Economic Regulation Authority

Western Australia

Issues Paper

To Assist with Submissions on the Proposed Revisions to the Access Arrangement for the Mid-West and South-West Gas Distribution Systems

April 2004

TABLE OF CONTENTS

1 INTRODUCTION

On 31 March 2004, AlintaGas Networks Pty Ltd (AGN), submitted to the Economic Regulation Authority (Authority) as the Relevant Regulator proposed revisions to the Access Arrangement together with the applicable Access Arrangement Information[1] for the Mid-West and South-West Gas Distribution Systems (GDS) for approval under the *National Third Party Access Code for Natural Gas Pipeline Systems* (Code).

The proposed revised Access Arrangement and applicable Access Arrangement Information documents are available at no cost from the Economic Regulation Authority (Authority) web site (www.era.wa.gov.au). Printed copies of the documentation are also available for $25.00 per set. Requests for the documents can be made to:

Mr Peter Rixson
Economic Regulation Authority
Fax: (08) 9213 1999
Telephone: (08) 9213 1968
Email: peter.rixson@era.wa.gov.au

A notice was issued by the Authority to interested parties and advertisements were published in the *West Australian* and the *Australian* on Wednesday 7 April 2004 advising that the proposed revisions to the Access Arrangement and the applicable Access Arrangement Information had been lodged by AGN. The notice and advertisements invited public submissions to be lodged with the Authority by 4pm Friday 14 May 2004.

After considering all public submissions, the Authority is required to issue a Draft Decision. The Code requires that if the Authority proposes to not approve the proposed revisions to the Access Arrangement, the Draft Decision must state the amendments (or nature of the amendments) which need to be made for it to be approved.

After publication of the Draft Decision, interested parties will be given a further opportunity to make submissions. The closing date for submissions on the Draft Decision will be specified at the time the Draft Decision is released. The Authority is required to issue a Final Decision on the proposed revisions to the Access Arrangement after considering these submissions.

At any time prior to the Final Decision, the Authority, of its own volition, may require AGN to make changes to the applicable Access Arrangement Information. Further, if requested to do so by any interested person, the Authority must consider whether or not the applicable Access Arrangement Information meets the requirements of the Code, and whether to require AGN to make changes to the Access Arrangement

[1] The Access Arrangement Information, as it applies to the proposed revisions to the Access Arrangement, is hereafter referred to as the applicable Access Arrangement Information.

Information. The Authority will provide notice to interested parties as to the availability of any amended Access Arrangement Information document.

The Authority is empowered to produce and publish information relevant to its functions. In that setting, the purpose of this issues paper is to:

- list a number of issues which the Authority has identified as potentially relevant to assessing the proposed revisions to the Access Arrangement and the applicable Access Arrangement Information for the AGN GDS. This list is not intended to be exhaustive; and

- assist interested parties in making submissions on the issues raised in this paper and other relevant issues that they consider should be examined in the assessment of the proposed revisions to the Access Arrangement.

The Access Arrangement and the applicable Access Arrangement Information should be read in conjunction with this issues paper as it necessarily provides only a simplified account of the regulatory and contractual instruments, AGN's proposals and the arguments advanced for them. The issues paper does not attempt to replicate those documents.

2 BACKGROUND

2.1 The Pipeline System

The Mid-West and South-West Gas Distribution Systems (GDS) is the principal gas distribution network servicing gas consumers in the south western coastal area of Western Australia stretching from Geraldton in the north to Busselton in the south.

The GDS is not a contiguous system, although all its discrete segments are connected through one or more receipt points and meter stations to the Dampier to Bunbury Natural Gas Pipeline as the main gas transmission pipeline delivering gas from the North-West of the state into the GDS. It also has a number of interconnections with the Parmelia Pipeline delivering gas from Perth Basin fields.

As at 31 March 2004, the GDS is understood to comprise approximately 11,320 kilometres of gas pipelines and associated facilities, including meters and delivery facilities sited at customers' premises. The pipelines range across high, medium and low pressure laterals and reticulation sub-networks. Gas flows from high pressure (above 300 kPa) steel pipeline laterals off the transmission pipeline through pressure regulator sets into the medium and low pressure system The medium and low pressure system is constructed predominately of polyvinyl chloride pipe.

The GDS delivers gas to a range of large industrial users, commercial and industrial sites and residences in the region. In total there are over 480,000 individual delivery points. The AGN anticipates that the number of delivery points will rise to over 555,000 by 2009. In 2003 the average quantity of gas delivered through the GDS was 82.7 terajoules (TJ) per day, with a seasonal peak of 129.7 TJ per day. AGN forecasts the average daily delivery of gas to increase to 87.7 TJ by 2009.

2.2 Revisions to the Access Arrangement in Context

The Code, given effect by the *Gas Pipelines Access (WA) Act 1998*, provides for the regulation of access to gas transmission and distribution systems in Western Australia. As set out in the preamble to the Code the objective of the Code is to establish a framework for third party access to gas pipelines that:

(a) facilitates the development and operation of a national market for natural gas; and

(b) prevents abuse of monopoly power; and

(c) promotes a competitive market for natural gas in which customers may choose suppliers, including producers, retailers and traders; and

(d) provides rights of access to natural gas pipelines on conditions that are fair and reasonable for both Service Providers and Users; and

(e) provides for the resolution of disputes.

In the context of this objective, Service Providers that operate gas pipelines and gas distribution systems covered by the Code (known as Covered Pipelines) are required to submit Access Arrangements for approval by the Relevant Regulator, in this case, the Authority. By a specified date after approval of such Access Arrangements, the Service Provider must submit proposed revisions thereto. The Code (sections 2.28 to 2.48) specifies the processes required for proposed revisions to be approved.

The GDS is a Covered Pipeline under the Code and the current Access Arrangement for the GDS was approved in July 2000. It specifies a Revisions Submission Date of 31 March 2004. It also specifies the intended Revisions Commencement Date to be 1 January 2005.

An Access Arrangement is a statement of the policies and the basic Terms and Conditions which apply to third party access to a Covered Pipeline. The Code (sections 3.1 to 3.20) specifies the minimum elements that are required to be included in Access Arrangements. Other elements may be included. A threshold requirement is the specification of one or more reference services for access to the pipeline system. Associated with these reference services are applicable Terms and Conditions for provision of those services together with Reference Tariffs, which operate as benchmark tariffs for specific reference services offered by the Service Provider.

A number of other principles and procedures governing access to the transmission system are also required by section 3 of the Code to be included in Access Arrangements, addressing matters such as queuing for services, capacity trading and extensions/expansions to the relevant pipeline system.

The Authority may approve revisions to the Access Arrangement only if satisfied that the Access Arrangement as revised contains the elements and satisfies the principles set out in sections 3.1 to 3.20 of the Code. Revisions to the Access Arrangement cannot be rejected on the basis that the Access Arrangement as revised does not address a matter that section 3 of the Code does not require it to address.

In assessing the proposed revisions to the Access Arrangement, the Authority must take into account the factors set out in section 2.24 of the Code, that is:

a) the legitimate business interests of AGN as the Service Provider and its investment in the Covered Pipeline;

b) firm and binding contractual obligations of the Service Provider or other persons (or both) already using the GDS;

c) the operational and technical requirements necessary for the safe and reliable operation of the GDS;

d) the economically efficient operation of the GDS;

e) the public interest, including the public interest in having competition in markets (whether or not in Australia);

f) the interests of Users and Prospective Users of the GDS; and

g) any other matters that the Authority considers are relevant.

It is important to note that the services (and Terms and Conditions including price) that are described in an Access Arrangement do not necessarily preclude a Service Provider and User from agreeing to the provision of a different service at a different price. In addition, the dispute resolution provisions of section 6 of the Code are available should there be a dispute as to the terms of supply of such other services.

3 ISSUES FOR CONSIDERATION

3.1 Required Contents of an Access Arrangement

Under section 3 of the Code a revised Access Arrangement must include, as a minimum, the following elements:

- **a Services Policy**, which must include a description of one or more services that the Service Provider will offer to Users and Prospective Users (sections 3.1 and 3.2 of the Code);
- **Reference Tariffs** and a R**eference Tariff Policy**, including one or more tariffs determined according to the Reference Tariff principles in section 8 of the Code (sections 3.3 to 3.5 of the Code);
- the **Terms and Conditions** on which the Service Provider will supply each reference service (section 3.6 of the Code);
- a **Capacity Management Policy**, incorporating a statement that the covered pipeline is either a contract carriage or market carriage pipeline (sections 3.7 and 3.8 of the Code);
- a **Trading Policy**, addressing the transfer between persons of rights to obtain a service (on a contract carriage pipeline) (sections 3.9 to 3.11 of the Code);
- a **Queuing Policy**, defining the priority that Prospective Users have to negotiate for specific capacity (sections 3.12 to 3.15 of the Code);
- an **Extensions/Expansions Policy**, setting out a method for determining whether an extension or expansion to the covered pipeline is or is not to be treated as part of the covered pipeline for the purposes of the Code (section 3.16 of the Code); and
- a **Review Date**, by which revisions to the revised Access Arrangement must be submitted, and a date by which those revisions are intended to commence (sections 3.17 to 3.20 of the Code).

The Authority proposes in this issues paper to discuss the proposed revised Access Arrangement by reference to each of these required elements. The issues paper has therefore been structured as follows. Section 3.2 of this issues paper discusses Services Policy. Section 3.3 deals with Reference Tariffs and Reference Tariff Policy. Sub-sections 3.4 to 3.10 discuss the remaining non-tariff issues required to be included in a revised Access Arrangement under section 3 of the Code.

This approach is not to be taken as limiting or confining the range of issues about which the Authority seeks submissions from the public. Under the Code the Authority's assessment of the proposed revisions must involve consideration of a range of matters in addition to whether the Access Arrangements meet the minimum content criteria in section 3 of the Code. The Authority therefore encourages interested persons to make submissions about any other issues.

In particular other issues to which submissions may be addressed include:

(a) the relevance of the objectives of the Code referred to in section 2.2 above to the Authority's assessment in the present case;

(b) the manner in which the Authority ought discharge its obligation to take into account the factors set out in section 2.24 of the Code in assessing the proposed revisions;

(c) the scope of any conflict between the objectives in section 8.1 of the Code in their application to the Reference Tariff determination to be made by the Authority in the present case, and how the Authority ought to exercise the discretion conferred by section 8.1 to determine the matter in which any conflicting objectives can best be reconciled or which of them should prevail;

(d) the regulatory approach which the Authority ought to take generally in determining whether or not to approve the proposed revisions to the Access Arrangement.

The above are issues to which submissions included in the applicable Access Arrangement Information by AGN appear relevant. They are also matters in relation to which the Full Court of the Supreme Court of Western Australia has made comments which may provide guidance to interested parties, in its decision in *Re Dr Ken Michael AM; Ex parte Epic Energy (WA) Nominees Pty Ltd & Anor* [2002] WASCA 231 (Epic Case). Parties wishing to make submissions in relation to these issues are referred to the relevant parts of the applicable Access Arrangement Information and to the Epic Case for further information.

3.2 Services Policy

Sections 3.1 and 3.2 of the Code require the revised Access Arrangement to include a Services Policy which must include a description of one or more services that the Service Provider will make available to Users and Prospective Users. The policy must contain one or more reference services which are likely to be sought by a significant part of the market, and any service or services that in the Authority's opinion should be included in the Services Policy.

To the extent practicable and reasonable, a Service Provider should make available elements of a service if requested by Users and Prospective Users and apply a separate tariff for each element of such a service.

The proposed revisions to the Access Arrangement for the AGN GDS make provision for the following classes of service.

(a) Reference Services

The proposed revisions to the Access Arrangement would provide for five Reference Services for haulage. These Reference Services are to be identified as Reference Service A1, A2, B1, B2 & B3 respectively.

The descriptions of Reference Services A1, B2 & B3 appear similar to those of Reference Service A, B2 & B3 offered currently.

AGN proposes to subdivide the current Reference Service B1 into new Reference Service A2 and new Reference Service B1. AGN proposes this to enable it to fulfil its responsibilities under the Retail Market Scheme that is to come into effect as a consequence of Full Retail Contestability (FRC) in gas that is intended to be implemented in Western Australia from May 2004. Information on the Retail Market Scheme is accessible on the Office of Energy web site (www.energy.wa.gov.au).

The distinction proposed by AGN between new Reference Services A2 and B1 is based on requiring in Reference Service A2 for telemetry to be installed as part of User Specific Delivery Facilities. Reference Service A2 is for Users taking 10 terajoules (TJ) or more, but less than 35 TJ of gas at a Delivery Point in any year of a Haulage Contract. Both Reference Services A2 and B1 are only available to Users taking less than a Contracted Peak Rate of 10 gigajoules (GJ) of gas per hour at a Delivery Point.

It is noted here and raised under the discussion of tariffs below, that AGN proposes that Reference Tariffs for the new Reference Services A2 and B1 should, for the first year of the next Access Arrangement Period (Year 1), vary from each other only to the extent of an additional component (charge) in Reference Service A2 related to the required User Specific Delivery Facilities.

A description of each proposed Reference Service is set out in Part A, clauses 12 to 16 of the revision to the Access Arrangement, with proposed Reference Tariffs in Part B, Schedules 1 to 5, and Terms and Conditions in Part C, Schedules 1 to 5, respectively.

AGN proposes in Part A, clauses 17 to 20, that it should have the discretion to vary the Haulage Contract at any time to allocate a Replacement Reference Service to commence 20 business days after giving notice. It is proposed that this right be exercised as a reasonable and prudent person having regard to information (if any) provided by an affected User who has been given 10 business days notice of AGN's intention to re-allocate.

AGN proposes in Part A, clause 29 that it may require Users or Prospective Users to hold contractual rights to Firm Capacity on an Interconnected Pipeline sufficient for delivery to meet the Contracted Peak Rate.

Issues for Consideration - Reference Services

- Are there other Services that are likely to be sought by a significant part of the market, that the Authority may consider should be included in the Services Policy? If there are such Services, whether a Reference Tariff should be included for each such Service? Alternatively, are changes required to the proposed Reference Services?

- Are there any issues for Users and Prospective Users arising from the proposed splitting of the current Reference Service B1 into Reference Service A2 and Reference Service B1?

- Does the proposed discretion for AGN to allocate a Replacement Reference Service after giving notice give rise to any issues for the affected User(s)?

- What are the expected consequences arising from the proposal that Users or Prospective Users can be required to hold firm capacity on an Interconnected Pipeline?

(b) Non-Reference Services

In addition to the Reference Services, the proposed revisions to the Access Arrangement makes provision for certain other Services (non-reference services) to be offered to Users and Prospective Users.

AGN proposes in Part A, clauses 21 to 23 of the revisions to the Access Arrangement, to continue to offer an Interconnection Service on negotiated terms, conditions and pricing. These conditions are to include that at all times the gas entering the GDS must comply with the Gas Quality Specification which remains unchanged.

AGN proposes in Part A, clauses 24 to 26 that it will negotiate in respect of other Services and accommodate as required Services determined by the Arbitrator. On the basis of its responsibilities under the Retail Market Scheme, AGN excludes from the revised Service Policy offering the current range of Ancillary Services (Disconnection Service, Reconnection Service, Additional Meter Reading Service and Additional Meter Testing Service).

Issues for Consideration - Non-Reference Services

- Are there issues that arise from conditions that may be specified as part of any negotiated Services Agreement for Interconnection Services?
- Are there concerns regarding the proposal to delete from the revised Access Arrangement those Services currently available as Ancillary Services and making them available through negotiation under some other process than the Code provides?
- Are there other services that the Authority may consider should be included in the Services Policy under section 3.2(a)(ii) of the Code, as Services that AGN should make available to Users or Prospective Users?

3.3 Reference Tariffs

The revised Access Arrangement must include a Reference Tariff Policy that describes the principles used to determine Reference Tariffs. The Reference Tariff Policy and each Reference Tariff must, in the opinion of the Authority, comply with Reference Tariff Principles described in section 8 of the Code. The Reference Tariff Policy and Reference Tariffs should be designed with a view to achieving the objectives set out in section 8.1 of the Code as follows:

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

The Code provides in section 8.9 and sections 8.15 to 8.43, a general procedure for the determination of Reference Tariffs that applies when a revision of the Access Arrangement is proposed to commence for any Access Arrangement Period after the first Access Arrangement Period:

- determination of the Capital Base to apply at commencement of that period;
- forecast of capital expenditure for that period;

- estimation of a regulatory Rate of Return;
- specification of a depreciation schedule;
- estimation of non capital costs for that period; and
- determination of Total Revenue, a cost/revenue allocation across Services, and Reference Tariffs.

(a) Capital Base

The Capital Base for the Covered Pipeline is a major determinant of the revenue to the Service Provider and of Reference Tariffs paid by Users during Access Arrangement periods.

The Code required that a value be established for the Capital Base of the AGN GDS at the commencement of its first Access Arrangement Period according to the principles set out in sections 8.10 to 8.14 of the Code. That value was established in the current approved Access Arrangement at $535.9m ($ of 31 December 1999).

Section 8.9 of the Code sets out the procedure for determining the Capital Base to apply during the next Access Arrangement Period. For the cost-of-service approach that AGN is using to determine the Total Revenue forecast to be generated by Reference Tariffs over that next period, the procedure is:

- take the value of the Capital Base applying at the commencement of the current (first) period;
- add the value of capital expenditure in each year of the current period if it satisfies the requirements as New Facilities Investment or Recoverable Portion (as specified in sections 8.15 to 8.19);
- subtract the value of depreciation taken on assets that were existing or have been added during the current period; and
- subtract a value for any assets made redundant over the current period (Redundant Capital).

Each of the values is to be adjusted appropriately for inflation. As provided for in section 8.4 of the Code, AGN has chosen to use the Cost-of-Service methodology to calculate Total Revenue. It has also chosen, as provided in section 8.5A(b) of the Code, to make this calculation on a real basis. Accordingly, each of the values used in the above procedure is adjusted for inflation to the date selected for the real value. AGN has chosen that date as 30 June 2003.

It is understood from the accompanying Access Arrangement Information that AGN believes that the Authority would be acting reasonably to infer that all capital actually expended and projected to yet be expended in the current period is New Facilities Investment complying with s.8.16 and s.8.17 of the Code.

AGN proposes that there is no Redundant Capital. On that basis AGN proposes in Part B, clause 22 of the revisions to the Access Arrangement that the Capital Base as at 1 January 2005 is $634.4m ($ of 30 June 2003).

Issues for Consideration – Initial Capital Base

- Are there comments on the AGN proposal that the Authority accept that all capital expenditure during the current (first) Access Arrangement Period is complying New Facilities Investment?

- Is it reasonable, on the basis of information provided by AGN, for the Authority to accept that there is no Redundant Capital from the GDS over the current (first) Access Arrangement Period?

- Is it reasonable, on the basis of information provided by AGN, for the Authority to be satisfied that the determination of the Capital Base for the commencement of the next (second) Access Arrangement Period has been calculated in accord with all relevant provisions of the Code, including section 8.2(e) requiring that forecasts to be utilised in the setting of Reference Tariffs represent best estimates arrived at on a reasonable basis?

(b) Forecast New Capital Expenditure

The Code (sections 8.20) permits the inclusion of new capital expenditure that is forecast to occur within the next Access Arrangement Period as New Facilities Investment for the purposes of calculating Total Revenue to determine Reference Tariffs. This is provided that such expenditure is reasonably expected to satisfy section 8.16(a) at the time it is forecast to occur. Section 8.16(a) in general terms requires that the expenditure:

- represents prudent and efficient investment, in accordance with accepted good industry practice;

- achieves the lowest sustainable cost of providing Services; and

- satisfies at least one of three criteria that concern generating sufficient revenue to pay back the investment, providing sufficient system-wide benefits or maintaining safety and system integrity.

AGN indicates in the applicable Access Arrangement Information that it plans its capital investments using an internal Asset Management Plan (AMP) process. AGN states that this AMP seeks to maximize system integrity while minimizing capital expenditure.

The proposed revisions include an Incentive Mechanism that would enable the AGN to retain variances to the return that was forecast in the previous period, arising from differences between forecast and actual capital expenditure, for 10 years after the date the variance originated. AGN is therefore proposing that Reference Tariffs would continue to be based on the forecast figure for 10 years after that date. AGN would also not be able to pass on, through Reference Tariffs, any over-expenditure on capital for similar durations.

The forecast capital expenditure is presented in Table 4.6 of the applicable Access Arrangement Information. The total estimated for the next period to 1 January 2010 is $142.5m ($ of 30 June 2003). This compares to AGN's estimate for actual and projected capital expenditure in the current period to 1 January 2005 of $130.6m ($ of 30 June 2003), including $12m for FRC to be operational in May 2004.

AGN does not separately identify in its forecast any capital expenditure on FRC to be required in the next (second) Access Arrangement Period. The maximum cumulative amount for FRC as agreed by the Relevant Regulator in its 1 October 2003 notice to satisfy s.8.16 is $12m. AGN projects that this full amount will be expended in the current (first) Access Arrangement Period. Excluding FRC as a scope change in the current period, the capital expenditure forecast by AGN for the next period is some $24m ($ of 30 June 2003), or around 20% in real terms, above that projected for the current period.

Issues for Consideration – New Capital Expenditure

- Do the forecast capital expenditures for the GDS over the next Access Arrangement Period represent best estimates arrived at on a reasonable basis?
- Is it reasonable to infer that the forecast capital investment for the GDS over the next Access Arrangement Period complies with s.8.20 of the Code, i.e. expected to comply with s.8.16(a) of the Code as being amongst other things prudent, efficient and in accord with accepted good industry practice, when the investment occurs?
- What are the issues/concerns that may arise from the proposed new Incentive Mechanism of having a 10-year rolling retention by AGN of variances to expected return that arise from efficiency gains/loses in capital expenditure?

(c) Regulatory Rate of Return

The regulatory Rate of Return is the return to be provided on the Capital Base and forecast New Facilities Investment for the purposes of calculating the required Total Revenue to supply Services and thereby to determine Reference Tariffs for the next Access Arrangement Period. The regulatory Rate of Return is to comply with sections 8.30 and 8.31 of the Code and thus "should provide a return which is commensurate with prevailing conditions in the market for funds and the risk involved in delivering the Reference Services…."

The significance of the determination of the regulatory Rate of Return can be seen from the forecast given in Table 4.14 of the applicable Access Arrangement Information that puts the amount of the returns on capital invested at a total of $270.8m ($ of 30 June 2003) over the next Access Arrangement Period. This is around 45% of Total Revenue for that period and thus represents the largest single cost component for the proposed Reference Tariffs. Actual returns for AGN from regulated Services over that period can be expected to vary from this amount that is based on a regulatory Rate of Return, due to a wide range of factors including the influence of Incentive Mechanisms that encourage efficiency and growth of the gas market.

AGN has chosen in this revision of the Access Arrangement to continue to use the Capital Asset Pricing Model (CAPM) as a financial model of the weighted average of the return applicable to each source of funds employed. It has presented in Schedule 1 to the applicable Access Arrangement Information, a report by its consultant, KPMG, entitled "The Weighted Average Cost of Capital for Gas Distribution", dated March 2004 (KPMG Report).

On the basis of information and a recommendation in the KPMG Report, AGN proposes in clause 4.2.9 of the applicable Access Arrangement Information, a Rate of Return expressed as a pre-tax real weighted average cost of capital (WACC) of 8.5%.

Table 4.9 of the applicable Access Arrangement Information presents a list of parameters relevant to the KPMG recommendation supporting that proposal. The KPMG Report offers a pre-tax real WACC of 8.5% as its preferred estimate in a feasible range of 8.0% to 8.7%. It has formulated this feasible range taking parameter values at the ends of ranges it finds feasible for individual parameters.

The proposed pre-tax real WACC of 8.5% compares to that of 7.5% as approved for the current Access Arrangement Period.

AGN offers in clause 4.2.9.1 of the applicable Access Arrangement Information a list of four principles it believes in the light or recent regulatory and other events should guide analysis of the cost of capital. These principles are proposed in respect of:

- function of the Regulator,
- potential for error,
- asymmetric costs, and
- standards of workable competition.

The first of these proposed principles raises an issue of direct relevance to the considerations of the Authority in making a Draft Decision in respect of the proposed revisions. The Service Provider draws attention in clause 4.2.9.1 of the applicable Access Arrangement Information to a statement made by the Australian Competition Tribunal (ACT) at clause 42 of its Reasons for Judgment concerning its Order of 23 December 2003 in respect of the application to it by GasNet Australia (Operations) Pty Ltd (GasNet). The statement is as follows:

> "Contrary to the submission of the ACCC, it is not the task of the Relevant Regulator under s.8.30 and s.8.31 of the Code to determine a 'return which is commensurate with prevailing conditions in the market for funds and the risk involved in delivering the Reference Service'. The task of the ACCC is to

determine whether the proposed Access Arrangement in its treatment of Rate of Return is consistent with the provisions of s.8.30 and s.8.31 and that the rate determined falls within the range of rates commensurate with the prevailing market conditions and the relevant risk."

The ACT judgment goes on in clauses 44 and 45 to refer to the choice of model and its use as being to produce a Rate of Return which was consistent with the objectives contained in section 8.1 of the Code.

Section 8.1 of the Code provides a listing of six objectives for the design of a Reference Tariff and a Reference Tariff Policy. Objective (d) is to not distort investment decisions in Pipeline transportation systems or in upstream and downstream industries.

The selection of a complying range for the Market Risk Premium (MRP) parameter in the CAPM approach may require consideration of objective (d). This will require consideration of a range of available sources of data, including regulatory outcomes under the Code, which the Authority understands for some time have been based upon a MRP of 6%. In this respect, the KPMG Report provides reference to a number of available sources of data concerning MRP excluding regulatory outcomes, and concludes that a range from 6% to 8% per annum is feasible.

The KPMG Report recommends a value of 8.5% for Rate of Return (pre-tax real WACC) from a feasible range it estimated as extending from 8.0% to 8.7%. It says that this figure "would, in the current environment, appropriately balance the interests of Alinta and its customers, and provide appropriate incentives for investment".

In the context of the KPMG comment that the selection of a recommended Rate of Return reflects the outcome of a balancing exercise, the Authority notes that the Code provides a framework for such balancing exercise to occur, to which comments made by the Full Court of the Supreme Court of WA in the Epic Case are relevant. That is:

(a) Section 8.6 of the Code recognises that in view of the manner in which the Rate of Return may be determined, it is possible that a range of values may be attributed to the Total Revenue described in section 8.4.

(b) Recognising this, section 8.6 confers discretion on the Authority to have regard to any financial and operational performance indicators it considers relevant in order to determine the level of costs within the range of feasible outcomes under section 8.4 that is most consistent with the objectives in section 8.1.

(c) Section 8.1 in turn recognises the potential for conflict between the objectives therein in their application to a particular Reference Tariff determination, and therefore confers discretion upon the Authority to determine the manner in which they can best be reconciled or which of them should prevail.

(d) Comments made by the Full Court of Western Australia in the Epic Case suggest that in exercising its discretion to weigh conflicting section 8.1

objectives in any particular case, the Authority should be guided by the factors in sub-sections 2.24(a) to (g) of the Code (see Parker J at paras 85 & 136, [2002] WASCA 231).

Issues for Consideration – Regulatory Rate of Return

- Has the capital asset pricing model been applied in an appropriate and consistent manner?
- Are the ranges of values estimated for input variables of the capital asset pricing model (which include the risk free rate; asset or equity betas; market risk premium; treatment of taxation and dividend imputation.) best estimates for feasible values arrived at on a reasonable basis, and do they yield a range of feasible values for Rate of Return that complies to the greatest practical extent with the objectives of section 8.1 of the Code?
- Does the proposed pre-tax real WACC of 8.5% p.a. comply with section 8.30 and section 8.31 of the Code and to the greatest practical extent with the objectives of section 8.1 of the Code?

(d) Economic Depreciation of Assets

A Depreciation Schedule is the basis upon which the assets that form part of the Capital Base are depreciated for the purposes of determining a Total Revenue requirement to be met by Reference Tariffs. The objectives for the design of a Depreciation Schedule consistent with AGN's chosen cost-of-service approach are set out in section 8.33 of the Code. Complying with these objectives requires that the Depreciation Schedule for the AGN GDS should be designed so that:

- Reference Tariffs change over time in a manner consistent with the efficient growth of the market for the Services;
- each asset or group of assets represented within the Capital Base is depreciated over the economic life of that asset or group of assets;
- to the maximum extent that is reasonable, the schedule for each asset or group of assets is adjusted over the life of that asset or group of assets to reflect changes in the expected economic life of that asset or group of assets; and
- an asset is depreciated only once (the sum of the depreciation that is attributable to any asset or group of assets over the life of those assets is equivalent to the value of that asset or group of assets at the time at which the value of that asset or group of assets was first included in the Capital Base, subject to such adjustment for inflation (if any) as is appropriate given the approach to inflation adopted pursuant to section 8.5A of the Code).

AGN has proposed at Table 4.4 of the applicable Access Arrangement Information, a schedule of economic lives for eleven categories of assets in the Capital Base. Estimates are provided for the average remaining economic lives (as of 30 June 2004) of assets within those categories. Table 4.5 shows for each year of the next 5-year Access Arrangement Period, depreciation amounts (as of 30 June 2004) estimated on a straight-line basis. These amounts include for assets to be added as a consequence of the forecast capital expenditure over that period. The amounts total $131.5m ($ of 30 June 2003) over the period in relation to a Capital Base estimated to increase over that period from $636.0m to $641.3m ($ of 30 June 2003). This depreciation amount provided as a return of capital, comprises around 22% of the Total Revenue and thus contributes around 22% of Reference Tariffs over the period.

Issues for Consideration – Economic Depreciation of Assets

- Is the proposed method of calculating depreciation costs consistent with the requirements of the Code?
- Is sufficient information provided to allow interested parties to understand the derivation of this element of the revised Access Arrangement and to form an opinion as to the compliance of the revised Access Arrangement with the provisions of the Code?

(e) Non Capital Costs

The Code section 8.37 permits the recovery through Reference Tariffs of forecast Non Capital Costs, such as for operations and maintenance, except for such costs that would not be incurred by a prudent operator acting efficiently, in accordance with accepted and good industry practice, and to achieve the lowest sustainable cost of delivering the Reference Services.

AGN states at clause 5.4.3.1 of the applicable Access Arrangement Information that it "considers it appropriate to infer that its actual operating expenditure is efficient because under the regulatory arrangements, distributors have a commercial incentive to minimize expenditure levels". AGN proposes that the Authority should take this approach in respect of prior actual non capital costs and forecast non capital costs.

The non capital costs reported in Table 4.10 of the applicable Access Arrangement Information reveals that AGN achieved at or below the approved forecast amounts after the first two years of the current period. In the first two years, the Service Provider indicates that it incurred substantial restructuring costs. It proposes to base the forecast for the next Access Arrangement Period on the non capital costs that are projected for the final year of the current Access Arrangement Period. No indication is given as to any asset management or other associate contractual arrangements impacting on non capital costs.

AGN proposes that two scope change items be recognized as adding to the non capital cost forecast for the next period. These items are related to the cost of operating its network and the cost for implementing its responsibilities under FRC. The additional network costs are estimated at $1.3m per annum ($ of 30 June 2003) for operating with the newly-imposed land clearing permits and about $0.1m per annum ($ of 30 June 2003) in on-going costs for payment of penalties to customers under its proposed new Guaranteed Service Level commitment. The additional costs for its role in implementing FRC is estimated by the Service Provider at $1.3m per annum ($ of 30 June 2003). These additional costs are included in the forecast of Non Capital Costs given in Table 4.11 of the applicable Access Arrangement Information.

The proposed revisions to the Access Arrangement contain an Incentive Mechanism that allows carry-forward by AGN of variances to expected returns arising from differences between actual and forecast non capital costs (and also for differences in capital costs) for 10 years from the time the difference was initiated. The consequence of this revision would appear to be to increase the share retained by AGN of any efficiency gains/losses in non capital costs to around 50% in real terms.

In support of its forecast non capital costs, the Service Provider tenders the conclusions of two separate consultants it commissioned to examine various aspects of its actual and forecast non capital costs. In clause 4.3.11 of the applicable Access Arrangement Information, AGN states that following an analysis of its costs, these consultants "both indicate that AGN is efficient compared to its domestic peers".

AGN has forecast non capital costs, including for FRC, at a total of $40.5m in 2005 declining to $38.8m in 2009 (all in $ of 30 June 2003).

Issues for Consideration – Non Capital costs

- Do the forecasts of operating and maintenance costs represent best estimates arrived at on a reasonable basis?
- Do the forecast non capital costs reflect currently accepted and good industry practice in the operation of comparable gas distribution systems?
- What are the issues/concerns that may arise from the proposed new Incentive Mechanism of having a 10-year rolling retention by AGN of variances to expected return that arise from efficiency gains/loses in non capital expenditure?

(f) Determination of Reference Tariffs

The Code requires that Total Revenue for the AGN GDS be set on the basis of the sales of all Services provided by that GDS. Sections 8.38 to 8.43 of the Code address allocation of that portion of Total Revenue to be recovered through Reference Tariffs.

For individual Reference Tariffs, section 8.38 provides that to the maximum extent that it is commercially and technically reasonable, a Reference Tariff should be designed to recover all of the portion of Total Revenue that is directly attributable to the Reference Service, plus a share of Total Revenue that reflects the principles in section 8.1 of the Code and is otherwise fair and reasonable as to the cost attributable to providing that Reference Service jointly with other Services. This design principle is extended by section 8.42 as far as to individual User's share of Total Revenue.

Adjustment is allowed to Reference Tariffs for passing on to Users of Services some or all of subsidy amounts incurred or to be incurred as Prudent Discounts. Section 8.43 provides discretion to the Authority with effect from the commencement of an Access Arrangement Period, to permit some or all of any such discounts as qualify as Prudent Discounts to be recovered from Services (including from Reference Services) in a manner the Authority is satisfied is fair and reasonable. There was no such permission given for the current (first) Access Arrangement Period.

AGN is seeking in its revisions to the Access Arrangement to institute such an adjustment for the on-going recovery of discounts that it has in place at the commencement of the next period. AGN has not provided a separately identifiable cost for those discounts. In April 2001, the Relevant Regulator, acting under section 7.1 of the Code, approved as an Associate Contract a Haulage Contract between AGN and AlintaGas Sales Pty Ltd. That Haulage Contract provides for some discounted tariffs and was approved against the circumstances of the current Access Arrangement which do not provide for recovery of those discounts from other Users.

The methodology proposed by AGN to translate the Total Revenue forecast for the next period into Reference Tariffs over that period differs from that used in the current (first) Access Arrangement Period. AGN proposes that Reference Tariffs for Year 1 of the next period are “rolled forward” from those in 2004, the last Year of the current (first) Access Arrangement Period. AGN further proposes that Reference Tariffs for the remaining years of the next Access Arrangement (Variation Years) be set notionally as a smoothed price path, but be subject, at AGN’s discretion, annually to adjustment on an individual Tariff Component level.

On the basis of AGN’s proposed revisions, the smoothed price path would be an annual increase of around 2% above the Consumer Price Index.

The basis proposed for constraining the adjustment of individual Tariff Components is called a “tariff basket price cap” approach and is as set out in clause 5.1 of the applicable Access Arrangement Information.

Issues for Consideration – Methodology for Determining Total Revenue and Reference Tariffs

- Is the methodology for determining Total Revenue for the AGN GDS consistent with that provided for by the Code?
- Is the allocation of costs underlying the Reference Tariff schedule consistent with the requirements of the Code?
- Is the approach proposed for "rolling forward" of Reference Tariffs from 2004 into Reference Tariffs for Year 1 of the next Access Arrangement, consistent with the requirements of the Code?
- Is the "tariff basket price cap" approach, whereby AGN is to have discretion to vary Tariff Components of Reference Tariffs for Years beyond Year 1 of the next Access Arrangement Period, consistent with the requirements of the Code?

3.4 Incentive Mechanisms

The Code encourages the inclusion in Access Arrangements of mechanisms for providing Service Providers with incentives to improve the efficiency of pipeline operation. These mechanisms typically focus on a sharing of the benefits of efficiency gains between the Service Provider and Users. The Code provides that such sharing can be accomplished by retention by the Service Provider of some or all of an efficiency gain for a duration that may extend into subsequent Access Arrangement periods.

The price path approach that is facilitated by the Code process of determining Reference Tariffs as effective price caps for Reference Services over the period, provides a simple but effective Incentive Mechanism. The price path for the current (first) Access Arrangement Period was expressed simply in annual adjustments to Tariff Components being only according to a CPI – X factor, where X was 0.0530 in Year 2 and 0.0255 for each Year thereafter.

AGN reports in the applicable Access Arrangement Information that it has achieved some efficiency gains over the current (first) Access Arrangement Period, but restructuring costs in particular were higher than forecast to achieve non capital cost efficiencies, and capital costs were higher than forecast arising predominantly from an increased number of connections.

Under the present simple price path approach both the efficiency gains (lower than forecast costs) and efficiency losses (higher costs) of capital and non capital costs were retained by AGN to the end of the current (first) Access Arrangement Period, without adjustment for what might be regarded as change of scope items. The figure reported by AGN would indicate an overall net efficiency loss for the period. There is presently no provision for carry-forward into the next period of retained efficiency gains/loses, and AGN proposes to pass through into Reference Tariffs from Year 1 of the next period, the impact of those higher than forecast costs incurred in the first period.

There is considerable flexibility under sections 8.44 to 8.46 of the Code for AGN to design and propose Incentive Mechanisms as a part of a Reference Tariff Policy.

Under section 8.44 of the Code, the Authority must consider whether a proposed Incentive Mechanism is appropriate. Section 8.46 sets out the objectives sought to be achieved in the design of a complying Incentive Mechanism. The objectives foster increased cost efficiency and growth of the gas market. Objective (e) is to ensure that Users and Prospective Users gain from increased efficiency, innovation and volume of sales (but not necessarily in the Access Arrangement Period during which such increased efficiency, innovation or volume of sales occur).

The Service Provider is proposing in the revision to the Access Arrangement to commence an Incentive Mechanism that is similar in some respects to that approved at the end of 2002 for the three major gas distribution systems in Victoria.

AGN proposes similarly to those Victorian arrangements for a rolling retention of efficiency gains/losses that arise from both capital and non capital sources. It proposes similarly to have these gains/losses assessed as part of the next revision process and for scope adjustments to be made to the benchmark costs against which actual expenditure will be compared to determine efficiency gains/loses. It also proposes similarly to not permit claw-back of efficiency gains/losses that have already been made in the course of the next Access Arrangement Period.

There are, however, some readily identified distinctions that emerge from the Service Provider's proposal. The AGN proposal for a tariff basket price cap approach means that AGN will be able, within some overall constraint, to vary Tariff Components annually if required to ensure the structure of tariffs and the charges more adequately reflects costs incurred. AGN proposes to be able to address scope change items separately as well as to adopt responsive benchmarks. AGN also proposes that negative variances to return (efficiency losses) will be treated as for efficiency gains rather than be carried forward until offset by efficiency gains. Significantly, AGN proposes that the rolling retention period be for 10 years rather than the rolling retention period of 5 years that was approved for the arrangements in Victoria.

Issues for Consideration – Incentives Mechanisms

- Does the proposed Incentive Mechanism provide an appropriate level of incentive for AGN to seek and to implement in a timely manner a range of efficiency initiatives that to the greatest extent practical would achieve the objectives in section 8.1 of the Code?
- Does the proposed Incentive Mechanism provide for a reasonable sharing of the benefits from efficiency gains (and loses) between AGN and Users?
- Is the proposed rolling retention period of 10 years in the context of the overall proposed Incentive Mechanism likely to be consistent with the Code objectives for the design of an Incentive Mechanism?

3.5 Terms and Conditions Other Than Price

The proposed revisions to the Access Arrangement must include the Terms and Conditions on which AGN will supply each Reference Service (section 3.6 of the Code). The Terms and Conditions form the basis of a contract between a User and AGN for provision of a Reference Service. The Terms and Conditions must, in the Authority's opinion, be reasonable.

AGN has provided the proposed Terms and Conditions for supply of the Reference Services as Part C of the revision to the Access Arrangement. For Users taking delivery of larger amounts of Gas, these Terms and Conditions are specified separately in Schedules 1, 2 & 3 of Part C for Reference Services A1, A2 and B1 respectively. Schedule 4 of Part C provides the Terms and Conditions that are common for other Users receiving Gas at delivery points with standard delivery facilities.

Issues for Consideration – Terms and Conditions Other Than Price

- Are the proposed Terms and Conditions reasonable in the context of the GDS?
- Is the allocation of risk between AGN and Users implied by the Terms and Conditions consistent with economic efficiency?
- Is the allocation of risk implied by the Terms and Conditions consistent with proposed charges, including Reference Tariffs?
- Do the revisions to the Access Arrangement clearly identify the relevant Terms and Conditions, and thereby enable a Prospective User to be sufficiently well informed before making a specific access request?

3.6 Capacity Management Policy

The proposed revisions to the Access Arrangement must include a Capacity Management Policy that indicates whether the GDS is to be managed as a contract carriage pipeline or a market carriage pipeline.

AGN proposes to manage the GDS as a contract carriage pipeline.

Issues for Consideration – Capacity Management Policy

- Will management of the GDS as a contract carriage pipeline adequately cater for the needs of Users and Prospective Users?

3.7 Trading Policy

Sections 3.9 to 3.11 of the Code set out the requirements of a Trading Policy. If a pipeline is a contract carriage pipeline (as is proposed for the GDS), the proposed revisions to the Access Arrangement must include a Trading Policy, which explains how Users may trade their rights to a Service with other Users or Prospective Users.

The proposed revisions to the Access Arrangement provide, in clauses 38 to 40 of Part A, for bare transfers and for conditional transfers by a User of its Contracted Peak Rate at a Delivery Point. Clause 41 of Part A provides for changing Delivery Points as specified in section 3.10(c) of the Code.

Issues for Consideration - Trading Policy

- Does the proposed Trading Policy adequately provide for Users to trade their rights to obtain Services with other Users or Prospective Users?
- Are the obligations placed on the parties wishing to trade in rights to a service appropriate and reasonable?
- Is the proposed Trading Policy likely to facilitate competition?
- Does the policy reasonably balance the interests of AGN and other parties?

3.8 Queuing Policy

Sections 3.12 to 3.15 of the Code set out the requirements for a Queuing Policy. The proposed revisions to the Access Arrangement must include a Queuing Policy that explains the priorities of Users and Prospective Users in obtaining access to the GDS.

The Queuing Policy must provide sufficient detail to enable Users and Prospective Users to understand in advance how priority will be assigned and, to the extent reasonably possible, accommodate the legitimate business interests of AGN, Users and Prospective Users, and generate economically efficient outcomes.

The proposed revisions to the Access Arrangement set out in clauses 47 to 52 of Part A make provision for priorities for AGN's consideration of an application for access and related matters. Applications for access are to be considered on a first-come-first-served basis, except where the application is in AGN's opinion vexatious (as defined in Part A) or the application otherwise does not conform with the requirements of a complying Queuing Policy as set out in section 3.13 of the Code.

Issues for Consideration - Queuing Policy

- Does the proposed Queuing Policy provide sufficient detail for Users and Prospective Users to understand how priorities to access will be determined?
- Does the proposed Queuing Policy accommodate the legitimate business interests of AGN, Users and Prospective Users?
- Is the proposed policy consistent with a reasonable balance of interests between AGN, Users and Prospective Users?
- Are there other matters that the Authority might think fit, taking into account the matters listed in section 2.24 of the Code, for the Queuing Policy to be required to deal with?

3.9 Extensions/Expansions Policy

Section 3.16 of the Code requires that the proposed revisions to the Access Arrangement include an Extensions/Expansions Policy that sets out the method to determine whether any extensions to or expansions of the GDS will be treated as part of the GDS as a covered pipeline and, if so treated, how they will affect Reference Tariffs.

The proposed Extensions/Expansions Policy for the GDS as set out in Part A clauses 53 to 58 of the proposed revisions to the Access Arrangement, provides for incremental expansions, as defined in clause 54, to be "part of, or (for purposes of Gas flow) directly connected with, an existing Sub-network…" to be automatically included in the GDS as a covered pipeline.

Clause 55 provides that all other extensions or expansions are automatically excluded from being covered as part of the GDS except where AGN determines that such an extension or expansion should be included.

Issues for Consideration – Extensions/Expansions Policy

- Does the proposed Extensions/Expansions Policy adequately explain the method by which it will be determined whether any extension to or expansion of the GDS will become part of the GDS as a covered pipeline?
- Does the proposed Extensions/Expansions Policy adequately specify how extensions and expansions will affect Reference Tariffs?
- Is the proposed Extensions/Expansions Policy consistent with a reasonable balance of interests between AGN and Users?

3.10 Review of the Revised Access Arrangement

The Code (section 3.17) requires that the proposed revisions to the Access Arrangement include a date by which AGN must submit revisions to the Access Arrangement (the Revisions Submission Date), and a date upon which the revisions to the Access Arrangement are intended to commence (the Revisions Commencement Date).

The choice of the period between scheduled reviews of the Access Arrangement for the GDS involves a trade-off between different efficiency objectives (as outlined in section 3.8(e) of the Code). In addition, the choice of this period has implications for the extent of uncertainty that is faced by market participants.

AGN has proposed a Revisions Submission Date of 30 June 2009 and an intended Revisions Commencement Date of 1 January 2010. This implies that, subject to the Revisions Commencement Date of the proposed revisions to the Access Arrangement being as intended 1 January 2005, the next Access Arrangement Period, and approved Access Arrangement, Reference Tariffs and Reference Tariff Policy, would operate for 5 years.

The current (first) Access Arrangement does not provide for a date at which that Access Arrangement will expire. This is in accord with discretion available under section 3.20 of the Code. The proposed revisions to the Access Arrangement similarly do not provide for an expiry date.

The Code (section 3.18) requires that the Authority must not approve the proposed revisions to the Access Arrangement without considering whether mechanisms should be included to address the risk of forecasts on which the terms of the Access Arrangement were based and approved proving incorrect. Mechanisms may include requiring AGN to submit revisions prior to the Revisions Submission Date if certain events occur. This provision is in addition to the discretion under section 2.28 for AGN to at any time submit proposed revisions to the Access Arrangement.

AGN is proposing such a mechanism in Part A, clause 65 of the revisions to the Access Arrangement. It will require that an earlier than scheduled revision will be submitted by AGN if certain "Revision Trigger Events" occur. The Revision Trigger Events are presented in Schedule 1 to Part A. These provisions appear substantially similar to provisions within the current (first) Access Arrangement. However, clause 66 of the revisions to the Access Arrangement provides that there is also an option for AGN to proceed, following a Revision Trigger Event, to submit revisions to its Access Arrangement. The process for revision to tariffs within the Access Arrangement Period as authorised by this mechanism is set out as a "Trigger Event Adjustment Approach" in clauses 12 to 14 of Part B to the proposed revisions to the Access Arrangement.

AGN is proposing in the Trigger Event Adjustment Approach that the specific Revision Trigger Event is a situation where AGN has not already recovered FRC costs or FRC New Facilities Investment. The Authority must under this approach consider deeming compliance that costs have, in general terms, been reasonably incurred and not otherwise recovered by AGN.

Issues for Consideration – Review of the Access Arrangement

- Does the length of the next (second) Access Arrangement Period appropriately balance the need to recognise the potential changes in the nature of the natural gas industry and the uncertainty which arises in such an environment (which favours a short Access Arrangement period) against the desire to reduce any uncertainty created by the regulatory process (which favours a longer Access Arrangement period)?

- Is AGN's proposal for a Revision Trigger Event and a Trigger Event Adjustment Approach that would enable AGN, provided the Authority deemed that certain conditions are complied with, to impose charges and change tariffs during the next (second) Access Arrangement Period to recover FRC costs that otherwise might be not recovered at that time, appropriate under section 3.18 of the Code?

- Should any other specific events, other than those in Schedule 1 to Part A, be defined that trigger an obligation on AGN to submit revisions prior to the Revisions Submission Date?

4 ACCESS ARRANGEMENT INFORMATION

The preamble to section 2 of the Code provides that the applicable Access Arrangement Information (Access Arrangement Information) should enable Users and Prospective Users to understand the derivation of the "elements" of the proposed revisions to the Access Arrangement (Access Arrangement) and to form an opinion as to the compliance of the revisions to the Access Arrangement with provisions of the Code. The term "elements" refers to Reference Tariffs, Reference Services and other minimum requirements such as those discussed in section 3 of this paper.

While there is no requirement for the Access Arrangement Information to be approved, and it may include any relevant information, the Code makes it mandatory for the applicable Access Arrangement Information to contain certain information. Section 2.6 of the Code requires the Access Arrangement Information to contain such information as in the opinion of the Authority will enable Users and Prospective Users to understand the derivation of elements of the Access Arrangement, while section 2.7 of the Code requires the Access Arrangement Information to contain at least the categories of information described in Attachment A to the Code.

AGN can be required by the Authority under section 2.30 of the Code, to provide more information to the public by making, by a specific date, changes to the Access Arrangement Information, if the Authority is not satisfied that the Access Arrangement Information meets the requirements of sections 2.6 or 2.7 of the Code. The Authority may do so of its own volition, or following a request by any person that the Authority consider whether the Access Arrangement Information meets the requirements of sections 2.6 and 2.7. If such a request is made, it is mandatory for the Authority to consider such request.

When requiring that a Service Provider make changes to the Access Arrangement Information, the Authority must not require that information be included in the Access Arrangement Information, the release of which in the Authority's opinion could be unduly harmful to the legitimate business interests of AGN, a User or a Prospective User.

Issues for Consideration – Information Disclosure

- Is the information disclosed in the revisions to the Access Arrangement and the applicable Access Arrangement Information sufficient to enable Users and Prospective Users to understand the derivation of the elements in the proposed revisions to the Access Arrangement?
- Is the information sufficient to allow Users and Prospective Users to form an opinion as to the compliance of the revisions to the Access Arrangement with the provisions of the Code?
- Are the information requirements listed in Attachment A (copy appended) to the Code adequately addressed? If not, what additional information should be provided, and in what form and by what time?

5 MAKING A SUBMISSION

Submissions are invited from all interested parties on the proposed revisions to the Access Arrangement which must be received at the Authority by 4:00pm Friday 14 May 2004, Western Standard Time.

5.1 Confidentiality

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

Where an interested party wishes to make a submission in confidence, it should clearly indicate the parts of the submission in respect of which confidentiality is claimed. Any claim of confidentiality will be considered in accordance with the provisions of sections 7.11 to 7.14 of the Code.

5.2 Format for Submissions

Submissions with comments on the proposed revisions to the Access Arrangement should be in both written and electronic form and addressed to:

> Mr Peter Rixson
> Economic Regulation Authority
> Level 6 Governor Stirling Tower
> 197 St Georges Terrace
> PERTH WA 6000
> Email: peter.rixson@era.wa.gov.au

⇒ Attachment

APPENDIX

Attachment A to the Code

Information Disclosure by a Service Provider to Interested Parties

Pursuant to Section 2.7 the following categories of information must be included in the Access Arrangement Information.

The specific items of information listed under each category are examples of the minimum disclosure requirements applicable to that category but, pursuant to Sections 2.8 and 2.9, the Relevant Regulator may:

- allow some of the information disclosed to be categorised or aggregated; and
- not require some of the specific items of information to be disclosed,

if in the Relevant Regulator's opinion it is necessary in order to ensure the disclosure of the information is not unduly harmful to the legitimate business interests of the Service Provider or a or Prospective User.

Category 1: Information Regarding Access & Pricing Principles

Tariff determination methodology

Cost allocation approach

Incentive structures

Category 2: Information Regarding Capital Costs

Asset values for each pricing zone, service or category of asset

Information as to asset valuation methodologies - historical cost or asset valuation

Assumptions on economic life of asset for depreciation

Depreciation

Accumulated depreciation

Committed capital works and capital investment

Description of nature and justification for planned capital investment

Rates of return - on equity and on debt

Capital structure - debt/equity split assumed

Equity returns assumed - variables used in derivation

Debt costs assumed - variables used in derivation

Category 3: Information Regarding Operations & Maintenance

Fixed versus variable costs

Cost allocation between zones, services or categories of asset & between regulated/unregulated

Wages & salaries - by pricing zone, service or category of asset

Cost of services by others including rental equipment

Gas used in operations - unaccounted for gas to be separated from compressor fuel

Materials & supply

Property taxes

Category 4: Information Regarding Overheads & Marketing Costs

Total Service Provider costs at corporate level

Allocation of costs between regulated/unregulated segments

Allocation of costs between particular zones, services or categories of asset

Category 5: Information Regarding System Capacity & Volume Assumptions

Description of system capabilities

Map of piping system - pipe sizes, distances and maximum delivery capability

Average daily and peak demand at "city gates" defined by volume and pressure

Total annual volume delivered - existing term and expected future volumes

Annual volume across each pricing zone, service or category of asset

System load profile by month in each pricing zone, service or category of asset

Total number of customers in each pricing zone, service or category of asset

Category 6: Information Regarding Key Performance Indicators

Industry KPIs used by the Service Provider to justify "reasonably incurred" costs

Service provider's KPIs for each pricing zone, service or category of asset