under Prior Contracts.

The cost of providing the services from which Rebateable Revenue was obtained is the product of:

$r$  = the marginal cost of delivering additional volume (the principal components of which will be a loss in per unit revenue under the Alcoa Exempt Contract, and the cost of additional compressor fuel); and

$Q$  = the volume delivered via services from which Rebateable Revenue was obtained.

Both  $a_1$  and  $a_2$  are determined from the modelling which supports determination of the proposed DBNGP Reference Tariff. Their values are:

Parameter	Value
$a_1$	0.903292359
$a_2$	0.902369200

140. Section 9.2(b) of the Proposed Access Arrangement sets out a proportional distribution of distributable revenue as follows.

Where DR is greater than zero, then the amount of Rebateable Revenue equal to DR shall be distributed as follows:

- 45% is to be distributed to Rebate Sharing Shippers during the year;
- 40% is added to the deferred recovery account balance as described in Paragraph 7.3 of the proposed Access Arrangement;<sup>30</sup> and
- 15% is to be retained by Epic Energy.

If DR is less than or equal to zero, the Rebateable Revenue is to be retained by Epic Energy.

141. In my Final Decision, I took the view that the proposed method of calculation of Threshold Revenue is contrary to the objective for an incentive mechanism as set out

<sup>30</sup> For clarification, additions of positive sums to the deferred recovery account act to reduce the “negative balance” of the account.

in section 8.46(a) of the Code. I required the following Amendment 12 of the Proposed Access Arrangement.<sup>31</sup>

#### Amendment 12

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.

142. In relation to the rebate of revenues from sale of Rebateable Services, I also gave attention in my Final Decision to the proportion of rebateable revenues that would actually be distributed to Users. Epic Energy proposed to retain 15 percent of Distributable Revenue, plus an additional 40 percent that, for regulatory purposes, is credited to the proposed deferred recovery account. I indicated in my Final Decision that I did not accept the Initial Capital Base proposed by Epic Energy and, with a lower Capital Base, there may be no requirement for a deferred recovery account. In such a situation I considered it necessary for Epic Energy to re-consider the apportioning of revenue from Rebateable Services in accordance with its incremental costs of providing the relevant services and an incentive to provide these services. I required the following Amendment 11.

#### Amendment 11

Paragraph 9.2(b) of the proposed Access Arrangement should be revised so as to re-specify the apportioning of rebateable revenue consistent with providing for Epic Energy to recover reasonable incremental costs incurred in providing Rebateable Services and providing a reasonable incentive to supply these services, but without reference to the Deferred Depreciation Account.

143. Epic Energy has made a number of changes to clause 9 of the Proposed Access Arrangement.
144. The following revision was made to clause 9.1 of the Access Arrangement as a part of provisions for the rebate of revenue from Delivery Point Charges where a User has met the cost of the Delivery Point facilities.

#### 9.1 Description

- (a) Revenue obtained from the following Services is Rebateable Revenue:
  - (i) Seasonal Service;
  - (ii) Park and Loan Service;
  - (iii) Secondary Market Service; and
  - (iv) Any other Service nominated by Epic Energy.
- (b) Additionally, revenue (less the Compressor Fuel Charge) obtained by Epic Energy from Overrun to the extent provided under clause 5.2 (a) of the Access Arrangement Terms and Conditions is Rebateable Revenue.
- (c) Revenue obtained by Epic Energy in the circumstances referred to in Paragraph 7.20 of the Access Arrangement will be rebated in accordance with that Paragraph 7.20 but is not included as part of the Rebateable Revenue for the purposes of this Paragraph.

<sup>31</sup> Final Decision, para 464, 726.

145. A change has been made to parameters in the definition of “threshold revenue” in clause 9.2 of the Proposed Access Arrangement as follows.

“Threshold Revenue” or “TR” means:

$$TR = a_1 \times (FSC - PAC) \times C_1 + a_2 \times (FSV - PAV) \times C_2 - RFS + r \times Q;$$

“a<sub>1</sub>” and “a<sub>2</sub>” are to be obtained from the following table:

Parameter	Value
a <sub>1</sub>	<a href="#">0.895661</a> <del>0.903292359</del>
a <sub>2</sub>	<a href="#">0.880731</a> <del>0.902369200</del>

146. The following definitional change has been made in clause 9.2 of the Proposed Access Arrangement.

“RFS” is the actual revenue from the sale of the Firm Service and any other Services in the nature of a Firm Service to the extent that this does not include Services under Prior Contracts and any other Service which Epic Energy advised is a Rebateable Service pursuant to Paragraph 9.1(a)(iv).

147. The following changes have been made to the Proposed Access Arrangement in relation to the distribution of rebatable revenue.

9.2 Method of Rebate

...

(b) Distribution of Rebate – [COS Method](#)

Where [the Total Revenue is determined by the COS Method](#) and where DR is greater than zero, then the amount of Rebateable Revenue equal to DR shall be distributed as follows:

- (i) 45% is to be distributed to Rebate Sharing Shippers during the year;
- (ii) 40% is added to the deferred recovery account balance as described in Paragraph 7.3; and
- (iii) 15% is to be retained by Epic Energy,

and where DR is less than or equal to zero, the Rebateable Revenue shall be retained by Epic.

(c) [Distribution of Rebate – NPV Method](#)

[Where the Total Revenue is determined by the NPV Method and where DR is greater than zero, then the amount of Rebateable Revenue equal to DR shall be distributed as follows:](#)

- [\(i\) 45% is to be distributed to Rebate Sharing Shippers during the year;](#)
- [\(ii\) 40% is subtracted from the Residual Value at the end of the Access Arrangement Period; and](#)
- [\(iii\) 15% is to be retained by Epic Energy.](#)

[and where DR is less than or equal to zero, the Rebateable Revenue shall be retained by Epic.](#)



148. Amendment 12 of my Final Decision was addressed by Epic Energy in changes made to clause 9.2 of the Proposed Access Arrangement in relation to the definition of parameter RFS in the distributable revenue formula:

“RFS” is the actual revenue from the sale of the Firm Service and any other Services in the nature of a Firm Service to the extent that this does not include Services under Prior Contracts and any other Service which Epic Energy advised is a Rebateable Service pursuant to Paragraph 9.1(a)(iv).

149. Epic Energy addressed the required amendment by including “revenue from the sale of ... other Services in the nature of a Firm Service” in the RFS term. However, Epic Energy has qualified this by excluding “Services under Prior Contracts” and any other Service that Epic Energy advises is a Rebateable Service. The exclusion of actual revenue from “Services under Prior Contracts” is consistent with Epic Energy’s stated formula for determining “Threshold Revenue” (the “TR” term), which excludes consideration of the revenues from services under prior contracts. The exclusion of “any other Service” which is a Rebateable Service is reasonable as Epic Energy would not gain the full benefit of revenue from such a service. I am therefore satisfied that the definition of “RFS” term substantially incorporates Amendment 12.
150. Epic Energy has not revised the Proposed Access Arrangement in response to Amendment 11. Details are provided in the Revised Proposed Access Arrangement of two alternative arrangements for distribution of Rebateable Revenue, but both still provide for part of the Rebateable Revenue to be retained by Epic Energy and credited either to the deferred depreciation account (in the case of the cost-of-service methodology for determination of Total Revenue) or the residual asset value (in the case of the net-present-value methodology for determination of Total Revenue).
151. Revisions made to the Rebateable Revenue provisions of the Proposed Access Arrangement that are other than in response to my required amendments relate to:
- exclusion from the Rebateable Revenue provisions of clause 9 of the Proposed Access Arrangement of the rebate arrangements relating to revenue from the Delivery Point Charge; and
  - changes to parameter values in the “distributable revenue” formula in response to changes in values of the Reference Tariff.
152. The first of these revisions is associated with other revisions made in respect of the Amendment 9 of my Final Decision (refer paragraph 110 and following of this further final decision), and is consistent with Amendment 9.
153. The changes in parameter values in the distributable revenue formula relate to the changes in values for the  $a_1$  and  $a_2$  parameters, which related to forecast average revenues from capacity related charges and compressor fuel charges, taking into account that not all Users are in Zone 10 of the DBNGP.
154. Therefore, I am satisfied that the other revisions indicated in paragraph 151 are appropriate in addressing the requirements of Amendments 9, 11 and 12 (although Amendment 11 has not been incorporated into the Revised Proposed Access Arrangement).

## Other Changes to the Reference Tariff Policy

### Fixed Principles

155. Epic Energy has made a substantive revision to the Reference Tariff Policy by expanding a clause of the Proposed Access Arrangement relating to fixed principles within the meaning of sections 8.47 and 8.48 of the Code. The relevant revisions to the Proposed Access Arrangement are as follows.

#### 7.19 Reference Tariff Principles Not Subject to Review

(a) The following are Fixed Principles in accordance with section 8.47 of the Code and each is to remain fixed in the Reference Tariff Policy of the Access Arrangement for the relevant period specified below:

- (i) The initial Capital Base calculated in accordance with Paragraph 7.3 shall remain unchanged over subsequent Access Arrangement Periods. The initial Capital Base is a fixed principle for the purposes of section 7.12 of the Code.
- (ii) The COS method referred to in this Paragraph 7 is a fixed principle and shall remain unchanged for as long as the DBNGP remains a covered pipeline under the Code (The application of the NPV method referred to in Paragraph 7.2 would also incorporate a fixed principle and remain fixed for as long as the DBNGP remains a covered pipeline under the Code.);
- (iii) The method of application of the Total Revenue in accordance with the COS method and the NPV method shall remain fixed for as long as the DBNGP remains a covered pipeline under the Code;
- (iv) The values of the following elements used in the calculation of the rate of return used to determine the Total Revenue under both the COS method and the NPV shall remain fixed for as long as the DBNGP remains a covered pipeline under the Code;

<u>Element</u>	<u>COS Method Value</u>	<u>NPV Method Value</u>
<u>Market Risk Premium</u>	<u>6.5%</u>	<u>6.5%</u>
<u>Asset beta</u>	<u>0.58</u>	<u>0.58</u>
<u>Franking Credit Value (gamma)</u>	<u>30.8%</u>	<u>30.8%</u>
<u>Debt to total assets ratio</u>	<u>55%</u>	<u>55%</u>
<u>Equity to total assets ratio</u>	<u>45%</u>	<u>45%</u>

- (v) The value of the market risk premium, the equity beta value and the franking credit value determine that part of the rate of return that exceeds the return that could be earned on an asset that does not bear any market risk;
- (vi) The use of a pre tax rate of return shall remain fixed for as long as the DBNGP remains a covered pipeline under the Code.

156. Epic Energy's stated reasons for revision of the Access Arrangement to include these fixed principles are as follows.<sup>32</sup>

<sup>32</sup> Epic Energy, 8 August 2003, Post Final Decision Submission #1, PFDS#1, Revised Access Arrangement and Access Arrangement Information.

- 2.67 ... [R]egulatory risk was not envisaged by Epic Energy at the time of the investment in the DBNGP and nor should it be tolerated. To ensure that Epic Energy is afforded an opportunity to earn a return of and return on its investment, it has proposed a number of Fixed Principles to apply to its Reference Tariff and reference tariff policy. They are outlined in section 7 of the revised access arrangement.
- 2.68 Epic Energy's economic advisers, the Brattle Group, have advised that there are good economic reasons for the establishment of Fixed Principles that extend beyond the short term of a single tariff review period. A copy of the note prepared by the Brattle Group is contained in Attachment 1.
157. Epic Energy did not make any proposal to me for the additional fixed principles prior to submission of the Revised Proposed Access Arrangement. Consequently there has not been any public consultation on the additional proposed fixed principles.
158. In any event, the revisions have not been made in response to any amendment I required in my Final Decision or Supplementary Reasons and do not incorporate, substantially incorporate or otherwise address any of the required amendments.

#### Levelised Tariff Path Commitment

159. Epic Energy has introduced a new clause 7.21 to the Proposed Access Arrangement that relates to the Extensions/Expansions Policy (clause 12 of the Access Arrangement) and provides for, in certain conditions, expansions in capacity of the DBNGP to occur without a change in the Reference Tariff:

##### [7.21 Levelised Tariff Path Commitment](#)

If the conditions in Paragraph 12.1 are satisfied and the Total Revenue is calculated on a COS method, the Reference Tariff to be paid by Shippers will never exceed the tariff derived by applying the price path referred to in Paragraph 7.15 to the initial Reference Tariff.

160. This revision to the Proposed Access Arrangement is relevant to the Extensions/Expansions Policy as it relates to the manner in which the Reference Tariff may change in response to extensions or expansions of the pipeline. I therefore examine this revision in relation to the Extensions/Expansions Policy later in this further final decision (paragraph 283 and following).

#### **TERMS AND CONDITIONS**

##### **Revisions in Response to Required Amendments**

161. Epic Energy provided terms and conditions in a single document as Annexure B of the Proposed Access Arrangement: the Access Contract Terms and Conditions.
162. Epic Energy's Access Contract Terms and Conditions set out the terms and conditions for provision of the proposed Firm Service. The terms and conditions are set out in clauses relating to the following matters.
1. Interpretation
  2. Gas Specifications
  3. Receipt Points and Delivery Points
  4. Nominations

5. Overrun
  6. Imbalances
  7. Peaking
  8. Invoicing and Payment
  9. Rights of Epic Energy
  10. Control, Possession and Title to Gas
  11. Notional Delivery Points
  12. Metering
  13. Liability
  14. Curtailment and Interruption
  15. Force Majeure
  16. Charges
  17. Default and Termination
  18. Dispute Resolution and Independent Experts
  19. Assignment
  20. Confidentiality
  21. Representations and Warranties
  22. Records and Information
  23. Insurances
  24. No Waiver
  25. Entire Agreement
  26. Severability
  27. Entry and Inspection
  28. Ownership, Control, Maintenance and Risk
  29. Rebate Sharing Contract
  30. No Common Carriage
  31. Epic Energy not a Supplier of Gas
  32. Stamp Duty
  33. No Third Party Benefit
163. In addition to Annexure B of the Proposed Access Arrangement, clause 10 of the Proposed Access Arrangement relates generally to terms and conditions. Clause 10 makes reference to the terms and conditions set out in Annexure B, and in addition makes provision for Epic Energy to vary certain provisions of the Access Contract Terms and Conditions without the consent of Users or the Regulator (clauses 10.3 and 10.4).
164. In my Final Decision I required several amendments to the Proposed Access Arrangement in respect of the Access Contract Terms and Conditions. These amendments, the revisions made to the Access Arrangement in response to the required amendments, and my assessment of these revisions are described as follows.
165. In my Final Decision I addressed clauses 10.3 and 10.4 of the Proposed Access Arrangement (which makes provision for Epic Energy to vary certain provisions of the Access Contract Terms and Conditions without the consent of Users or the Regulator) as well as specific clauses of the Access Contract Terms and Conditions. I took the view that provision under clauses 10.3 and 10.4 of the Proposed Access

Arrangement for Epic Energy to vary certain terms and conditions without consent of the Regulator is not compliant with the Code.<sup>33</sup> The following amendment was required.<sup>34</sup>

Amendment 14

Provisions under sub-clauses 10.3 and 10.4 of the proposed Access Arrangement for Epic Energy to vary certain terms and conditions without consent of the Regulator are not compliant with the Code. 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.

166. Epic Energy revised clause 10 of the Proposed Access Arrangement as follows.

10. Terms and Conditions

10.1 The terms and conditions upon which Epic Energy will grant parties access to Firm Service in the DBNGP are those terms and conditions contained in the Access Contract Terms and Conditions as amended or varied from time to time in accordance with Paragraph 10.3. Any term used in this Access Arrangement that is defined in the Access Contract Terms and Conditions has the same meaning.

10.2 At the date of this Access Arrangement, the Access Contract Terms and Conditions are set out in Annexure B.

10.3 ~~Subject to paragraph 10.4, Epic Energy may vary the Access Contract Terms and Conditions in accordance with section 2 of the Code, without the consent of the Shipper or the Regulator except for those terms and conditions relating to:~~

- ~~(a) — Reference Tariffs~~
- ~~(b) — Overrun~~
- ~~(c) — Imbalancing~~
- ~~(d) — Peaking~~
- ~~(e) — Liability~~
- ~~(f) — Curtailment and Interruption~~
- ~~(g) — Permissible Interruptibility~~
- ~~(h) — Force Majeure~~
- ~~(i) — Charges~~
- ~~(j) — Assignment~~
- ~~(k) — Rebate Sharing Contract~~
- ~~(l) — Schedule 1~~

10.4 ~~Epic Energy may only amend the Access Contract Terms and Conditions referred to in Paragraph 10.3 if that amendment (when taken with other amendments under Paragraph 10.3) does not in aggregate detract from the value of the Reference Service to the Shipper.~~

167. The revisions to the Access Arrangement remove provision for Epic Energy to amend the Access Contract Terms and Conditions other than in accordance with the process for revision of an Access Arrangement as set out in section 2 of the Code. I am

<sup>33</sup> Final Decision, para 527.

<sup>34</sup> Final Decision, para 727.

therefore of the view that the revisions made to the Access Arrangement incorporate the required amendment.

168. As a further general matter relating to the Access Contract Terms and Conditions, I noted in my Final Decision that neither the Proposed Access Arrangement nor the Access Contract Terms and Conditions contain a provision that expressly states that Epic Energy is under an obligation to accept and deliver gas, although there are provisions such as clause 9.4 of the Access Contract Terms and Conditions that refer to “an obligation to deliver gas”. I took the view that it would be reasonable for the terms and conditions for the Firm Service to contain a provision that more explicitly states that Epic Energy is under an obligation to accept and deliver gas.<sup>35</sup> The following amendment was required.

Amendment 15

The Access Contract Terms and Conditions should be amended to contain a provision that expressly states that Epic Energy is under an obligation to accept and deliver gas.

169. Epic Energy addressed Amendment 15 by inclusion of a new clause 3.8 of the Access Contract Terms and Conditions as follows.

3.8 Obligation to Accept and Deliver Gas

Subject to the Access Contract Terms and Conditions:

(a) Epic Energy must accept gas from and delivery (sic) gas to the Shipper; and

(b) The Shipper must make gas available at the Receipt Point(s),

in accordance with the Shipper’s Access Contract.

170. I am satisfied that subject to correction of an apparent typographical error in the proposed sub-clause 3.8(a) (correction of “delivery” to read “deliver”) the revision to this sub-clause incorporates the required amendment.
171. Epic Energy has also revised the Access Contract Terms and Conditions to include new clauses 3.9 to 3.18 that provide for Epic Energy to refuse to accept and deliver gas in a range of specified circumstances. Epic Energy indicates that the rights and obligations established by the new sections 3.9 to 3.18 are consistent with existing contracts and practice and are essential for the effective management of the DBNGP.<sup>36</sup>

3.9 Epic Energy may refuse to accept Gas

In addition to any other rights and remedies that may be available to it under any Law or under the Access Contract or otherwise, Epic Energy may (without prior notice to the Shipper) refuse to accept Gas from the Shipper at a Receipt Point:

(a) if Epic Energy is entitled under clause 2 (Epic Energy may refuse to accept Out-Of Specification Gas), clause 6 (Imbalance Limit), clause 6.5 (Refusal to Accept Gas or Deliver Gas), clause 7 (Peaking) or if the Shipper’s Receipt Point is not connected to the SCADA System;

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<sup>35</sup> Final Decision, para 528.

<sup>36</sup> Epic Energy, 8 August 2003, Post Final Decision Submission #1, PFDS#1: Revised Access Arrangement and Access Arrangement Information, para 5.3.

- (b) if the Shipper is in breach of any requirement of clause 12 (Metering);
- (c) if the Shipper is in default under this Contract as set out in clause 17 (Default by Shipper);
- (d) if Epic Energy is relieved from so doing under clause 15 (Force Majeure); or
- (e) if Epic Energy considers as a reasonable and prudent service provider that it would be unsafe to do so;
- (f) if acceptance by Epic Energy of that Gas would cause the DBNGP to exceed its maximum allowable operating pressure; or
- (g) to the extent that Delivery of a quantity of Gas at a Receipt Point on a gas Day would cause the Shipper to exceed the Shipper's nomination for that Receipt Point for that gas Day.

3.10 Notification of refusal to accept Gas

Without affecting Epic Energy's rights under clause 3.9, Epic Energy must:

- (a) use its reasonable endeavours to give the Shipper advance notice which is reasonable in the circumstances of any impending refusal to accept gas;
- (b) if it does not give the Shipper advance notice under clause 3.10(a) of a refusal to accept gas, Epic Energy must notify the Shipper of that refusal as soon as practicable after that refusal; and
- (c) where practicable, notify the Shipper of the reasons for a refusal to accept gas.

3.11 Refusal to accept Gas not a Curtailment

A refusal to accept gas under clause 3.9 is not a curtailment for the purposes of the Access Contract and for the avoidance of doubt shall not be included in the Permissible Limit.

3.12 No liability for refusal to accept Gas

Subject to clause 13.2 (Liability for fraud), Epic Energy is not liable for any Direct Loss or Indirect Loss caused by or arising out of any refusal to accept gas under:

- (a) clause 3.9(a) to 3.9(d) or clause 3.9(f) and clause 3.9(g), in any event; and
- (b) clause 3.9(e), if Epic Energy has taken the steps which would be expected of a reasonable and prudent service provider to avoid the need for, or failing such avoidance, to minimise the magnitude and duration of, the refusal to accept gas.

3.13 Refusals to accept may be apportioned over Receipt Points

If Shipper has contracted Capacity at more than one Receipt Point, Epic Energy may, as a reasonable and prudent service provider, apportion any refusals to accept gas across those Receipt Points, and in so doing Epic Energy is to the extent technically feasible (as determined by Epic Energy) and if circumstances reasonably permit:

- (a) to make reasonable endeavours to consult with the Shipper concerning that apportionment; and
- (b) to have regard as a reasonable and prudent service provider to any apportionment mechanism agreed between the parties or requested by the Shipper.

3.14 Refusal to Deliver Gas

In addition to any other rights and remedies that may be available to it at Law or under the Access Contract or otherwise, including without limitation clause 14 (Curtailment), Epic Energy may refuse to deliver gas to Shipper at a Delivery Point:

- (a) to the extent that delivery of a quantity of gas at a Delivery Point on a gas Day would cause the Shipper to exceed the Shipper's Delivery Point MDQ or the daily nomination for that Delivery Point for that gas Day;
- (b) to the extent that Epic Energy is entitled to refuse to Deliver Gas under:
  - (i) clause 2.4 (Shipper's liability for Out-of-Specification Gas);
  - (ii) clause 6 (Imbalance Limit);
  - (iii) clause 6.5(Refusal to Accept Gas or Deliver Gas);
  - (iv) clause 7 (Peaking);
  - (v) clause 17 (Overrun); or
  - (vi) clause 17 (Default and Termination);
- (c) If the Shipper's Delivery Point is not connected to the SCADA System;
- (d) Epic Energy considers as a reasonable and prudent service provider that it would be unsafe to do so; or
- (e) delivery by Epic Energy of that gas would cause the DBNGP to exceed its maximum allowable operating pressure.

### 3.15 Notification of refusal to Deliver Gas

When Epic Energy refuses to Deliver Gas to Shipper under clause 3.14, Epic Energy must:

- (a) use its reasonable endeavours to give the Shipper advance notice which is reasonable in the circumstances of any impending refusal to deliver gas;
- (b) if it does not give the Shipper advance notice under clause 3.15(a) of a refusal to deliver gas, Epic Energy must notify the Shipper of that refusal as soon as practicable after that refusal; and
- (c) where practicable, notify the Shipper of the reasons for a refusal to deliver gas.

### 3.16 Refusal to Deliver Gas not a Curtailment

A refusal to deliver gas under clause 3.14 is not a curtailment for the purposes of the Access Contract and for the avoidance of doubt shall not be included in the Permissible Limit.

### 3.17 No liability for refusal to Deliver Gas

Subject to clause 13.2 (Liability for fraud), Epic Energy is not liable for any Direct Loss or Indirect Loss caused by or arising out of any refusal to deliver gas under clause 3.14.

### 3.18 Refusals to Deliver may be apportioned over Delivery Points

If the Shipper has contracted Capacity at more than one Delivery Point, Epic Energy may, as a reasonable and prudent service provider, apportion any refusals to deliver gas across those Delivery Points, and in so doing Epic Energy is to the extent technically feasible and if circumstances reasonably permit:

- (a) to make reasonable endeavours to consult with the Shipper concerning that apportionment; and
- (b) to have regard as a reasonable and prudent service provider to any apportionment mechanism agreed between the parties or requested by the Shipper.

172. The qualifications on the obligation to accept and/or deliver gas in the new clauses 3.9 to 3.18 are in some part declaratory of other existing provisions of the Access Contract Terms and Conditions and in other part additions to the terms and conditions for the Firm Service that would affect the contractual rights of both Epic Energy and



Users. The nature of the new provisions in this respect are summarised in the following table.

Clause		Comment
3.9	Epic Energy may refuse to accept Gas	Clause 3.9 extends the rights of Epic Energy (under clause 17) to suspend the Service if the User is in default of the Access Contract by allowing Epic Energy to suspend the Service without notice.
	In addition to any other rights and remedies that may be available to it under any Law or under the Access Contract or otherwise, Epic Energy may (without prior notice to the Shipper) refuse to accept Gas from the Shipper at a Receipt Point:	
	(a) if Epic Energy is entitled under clause 2 (Epic Energy may refuse to accept Out-Of Specification Gas), clause 6 (Imbalance Limit), clause 6.5 (Refusal to Accept Gas or Deliver Gas), clause 7 (Peaking) or if the Shipper's Receipt Point is not connected to the SCADA System;	Provision for Epic Energy to refuse to accept gas where entitled to under clauses 2, 6, 6.5 and 7 is declaratory of rights of Epic Energy under these clauses.  The provision for refusal to accept gas if the receipt point is not connected to the SCADA system is a new provision, although there is an existing requirement (clause 12.1(b)) for a User to maintain electronic access for Epic Energy to Receipt Points. Failure to comply with sub-clause 12.1(b) may in any case cause a User to be in material default of the Access Contract and provide for suspension of the service pursuant clause 17.
	(b) if the Shipper is in breach of any requirement of clause 12 (Metering);	This is a new provision that allows for Epic Energy to refuse to accept gas if the User is in breach of contract in relation to metering. Failure to comply with clause 12 may in any case cause a User to be in material default of the Access Contract and provide for suspension of the service pursuant to clause 17.
	(c) if the Shipper is in default under this Contract as set out in clause 17 (Default by Shipper);	This is declaratory of an existing provision under clause 17 for Epic Energy to suspend a service.
	(d) if Epic Energy is relieved from so doing under clause 15 (Force Majeure); or	This is declaratory of an existing provision under clause 15 for Epic Energy to suspend a service if it is prevented from providing the service by Force Majeure.
	(e) if Epic Energy considers as a reasonable and prudent service provider that it would be unsafe to do so;	This is declaratory of an existing provision for Epic Energy to suspend a service under clause 14.
	(f) if acceptance by Epic Energy of that Gas would cause the DBNGP to exceed its maximum allowable operating pressure; or	This is declaratory of an existing provision for Epic Energy to interrupt or curtail a service under clause 14.

Clause		Comment
	(g) to the extent that Delivery of a quantity of Gas at a Receipt Point on a gas Day would cause the Shipper to exceed the Shipper's nomination for that Receipt Point for that gas Day.	This is an extension of the Access Contract Terms and Conditions that makes provision for Epic Energy to suspend a Service. There was previously no provision for Epic Energy to suspend a Service for reason that a User exceeds a nomination.
3.10	Notification of refusal to accept Gas  Without affecting Epic Energy's rights under clause 3.9, Epic Energy must:  (a) use its reasonable endeavours to give the Shipper advance notice which is reasonable in the circumstances of any impending refusal to accept gas;  (b) if it does not give the Shipper advance notice under clause 3.10(a) of a refusal to accept gas, Epic Energy must notify the Shipper of that refusal as soon as practicable after that refusal; and  (c) where practicable, notify the Shipper of the reasons for a refusal to accept gas.	This is a new provision creating an obligation on Epic Energy to give advance notice of refusal to accept gas.
3.11	Refusal to accept Gas not a Curtailment  A refusal to accept gas under clause 3.9 is not a curtailment for the purposes of the Access Contract and for the avoidance of doubt shall not be included in the Permissible Limit.	This is a new provision that limits the interpretation of the term "Curtailment" and extends the rights of Epic Energy in regard to curtailment or interruption of a service.
3.12	No liability for refusal to accept Gas  Subject to clause 13.2 (Liability for fraud), Epic Energy is not liable for any Direct Loss or Indirect Loss caused by or arising out of any refusal to accept gas under:  (a) clause 3.9(a) to 3.9(d) or clause 3.9(f) and clause 3.9(g), in any event; and  (b) clause 3.9(e), if Epic Energy has taken the steps which would be expected of a reasonable and prudent service provider to avoid the need for, or failing such avoidance, to minimise the magnitude and duration of, the refusal to accept gas.	This is a new provision that extends the rights of Epic Energy in regard to curtailment or interruption of a service.

Clause		Comment
3.13	<p>Refusals to accept may be apportioned over Receipt Points</p> <p>If Shipper has contracted Capacity at more than one Receipt Point, Epic Energy may, as a reasonable and prudent service provider, apportion any refusals to accept gas across those Receipt Points, and in so doing Epic Energy is to the extent technically feasible (as determined by Epic Energy) and if circumstances reasonably permit:</p> <p>(a) to make reasonable endeavours to consult with the Shipper concerning that apportionment; and</p> <p>(b) to have regard as a reasonable and prudent service provider to any apportionment mechanism agreed between the parties or requested by the Shipper.</p>	<p>This is a new provision that adds a new “dimension” to the interruption or curtailment of receipt of gas, but does not alter the rights of Epic Energy to interrupt or curtail receipt of gas.</p>
3.14	<p>Refusal to Deliver Gas</p> <p>In addition to any other rights and remedies that may be available to it at Law or under the Access Contract or otherwise, including without limitation clause 14 (Curtailment), Epic Energy may refuse to deliver gas to Shipper at a Delivery Point:</p> <p>(a) to the extent that delivery of a quantity of gas at a Delivery Point on a gas Day would cause the Shipper to exceed the Shipper’s Delivery Point MDQ or the daily nomination for that Delivery Point for that gas Day;</p> <p>(b) to the extent that Epic Energy is entitled to refuse to Deliver Gas under:</p> <p>(i) clause 2.4 (Shipper’s liability for Out-of-Specification Gas);</p> <p>(ii) clause 6 (Imbalance Limit);</p> <p>(iii) clause 6.5(Refusal to Accept Gas or Deliver Gas);</p> <p>(iv) clause 7 (Peaking);</p> <p>(v) clause 17 (Overrun); or</p> <p>(vi) clause 17 (Default and Termination);</p>	<p>The opening paragraph of clause 3.14 seeks to extend the rights of Epic Energy to refuse to deliver gas.</p> <p>This is an extension of the Access Contract Terms and Conditions that provides for Epic Energy to curtail a service. There was previously no provision for Epic Energy to suspend a service for reason that a User exceeds a nomination.</p> <p>This provision is declaratory of rights of Epic Energy under other clauses of the Access Contract Terms and Conditions.</p>

Clause		Comment
(c)	If the Shipper's Delivery Point is not connected to the SCADA System;	This is a new provision for refusal to deliver gas if the Delivery Point is not connected to the SCADA system. There is no existing requirement for a User to maintain electronic access for Epic Energy to Delivery Points. Failure to comply with sub-clause 12.1(b) may in any case cause a User to be in material default of the Access Contract and provide for suspension of the service under provisions of clause 17.
(d)	Epic Energy considers as a reasonable and prudent service provider that it would be unsafe to do so; or	This is declaratory of a provision for Epic Energy to interrupt or curtail a service under sub-clauses 14.1(a) and 14.3.
(e)	delivery by Epic Energy of that gas would cause the DBNGP to exceed its maximum allowable operating pressure.	This is declaratory of a provision for Epic Energy to interrupt or curtail a service under sub-clauses 14.1(a) and clause 14.3.
3.15	When Epic Energy refuses to Deliver Gas to Shipper under clause 3.14, Epic Energy must:	This is a new provision creating an obligation on Epic Energy to give advance notice of refusal to deliver gas.
(a)	use its reasonable endeavours to give the Shipper advance notice which is reasonable in the circumstances of any impending refusal to deliver gas;	
(b)	if it does not give the Shipper advance notice under clause 3.15(a) of a refusal to deliver gas, Epic Energy must notify the Shipper of that refusal as soon as practicable after that refusal; and	
(c)	where practicable, notify the Shipper of the reasons for a refusal to deliver gas.	
3.16	Refusal to Deliver Gas not a Curtailment  A refusal to deliver gas under clause 3.14 is not a curtailment for the purposes of the Access Contract and for the avoidance of doubt shall not be included in the Permissible Limit.	This is a new provision that limits the interpretation of the term "Curtailment" and creates new rights for Epic Energy.
3.17	No liability for refusal to Deliver Gas  Subject to clause 13.2 (Liability for fraud), Epic Energy is not liable for any Direct Loss or Indirect Loss caused by or arising out of any refusal to deliver gas under clause 3.14.	This is a new provision that extends the rights of Epic Energy to suspend a Service.

Clause		Comment
3.18	<p>Refusals to Deliver may be apportioned over Delivery Points</p> <p>If the Shipper has contracted Capacity at more than one Delivery Point, Epic Energy may, as a reasonable and prudent service provider, apportion any refusals to deliver gas across those Delivery Points, and in so doing Epic Energy is to the extent technically feasible and if circumstances reasonably permit:</p> <p>(a) to make reasonable endeavours to consult with the Shipper concerning that apportionment; and</p> <p>(b) to have regard as a reasonable and prudent service provider to any apportionment mechanism agreed between the parties or requested by the Shipper.</p>	<p>This is a new provision that adds a “dimension” to the interruption or curtailment of delivery of gas, but does not alter the rights of Epic Energy to interrupt or curtail delivery of gas.</p>

173. I am of the view that it is consistent with the requirements of Amendment 15 for clause 3 of the Access Contract Terms and Conditions to include declaratory provisions that reiterate the limitations to Epic Energy’s obligations to accept and deliver gas that already exist within the Access Contract Terms and Conditions. I do not, however, consider that extensions of provisions for Epic Energy to suspend the acceptance or delivery of gas are consistent with the requirements of Amendment 15. As such, I do not accept that the following provisions of clauses 3.9 to 3.18 are necessary to incorporate Amendment 15 into the Access Contract Terms and Conditions or otherwise address the reasons for Amendment 15:

- that part of the opening paragraph of clause 3.9 that seeks to extend the powers of Epic Energy to refuse to accept gas;
- sub-clause 3.9(b);
- sub-clause 3.9(g);
- clause 3.10;
- clause 3.11;
- clause 3.12;
- clause 3.13;
- that part of the opening paragraph of clause 3.14 that seeks to extend the powers of Epic Energy to refuse to deliver gas;
- sub-clause 3.14(a);
- sub-clause 3.14(c);
- clause 3.15;

- clause 3.16;
- clause 3.17; and
- clause 3.18.

174. I turn now to assessment of revisions made in response to requirements to amend specific clauses of the Access Contract Terms and Conditions.

175. Amendment 16

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 to a shared Receipt Point and for proportional allocation by Epic Energy of gas supplied to that Receipt Point in the absence of any agreement or due notification, consistent with provisions relating to Delivery Points as set out in sub-clause 3.7 of the Access Contract Terms and Conditions.

176. Epic Energy addressed Amendment 16 by revisions to clause 3.6 of the Access Contract Terms and Conditions as follows.

3.6 Allocation of Gas at Receipt Points

- (a) Where the Shipper is the only person supplying gas to Epic Energy at a Receipt Point on a Day, the Shipper is deemed to have supplied all gas at that Receipt Point for that Day.
- (b) Subject to Epic Energy agreeing otherwise, ~~if the Shipper and any Other Shipper supply gas to Epic Energy at a Receipt Point on a Day, then the Shipper must provide written confirmation from the Producers by not later than 0830 hours on the following Day, of the amount of gas supplied by the Producers to the Shipper at that Receipt Point, and that confirmation shall be deemed to be the quantity of gas supplied by the Shipper to Epic Energy at that Receipt Point.~~ if the Shipper and any Other Shippers supply gas to Epic Energy at a Receipt Point on a Day, then the Shipper must by not later than 08.30 hours on the following Day:
  - (i) provide written confirmation from the Producers of the amount of gas supplied by the Producers to the Shipper at that Receipt Point; or
  - (ii) provide the Shipper (*sic*<sup>37</sup>) with a copy of an agreement entered into between the Shipper and Other Shippers in relation to the Shipper's proportional share of the gas stream at that Receipt Point,  
and that written confirmation/agreement (as the case may be) shall be deemed to be the quantity of gas supplied by the Shipper to Epic Energy at that Receipt Point.
- (c) If the Shipper fails to provide Epic Energy with a copy of the agreement under clause 3.6(b)(ii) or fails to provide written confirmation from the Producers under clause 3.6(i) by the time specified in clause 3.6(b), Epic Energy may determine that the Shipper has supplied gas to Epic Energy:
  - (i) their respective nominations at the Receipt Point; or
  - (ii) any other information to which a reasonable and prudent pipeline operator would have regard.That will be deemed to be the allocation irrespective of any subsequent notification received by Epic Energy.

<sup>37</sup> It is assumed that use of the term “the Shipper” in this sub-clause is a typographical error and the term “Epic Energy” should be used instead.

- (c) ~~If the Shipper fails to provide written confirmation from the Producers by the time specified in clause 3.6(b), the Shipper will be deemed to have supplied no gas to Epic Energy at that Receipt Point.~~

177. I am not satisfied that the revisions to clause 3.6 of the Access Contract Terms and Conditions adequately provide for Users that share a Receipt Point to provide Epic Energy with relevant details of an agreement in advance of actual gas receipt, which was the reason for the required amendment. As such, I do not consider that the revisions made in respect of Amendment 16 incorporate the required amendment. Nor am I satisfied that the revisions either substantially incorporate the amendment or otherwise address the reasons for requiring the amendment.

178. I note that Epic Energy also revised clause 3.7 of the Access Contract Terms and Conditions, although not in relation to a required amendment:

3.7 Allocation of Gas at Delivery Points

- (a) Where the Shipper is the only person to take delivery of gas from (*sic*) Epic Energy at a Delivery Point on a Day, then the Shipper is deemed to have taken delivery of all gas delivered at that Delivery Point.
- (b) If the Shipper and any Other Shippers take delivery of gas from Epic Energy at Delivery Point on a Day, then the Shipper's proportional share of the gas stream at that Delivery Point may be determined by agreement between the Shipper and Other Shippers who take delivery of gas at that Delivery Point.
- (c) If the Shipper fails to reach agreement with Other Shippers under Clause 3.7(b) or fails to provide Epic Energy with a copy any agreement under clause 3.7(b) or Epic Energy is not notified by 08:00 hours on the following Day of the Shipper's proportional share of gas at the Delivery Point then Epic Energy may determine the proportion of gas to be attributed to the Shipper and each Other Shipper by reference to:
  - (i) their respective nominations at the Delivery Point; or
  - (ii) any other information to which a reasonable and prudent pipeline operator would have regard.

[This will be deemed to be the allocation irrespective any subsequent notification received by Epic Energy.](#)

- (d) The Shipper shall promptly deliver to Epic Energy a copy of any agreement reached under Clause 3.7(b).

179. The revisions to clause 3.7 comprise an additional paragraph in sub-clause 3.7(c) to indicate that an attribution of gas deliveries between Users sharing a Delivery Point would apply in the absence of Epic Energy having received a copy of an agreement from the relevant Users. I accept that the new paragraph has a purpose of clarifying existing provisions in the Access Contract Terms and Conditions rather than adding new provisions. However, the additional paragraph is ambiguous as to whether the provision applies retrospectively or prospectively. Provided the new paragraph is revised to specify that the deemed allocation applies only to the Day of gas delivery, I would be prepared to accept the revisions.

180. Amendment 17

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.

181. Epic Energy has addressed the requirement of Amendment 17 by revision of schedule 1 of the Access Contract Terms and Conditions as follows.

**SCHEDULE 1  
RATES AND CHARGES**

Unavailability Charge	\$15/GJ
Nominations Surcharge	<del>\$15/GJ</del> <a href="#">350% of the relevant 100% load factor Reference Tariff</a>
Excess Imbalance Charge	\$15/GJ
Out of Specification Gas Charge	<del>\$15/GJ</del> <a href="#">350% of the relevant 100% load factor Reference Tariff</a>
Peaking Surcharge	\$15/GJ

182. Epic Energy made the following submission to me in respect of Amendment 17:<sup>38</sup>
- 8.8 Epic Energy is prepared to amend the out of specification gas charge and the nominations surcharge to comply with this Final Decision Amendment and considers that in doing so it has addressed the Regulator's reasoning behind this amendment.
- 8.9 In relation to the remaining charges, Epic Energy reiterates its position as set out in CDS#5 at paragraph 6.18 and confirms that these charges were set at levels to limit Shipper behaviour that could prevent Epic Energy from delivering the reference service after delivering the reference service after allowance is made for rebates.
183. I considered the submission referred to by Epic Energy in coming to my Final Decision and requiring Amendment 17. The revisions to Schedule 1 of the Access Contract Terms and Conditions to change the rates of the Nominations Surcharge and Out of Specification Gas Charge to 350 percent of the relevant 100 percent load factor Reference Tariff incorporate Amendment 17. However, the revisions do not incorporate Amendment 17 in so far as the rates of the Excess Imbalance Charge and Peaking Surcharge have not been revised.
184. Amendment 18
- Paragraph 5.3(b) of the Access Contract Terms and Conditions should be amended such that the offending Shipper's liability is not 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.
185. Epic Energy has not revised the Access Contract Terms and Conditions in accordance with Amendment 18, instead making the following submission to me:<sup>39</sup>
- 8.10 Epic Energy is not prepared to comply with this amendment. Epic Energy considers this amendment to be unnecessary in light of the common law obligation imposed upon parties to mitigate their losses at all times. This amendment does not add anything further to those common law obligations, however the amendment does in Epic Energy's opinion create uncertainties. For example it will be difficult to assess what would be considered 'reasonable steps' that are to be taken to mitigate the losses.

<sup>38</sup> Epic Energy, 8 August 2003, Post Final Decision Submission #1, PFDS#1: Revised Access Arrangement and Access Arrangement Information.

<sup>39</sup> Epic Energy, 8 August 2003, Post Final Decision Submission #1, PFDS#1: Revised Access Arrangement and Access Arrangement Information.



186. Epic Energy's submission raises matters previously considered by me in coming to my Final Decision. Epic Energy has not complied with the required amendment nor otherwise addressed the reasons for the required amendment.

187. Epic Energy has made other changes to clause 5.3 that are unrelated to the required amendment, as follows.

5.3 Interruptibility and Liability

(a) The Shipper has no right or entitlement to Overrun and therefore Overrun is interruptible in the absolute discretion of Epic Energy;

(b) If Epic Energy interrupts any Other Shipper, directly or indirectly as a result of the Shipper taking Overrun, then the Shipper is liable for ~~(+)~~ all loss or damage (including Indirect Loss) suffered by Epic Energy or the Other Shipper. ~~and~~

~~(ii) the Capacity Charges and Receipt Charges which Epic Energy is required to credit to that Other Shipper pursuant to Clause 14.1(b);~~

188. The effect of these revisions is to remove the explicit statement of liability of a User taking Overrun for Capacity Charges and Receipt Charges which Epic Energy is required to credit to another User. However, the liability of the User taking Overrun for these costs to Epic Energy is incorporated in the remaining provision of sub-clause 5.3(b), and hence the deletion of 5.3(b)(ii) has no practical effect.

189. Amendment 19

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.

190. Epic Energy has addressed the requirement of Amendment 19 by revisions to clause 6.4 of the Access Contract Terms and Conditions as follows.

6.4 Excess Imbalance Charge

If the absolute value of the Shipper's Imbalance at the end of a Day exceeds the Shipper's Imbalance Limit, then the Shipper shall pay the Excess Imbalance Charge for each GJ of gas by which the absolute value of such Imbalance exceeds the Shipper's Imbalance Limit except in relation to any Shipper's Imbalance which is directly caused by Epic Energy.

191. My reasons for Amendment 19 took into account a consideration that the Excess Imbalance Charge is not unreasonable as a means of motivating Users to comply with contractual obligations in relation to gas balancing. In my Supplementary Reasons I further recognised the justification of "behaviour modification" for the charges proposed by Epic Energy (including the Excess Imbalance Charge). I am of the view that the revisions proposed by Epic Energy are inconsistent with these reasons and with Amendment 19. Epic Energy's proposed revisions to clause 6.4 of the revised Access Contract Terms and Conditions could result in a User being liable for charges in respect of a gas imbalance that is a result of a cause other than the actions (or inactions) of the User, and hence the revisions are inconsistent with an objective of modifying the behaviour of the User. Accordingly, I am not satisfied that the revisions proposed by Epic Energy incorporate Amendment 19 or otherwise address the reasons for the amendment.

192. Amendment 20

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

193. Epic Energy has addressed the requirement of Amendment 20 by inserting a new clause 11.4 into the Revised Proposed Access Arrangement.<sup>40</sup>

11.4 Trading Imbalances

A Shipper may exchange all or part of its accumulated Imbalances with another shipper, at any time and on terms they may agree, and must give notice in writing of any such exchange to Epic Energy prior to the exchange occurring. On receipt of such written notice Epic Energy shall calculate adjustments in the Shipper's accumulated Imbalances to reflect the exchange.

194. In my Final Decision I did not indicate the specific section of the Access Arrangement that should be revised in response to Amendment 20, nor explicitly indicate that the Access Contract Terms and Conditions should be amended. Epic Energy has elected to address the required amendment through revision of the Trading Policy in clause 11 of the Proposed Access Arrangement.

195. There is no specific provision in the Access Contract Terms and Conditions that provides a User of the Firm Service with a right to trade imbalances. I am of the view that the facility to trade imbalances should be reflected in the Access Contract Terms and Conditions. As such, I am not satisfied that the revisions made to the Access Arrangement in respect of Amendment 20 adequately incorporate the required amendment or otherwise address the reasons for the required amendment.

196. Amendment 21

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.

197. Epic Energy has not revised the Access Contract Terms and Conditions to address the requirements of Amendment 21, instead submitting to me that:<sup>41</sup>

8.13 Epic Energy reiterates its position in relation to this amendment and does not accept that the Regulator can "cherry pick" between elements of the Firm Service and the T1 Service.

198. In this submission, Epic Energy makes reference to the 8 percent imbalance limit under the Terms and Conditions for the T1 Service.

199. Epic Energy's submission does not raise matters further to those considered by me in coming to my Final Decision. Epic Energy has not complied with the required amendment nor otherwise addressed the reasons for the required amendment.

200. Amendment 22

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

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<sup>40</sup> Epic Energy Submission Post Final Decision Submission #1, PFDS#1, Revised Access Arrangement and Access Arrangement Information, para 8.12.

<sup>41</sup> Epic Energy Submission Post Final Decision Submission #1, PFDS#1, Revised Access Arrangement and Access Arrangement Information.

and hourly delivery of gas in aggregate across all of that User's Delivery Points in a pipeline zone for Delivery Points in Zones 1 to 9, and on each lateral pipeline in Zone 10.

201. Epic Energy has addressed the requirement of Amendment 22 by revision of clause 7.1 of the Access Contract Terms and Conditions, as follows.<sup>42</sup>

7.1 Hourly Peaking

- (a) Without limiting Clause 6, the Shipper may take hourly delivery of quantities of gas ("MHQ") at a Delivery Point on a Day not exceeding 120% of one twenty-fourth of the Shippers Delivery Point MDQ at that Delivery Point.
- (b) ~~If the Shipper exceeds its MHQ~~, Epic Energy may require the Shipper to pay, and the Shipper shall if so required pay, the Peaking Surcharge for each GJ of gas by which the Shipper has exceeded the Shipper's MHQ in aggregate across all of that Shipper's Delivery Points:
  - (i) for zones 1-9 - in a pipeline zone; or.
  - (ii) for zone 10 - on a single lateral pipeline in the zone.
- (c) Clause 7.1(a) does not alter or affect the Shipper's MDQ.

202. I am satisfied that these revisions incorporate the required amendment.

203. Amendment 23

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.

204. Epic Energy has addressed the requirement of Amendment 23 by revision of clause 11.5 of the Access Contract Terms and Conditions, as follows.

11.5 Multiple Transmission Systems

Where gas is delivered to a distribution network (to which the DBNGP is connected) by a gas transmission system other than the DBNGP, the quantities of gas measured at a Notional Delivery Point will need to take into account arrangements between Epic Energy, that other gas transmission system and the operator of that distribution network and any agreement reached between them from time to time. Epic Energy will notify the Shipper of any such arrangement or agreement prior to the time the Shipper becomes subject to any contractual obligation that may be affected by those arrangements or agreement.

205. I am satisfied that these revisions incorporate the required amendment.

206. Amendment 24

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.

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<sup>42</sup> Epic Energy Submission Post Final Decision Submission #1, PFDS#1, Revised Access Arrangement and Access Arrangement Information, para 8.14.

207. Epic Energy has addressed the requirement of Amendment 24 by revision of clause 12.6 of the Access Contract Terms and Conditions, as follows.

12.6 Correction of measurements

- (a) If at any time, any of the Metering Equipment is found to be registering inaccurately, it will be adjusted as soon as reasonably possible to its specification. The reading of such Metering Equipment will be corrected for any period of inaccuracy (“Correction Period”) which is definitely known or agreed upon. If the Correction Period is not known or cannot be agreed by the parties, provided that the Correction Period will not extend beyond one half of the time elapsed since the date of the Previous Verification.

...

208. I am satisfied that these revisions incorporate the required amendment.

209. Amendment 25

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.

210. Epic Energy has addressed the requirement of Amendment 25 by revision of section 14 of the revised Access Contract Terms and Conditions and the insertion of the definition of “Planned Maintenance”, as follows.

14. CURTAILMENT AND INTERRUPTION

14.1 Permissible Interruption

Epic Energy may curtail or interrupt the Shipper without liability to the Shipper:

- ~~(a) in such circumstances as Epic Energy considers necessary as a reasonable and prudent pipeline operator PROVIDED THAT the interruption or curtailment is within the Permissible Limit; or~~
- ~~(b) for Force Majeure; or~~
- ~~(c) in the circumstances described in Clause 3.3(d).~~
- (a) due to an event of Force Majeure;
- (b) in circumstances where the Shipper consents to the curtailment or interruption;
- (c) whenever it needs to undertake any Major Works;
- (d) in emergencies, which are not caused by Epic Energy’s negligent conduct or breach of this Access Contract, which Epic Energy considers will or may present a threat of danger to the life, health or property of any person or jeopardise the operational efficiency or integrity of the DBNGP (“Emergency”);
- (e) for any Planned Maintenance; and
- (f) in such circumstances as Epic Energy considers necessary as a reasonable and prudent pipeline operator provided that the interruption or curtailment is within the Permissible Limit.

14.2 Permissible Limit

When calculating the number of hours of interruption or reduction that are within the Permissible Limit any curtailment or interruptions invoked under clauses 14.1(a), 14.1(b), 14.1(c) and 14.1(d) shall not be counted within the Permissible Limit.

#### 14.3 Notice and Responsibility

- (a) Epic Energy will provide the Shipper with notice of any interruption or curtailment ("Curtailment Notice") as soon as possible following Epic Energy becoming aware that it is necessary to interrupt or curtail the Service.
- (b) Epic Energy will send a copy of the Curtailment Notice by facsimile to the Shipper and will also endeavour to telephone the Shipper to advise that the Curtailment Notice has been or will be provided.
- (c) The Shipper will be solely responsible for informing all affected Producers and downstream entities of the notification of the curtailment or interruption or the Curtailment Notice.
- (d) Epic Energy will, on request by the Shipper and within a reasonable time after the request is made, provide such information as is reasonably required to support the issue of a Curtailment Notice.

#### 14.4 Compliance with Curtailment Notice

- (a) If Epic Energy issues a Curtailment Notice then the Shipper will be allowed such time as is stipulated in the Curtailment Notice (which must be no less than 1 hour unless the Curtailment Notice is issued as a result of an Emergency in which case Epic Energy may provide a shorter time period) to comply with the requirements of the Curtailment Notice.
- (b) If the Shipper does not comply with the requirements of a Curtailment Notice within the time period set out in clause 14.6(a) Epic Energy may take action to give effect to those requirements set out in the Curtailment Notice.
- (c) If the Shipper does take any Gas delivered to the Shipper at the Delivery Point in excess of the quantity specified in the Curtailment Notice then:
  - (i) the Shipper shall pay Epic Energy a charge calculated by multiplying the number of GJs of Gas in respect of which the Shipper is at variance from the level of receipts or deliveries specified in the Curtailment Notice by the Unavailability Charge; and
  - (ii) the Shipper shall be liable for any Direct Losses suffered by Epic Energy as a result of the failure to comply with the Curtailment Notice.

#### 14.5 Non Permissible Interruption

Epic Energy may curtail or interrupt the Shipper in circumstances which are not a Permissible Interruption PROVIDED THAT in that case, Epic Energy shall:

- (a) compensate the Shipper for any Direct Loss suffered by the Shipper; and
- (b) credit the Shipper in the next invoice issued by Epic Energy to the Shipper, with the Receipt Charge and Capacity Charges applicable to that capacity so interrupted or curtailed.

211. In the revisions to clause 14 of the Access Contract Terms and Conditions, Epic Energy has introduced a number of defined terms, with definitions provided in clause 1 of the Access Contract Terms and Conditions as follows.

"Curtailment Notice" has the meaning given in clause 14.5(a);

...

"Major Works" means any enhancement, expansion, connection, pigging or other work that the (sic) Epic Energy needs to undertake on the DBNGP that –

- (a) cannot reasonably be scheduled at a time when it will not affect gas transmission capacity on the DBNGP; and

(b) by its nature or magnitude would require a reasonable and prudent person to wholly or partially reduce gas transmission capacity on the DBNGP.

...

“Planned Maintenance” means maintenance on the DBNGP which:

- (i) is reasonably considered (in Epic Energy’s opinion) likely to effect the capacity to provide Firm Service on the DBNGP; and
- (ii) is scheduled in advance and of which the Shipper is given not less than thirty [30] Days written notice by Epic Energy, unless otherwise agreed by the parties or where for safe and reliable operation of the DBNGP the notice period needs to be shortened;

212. It is not clear to me which part of the new provisions of clause 14 is intended to respond to Amendment 25. Epic Energy may have intended to address the requirements of Amendment 25 through the new sub-clause 14.3(a), which provides for Epic Energy to provide a User with notice of impending interruption or curtailment as soon as Epic Energy becomes aware of the necessity of interrupting or curtailing the service. The requirement for 30 days notice of interruption or curtailment for planned maintenance is provided for by defining “planned maintenance” as that maintenance for which Users are given 30 or more days notice of likely interruption or curtailment. This does not substantially incorporate the required amendment or otherwise address the reasons for the required amendment, which were based on a premise that Epic Energy would undertake maintenance according to a planned schedule, and for which it would be possible to give Users 30 or more days notice of possible interruptions or curtailment. The revisions made by Epic Energy avoid imposing any obligation on Epic Energy to provide notice of such possible interruption or curtailment.
213. The other revisions to clause 14 and the introduction of new terms “Curtailment Notice” and “Major Works” do not follow from the requirements of Amendment 25. These revisions include significant changes to the scope of interruptions that may occur without penalty to Epic Energy, i.e. without being considered in relation to the permissible limit. In particular, new provisions have been introduced to clause 14.1 to allow for permissible interruption for reasons of major works and emergencies, which under clause 14.2 are not considered when calculating the number of hours of interruption or reduction that are within the permissible limit. These revisions represent a significant change to the Access Arrangement.
214. I am not satisfied that the revisions made to the Access Arrangement in respect of Amendment 25 incorporate the required amendment. Nor am I satisfied that the revisions either substantially incorporate the amendment or otherwise address the reasons for requiring the amendment.
215. Amendment 26
- The proposed Access Arrangement documents should be amended to include a definition of the term “Receipt Charge” or, alternatively, the term “Gas Receipt Charge” be used instead if that term, as defined in the Access Contract Terms and Conditions, was intended to be used.
216. Epic Energy has not revised the Access Contract Terms and Conditions to address the requirements of this amendment and has submitted to me that Amendment 26 is

redundant given the deletion of the Gas Receipt Charge in the Revised Proposed Access Arrangement.<sup>43</sup>

217. I accept the submission put to me by Epic Energy that Amendment 26 is made redundant by the revisions to the Access Arrangement that alter the Reference Tariff Structure to abolish the Gas Receipt Charge. I note, however, that the Gas Receipt Charge is still referred to in some clauses of the Access Contract Terms and Conditions, such as clause 14.5 as cited above.

218. Amendment 27

The definition of “force majeure” in sub-clause 1.1 of the Access Contract Terms and Conditions should be amended such that “strikes or industrial disputes” is not excluded from the scope of events or circumstances of force majeure, at least to the extent that the strikes or industrial disputes are not within the control of the party claiming force majeure or which that party is not able to prevent or overcome.

219. Epic Energy has addressed the requirement of Amendment 27 by revision of the definition of Force Majeure in clause 1 of the Access Contract Terms and Conditions, as follows.

“Force Majeure” means any event or circumstance not within the control of a Party and which by the exercise of due diligence, that Party is not able to prevent or overcome.

The following will not constitute (directly or indirectly) events or circumstances of Force Majeure:

- (a) changes in market structure, operations or conditions for:
  - (i) supply, purchase or sale of gas; or
  - (ii) any good or service manufactured or provided by the Shipper;
- (b) lack of, or reduction in, gas reserves, water supply or raw materials;
- (c) commercial failure, expiration or termination for whatever reason of a contract;
- (d) lack of funds/inability to pay money; or
- (e) strikes or industrial disputes (except to the extent that such strikes or industrial disputes are not within the control of a Party and which by the exercise of due diligence, that Party is not able to prevent or overcome).

220. I am satisfied that these revisions incorporate the required amendment.

221. Amendment 28

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, and to the extent that it fails to provide the service that is the subject of the Access Contract.

222. Epic Energy has indicated in a submission to me that it is not willing to comply with this required amendment and refers to a previous submission to me in which Epic Energy states that the required provision for Epic Energy to waive charges should not apply where Epic Energy claims the benefit of force majeure where the relevant event is caused by a shipper.

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<sup>43</sup> Epic Energy Submission Post Final Decision Submission #1, PFDS#1, Revised Access Arrangement and Access Arrangement Information, para 8.18.



223. Epic Energy's submission raises matters already considered by me in coming to my Final Decision. Epic Energy has not complied with the required amendment nor otherwise addressed the reasons for the required amendment.

224. Amendment 29

Sub-clause 16.4 of the Access Contract Terms and Conditions, relating to adjustment of charges if there is a change in the regulatory environment should be deleted from the Access Contract Terms and Conditions or amended to clarify that any application will be submitted as a revision to the Access Arrangement in accordance with section 2.28 of the Code.

225. Epic Energy has indicated in a submission to me that it is not willing to comply with this required amendment and refers to its position as set out in submissions made to me prior to my Final Decision.

226. Epic Energy has addressed the requirement of Amendment 29 by revising the Access Contract Terms and Conditions to incorporate the proposed changes to the Reference Tariff charges, as follows.

16. CHARGES

16.1 Obligation to Pay

The Shipper shall pay the Charges, in the manner and at the times set out in the Access Contract, that relate to the Service in accordance with the Access Contract.

16.2 CPI Adjustment

On each 1 January (commencing in 2001) all of the Charges will be adjusted by 67% of the variation (expressed as a percentage) in the CPI for the 12 month period ending on the previous 30 September.

~~16.3 Imports and Goods and Services Tax~~

16.3 New Taxes

If at any time during the term of this Access Contract:

- (a) any Tax which was not in force as at the date of this Access Contract is validly imposed;
- (b) any Tax which came into force after 1 January 2000 is validly imposed;
- (c) the rate at which a Tax is levied is validly varied from the rate prevailing as at the date of this Access Contract; or
- (d) the basis on which a Tax is levied or calculated is validly varied from the basis on which it is levied or calculated as at the date of this Access Contract.

then, to the extent that the new or varied Tax increases any costs incurred by Epic Energy under this Access Contract or otherwise affects the amounts payable under this Access Contract, the Shipper must pay to Epic Energy an amount equal to the increase in costs attributable to the new or varied Tax, which amount shall be added to amounts otherwise due under this Access Contract.

- (e) For the purposes of this clause 16.3:

"Tax" means a tax, levy, charge, impost, fee, deduction, withholding or duty of any nature (other than income tax and capital gains tax), including without limitation, any gas industry tax, petroleum resource rent tax, carbon tax, greenhouse gas tax, or environmental tax, duty, excise, levy, fee, rate or charge. This includes, without limitation, any interest, fine, penalty, charge, fee or other amount imposed in addition to those amounts.



16.3A Goods and Services Tax (GST)

- (a) The amounts payable or the value of other consideration provided in respect of supplies made in relation to this Access Contract (except the Reference Tariff) are exclusive of GST (if any). If a GST is levied or imposed on any supply made (or deemed to have been made) under or in accordance with this Access Contract, the amounts payable or the value of the consideration provided for that supply (or deemed supply) ("Payment") shall be increased by such amount as is necessary to ensure that the amount of the Payment net of GST is the same as it would have been prior to the imposition of GST.
- (b) Where any amount is payable as a reimbursement, indemnification or similar payment calculated by reference to a loss, cost, expense or other amount incurred, then that amount must be reduced by any input tax credit available to that party and, if a taxable supply, must be increased by the GST payable in relation to the supply and a tax invoice will be provided by the party being reimbursed or indemnified.
- (c) All GST payable shall be payable at the time any payment to which it relates is payable. Where any GST payable is not referable to an actual payment then it shall be payable within 10 days of a tax invoice being issued by the party making the supply.
- (d) Where in relation to this Access Contract a party makes a taxable supply, that party shall provide a tax invoice in respect of that supply before the GST payable in respect of that supply becomes due.
- (e) For the purposes of this clause 16.3A:

GST means goods and services tax or similar value added tax levied or imposed in the Commonwealth of Australia pursuant to the GST law;

GST law has the meaning given to such term in A New Tax System (Goods and Services Tax) Act 1999 of Australia or a successor act; and

Terms defined in A New Tax System (Goods and Services Tax) Act 1999 of Australia have the same meaning when used in this clause 16.3A.

16.4 Regulator's Funding Charge

- (a) Each quarter, the Shipper must pay Epic Energy the Regulator's Funding Charge.
- (b) The Regulator's Funding Charge is the sum of the Regulator's Ongoing Charge and the Regulator's Access Arrangement Charge.
- (c) The Regulator's Ongoing Charge has the meaning given in clause 16.5.
- (d) The Regulator's Access Arrangement Charge has the meaning given in clause 16.6.

16.5 Regulator's Ongoing Charge

- (a) The Regulator's Ongoing Charge is the Shipper's proportion of all charges imposed by the Regulator on Epic Energy in respect of the DBNGP under the Gas Pipelines Access (Western Australia) (Funding) Regulations 1999 or under any other law or regulation, during the preceding quarter.
- (b) The Regulator's Ongoing Charge is to be calculated pursuant to the following formula:

$$\text{ROCS} = \frac{(\text{TROCQEE} + \text{UROCS})}{\text{CS/CT}}$$

where:

ROCS means the Regulator's Ongoing Charge.

UROCS means the balance of the Regulator's Ongoing Charge that Epic Energy was unable to pass on to Shippers during the quarter immediately prior to the preceding

quarter plus a return on that amount equal to the regulated rate of return as contained in the Regulator's Final Approval for the Access Arrangement.

TROCQEE means the total of all charges imposed on Epic Energy by the Regulator during the preceding quarter.

CS means the daily average total capacity (expressed in GJ/day) contracted by the Shipper on the DBNGP pursuant to the Shipper's Access Contract, in the preceding quarter.

CT means the daily average total of all contracted capacity (expressed in GJ/day) on the DBNGP under the Access Arrangement less the daily average capacity contracted under any Exempt Contract, in the preceding quarter.

#### 16.6 Regulator's Access Arrangement Charges

(a) The Regulator's Access Arrangement Charge is the Shipper's proportion of all charges imposed by the Regulator on Epic Energy in respect of the DBNGP under the Gas Pipelines Access (Western Australia) (Funding) Regulations 1999 or under any other law or regulation, during the period leading up to the commencement of the Access Arrangement and is to be paid to Epic Energy in quarterly amounts over the term of the Shippers Access Contract.

(b) The Regulator's Access Arrangement Charge is to be calculated pursuant to the following formula:

$$\text{RAACS} = \frac{[(\text{TRAACEE} + \text{URAACS}) \times (\text{CS}/\text{CT})]}{[\text{TCM}/4]}$$

where:

RAACS means the Regulator's Access Arrangement Charge.

URAACS means the balance of the Regulator's Access Arrangement Charge that Epic Energy was unable to pass on to Shippers during the quarter immediately prior to the preceding quarter plus a return on that amount equal to the regulated rate of return as contained in the Regulator's Final Approval for the Access Arrangement.

TRAACEE means the total of all charges imposed on Epic Energy by the Regulator during the period leading up to the commencement of the Access Arrangement.

CS means the daily average total capacity (expressed in GJ/day) contracted by the Shipper on the DBNGP pursuant to the Shipper's Access Contract, in the preceding quarter.

CT means the daily average total of all contracted capacity (expressed in GJ/day) on the DBNGP under the Access Arrangement less the daily average capacity contracted under any Exempt Contract, in the preceding quarter.

TCM means the total number of months of the Shipper's Access Contract on the DBNGP.

~~(a) The Shipper will pay to Epic Energy a monthly amount equal to the cost of —~~

~~(i) changes to, or to the method of imposition of, any Supply Tax which was applicable and in effect at the date of this contract; and~~

~~(ii) any new Supply Tax,~~

~~which are imposed on Epic Energy during that month. If a Supply Tax is a GST the provisions set out in Clauses 16.3(b) to 16.3(f) shall apply.~~

~~In this clause, "Supply Tax" means any tax, charge, levy, duty, fee or impost imposed by any level of government relating to the construction, operation and maintenance of the DBNGP and the provision of the Service to the Shipper.~~

~~(b) Definitions~~

In this Clause 16.3, the following terms will have the following meanings:

~~“GST” means any goods and services tax, value added tax, retail turnover tax, consumption tax, or any similar tax, impost or duty introduced or charged by the Commonwealth of Australia or any state or territory of Australia whether before, on or after the Commencement Date, which pursuant to the GST Act or any other statute, is or may be levied or become payable in connection with the supply of any goods, services or other things under this contract.~~

~~“GST Act” means A New Tax System (Goods and Services Tax) Act 1999 and any legislation substituted for, replacing or amending that Act.~~

~~“GST rate” means the rate of tax imposed on the introduction of GST into Australia.~~

~~“GST adjustment rate” means the amount of any increase in the rate of tax imposed under a GST which is above the GST rate.~~

~~“basic consideration” means the consideration (whether in money or otherwise) to be paid or provided to the Provider for any supply or use of any goods, services or other things under this contract (other than tax payable pursuant to this clause).~~

~~“cost savings” shall mean in respect of the supply of any goods or services under this contract, the cost savings made by the Provider as a result of new tax system changes other than the imposition of GST on any such supply, in so far as they are properly allocated to those supplies, or any amount of any input credits available to the Provider in respect of such costs.~~

~~“new tax system changes” has the meaning which it bears in the TPA.~~

~~“Provider” means any party who provides goods or renders services under this contract.~~

~~“Recipient” means any party who receives a supply of goods or services under this contract.~~

~~“tax invoice” has the meaning which it bears in section 195-1 of the GST Act.~~

~~“TPA” means New Tax System (Trade Practices Amendment) Act 1999 and any legislation substituted for, replacing or amending that Act.~~

~~(c) — Registration~~

~~Epic Energy and the Shipper agree that each of them, or their duly appointed agent, will register under the GST Act as and when it becomes possible to do so.~~

~~(d) — Recipient Must Pay~~

~~(i) — If, upon the introduction of GST, GST is payable on the basic consideration or any part thereof or if the Provider is liable to pay GST in connection with any goods, services or other things supplied under this contract then, as from the date of any such introduction or application:~~

~~(A) — the Provider may increase the basic consideration or the relevant part thereof by an amount which is equal to the GST rate; and~~

~~(B) — the Recipient shall pay the increased basic consideration on the due date for payment by the Recipient of the basic consideration.~~

~~(ii) — If, at any time, the GST rate is increased, the Provider may, in addition to the GST rate, increase the basic consideration by the GST adjustment rate and such amount shall be payable in accordance with Clause 16.3(d)(i)(A)~~

~~(e) — GST Invoice~~

~~Where the basic consideration is to be increased to account for GST pursuant to Clause 16.3(d), the Provider shall issue a tax invoice to the Recipient at the time the payment is made.~~

~~(f) — Variation to Basic Consideration~~

~~(i) — If, as a result of the new tax system changes, there is an abolition (in whole or part) of, or a reduction in the level of, wholesale sales taxes or other indirect taxes (“the relevant taxes”) which apply to goods which are sold or supplied by the Provider, then, as from the date of any such abolition or reduction (and upon any subsequent abolition or reduction) of the relevant taxes the provisions of this contract dealing with the calculation of the basic consideration shall be amended as necessary to ensure that, as far as reasonably practicable, the cost savings are passed on to the Recipient.~~

~~(ii) — Epic Energy and the Shipper agree that, in order to give effect to Clause 16.3(f)(i), at least 21 days before the introduction of the new tax changes, they shall meet and negotiate in good faith and, if possible, agree upon the specific amendments to be made to the contract to apply from the relevant date.~~

~~If Epic Energy and the Shipper are unable to agree upon the calculation of any cost savings, either party may by written notice to the other, require the calculation of the cost savings to be referred to an independent expert appointed pursuant to clause 18.~~

~~16.4 — Change in Regulatory Environment~~

~~(a) — If there is a change in the regulatory environment which causes Epic Energy to incur additional costs during the Access Period, Epic Energy may apply to the Regulator for an adjustment of the Charges.~~

~~(b) — Any adjustment to the Charges approved by the Regulator pursuant to Clause 16.5 will apply from the date determined by the Regulator.~~

227. Clause 16.4 of the Access Contract Terms and Conditions provides for Epic Energy to apply to the Regulator for an adjustment of charges if there is a change in the regulatory environment that causes Epic Energy to incur additional costs during the Access Arrangement Period. The apparent intention of clause 16.4 is to allow Epic Energy to pass-through costs of regulation through a change in the Reference Tariff. In the Final Decision, I took the view that a Reference Tariff could not be varied in this manner: the Code only provides for variation of a Reference Tariff during an Access Arrangement Period through implementation of an approved Reference Tariff Variation Method as provided for in sections 8.3B to 8.3H of the Code.<sup>44</sup>
228. Epic Energy’s revisions to clause 16.4 and following of the Access Contract Terms and Conditions seek to replace the original provisions for adjustment of charges with a charge that is an explicit component of the Reference Tariff, but which remains a vehicle for the pass-through of costs actually incurred. I am not satisfied that the revisions provide for variation of the Reference Tariff in accordance with sections 8.3B to 8.3H of the Code. Furthermore, and for the reasons indicated in paragraph 133, I am not prepared at this late stage in the process of assessing the proposed Access Arrangement to accept a proposal for the pass-through of costs when Epic Energy had adequate time prior to my Final Decision to develop a tariff variation method that would comply with sections 8.3B to 8.3H of the Code.

<sup>44</sup> Final Decision, paras 635, 636.

229. I am not satisfied that the revised Access Contract Terms and Conditions incorporate Amendment 29. Nor am I satisfied that the revisions either substantially incorporate the amendment or otherwise address the reasons for requiring the amendment.

230. Amendment 30

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.

231. In its submission to me, Epic Energy indicated that it responded to Amendment 30 by revision of sub-clause 17.1(c) of the revised Access Contract Terms and Conditions.<sup>45</sup> No revision of sub-clause 17.1(c) has, however, been made in the revised Access Contract Terms and Conditions submitted to me on 8 August 2003. Accordingly, I am not satisfied that the revised Access Contract Terms and Conditions incorporate Amendment 30.

232. Amendment 31

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.

233. Epic Energy has addressed the requirement of Amendment 31 by inclusion of a new clause 9.5 in the Proposed Access Arrangement as follows.<sup>46</sup>

#### 9.5 Rebate of Certain Charges

(a) If a Shipper is required to pay any of the following Charges to Epic Energy, Epic Energy shall provide a rebate to all other Shippers for Firm Service and Services in the nature of Firm Service (but excluding services under Prior Contracts) ('Charge Revenue Rebate Shippers') an amount calculated in accordance with the formula contained in paragraph 9.5(b):

(i) Out of Specification Gas Charge ('OSGC');

(ii) Nomination Surcharge ('NS');

(iii) Excess Imbalance Charge ('EIC');

(iv) Peaking Surcharge ('PS'); and

(v) Unavailability Charge ('UC').

(b)  $CRR = 0.95 \times [(OSGC + NS + EIC + PS + UC) - IC]$

Where:

"CRR" means the Charge Revenue Rebate.

<sup>45</sup> Epic Energy, 8 August 2003, Post Final Decision Submission #1, PFDS#1, Revised Access Arrangement and Access Arrangement Information, para 8.22.

<sup>46</sup> Epic Energy, 8 August 2003, Post Final Decision Submission #1, PFDS#1, Revised Access Arrangement and Access Arrangement Information, para 2.5.

“IC” means incremental costs incurred by Epic Energy in providing the services resulting from the Shipper’s actions which give rise to the relevant Charge set out in clause 9.5(1)(i)-(v) being imposed.

- (c) Any amounts due to a Charge Revenue Rebate Shipper pursuant to Paragraph 9.5(a) will be deducted from the amount which would otherwise be payable under the Shipper’s next Invoice following calculation of the CRR at the end of a Year.
- (d) If the Charge Revenue Rebate Shipper is no longer a Shipper of a Service, then the Charge Revenue Rebate Shipper may elect to either take the amount as a cash payment or leave the amount with Epic Energy to hold and credit against an Invoice for Services used by the Shipper in the future.
- (e) The amount of CRR rebated to each Charge Revenue Rebate Shipper is to be the ratio that the Charge Revenue Rebate Shipper’s daily average total capacity (expressed in GJ per Day) contracted by that Charge Revenue Rebate Shipper on the DBNGP pursuant to its Access Contract in the year to which the CRR calculation relates bears to the daily average total of all contracted capacity (expressed in GJ/day) on the DBNGP under the Access Arrangement (except for Prior Contracts) in that year.

234. In the formula for calculation of an amount of rebatable revenue, Epic Energy has included a term for “incremental costs incurred by Epic Energy in providing the services resulting from the Shipper’s actions”. The inclusion of these costs in the formula has the effect of establishing a threshold revenue from the relevant charges, below which no rebate is payable. In my view, this is contrary to the required amendment. I am also not satisfied that as the provision for rebate of revenues is contained in the Access Arrangement rather than the Access Contract Terms and Conditions that a User of the Reference Service has a clear contractual entitlement to a share of rebatable revenue. I am therefore not satisfied that the revisions made to the Access Arrangement in respect of Amendment 31 incorporate the required amendment. Nor am I satisfied that the revisions either substantially incorporate the amendment or otherwise address the reasons for requiring the amendment.

235. Amendment 48

The proposed Access Arrangement and Access Contract Terms and Conditions should be amended to provide that the Out of Specification Gas Charge, Nomination Surcharge, Overrun Charge, Excess Imbalance Charge, Peaking Surcharge and Unavailability Charge are to be imposed only where:

- (a) the conduct contemplated by those penalties causes actual pecuniary loss or damage; or
- (b) in the reasonable opinion of the pipeline operator the conduct contemplated by those penalties exposes the pipeline to a significant risk (whether or not that risk becomes manifest) that threatens the integrity of the pipeline.

236. Amendment 48 was stated in my Supplementary Reasons. Epic Energy did not submit revisions to the Access Arrangement subsequent to issue of my Supplementary Reasons, but responded to the required amendment in a submission made to me on 5 December 2003.<sup>47</sup> While opposing the required amendment Epic Energy submitted alternate wording that it considered consistent with the reasons expressed in my Supplementary Reasons.

<sup>47</sup> Epic Energy, 5 December 2003, Supplemental Reasons and Amendments SRAS#1: Behavioural Regime.

237. Epic Energy has not incorporated or substantially incorporated Amendment 48 into the Access Contract Terms and Conditions, nor otherwise addressed the reasons for the required amendment.
238. Further, and in any event, I am of the view that Epic Energy's suggested alternate wording of the provision required by Amendment 48 may extend the scope of the provision. As such, the alternate wording proposed by Epic Energy goes beyond the required amendment.

### **Other Changes to the Access Contract Terms and Conditions**

#### Relocation of Receipt Points and Delivery Points

239. Epic Energy has made revisions to clauses 3.3 and 3.4 of the Access Contract Terms and Conditions in relation to provision for relocation of Receipt Points and Delivery Points. These revisions were made in response to required amendments of the Trading Policy and are addressed in this further final decision in relation to the Trading Policy (paragraph 246 and following).

#### Unavailability Notices

240. Epic Energy has made a revision to clause 5.4 in relation to Unavailability Notices, as follows.

5.4 Unavailability Notice

If Epic Energy issues an Unavailability Notice, then without limiting Clause 5.3,

- (a) the Shipper shall pay the Unavailability Charge for each GJ of gas delivered to the Shipper at a Delivery Point, or in aggregate as the case may be, in excess of the quantity specified in the Unavailability Notice;
- (b) Epic Energy may limit the rate of gas to be delivered at a Shipper's Delivery Point if Epic Energy reasonably considers that gas is to be delivered to a Shipper at a Delivery Point in excess of the quantity specified in the Unavailability Notice.

241. This revision to the Access Contract Terms and Conditions is unrelated to any required amendment. I do not consider it appropriate to make such revisions at this stage in the process of assessment of the Proposed Access Arrangement.

#### Metering

242. Epic Energy has made the following revision to clause 12.2 of the Access Contract Terms and Conditions in relation to provision of metering information to Users.

12.2 Epic Energy's Responsibility

Epic Energy shall:

- (a) supply, install, operate and maintain Metering Equipment at each Delivery Point in good working order and condition and in accordance with the principles and standards of a reasonable and prudent pipeline operator; and
- (b) calculate and record —

- (i) the quantity of gas supplied to Epic Energy by the Shipper; and
- (ii) the quantity of gas delivered to the Shipper by Epic Energy.

(c) provide the information referred to in clause 12.2(b) to the Shipper and any other metering information as is available to Epic Energy, which can reasonably be provided to the Shipper and which Epic Energy reasonably determines is necessary to enable the Shipper to assess its potential liability for Charges.

243. I addressed this revision in relation to Amendment 2 of the Final Decision that required amendment of the Access Arrangement to be provided for timely provision to Users of such metering information as is available to Epic Energy and which is necessary to enable Users to assess their potential liability for penalty charges and enable Users to take actions to avoid those charges. For reasons expressed in paragraph 24 and following of this further final decision, I am of the view that the timely provision of information is implied by the wording of the proposed clause 12.2(c) in the revised Access Contract Terms and Conditions. I am therefore satisfied that the revision substantially incorporates the required amendment.

#### **CAPACITY MANAGEMENT POLICY**

244. Epic Energy has proposed to manage the DBNGP as a Contract Carriage Pipeline.<sup>48</sup>
245. In my Final Decision, I recognized that the Code requires no more than a statement in the Access Arrangement that the DBNGP is a Contract Carriage or Market Carriage pipeline, subject to Ministerial approval for any proposal for the pipeline to be a Market Carriage pipeline. I determined that as the Proposed Access Arrangement states that the DBNGP is to be managed as a Contract Carriage pipeline, the requirements of the Code are met.<sup>49</sup> I did not require any amendments to the Proposed Access Arrangement in respect of the Capacity Management Policy and no other revisions were made by Epic Energy in the Revised Proposed Access Arrangement.

#### **TRADING POLICY**

246. A Trading Policy was 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 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.

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<sup>48</sup> Proposed Access Arrangement, section 14.

<sup>49</sup> Final Decision, para 650.



247. The Secondary Market is proposed as 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. Paragraph 11.3(f) of the Proposed Access Arrangement indicates that the objective of the Secondary Market is to encourage Firm Service Users to make unutilised capacity available to third parties. Under the Proposed Access Arrangement, there will not be an interruptible service or an authorised overrun service available to Users. A User’s requirements over and above its contracted capacity will need to be met (subject to availability) from the Secondary Market, but that capacity can be acquired at any time during the relevant Day.
248. The provision of capacity through the Secondary Market comprises a Non-Reference Service under the Proposed Access Arrangement, and is provided under the same terms and conditions as set out in the Access Contract Terms and Conditions, except as expressly modified by Secondary Market Rules and Secondary Market Terms and Conditions as amended or varied by Epic Energy from time to time. Secondary Market Rules and Secondary Market Terms and Conditions were submitted to me with the Proposed Access Arrangement documentation, but I did not consider these to comprise part of the Proposed Access Arrangement.<sup>50</sup>
249. Relocation of capacity by a User between Delivery Points is addressed in clause 3.3 of the Access Contract Terms and Conditions and provides for a User to:
- relocate Delivery Point MDQ on a spot basis to a Delivery Point upstream of the contracted Delivery Point without prior consent of Epic Energy;
  - relocate Delivery Point MDQ on a spot basis to a Delivery Point downstream of the contracted Delivery Point with prior consent of Epic Energy, which consent shall not be unreasonably withheld other than on operational grounds, and subject to the User acknowledging that the equivalent downstream quantity may be less than the Delivery Point MDQ that the User seeks to relocate.
250. All relocations of Delivery Point MDQ are proposed to be subject to the rights of other Users with contracted Delivery Point MDQ at the Delivery Point to which the relocation is desired.
251. Relocations of Receipt Point MDQ are addressed in clause 3.5 of the proposed Access Contract Terms and Conditions. Subject to operational feasibility, a User may supply gas to any Receipt Point in Zone 1 at quantities greater than the User’s Access Contract for the Receipt Point, subject to operational feasibility and the aggregate gas quantity for the User across all Receipt Points not exceeding the User’s aggregate contracted MDQ across all Receipt Points.
252. I required two amendments to the Proposed Access Arrangement in respect of the ability of Users of the DBNGP to relocate capacity across receipt points and delivery points:

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<sup>50</sup> Under section 3.6 of the Code, an Access Arrangement is only required to include terms and conditions for Reference Services, i.e. services for which a Reference Tariff is specified. The Secondary Market Service does not (and cannot) have a Reference Tariff specified and therefore cannot be a Reference Service, nor can the Regulator require that the Access Arrangement include the terms and conditions for provision of the Secondary Market Service.

## Amendment 32

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 on 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 33

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 section 3.10(c) of the Code.

253. Epic Energy has addressed the requirement of Amendments 32 and 33 by revisions to clause 3 of the Access Contract Terms and Conditions, as follows.

## 3.3 Relocation of Delivery Point MDQ

- (a) Shipper may by notice in writing to Epic Energy request a relocation of all or any part of its MDQ from an existing Delivery Point to a new Delivery Point ("Requested Relocation").
- (b) After receiving a notice under clause 3.3(a), Epic Energy must assess whether the Requested Relocation is commercially and technically feasible (as reasonably determined by Epic Energy).
- (c) As soon as practicable after completing its assessment under clause 3.3(b), Epic Energy must give notice in writing to the Shipper advising whether the Requested Relocation is approved or not. Epic Energy may make its approval subject to conditions if they are reasonable on commercial and technical grounds (including but not limited to Operational Grounds).
- (d) Without limiting clause 3.3(b), the Shipper's ability to relocate its Delivery Point MDQ to another Delivery Point is subject to the rights of Other Shippers with contracted Delivery Point MDQ at that Delivery Point.
- (e) Without limiting clause 3.3(b), in the event the Shipper wishes to relocate any part of its Delivery Point MDQ to a delivery point downstream of the Shipper's contracted Delivery, the Shipper acknowledges that the equivalent downstream quantity may be less than the Delivery Point MDQ the Shipper seeks to relocate.
- (f) Epic Energy may without liability to the Shipper, curtail deliveries of gas to the Shipper relocated under this clause 3.3, if Epic Energy is required to deliver gas to an Other Shipper at the Delivery Point and that Other Shipper has Delivery Point MDQ at the Delivery Point.
- ~~(a) The Shipper may (subject to Clause 3.7) elect to relocate any part of its Delivery Point MDQ on a Spot Basis to a delivery point upstream of its contracted Delivery Point without the need to obtain the prior consent of Epic Energy, but the Shipper must notify Epic Energy of that relocation as soon as possible after the Shipper becomes aware of the need to relocate, but in any event not later than 08:00 hours on the Day.~~
- ~~(b) The Shipper's ability to relocate its Delivery Point MDQ to an upstream delivery point is subject to the rights of Other Shippers with contracted Delivery Point MDQ at that delivery point.~~
- ~~(c) The Shipper may not relocate any part of its Delivery Point MDQ to a delivery point downstream of the Shipper's contracted Delivery Point MDQ without the prior written agreement of Epic Energy, which agreement will not be unreasonably~~

~~withheld other than on Operational Grounds, and the Shipper acknowledges that the equivalent downstream quantity may be less than the Delivery Point MDQ the Shipper seeks to relocate.~~

- ~~(d) Epic Energy may without liability to the Shipper, curtail deliveries of gas to the Shipper relocated under Clause 3.3(a), if Epic Energy is required to deliver gas to an Other Shipper at the delivery point and that Other Shipper has Delivery Point MDQ at the delivery point.~~

#### 3.4 Charges

- ~~(a) If the Shipper elects under Clause 3.3(a) to relocate some or all of its Delivery Point MDQ to another delivery point (which may or may not be a Delivery Point) then the Charges payable by the Shipper shall not change.~~

- ~~(b)(a)~~ (a) If the Shipper reaches agreement with Epic Energy under clause 3.3(c) to relocate some or all of its Delivery Point MDQ to another delivery point (which may or may not be a Delivery Point) then the Charges payable by the Shipper will be in accordance with the Tariff Schedule.

#### 3.5 Receipt Point Flexibility

Subject to Clause 3.6:

- (a) The Shipper may supply quantities [of](#) gas at any receipt point in Zone 1 on a Day (not exceeding in aggregate across all receipt points the Shipper's MDQ) provided it is operationally feasible; and
- (b) The Shipper may supply quantities of gas at a Receipt Point on a Day (not exceeding in aggregate across all Receipt Points the Shipper's MDQ) greater than those quantities specified in the Shipper's Access Contract for the Receipt Point provided it is operationally feasible.

254. I am satisfied that the revisions to clause 3.3 of the Access Contract Terms and Conditions incorporate Amendment 32 to the extent of providing for Users of the Firm Service to relocate capacity across Delivery Points.
255. Epic Energy has not made revisions to the Access Contract Terms and Conditions to provide for relocation of capacity across Receipt Points. In a submission to me, Epic Energy has indicated that it cannot provide any further flexibility in relation to receipt point relocation beyond that set out in clause 3.5 of the revised Access Contract Terms and Conditions because provisions of existing contracts ensure that it will never be commercially feasible for Epic Energy to allow the relocation of a Receipt Point outside of Zone 1.<sup>51</sup>
256. Epic Energy has not made revisions to clause 11 of the Proposed Access Arrangement in accordance with the requirements of Amendment 33 but instead has made a submission to me that this amendment is dealt with by the revisions made to clause 3.3 of the Access Contract Terms and Conditions in response to Amendment 32.<sup>52</sup>

<sup>51</sup> Epic Energy, 8 August 2003, Post Final Decision Submission #1, PFDS#1, Revised Access Arrangement and Access Arrangement Information, para 5.10.

<sup>52</sup> Epic Energy, 8 August 2003, Post Final Decision Submission #1, PFDS#1, Revised Access Arrangement and Access Arrangement Information, para 5.12.

257. I do not accept Epic Energy's position that it would never be commercially feasible for Epic Energy to allow the relocation of a Receipt Point outside of Zone 1. Section 3.11 of the Code – relating to provision under a Trading Policy for relocation of Receipt Points and Delivery Points – explicitly contemplates that “commercially and technically reasonable” in the context of a change in Receipt Point may involve the Service Provider specifying that, as a condition of the change in Receipt Point, the Service Provider must receive the same amount of revenue it would have received before the change. I am therefore not satisfied that in respect of a facility to relocate capacity across Receipt Points that the revised Access Contract Terms and Conditions incorporates Amendment 32, and nor am I satisfied that the revised Access Contract Terms and Conditions otherwise addresses my reasons for requiring the amendment.
258. Amendment 33 of my Final Decision required that explicit provision be made in the Trading Policy for relocation of capacity across Receipt Points and Delivery Points. Epic Energy revisions to the Access Contract Terms and Conditions address only the relocation of capacity across Receipt Points and Delivery Points in respect of the Firm Service. I am therefore not satisfied that the revisions made to the Access Arrangement incorporate Amendment 33. Nor am I satisfied that the revisions either substantially incorporate the amendment or otherwise address the reasons for requiring the amendment.
259. In addition to the facility to relocate capacity across Receipt Points and Delivery Points, I also required amendment of the Trading Policy in respect of the Secondary Market Service:
- Amendment 34
- The Access Arrangement should be amended to include a description of the Secondary Market Service, sufficient to describe the rights of Users to trade capacity.
260. Amendment 34 requires that the Access Arrangement be amended to state the nature of the rights of Users to trade capacity that are inherent in the Secondary Market Service. Epic Energy has addressed this amendment in the Access Arrangement by alteration of the definition of the Secondary Market Service as follows.
- Secondary Market Service* means the service acquired by a Shipper from the Secondary Market, [as described in the Access Arrangement Information](#) and which is subject to the Secondary Market Terms and Conditions;
261. Epic Energy has addressed Amendment 34 by cross-reference to the Access Arrangement Information and a further document, the Secondary Market Terms and Conditions (which does not comprise part of the Access Arrangement). As Epic Energy has not included in the Access Arrangement a description of the rights of Users to trade capacity on the Secondary Market, I am not satisfied that this revision incorporates or substantially incorporates Amendment 34, nor otherwise addresses the reasons for this amendment.
262. In addition to revisions made in respect of required amendments, Epic Energy has also revised the Access Arrangement to include a new clause 11.4 in the Trading Policy that allows Users to trade accumulated imbalances. This has been addressed in relation to Amendment 20 of the Final Decision, which required amendment of the Access Arrangement to allow trading of imbalances (refer paragraph 192 and following of this further final decision).

## QUEUING POLICY

263. 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 in which they are received 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.<sup>53</sup>

264. The Code is explicit in the requirements for a Queuing Policy, in particular requiring that a Queuing Policy contain sufficient detail to enable Users and Prospective Users to understand in advance how the Queuing Policy will operate. In my Final Decision I stated my view that the proposed Queuing Policy did not meet this requirement of the Code<sup>54</sup> and I required several amendments relating to provision of greater detail in the Policy, and providing information to Prospective Users with queued Access Requests:

### Amendment 35

Clause 5.3 of the proposed Access Arrangement should be amended to describe the circumstances in which Epic Energy may change the priority order of Access Requests in the queue, or grant access to Prospective Users other than in order of the queue.

### Amendment 36

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

### Amendment 37

Clause 5.3 of the proposed Access Arrangement should 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 38

Clause 5.3 and/or 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 existing spare capacity of the

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<sup>53</sup> A Capacity Expansion Option is defined in the Access Arrangement as part of the Extensions/Expansions Policy and comprises an option sold by Epic Energy to a Prospective User providing the Prospective User with a right to a specified quantity of capacity for Firm Service on the terms and conditions specified in the Capacity Expansion Option. A Capacity Expansion Option will have a purchase price to be determined by Epic Energy and is able to be traded by the Prospective User to another Prospective User.

<sup>54</sup> Final Decision, para 676.

pipeline where there is no Access Request in a queue that could otherwise be satisfied by that Spare Capacity.

Amendment 39

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.

Amendment 40

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 41

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.

265. Epic Energy has revised the Queuing Policy as follows.

5.3 Queuing Policy

- (a) Epic Energy will create a single queue for all Access Requests. ~~are to have priority determined by the order in which they are received by Epic Energy. However, Epic Energy may deal with Access Requests out of order provided that the Access Requests which were first in time are not ultimately disadvantaged.~~
- (b) For the avoidance of doubt, there will be no separate queue for Access Requests for a Firm Service. ~~If an Access Request is rejected, that Access Request's priority is lost.~~
- (c) Subject to Paragraphs 5.3(d), 5.3(e) and 5.3(i), Access Requests are to have priority determined by the order in which they are received by Epic Energy. However, Epic Energy may deal with Access Requests out of order provided that: ~~An Access Request may be rejected at any stage prior to its acceptance by Epic Energy.~~
  - (i) the Access Request that is being dealt with out of order is materially different to the Access Requests which are first in time; and
  - (ii) the Prospective Shippers with the Access Requests which are first in time do not suffer any material prejudice as a result.
- (d) Any Access Request for a Service that was made prior to this Access Arrangement coming into effect ("prior AA Access Requests") will have priority over Access Requests made after this Access Arrangement coming into effect. The priority amongst prior AA Access Requests is to be determined in accordance with the order in which they are received by Epic Energy. ~~This queuing policy is subject to any Capacity Expansion Options which may be granted by Epic Energy from time to time.~~
- (e) An Access Request will not be placed in the queue if it does not comply with the requirements for a complying Access Request, as set out in the Access Guide. ~~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.~~
- (f) An Access Request that is entered into the queue may be rejected at any stage prior to its acceptance by Epic Energy (in the form of an Access Contract) if:
  - (i) the Access Request requires enhancement to or expansion of the DBNGP system for it to be met and the enhancement or expansion is inconsistent

- with Epic Energy's extensions and expansions policy as set out in the Access Arrangement; or
- (ii) the Prospective Shipper is, to Epic Energy's satisfaction, not in a position to meet its obligations under the Access Contract; or
  - (iii) the requested Capacity can not be provided having regard to the load characteristics set out in the Access Request and the load characteristics of Other Shippers; or
  - (iv) where the Access Request is for a Non-Reference Service, Epic Energy and the Prospective Shipper have not reached agreement concerning the terms and conditions for the Non-Reference Service by 24 months prior to the proposed commencement date under the Access Request.
- (g) If an Access Request is rejected, that Access Request's priority is lost.
- (h) A Prospective Shipper may at any time before Epic Energy accepts an Access Request withdraw its Access Request by notice in writing. In this case, any refund of the Prescribed Fee is entirely within the discretion of Epic Energy.
- (i) A Prospective Shipper may amend an Access Request at any time prior to its acceptance by Epic Energy by submitting a further Access Request form which form expressly states that it amends the previous Access Request ("Original Access Request") and is marked up to show the changes from the Original Access Request. The amended Access Request supersedes the Prospective Shipper's Original Access Request and the following shall apply:
- (i) If the amendment is limited to a reduction in a change in requested Commencement Date, or is not in Epic Energy's opinion a material change to the Original Access Request, the amended Access Request will be deemed to have been lodged on the date of the Original Access Request.
  - (ii) In all other cases, if Epic Energy determines the amended Access Request is materially different from the Original Access Request to the extent that another Prospective Shipper whose Access Request has a position in the relevant queue after the Original Access Request is materially prejudiced, the amended Access Request will be deemed to have been lodged on the date on which it is received by Epic Energy.
- (j) This queuing policy is subject to any Capacity Expansion Options which may be granted by Epic Energy from time to time.
- (k) 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 as follows:
- (i) In relation to developable capacity – ahead of any Access Request already in the queue at the time of exercise of the Capacity Expansion Option; and
  - (ii) In relation to Spare Capacity – as if it were an Access Request lodged in the queue as at the time of exercise of the date of its exercise (*sic*). However, it will still be open for Epic Energy to deal with it in accordance with Paragraph 5.3(c).
- (l) Subject to Epic Energy complying with any confidentiality obligations to other Prospective Shippers, following receipt of an Access Request, Epic Energy will notify Prospective Shippers, in accordance with section 5 of the Code, of:
- (i) the time when that Access Request may be met; and
  - (ii) details of the position in the queue of that Access Request.
- (m) Within a reasonable time of Epic Energy becoming aware of any material change (in the context a Prospective User's application) in the expected timing of when the



Prospective User's Access Request in the relevant queue will be satisfied, Epic Energy will notify the Prospective User of the change.

266. My assessments of the specific revisions relating to each of the required amendments are as follows.
267. Epic Energy has addressed the requirement of Amendment 35 by revision by the new sub-clause 5.3(c) of the Proposed Access Arrangement which sets out the conditions in which an Access Request may be dealt with other than in order of the queue. These conditions are:
- the Access Request that is being dealt with out of order is materially different to the Access Requests which are first in time; and
  - the Prospective Users with the Access Requests which are first in time do not suffer any material prejudice as a result.
268. The proposed conditions under which Access Requests may be dealt with other than in order of the queue are unambiguous. They are also consistent with the concept of a first-in-time, first-in-right queue, to the extent that not suffering material prejudice will mean that dealing with an Access Request out of order will not mean that other Users with queued Access Requests face a material change in the expected time of fulfilment of the Access Request. I am satisfied that the revisions incorporate Amendment 35.
269. Epic Energy has addressed the requirement of Amendment 36 by the new sub-clauses 5.3(f) and (g) of the Proposed Access Arrangement. Sub-clause 5.3(f) sets out the conditions in which an Access Request may be rejected. These conditions are:
- the Access Request requires enhancement to or expansion of the DBNGP system for it to be met and the enhancement or expansion is inconsistent with Epic Energy's extensions and expansions policy as set out in the Access Arrangement; or
  - the Prospective User is, to Epic Energy's satisfaction, not in a position to meet its obligations under the Access Contract; or
  - the requested Capacity can not be provided having regard to the load characteristics set out in the Access Request and the load characteristics of other Users; or
  - where the Access Request is for a Non-Reference Service, Epic Energy and the Prospective User have not reached agreement concerning the terms and conditions for the Non-Reference Service by 24 months prior to the proposed commencement date under the Access Request.
270. The first three of the conditions under which an Access Request may be rejected relate to an inability of the Access Request to be met, or a view formed by Epic Energy that the Prospective User would be unable to meet its obligations under an Access Contract. I am satisfied that these conditions otherwise address Amendment 36, except that I consider that the proposed sub-clause 5.3(f)(ii) provides Epic Energy with too broad a discretion to enable a Prospective User to understand in advance how



the Queuing Policy would operate. In my view sub-clause 5.3(f)(ii) should be limited to a situation where the Prospective User is, to Epic Energy's satisfaction as a reasonable and prudent pipeline operator, not in a position to meet its obligations under the Access Contract.

271. The fourth condition relates to Non-Reference Services and establishes a minimum time period of 24 months prior to commencement of the Service by which time the terms and conditions for the Access Contract must have been determined. I accept that a time limit on negotiation of terms and conditions otherwise addresses the reasons for Amendment 36. However, I do not consider that the application of these time limits, in the event that the terms and conditions being negotiated are the subject of arbitration under section 6 of the Code, satisfactorily incorporates Amendment 36 or otherwise addresses the reasons for Amendment 36.
272. Epic Energy has not revised the Proposed Access Arrangement in accordance with Amendment 37, but instead has revised clause 5.3 of the Access Arrangement to indicate that there is a single queue for all Access Requests (sub-clause 5.3(a)), and that Access Requests may be dealt with other than in order of the queue if they are for materially different services and that other Access Requests are not materially prejudiced (clause 5.3(c)).
273. In a submission to me, Epic Energy explained the reasons for the approach taken in the Revised Proposed Access Arrangement.<sup>55</sup>

Epic Energy has by virtue of its amendments to the queuing policy, clearly set out the priority of access requests of prospective shippers and believes it has therefore dealt with the issue the Regulator relies on as his reasoning for this amendment.

In any event Epic Energy considers that there is unlikely to be any services independent in their use of pipeline capacity that would require a separate queue. By way of example, if spare capacity became available and there was a queue for a firm service and a separate queue for a seasonal service, and for a peak and loan service, and for a peaking service and potentially for other non reference services, we query how Epic Energy would determine which queue would get priority to the available spare capacity.

Further Epic Energy considers that a single (*sic*) queue as proposed is less complicated and easier to manage (outcomes relating to clarity for shippers that would also satisfy the reasoning behind the Regulator's reasoning for many of the amendments relating to queuing policy).

274. I am satisfied that the revisions made to the Access Arrangement in respect of Amendment 37 would have the same effect as establishing multiple queues. I therefore consider that the Revised Proposed Access Arrangement otherwise addresses my reasons for requiring Amendment 37.
275. Amendment 38 required that clause 5.3 and/or 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 existing Spare Capacity of the pipeline where there is no Access Request in a queue that could otherwise be satisfied by that Spare Capacity.

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<sup>55</sup> Epic Energy Submission Post Final Decision Submission #1, PDFS#1, Revised Access Arrangement and Access Arrangement Information, para 4.10 – 4.12.

276. Epic Energy has not revised the Proposed Access Arrangement in accordance with this required amendment, but instead has addressed the requirements of Amendment 38 through the new sub-clauses 5.3(j) and (k). Sub-clause 5.3(k)(ii) indicates that if a Capacity Expansion Option is exercised in respect of Spare Capacity, then it is treated as an Access Request and placed in the queue for spare capacity according to the time and date at which it was exercised. As this sub-clause acts to prevent the “jumping” of the queue for Spare Capacity by exercise of a Capacity Expansion Option, I am satisfied that the revisions to the Access Arrangement otherwise address my reasons for Amendment 38.
277. Amendment 39 requires that clause 5.3 of the Proposed Access Arrangement 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.
278. Epic Energy has addressed the required amendment by revision of the Proposed Access Arrangement to insert the new sub-clauses 5.3(h) and (i). I am satisfied that these revisions to the Access Arrangement incorporate Amendment 39.
279. Amendment 40 requires that 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.
280. Epic Energy has addressed the required amendment by revision of the Proposed Access Arrangement to insert the new sub-clause 5.3(l). I am satisfied that these revisions to the Access Arrangement incorporate Amendment 40.
281. Amendment 41 requires that 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.
282. Epic Energy has addressed the required amendment by revision of the Proposed Access Arrangement to insert the new sub-clause 5.3(m). I am satisfied that these revisions to the Access Arrangement incorporate Amendment 41.

#### **EXTENSIONS/EXPANSIONS POLICY**

283. Epic Energy provided an Extensions/Expansion Policy in clause 12 of the Proposed Access Arrangement. Under the policy, Epic Energy indicates that it will enhance or expand the capacity of the DBNGP where it considers the requirements of section 6.22 of the Code (relating to a requirement by the Arbitrator to expand the pipeline) are satisfied. It will otherwise enhance or expand capacity at its discretion.
284. Under the proposed Extensions/Expansions Policy, Epic Energy indicated that it may from time to time offer Capacity Expansion Options that are for Firm Service Capacity on the DBNGP. A Capacity Expansion Option would give a Prospective User a right to a specified quantity of Capacity on particular terms and conditions. Capacity Expansion Options would have a particular purchase price determined by Epic Energy and would be capable of being traded with other Prospective Users.

Expansions of the DBNGP pursuant to Capacity Expansion Options would be treated as part of the Covered Pipeline unless Epic Energy states otherwise.

285. Epic Energy proposed that any extension or expansion to the pipeline will become part of the Covered Pipeline unless Epic Energy elects otherwise. In the case of extensions or expansions undertaken other than as a result of exercise of a Capacity Expansion Option, Epic Energy will provide notice to the Regulator of the extension or expansion that Epic Energy elects will not become part of the Covered Pipeline.
286. Epic Energy also proposed that expansions or extensions of the DBNGP that become part of the Covered Pipeline will not affect Reference Tariffs in the current Access Arrangement Period. Epic Energy proposed that it may from time to time seek surcharges or capital contributions in respect of New Facilities Investment. Where it does not do so, a User using incremental capacity would pay the Reference Tariff.
287. In my Final Decision I required five amendments to the Proposed Access Arrangement, as follows.

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

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 44

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.

Amendment 45

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 any intention to impose surcharges.

Amendment 46

The Extensions/Expansions Policy of the proposed Access Arrangement should be amended to make provision for Epic Energy to advise the Regulator of a decision by Epic Energy to not include an extension or expansion of the DBNGP as part of the Covered Pipeline.

288. Epic Energy has revised the Extensions/Expansions Policy as follows.

12. EXTENSIONS/EXPANSIONS POLICY

12.1 If the following conditions are satisfied, Epic Energy will enhance or expand the capacity of the DBNGP and in such circumstances, the provisions of Paragraph 7.21 will apply:

- (a) There is insufficient spare capacity on the DBNGP to satisfy all of the capacity being sought under the Access Request.
- (b) A Shipper provides Epic Energy with an Access Request that contains the following:
  - (i) The Access Request is for Firm Service.
  - (ii) The Access Request is for an Access Contract of at least 20 years in duration.

- (iii) The proposed commencement date of the Access Contract is no earlier than 30 months after the date the Access Request is received and entered in the queue.
- (iv) The Access Request requests capacity on the DBNGP at a Delivery Point for at least a total MDQ of 10 TJ per Day.
- (c) There is no dispute between Shipper and Epic Energy in relation to the DBNGP.
- (d) Epic Energy has not expanded the DBNGP within 12 months prior to the Access Request being received (whether as a result of an earlier Access Request being received from the Shipper or otherwise).

12.2 If the conditions in Paragraph 12.1 are not satisfied the following will apply:

- (a) Epic Energy will enhance or expand the capacity of the DBNGP to meet the gas transportation needs of Prospective Shippers where Epic Energy believes the tests in section 6.22 of the Code have been satisfied, and Epic Energy may otherwise enhance or expand the capacity in the DBNGP to meet the needs of Prospective Shippers.
- (b) Unless Epic Energy states otherwise, an expansion of the DBNGP is to be treated as part of the Covered Pipeline. Epic Energy shall provide written notice to the Regulator of any decision not to include any expansion or extension of the DBNGP in the Covered Pipeline.
- (c) If Epic Energy proposes to extend or enhance the DBNGP for a purpose other than meeting its obligations to the holder of a Capacity Expansion Option, the extension or expansion is to become part of the Covered Pipeline unless Epic Energy elects otherwise. Epic Energy will give the Regulator notice of an extension or expansion which Epic Energy elects will not become part of the Covered Pipeline.
- (d) If an extension or expansion of the DBNGP becomes part of the Covered Pipeline, the extension or expansion will not affect the Reference Tariff before the next Revisions Commencement Date.
- (e) Epic Energy may from time to time seek surcharges or capital contributions from Prospective Shippers in respect of new facilities investment in accordance with sections 8.23 to 8.26 of the Code. If Epic Energy intends to levy a Surcharge on Shippers, it will provide written notice of its intention to do so.
- (f) Except where Epic Energy imposes a surcharge or seeks a capital contribution, Shipper's using incremental capacity will pay the Reference Tariff.

12.3 To assist Prospective Shippers with their future gas transportation needs, Epic Energy may from time to time offer options for capacity on the DBNGP which require expansions ("Capacity Expansion Options").

12.4 A Capacity Expansion Option gives a Prospective Shipper a right to a specified quantity of capacity on the terms and conditions specified in the Capacity Expansion Option. A Capacity Expansion Option will have a purchase price to be determined by Epic Energy and is able to be traded by the Prospective Shipper to another Prospective Shipper.

~~12.6 Unless Epic Energy states otherwise, an expansion of the DBNGP is to be treated as part of the Covered Pipeline. Epic Energy shall provide written notice to the Regulator of any decision not to include any expansion or extension of the DBNGP in the Covered Pipeline.~~

~~12.7 If Epic Energy proposes to extend or enhance the DBNGP for a purpose other than meeting its obligations to the holder of a Capacity Expansion Option, the extension or expansion is to become part of the Covered Pipeline unless Epic Energy elects otherwise. Epic Energy will give the Regulator notice of an extension or expansion which Epic Energy elects will not become part of the Covered Pipeline.~~

~~12.8 If an extension or expansion of the DBNGP becomes part of the Covered Pipeline, the extension or expansion will not affect the Reference Tariff before the next Revisions Commencement Date.~~

- ~~12.9 Epic Energy may from time to time seek surcharges or capital contributions from Prospective Shippers in respect of new facilities investment. Surcharges may be levied on Shippers provided Epic Energy is reasonably satisfied that the principles in section 8.26 of the Code apply.~~
- ~~12.9 Except where Epic Energy imposes a surcharge or seeks a capital contribution, Shipper's using incremental capacity will pay the Reference Tariff.~~
- ~~12.1 Epic Energy will enhance or expand the capacity of the DBNGP to meet the gas transportation needs of Prospective Shippers where Epic Energy believes the tests in Paragraph 6.22 of the Code have been satisfied, and Epic Energy may otherwise enhance or expand the capacity in the DBNGP to meet the needs of Prospective Shippers.~~
- ~~12.2 To assist Prospective Shippers with their future gas transportation needs, Epic Energy may from time to time offer options for Firm Service capacity on the DBNGP ("Capacity Expansion Options").~~
- ~~12.3 A Capacity Expansion Option gives a Prospective Shipper a right to a specified quantity of capacity for Firm Service on the terms and conditions specified in the Capacity Expansion Option. A Capacity Expansion Option will have a purchase price to be determined by Epic Energy and is able to be traded by the Prospective Shipper to another Prospective Shipper.~~
- ~~12.4 Unless Epic Energy states otherwise in the Capacity Expansion Option, an expansion of the DBNGP pursuant to the exercise of a Capacity Expansion Option by the holder is to be treated as part of the Covered Pipeline.~~
- ~~12.5 If Epic Energy proposes to extend or enhance the DBNGP for a purpose other than meeting its obligations to the holder of a Capacity Expansion Option, the extension or expansion is to become part of the Covered Pipeline unless Epic Energy elects otherwise. Epic Energy will give the Regulator notice of an extension or expansion which Epic Energy elects will not become part of the Covered Pipeline.~~
- ~~12.6 If an extension or expansion of the DBNGP becomes part of the Covered Pipeline, the extension or expansion will not affect the Reference Tariff before the next Revisions Commencement Date.~~
- ~~12.7 Epic Energy may from time to time seek surcharges or capital contributions from Prospective Shippers in respect of new facilities investment~~
- ~~12.8 Except where Epic Energy imposes a surcharge or seeks a capital contribution, Shipper's using incremental capacity will pay the Reference Tariff.~~
289. The specific revisions relating to each of the required amendments are examined as follows.
290. Amendments 42, 43, 44 and 45 are purportedly addressed in new sub-clause 12.2(e) of the Revised Proposed Access Arrangement, as follows:
- 12.2 If the conditions in Paragraph 12.1 are not satisfied the following will apply:
- ...
- (e) Epic Energy may from time to time seek surcharges or capital contributions from Prospective Shippers in respect of new facilities investment in accordance with sections 8.23 to 8.26 of the Code. If Epic Energy intends to levy a Surcharge on Shippers, it will provide written notice of its intention to do so.
291. In part, Amendments 42, 43 and 44 require the Proposed Access Arrangement to be amended to indicate the circumstances in which Surcharges and Capital Contributions may be sought in relation to an extension or expansion.

292. Clause 12.1 indicates that for contracts meeting a range of conditions – including that they are of significant size (>10 TJ/day) and duration (at least 20 years) – that (with reference to clause 7.21 of the Revised Proposed Access Arrangement) the new User would pay the Reference Tariff. Clause 12.2 is indicated to apply where the conditions of clause 12.1 are not satisfied, and sub-clause 12.2(e) indicates that Epic Energy may from time to time seek surcharges or capital contributions from Prospective Shippers in respect of new facilities investment in accordance with sections 8.23 to 8.26 of the Code. Amendments 42 and 43 require an express statement in the Access Arrangement of the circumstances in which Surcharges and Capital Contributions will be sought. Epic Energy does not intend, by its revisions, to agree to fund part or all of an expansion or extension to the Pipeline in circumstances where the tariffs specified in Schedule 39 of the Asset Sale Agreement do not apply. To the contrary, Epic Energy has confirmed that in fact there are currently no circumstances of which it is aware where Epic Energy will fund any expansion of the capacity of, or an extension to, the DBNGP without requiring a Surcharge or Capital Contribution to be paid by a Shipper requiring a Reference Service. In effect, this means that Surcharges and Capital Contributions are likely to be sought in all cases. However, Epic Energy has indicated that it wishes to “preserve its options” in relation to an expansion that is not consistent with its expansion commitment from the DBNGP sale. In the circumstances, the proposed revisions are not properly responsive to the Final Decision and the proposed revisions do not incorporate or substantially incorporate, or otherwise address the reasons for, Amendments 42 and 43.
293. Amendment 44 also requires that it be indicated in the Access Arrangement that Surcharges and Capital Contributions will only be sought in accordance with the relevant provisions of the Code. I am satisfied that the proposed sub-clause 12.2(e) meets this requirement.
294. Amendment 45 requires that Epic Energy provide written notice to the Regulator of any intention to impose Surcharges. Epic Energy’s proposed sub-clause 12.2(e) requires provision of notice if a Surcharge is to be levied, but does not indicate that the notice is to be provided to the Regulator. Epic Energy does not provide any adequate reasons why it has not made such a revision. I am not satisfied that the revision incorporates or substantially incorporates Amendment 45, or otherwise addresses the reasons for Amendment 45.
295. Amendment 46 requires that the Extensions/Expansions Policy of the Proposed Access Arrangement should be amended to make provision for Epic Energy to advise the Regulator of a decision by Epic Energy to not include an extension or expansion of the DBNGP as part of the Covered Pipeline.
296. Epic Energy has responded to Amendment 46 in the new sub-clause 12.2(b) of the Revised Proposed Access Arrangement, as follows:

12.2 If the conditions in Paragraph 12.1 are not satisfied the following will apply:

...

- (b) Unless Epic Energy states otherwise, an expansion of the DBNGP is to be treated as part of the Covered Pipeline. Epic Energy shall provide written notice to the Regulator of any decision not to include any expansion or extension of the DBNGP in the Covered Pipeline.

297. Sub-clause 12.2(b) provides for the Regulator to be notified of any decision not to include any expansion or extension of the DBNGP in the Covered Pipeline in circumstances where the conditions of clause 12.1 are not satisfied. Amendment 46 and my reasons for Amendment 46 do not contemplate such a qualification on notification of the Regulator. As such, I am not satisfied that the new sub-clause 12.2(b) incorporates, substantially incorporates or otherwise addresses Amendment 46.
298. In addition to the revisions to the Extensions/Expansions Policy that specifically address amendments required under my Final Decision, I note other elements of the revisions as follows.
299. Firstly, I note that Epic Energy has used the term “enhance” in respect of New Facilities investment in the DBNGP, but does not define this term nor distinguish between an “enhancement” and an “expansion” of the DBNGP. In view of the resultant ambiguity in the Extensions/Expansions Policy I am not satisfied that the revisions incorporate Amendments 42, 43 and 44.
300. Thirdly, in revisions made to the Extensions/Expansions Policy, Epic Energy sets out a number of conditions in section 12.1 that, if met by an Access Request, would result in an extension or expansion of the pipeline and no Capital Contributions and Surcharges would apply. These revisions do not have the effect of incorporating any of the Amendments 42, 43, 44, 45 or 46. In the circumstances, I am not satisfied that such conditions otherwise address the reasons I required those amendments.
301. In a confidential submission made to me on 5 December 2003, Epic Energy indicated a desire to have further revisions made to the Extensions/Expansions Policy of the Access Arrangement.<sup>56</sup> It is not clear whether by this submission Epic Energy intended to revise its Proposed Access Arrangement. In any case, I take the view that the provision proposed by Epic Energy is merely declaratory of rights of existing Users of the DBNGP under existing contracts and as such it has no material effect. Further, the revision is not related to any amendments to the Access Arrangement I required in my Final Decision or Supplementary Reasons. Nor does the revision otherwise address the reasons for those amendments.

#### **REVIEW AND EXPIRY OF THE ACCESS ARRANGEMENT**

302. Section 13 of the Proposed Access Arrangement specified the date on which Epic Energy would submit revisions to the Regulator and the date Epic Energy intended those revisions to commence. Epic Energy proposed that the Revisions Submission Date is 1 July 2004 and that the Revisions Commencement Date is 1 January 2005.
303. In my Final Decision, I noted that the Access Arrangement Period proposed by Epic Energy extended only to the end of 2004. I also recognised that the Revisions Commencement Date, which marks the end of the Access Arrangement Period and the beginning of the next, is a matter for determination by Epic Energy, and that Epic

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<sup>56</sup> Epic Energy Submission in Response to Supplemental Reasons and Amendment SRAS#1: Behavioural Regime.

Energy had not indicated any intent to change the Revisions Commencement Date from that indicated in the Proposed Access Arrangement.

304. I did, however, consider it prudent for the Access Arrangement to provide for a nine-month period for assessment of proposed revisions submitted in accordance with the Revisions Submission Date, and hence for the Revisions Submission Date to be nine months prior to the Revisions Commencement Date. The following amendment of the Proposed Access Arrangement was required:

Amendment 47

The Access Arrangement should be amended to provide for a Revisions Submission Date on or before 1 April 2004.

305. Epic Energy has revised clause 13 of the Access Arrangement to extend the Access Arrangement Period beyond that initially proposed, as follows:

13. REVIEW DATE

- (a) The Revisions Submission Date is ~~1 July 2004~~ the later of:
- (i) 1 April 2009;
  - (ii) 6 months after the date the Access Arrangement becomes effective
  - (iii) 6 months after any decision is made by the Gas Review Board or other relevant appeals body becomes effective.
- (b) The Revisions Commencement Date is ~~1 January 2005~~ the later of:
- (i) 1 January 2010;
  - (ii) 15 months after the date the Access Arrangement becomes effective;
  - (iii) 15 months after any decision is made by the Gas Review Board or other relevant appeals body.

306. Epic Energy has supported its proposed changes to the Revisions Submission Date and Revisions Commencement Date with reasons as follows:<sup>57</sup>

Epic Energy considers it appropriate to extend the revisions submission and commencement date for the following reasons:

- The original proposed Access Arrangement would be almost at an end based on the current dates;
- Given the cost involved in the regulatory approval process it is in the interest of users and Epic Energy to extend the revisions submission and commencement date to those set out in the revised Access Arrangement;
- Epic Energy has where possible dealt with all issues that the Regulator highlighted as needing to be resolved as part of the review of the next Access Arrangement being:
  - Key Performance Indicators – these are outlined in section 7 of the revised Access Arrangement Information;
  - Forecast Data – this is provided in the revised Access Arrangement Information at sections 3, 4 and 5.

<sup>57</sup> Epic Energy, 8 August 2003, Post Final Decision Submission #1, PFDS#1, Revised Access Arrangement and Access Arrangement Information, para 7.5.



- Gas specification – the gas specification as set out in the DBNGP Access Manual is the gas specification defined in a number of existing contracts. These contracts have end dates of 2010 with further options to extend until 2015. For the gas specification to be changed during this period would be to deprive these existing Shippers of a contractual right that was in existence prior to the date the proposed Access Arrangement was submitted and is therefore contrary to section 2.25 of the Code. Therefore Epic Energy proposes to retain the gas specification for the proposed Access Arrangement to ensure that the contractual rights of existing shippers are not breached.
- 307. The revisions proposed by Epic Energy address the reasons for Amendment 47 inasmuch as they provide for a Revisions Submission Date of nine months prior to the Revisions Commencement Date.
- 308. Epic Energy has proposed extending the Access Arrangement Period significantly beyond that in the Proposed Access Arrangement. There may be merit in such a change for reasons of avoiding an almost immediate review of the Access Arrangement after approval. However, this was not the reason I required Amendment 47. Nor am I satisfied that the newly proposed term of the Access Arrangement incorporates, substantially incorporates or otherwise addresses Amendment 47.
- 309. Further, I do not consider such a substantial revision to the proposed Access Arrangement is appropriate at this late stage in the process of assessment of the Access Arrangement. Any extension of the Access Arrangement Period would require further consideration of significant matters such as forecasts and allocation of costs. The principles of procedural fairness require that interested parties have an opportunity to comment upon new material that might adversely affect their interests. They have not had such an opportunity with respect to this proposed revision.
- 310. It is open to Epic Energy to apply to me to have the Access Arrangement Period extended during the Access Arrangement Period itself. Section 7.19 of the Code gives me the discretion to consider such an application provided it is received before the expiration of the Access Arrangement Period.
- 311. While it is unfortunate that the delay in the approval process has significantly shortened the period between final approval and review of the Access Arrangement, it should be noted that the cause of a substantial amount of delay was a dispute about the proper approach to setting the Initial Capital Base under the Code. As the Initial Capital Base has now been set and will apply in future Access Arrangement Periods, this should make the approval process more expeditious in the future.

#### **OTHER CHANGES TO THE ACCESS ARRANGEMENT**

- 312. In the Revised Proposed Access Arrangement, Epic Energy has made a number of general changes that are unrelated to any amendments in the Final Decision or the Supplementary Reasons, and appear to be unrelated to any component of the Access Arrangement required under sections 3.1 to 3.20 of the Code. For the sake of completeness, I have considered these changes which are described and commented on as follows.

## Description of the Pipeline System

313. Clause 3 of the Revised Proposed Access Arrangement provides a description of the DBNGP system. Epic Energy has revised this clause as follows.

3.1 The DBNGP is as described in the following pipeline licences:

(a) PL 40 (as amended or varied); and

(b) ~~The pipeline licence to be granted for the construction and operation of CS10 in Kwinana~~ [PL 47 \(as amended or varied\)](#)

together with any extensions or modifications to the DBNGP pursuant to Paragraph 10.

3.2 A detailed description of the DBNGP is contained in the Access Arrangement Information.

314. The revisions represent an updating of information provided in the Access Arrangement, in respect of the details of a pipeline licence for part of the pipeline system that was in the process of construction when the Proposed Access Arrangement was initially submitted to me. As the revisions do not in any way relate to an amendment, I cannot approve them pursuant to section 2.19 of the Code. However, as an aside, I note that the revisions appear to be appropriate to include in the Access Arrangement.

## Commencement of the Access Arrangement

315. Clause 4 of the Proposed Access Arrangement stated the date of commencement of the Access Arrangement. Epic Energy revised this clause as follows.

4 Commencement

The Access Arrangement commences on ~~the latter of:~~ [the date the Access Arrangement becomes effective under the Gas Pipelines Access Law.](#)

~~(a) 1 January 2000; or~~

~~(b) The date the Regulator approves the Access Arrangement.~~

316. There is no clear statement of the date of commencement of the Access Arrangement. In the normal course of events the Access Arrangement would become effective as of the date of approval by the Regulator. It may be appropriate to specify the date on which the Access Arrangement becomes effective, which was contemplated by clause 4 as initially proposed. Taking into account also that the revision is unrelated to any required amendment, I do not consider that the revision is appropriate.

## Definitions

317. Epic Energy has made the following changes to definitions of terms in the Access Arrangement.

[Access Request](#) means the request for access as set out in the Access Guide;

[Commencement Date](#) means 08:00 hours on the date for commencement of the Service set out in the Access Request executed by Epic Energy

[Gas Review Board](#) means the West Australian Gas Review Board established by section 50 of the Gas Pipelines Access (Western Australia) Act 1998;

**Reference Tariff** means Epic Energy's reference tariff for Firm Service as set out in the Tariff Schedule [plus the Regulator's Funding Charge](#);

**Seasonal Service** means capacity made available by Epic Energy in relation to a particular Month out of incremental capacity [\(being capacity over and above Firm Service Capacity\)](#) available due to seasonal factors;

**Secondary Market Service** means the service acquired by a Shipper from the Secondary Market, [as described in the Access Arrangement Information](#) and which is subject to the Secondary Market Terms and Conditions;

[Terms used in capitals in this Access Arrangement have the same meaning as exists under the Code unless the context otherwise requires.](#)

318. I note that the definition of "Reference Tariff" has been changed to include the proposed Regulator's Funding Charge. As explained in this further final decision, I do not consider that the introduction of this charge is permissible under the Code. As such, I do not consider that the revision to the definition of the Reference Tariff is appropriate. Further, as the revisions do not in any way relate to an amendment, I cannot approve them pursuant to section 2.19 of the Code.
319. Other changes to or new definitions of terms are consistent with my understanding of the terms at the time of the Final Decision.

**ANNEXURE A****REVISED ACCESS ARRANGEMENT DOCUMENTS  
AND SUBMISSIONS**

<b>Document Title</b>	<b>Version</b>	<b>Date Submitted</b>	<b>Document Content</b>
Dampier to Bunbury Natural Gas Pipeline Revised Proposed Access Arrangement Under the National Access Code	Public.	8 August 2003	Revised Proposed Access Arrangement.
Dampier to Bunbury Natural Gas Pipeline Revised Proposed Access Arrangement Under the National Access Code	Marked-up. Public.	8 August 2003	Revised Proposed Access Arrangement with revisions marked using the MS Word revisions function.
Dampier to Bunbury Natural Gas Pipeline Annexure "B": Revised Access Arrangement Terms and Conditions Under the National Access Code	Public	15 August 2003	Revised Terms and Conditions for the Firm Service, provided as Annexure B to the Access Arrangement.
Dampier to Bunbury Natural Gas Pipeline Annexure "B": Revised Access Arrangement Terms and Conditions Under the National Access Code	Marked-up. Public	15 August 2003	Revised Terms and Conditions for the Firm Service, provided as Annexure B to the Access Arrangement with revisions marked using the MS Word revisions function.
Dampier to Bunbury Natural Gas Pipeline Revised Proposed Access Arrangement Information	Confidential.	8 August 2003	Revised proposed Access Arrangement Information.
Dampier to Bunbury Natural Gas Pipeline Revised Proposed Access Arrangement Information Under the National Access Code	Marked-up. Confidential.	8 August 2003	Revised proposed Access Arrangement Information with revisions marked using the MS Word revisions function.
Dampier to Bunbury Natural Gas Pipeline Revised Proposed Access Arrangement Information Under the National Access Code	Confidential	5 December 2003	Corrected version of the Revised Proposed Access Arrangement Information submitted on 8 August 2003.
Post Final Decision Submission PDFS#1, Revised Access Arrangement and Access Arrangement Information	Public	15 August 2003	Submission on the reasoning behind the revised Access Arrangement and Access Arrangement Information.

<b>Document Title</b>	<b>Version</b>	<b>Date Submitted</b>	<b>Document Content</b>
Post Final Decision Submission PDFS#1, Revised Access Arrangement and Access Arrangement Information	Confidential	15 August 2003	Submission on the reasoning behind the revised Access Arrangement and Access Arrangement Information.
PFDS#1 Attachment 1	Confidential	8 August 2003	<i>Additional Note on Fixed Principles and the Deferred Recovery Account for the DBNGP</i> , paper prepared for Epic Energy by Paul Carpenter of the Brattle Group.
PFDS#1 Attachment 3	Confidential	8 August 2003	<i>Note on Loss of Initial Equity</i> , explanatory note prepared by Epic Energy.
PFDS#1 Attachment 4	Confidential	8 August 2003	<i>Ripper Backs Pipeline Sale</i> , article of the Australian Financial Review, 7 August 2003, p 17.
PFDS#1 Attachment 5	Confidential	8 August 2003	<i>A Further Note on the Cost of Capital for the Dampier to Bunbury Natural Gas Pipeline</i> , paper prepared for Epic Energy by M. Alexis Maniatis of the Brattle Group.
PFDS#1 Attachment 6	Confidential	8 August 2003	Series of letters between Gas Pipeline Sale Steering Committee and Epic Energy between 1 March and 3 March 2003 ( <i>sic</i> <sup>58</sup> ) outlining details of proposed expansions at time of sale.
PFDS#1 Attachment 7	Confidential	8 August 2003	<i>Expansion of the DBNGP</i> , Epic Energy paper on gas throughput forecasts and proposed pipeline expansion.
PFDS#1 Attachment 8	Confidential	8 August 2003	Copies of letters disputing the Regulator's findings in the Final Decision in relation to derivation of the Epic Energy purchase price.
Dampier to Bunbury Natural Gas Pipeline Supplemental ( <i>sic</i> ) Reasons and Amendment SRAS#1: Behavioural Regime	Confidential	5 December 2003 <sup>59</sup>	Submission in response to the Regulator's Supplementary Reasons and Amendment

<sup>58</sup> Indicated date of 2003 appears to be a typographical error as letters are for the same period in 1998.

<sup>59</sup> In an apparent typographical error, this submission is dated 5 November 2003.