Proposed Revisions to the Access Arrangement for the WA Gas Networks Gas Distribution Systems

Submission: Response to Draft Decision

WA Gas Networks Pty Ltd

ABN 90 089531 975

8 October 2010

TABLE OF CONTENTS

1 RESPONSE TO DRAFT DECISION ON PROPOSED REVISIONS TO THE ACCESS ARRANGEMENT FOR THE WAGN GDS

1.1 Purpose of this submission

On 17 August 2010, the Economic Regulation Authority (ERA) issued a draft decision (Draft Decision) not to approve proposed revisions to the Access Arrangement for the WA Gas Networks Gas Distribution Systems (WAGN GDS). The proposed revisions (access arrangement proposal) had been submitted to the ERA, by WA Gas Networks Pty Ltd (WAGN), in accordance with the requirements of section 132 of the *National Gas Law* (NGL). The NGL, and the *National Gas Rules* (NGR), were given effect in Western Australia by the *National Gas Access (WA) Act 2009*.

Rule 59(1) of the NGR requires that, after considering submissions made in response to the access arrangement proposal, within the time allowed, and after taking into account any other matters considered relevant, the ERA is to make an access arrangement draft decision. The access arrangement draft decision is to indicate whether the ERA is prepared to approve the access arrangement proposal as submitted and, if not, the nature of the amendments that are required in order to make the proposal acceptable to the ERA (Rule 59(2)).

The Draft Decision set out 74 "Required Amendments" which must be made in order to make the access arrangement proposal acceptable to the ERA. In addition, the Draft Decision required, at various places, that WAGN make other changes to the access arrangement proposal, and provide additional information on a number of matters.

Rule 59(3) of the NGR requires that the Draft Decision fix a period (revision period) for revision of the access arrangement proposal in order to make it acceptable. In a notice issued with the Draft Decision, the ERA required that WAGN respond to the decision and provide revisions by 4:00 pm (WST) on Friday, 1 October 2010.

A critically important element of the Draft Decision is its view on the rate of return which WAGN should be allowed to earn on the capital invested in the WAGN GDS. That view incorporated an estimate of the debt risk premium which was made using information from the CBASpectrum service. During August 2010, CBASpectrum advised that it would discontinue providing the information used to estimate the premium. That information subsequently ceased to be available later in the month.

On 13 September, WAGN met with the ERA to discuss, among other things, possible alternatives to use of the CBASpectrum information. The ERA advised that it was not sufficiently far advanced with its work to be able to indicate either replacement data or a replacement method of estimation. On 27 September, the Australian Energy Regulator issued a consultation paper on its proposed approach to the issue in the context of regulated revenue determinations for the Victorian electricity businesses.

WAGN has continued to work on the debt risk premium, and has consulted with affected network service providers in other jurisdictions.

New information, which WAGN believes is materially relevant to its response to the Draft Decision, became available on 30 September. On 1 October, WAGN requested, from the ERA, an extension of the period for revision of the access arrangement proposal, to 8 October, to allow it (WAGN) to assess this new information and to incorporate it in its response the Draft Decision.

The ERA extended the revision period to 4:00 pm (WST) on Friday, 8 October 2010.

In this submission, WAGN responds to the Draft Decision.

1.2 Requirements of the *National Gas Rules*

In accordance with Rule 60 of the *NGR*:

- WAGN may, within the revision period, submit additions or other amendments to the access arrangement proposal to address matters raised in the Draft Decision (Rule 60(1));
- the amendments which WAGN submits must be limited to those necessary to address matters raised in the Draft Decision, unless the ERA approves further amendments (Rule 60(2)); and
- if amendments to the access arrangement proposal are submitted, WAGN must also provide the ERA with a revised proposal incorporating the amendments (Rule 60(3)).

WAGN's amendments to the access arrangement proposal, as allowed by the NGR, are explained in this submission. In attachments to the submission, WAGN provides:

- Amended Access Arrangement for the Mid-West and South West Gas Distribution Systems dated 8 October 2010;
- Amended Access Arrangement Information for the WAGN GDS dated 8 October 2010; and
- a spreadsheet model setting out the calculation of proposed revised reference tariffs consistent with the amendments explained in this submission.

1.3 Structure of this submission

This submission has been prepared in two parts. Part A deals with Amendments 6, 7 and 8 while Part B deals with Amendments 1 to 5 and Amendments 9 to 74.

Part A

2 TOTAL REVENUE (REFERENCE TARIFF BUILDING BLOCKS)

2.1 Tariff model and related issues

2.1.1 Required Amendment 8

The Authority requires Annexure A and sections 1 and 2 of Annexure B of WAGN's proposed access arrangement to be amended as follows:

Annexure A

Replace the haulage reference tariffs set out under Annexure A with the haulage reference tariffs set out in Table 27.

2.1.2 Tariff model

On 17 August 2010, the ERA provided WAGN with a copy of spreadsheet model which the ERA had used calculate the haulage reference tariffs set out in Table 27 of the Draft Decision.

WAGN subsequently identified a number of possible errors in the model, and believes these require correction before the tariffs which the model calculates can be taken as revised reference tariffs for the Access Arrangement for the WAGN GDS.

These possible errors relate to:

- use of total volume;
- use of ERA approved volumes for the current access arrangement period, and not the actual volumes;
- asset lives which are overstated by one year;
- an incorrect negative asset balance adjustment at 1 January 2005;
- combination of certain asset categories;
- use of the beginning of year, and not the average, capital base; and
- adjustment of certain actual and forecast expenditures in accordance with the *EnergySafety* Report.

2.1.3 Use of total volume

Required Amendment 8 requires replacement of the haulage reference tariffs set out in Annexure A of the proposed revised Access Arrangement with the haulage reference tariffs set out in Table 27 of the Draft Decision. The tariffs set out in Table 27 have been determined using, among other things, reference service volumes which appear to have been overstated.

The volumes used in the ERA Draft Decision for calculation of the revised reference tariffs for services A1, A2, B1 and B2 appear to be the total volumes forecast for those services. These volumes include the volumes forecast for end-users in respect of which WAGN proposes granting prudent discounts.

For its tariff calculations, the ERA has deducted the revenue from providing services to end-users in respect of which WAGN proposes granting prudent discounts from the total revenue (which was the approach taken by WAGN in the tariff model provided to the regulator on 29 January 2010). In these circumstances, the reference service volumes used should have been the total volumes less the volumes forecast for end-users in respect of which WAGN proposes granting prudent discounts.

2.1.4 Lives of assets created by 2000 to 2004 CAPEX overstated by one year

WAGN believes the tariffs set out in Table 27 of the Draft Decision may have been determined using incorrect remaining economic lives for the assets created by capital expenditure from 2000 to 2004.

In previous access arrangement decisions, CAPEX for the period 2000 to 2004 was depreciated from the year in which the CAPEX was incurred. For example, if CAPEX was incurred in 2001, a full year's depreciation was charged in 2001, and that year was taken to be the first year of the asset's economic life.

The ERA's Draft Decision seems to indicate a change in procedure so that depreciation is charged from the beginning of the year following the year in which capital expenditure is incurred. For example, if CAPEX is incurred in 2006 then depreciation is first charged in 2007, and the economic life of the assets created is assumed to begin in 2007.

To bring CAPEX from 2000 to 2004 into line with its current depreciation practice, the ERA has assumed that the economic lives of the assets created by CAPEX from 2000 to 2004 start in the year following expenditure. This has the effect of increasing the remaining asset lives by 1 year.

2.1.5 Incorrect negative asset balance adjustment at 1 January 2005

In its modelling, the ERA has made two adjustments to the capital base, at the commencement of the current access arrangement period, to eliminate negative asset balances.

In order to correctly calculate depreciation and the capital base, CAPEX must be disaggregated on a year by year basis to ensure that correct remaining economic lives are applied to each asset category. When assets are disaggregated on a year of expenditure basis, negative asset balances of $0.244 million become apparent at 1 January 2005. These negative asset balances have been eliminated, but they were not taken into account in establishing the capital base at 1 January 2005. Therefore the

capital base at 1 January 2005 no longer agrees with the capital base reported in the ERA's July 2005 Final Decision. The amount is small, but makes reconciliation of asset values difficult.

2.1.6 Combining asset categories

Capital expenditures for each of three classes of pipeline asset - Medium pressure, Medium low pressure and Low pressure - were approved for the period 2005 to 2009 in the ERA's July 2005 Final Decision of revisions to the Access Arrangement for the WAGN GDS.

Assets in all three classes have the same economic life of 60 years. For the purpose of calculating depreciation and establishing the capital base there is no need to separate capital expenditures into the three asset classes.

During the period 2005 to 2009, actual capital expenditure for the three asset classes was recorded, by WA Gas Networks, under the one heading "Medium low pressure".

The capital base at 1 January 2010 has been calculated by taking actual capital expenditures for 2005 to 2009 and subtracting, as depreciation, the depreciation for the period which was taken into account, by the ERA, for reference tariff determination in July 2005.

This may result in negative asset balances (at 1 January 2010) for the asset categories "Medium pressure" and "Low pressure" (for which no expenditure has been recorded for the period 2005 to 2009, but in respect of which depreciation has been subtracted).

Combining the asset classes Medium pressure, Medium low pressure and Low pressure into one - Medium low pressure - avoids the problem of negative asset balances without affecting depreciation or the capital base.

2.1.7 Average capital base and average customer numbers

Required Amendment 8 requires replacement of the haulage reference tariffs set out in Annexure A of the proposed revised Access Arrangement with the haulage reference tariffs set out in Table 27 of the Draft Decision. The tariffs set out in Table 27 have been determined using total revenue with a return component which has been calculated by applying the rate of return to the capital base in each year of the next access arrangement period.

WAGN believes that this use of the capital base - and not the average capital base - for each year is inconsistent with use of the average number of delivery points for each year for the calculation of tariff revenue. Moreover, it is inconsistent with Rule 73(3) of the NGR, which requires that all financial information be provided, and all calculations made, consistently on the same basis.

In the calculation of revised reference tariffs in its Draft Decision, the ERA assumes that revenue is earned from an average of the beginning of year and end of year numbers of customer connections for each year of the next access arrangement period. To be consistent, the average capital base for each year should then be used for determining forecast revenue.

2.1.8 Adjustment of expenditures in response to the *EnergySafety* Report

The tariffs set out in Table 27 appear to have been calculated using capital and operating expenditures which have not been corrected in the way proposed in the *EnergySafety* Report prepared for the ERA.

WAGN provided details of these corrections to the ERA on 25 September 2010. That response is reproduced in Annexure 1 to this submission.

2.2 Depreciation and rolling forward the capital base

2.2.1 Required Amendment 6

The Authority requires clause 9.1(b) of the proposed access arrangement to read:

(b) For the calculation of the Opening Capital Base for the WAGN GDS for the Next Access Arrangement Period, each of:

(i) the Opening Capital Base for the Current Access Arrangement Period (adjusted for any difference between estimated and actual capital Expenditure included in that Opening Capital Base);

(ii) Conforming Capital Expenditure made, or to be made, during the Current Access Arrangement Period;

(iii) any amounts added to the Capital Base under rule 82, rule 84 and rule 86 of the National Gas Rules;

(iv) depreciation over the Current Access Arrangement Period (calculated in accordance with paragraph 9.1(a));

(v) redundant assets identified during the course of the Current Access Arrangement Period; and

(vi) the value of Pipeline Assets disposed of during the Current Access Arrangement Period;

is to be escalated, at the rate of inflation as measured by the CPI All Groups, Eight Capital Cities, and expressed in the prices prevailing on a date nominated by WAGN (provided that date is a date on or prior to the end of the Current Access Arrangement Period).

2.2.2 A revised access arrangement proposal incorporating Required Amendment 6 would not comply or be consistent with the requirements of the *NGL* and the *NGR*

Were WAGN to submit an amendment to the access arrangement proposal for the WAGN GDS which included Required Amendment 6, the revised access arrangement proposal would not comply with the applicable requirements of the NGL and the NGR, and would not be consistent with the applicable criteria of the NGL and the NGR.

Required Amendment 6 requires that, where escalation is applied in the calculation of the opening capital base for the next access arrangement period, it is at the rate of inflation as measured by the CPI (All Groups, Eight Capital Cities) published by the Australian Bureau of Statistics.

In the proposed revisions to the Access Arrangement Information for the WAGN GDS, WAGN had advised, in compliance with the requirements of Rule 73, that:

Financial information in this document is provided on a real basis. All financial information is expressed in constant prices at December 2009 by escalating, where necessary, at the rate of inflation as measured by the Consumer Price Index (All Groups, Perth).

. . .

For the period 2005 to 2009, financial data has been reported on a calendar basis. Escalation has been based on the June Consumer Price Index as this represents the mid point of the year. For the period 1 January 2010 onwards, financial data is reported on a financial year basis. In this case, escalation has been based on the December Consumer Price Index as this represents the mid point of the financial year.

In paragraph 86 of the Draft Decision, the ERA stated that, although WAGN's proposal for dealing with inflation was compliant with the requirements of Rule 73 of the NGR, the ERA had full discretion in relation to this provision. The ERA was therefore entitled to withhold its approval to the proposed revisions concerning the way in which inflation was to be dealt with if it were satisfied that there was a preferable alternative that complied with the applicable requirements of the NGL and the NGR, and was consistent with applicable prescribed criteria.

The ERA was of the view that there was a preferable alternative: the measurement of inflation using the CPI (All Groups, Eight Capital Cities) instead of the CPI (All Groups, Perth), and the modelling of the effects of inflation using the index at the end of each modelling period, not the mid-point.

The ERA's reasons for requiring use of the Eight Capital Cities CPI, and end of period escalation, were:

- total revenue and reference tariff calculations for the current access arrangement period which were approved by the ERA, used the CPI (All Groups, Eight Capital Cities) for inflation related calculations, this being consistent with the ERA's long-standing practice for all access arrangements (paragraph 83);
- the ERA had, in all previous tariff setting for the WAGN GDS modelled all transactions at the end of the modelling period and had used the relevant CPI at the end of the modelling period; again, this accorded with the ERA's long standing regulatory practice for access arrangements (paragraph 84);
- the approach proposed by WAGN was different from the standard regulatory approach adopted by the ERA in relation to regulated gas pipelines in Western Australia and, in these circumstances, it would be preferable, having regard to the national gas objective, to continue the standard regulatory practice (paragraph 87); and

- the ERA considered that the national gas objective would be best achieved by requiring WAGN to apply the CPI (All Groups, Eight Capital Cities) and to use the index at the end of each modelling period rather than the midpoint (paragraph 88).

As a preliminary matter, WAGN is of the view that the ERA is incorrect in its application of Rule 73. Rule 73(1) sets out certain requirements in respect of financial information. Financial information must be provided on a nominal basis, or on a real basis, or on some other recognised basis for dealing with the effects of inflation. Furthermore, all financial information must be provided, and all calculations must be made, consistently on this basis as required by Rule 73(3). Rule 73 requires compliance; it does not address issues in respect of which there are alternative views, and on which discretion might be exercised. WAGN has stated, in its proposed revisions to the Access Arrangement Information, that all financial information has been provided on a real basis. WAGN has complied with the requirements of Rule 73, as the ERA has acknowledged, and there is no scope under that rule for the exercise of discretion by the ERA.

Should WAGN be incorrect in its view about the ERA's application of Rule 73, and the ERA has discretion to withhold its approval to WAGN's proposed basis for dealing with the effects of inflation in accordance with Rule 40(3), the regulator can only impose a preferred alternative, as the ERA has noted in paragraph 86, if that alternative:

(a) complies with the applicable requirements of the *NGL* and *NGR*; and

(b) is consistent with applicable criteria (if any) prescribed in the *NGL* and *NGR*.

The reasons which the ERA has advanced for imposing its preferred alternative are:

- consistency with the ERA's long-standing practice for all access arrangements;
- according with the ERA's long standing regulatory practice for access arrangements; and
- continuing standard regulatory practice.

None of these is an applicable requirement of the NGL and NGR, and none is an applicable criterion prescribed in the NGL and NGR. Furthermore, the view that, in applying its preferred alternative, the ERA is continuing standard regulatory practice is not correct. In its June 2010 Final Decision on proposed revisions to the access arrangement for the Jemena Gas Networks New South Wales gas distribution system, the Australian Energy Regulator required a different approach to that now being imposed on WAGN by the ERA.[1] The three reasons listed above are not valid reasons for the ERA imposing on WAGN use of the Eight Capital Cities CPI and end of period escalation.

[1] Australian Energy Regulator, *Final Decision - Public - Jemena Gas Networks Access arrangement proposal for the NSW gas networks 1 July 2010 - 30 June 2015*, June 2010, pages 47-48.

The ERA also advances the national gas objective as a reason for imposing its preferred alternative, but offers no explanation of how its required basis for dealing with the effects of inflation satisfied that objective, or is consistent with criteria which might be deduced from the objective.

Section 28(1) of the NGL requires that, in performing or exercising a regulatory function, the ERA performs that function in a manner that will or is likely to contribute to the achievement of the national gas objective. In addition, Rule 100 of the NGR requires that all provisions of an access arrangement be consistent with the national gas objective.

The national gas objective is set out in section 23 of the NGL:

The objective of this Law is to promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas.

Section 28(2) of the NGL further requires that, when exercising a discretion in approving or making those parts of an access arrangement relating to a reference tariff, the ERA must take into account the revenue and pricing principles. The revenue and pricing principles set out in section 24 of the NGL include:

24(3) A service provider should be provided with effective incentives in order to promote economic efficiency with respect to reference services the service provider provides. The economic efficiency that should be promoted includes—

(a) efficient investment in, or in connection with, a pipeline with which the service provider provides reference services; and

(b) the efficient provision of pipeline services; and

(c) the efficient use of the pipeline.

The capital expenditures which WAGN has incurred during the current access arrangement period, and which have been escalated so that all financial information (including depreciation and the opening capital base for the next access arrangement period) is expressed in constant December 2009 prices, are expenditures incurred in Western Australia for the purpose of providing natural gas services to consumers of natural gas in Western Australia.

During the period from 2005 to 2009, prices were rising more rapidly in Western Australia than they were nationally. This can be seen by comparing the CPI(All Groups, Eight Capital Cities) with the CPI(All Groups, Perth). The two indexes, for the June quarter of each year, and the rates of price increase which they indicate, are shown in Table 1 below.

Table 1
CPI (June quarter) and year-on-year increase

	2004	2005	2006	2007	2008	2009
All Groups, Eight Capital Cities	**144.8**	**148.4**	**154.3**	**157.5**	**164.6**	**167.0**
Year on year increase		2.5%	4.0%	2.1%	4.5%	1.5%
All Groups, Perth	**141.0**	**146.3**	**153.2**	**158.0**	**165.1**	**167.4**
Year on year increase		3.8%	4.7%	3.1%	4.5%	1.4%

Source: Australian Bureau of Statistics, catalogue number 6401.0.

Through its actions to implement the NGL and the NGR as laws of Western Australia, recognising the physically discrete nature of the gas market in the State, the Government of Western Australia has determined that the natural gas services and consumers of natural gas referred to in the national gas objective are services and consumers in Western Australia. This was made clear in the second reading speeches of Ministers in both houses of the Western Australian Parliament when the Bill to enact the *National Gas Access (WA) Act* was tabled. In both speeches, the Government's intention to ensure that the Act was able to accommodate the State's particular characteristics was expressly stated.

In these circumstances, the measure of inflation which should be used for the purpose of expressing WAGN's expenditures in constant December 2009 prices is the CPI (All Groups, Perth), and not the CPI (All Groups, Eight Capital Cities).

Furthermore, were those expenditures to be expressed in constant December 2009 prices using as the measure of inflation the CPI (All Groups, Eight Capital Cities), when the prices of materials and services purchased by WAGN were rising at a different rate - the rate measured by the CPI (All Groups, Perth) - the reference tariffs for the next access arrangement period would, other things being equal, diverge from the costs which they were intended to recover.

To the extent that reference tariffs for the next access arrangement period under-recover the costs which WAGN incurs, they would be an inducement for inefficient (inadequate) investment in the WAGN GDS, and for inefficient (excessive) use of natural gas services by consumers of natural gas.

To the extent that reference tariffs for the next access arrangement period over-recover the costs which WAGN incurs, they would be an inducement for inefficient (excessive) investment in the WAGN GDS, and for an inefficient (less than socially desirable) level of use of natural gas services by consumers of natural gas.

Reference tariffs which under-recover or over-recover WAGN's costs would not promote economic efficiency, and would be inconsistent with the requirement of section 24(3) that the service provider be provided with effective incentives to promote economic

efficiency. They would not be consistent with the promotion of efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas.

Use of the CPI (All Groups, Eight capital Cities), instead of CPI (All Groups, Perth) would not satisfy the national gas objective.

Similar issues arise in respect of the application of the index at the end of each modelling period, rather than at the midpoint, as would be required if WAGN were to comply with the direction given by the ERA in paragraph 90 of the Draft Decision.

Paragraph 90 states:

The Authority requires WAGN's proposed revisions to adopt the use of CPI (All Groups, Eight Capital Cities) instead of CPI (All Groups, Perth) and to model the effects of inflation using the index at the end of each modelling period, not the mid-point.

The costs which have been escalated, so that, for the purpose of determining the opening capital base for the next access arrangement period, they are expressed in constant December 2009 prices, are costs which have been incurred by WAGN during 2005, 2006, 2007, 2008 and 2009. Those costs are not incurred at the end of each year. They are incurred progressively from the start of each year.

Assuming, as the ERA has done, that costs are to be escalated from the end of the year in which they are incurred through to December 2009, does not take into account the effect of inflation on costs incurred during the year. The result is understatement of the amount expressed in constant December 2009 prices. The extent of the understatement can be seen from Table 2, which shows the escalation to be applied to capital expenditure in each year of the current access arrangement period for the purpose of determining an opening capital base expressed in constant December 2009 prices. The effects of both the ERA's required method (end of year escalation), and WAGN's proposed method, have been illustrated using CPI (All Groups, Perth), so that the difference shown in Table 2 is due to the method alone, and not to a combination of method and differences between the price index used by the ERA and the price index used by WAGN.

Table 2
Escalation to December 2009

	2005	2006	2007	2008	2009
ERA method	13.9%	9.1%	5.9%	2.1%	0.0%
WAGN method	16.0%	10.8%	7.4%	2.8%	1.4%

Modelling the effects of inflation, as the ERA requires, would have the effect of understating the capital base at 1 January 2010. Reference tariffs for the next access

arrangement period which were determined using the understated capital base would, other things being equal, under-recover WAGN's costs. They would be an inducement for inefficient (inadequate) investment in the WAGN GDS, and for inefficient (excessive) use of natural gas services by consumers of natural gas. These reference tariffs would not promote economic efficiency, and would not be consistent with the requirement of section 24(3) that the service provider be provided with effective incentives to promote economic efficiency. Nor would they be consistent with the promotion of efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas.

Modelling the effects of inflation, as the ERA requires, by applying a price index at the end of each modelling period, instead of at the mid-point as WAGN has proposed, would not be consistent with the national gas objective.

WAGN notes that no issue of inconsistency arises when the effects of inflation are modelled by applying a price index at the mid-point of each modelling period, and cash flows are discounted, for the purpose of present value calculations required by Rule 92(2) of the NGR, at the end of each modelling period. The effects of changing price levels, which inflation adjustment is expected to capture, are conceptually distinct from the effects of time preference, which are to be captured through the present value calculations required by Rule 92(2). These two conceptually distinct effects should not be confounded.

WAGN has not amended its access arrangement proposal, either as required by Required Amendment 6, or as directed in paragraph 90 of the Draft Decision. WAGN has retained the basis for dealing with inflation used in preparing the access arrangement proposal.

2.3 Return on capital

2.3.1 Required Amendment 8

The Authority requires Annexure A and sections 1 and 2 of Annexure B of WAGN's proposed access arrangement to be amended as follows:

Annexure A

Replace the haulage reference tariffs set out under Annexure A with the haulage reference tariffs set out in Table 27.

2.3.2 Proposed amendment to the access arrangement revisions proposal to address matters raised in the Draft Decision

The haulage reference tariffs set out in Table 27 of the Draft Decision have been determined using a rate of return of 6.89% (real, pre-tax).

WAGN submits an amendment to the access arrangement revisions proposal to address the matters raised in the Draft Decision in relation to the real pre-tax rate of return.

The amendment which WAGN submits is that:

the real pre-tax rate of return be amended to 9.6%, and that all other parts of the Access Arrangement Proposal which require change as a consequence of that amendment be amended.

2.3.3 Summary of reasons why the proposed amendment addresses matters raised in the Draft Decision

The Draft Decision concluded that the Sharp-Lintner Capital Asset Pricing Model (Sharpe-Lintner CAPM) should be used in the process of determining a rate of return on capital for the purposes of Rule 87 of the NGR (paragraph 745). The ERA rejected WAGN's proposal to use a combination of four different capital asset pricing models.

For the purposes of this response, WAGN is prepared to accept that the Sharp-Linter CAPM should be used in the process of determining a rate of return on capital for the purposes of Rule 87(2) of the NGR. Hence, the WAGN has recalculated the rate of return for the purposes of Rule 87 using the Sharp-Lintner CAPM as a starting point. In this way, the proposed amendment addresses the matters raised in the Draft Decision.

On this basis, WAGN contends as follows:

(a) a proper application of the Sharp-Linter CAPM for the purposes of Rule 87(2) produces a real, pre-tax WACC of 8.21% rather than 6.89%;

(b) Rule 87(2) provides approaches which must be used in the process of determining the rate of return for the purposes of Rule 87. However, Rule 87 does not prescribe that the rate of return produced by those approaches must be automatically adopted for the purposes of Rule 87. Rather Rule 87(1) requires that the rate of return on capital which is determined under Rule 87 must be commensurate with prevailing conditions in the market for funds and the risks involved in providing reference services;

(c) the outcome of the approaches prescribed by Rule 87(2)(b) must, if necessary, be adjusted to ensure that the rate of return determined under Rule 87 is commensurate with prevailing conditions in the market for funds and the risks involved in providing reference services. Otherwise, there is no purpose served by the separate provision contained in Rule 87(1), if the outcome of the prescribed approaches under Rule 87(2)(b) are to be automatically adopted for the purposes of Rule 87. Moreover, this interpretation of Rule 87 means that it operates in a way which gives effect to the overriding objective of a reference tariff prescribed in section 24(5) of the NGL;

(d) in the present case, the real, pre-tax WACC of 8.21%, which is the product of using the Sharp-Lintner CAPM as the approach prescribed by Rule 87(2)(b), requires adjustment in order for the regulatory rate of return to be commensurate with prevailing conditions in the market for funds and the risks involved in providing reference services. This is because the Sharp-Lintner CAPM does not take into account a number of risks, such as technological and regulatory risks, risks associated with the dynamics of investment behaviour and idiosyncratic risks;

(e) the extent of these risks may be estimated by reference to empirical research and also by reference to other capital asset pricing models, such as the Black CAPM, the Fama-French three factor model and the zero-beta Fama-French Model;

(f) for the purposes of Rule 87, these additional risks justify an increase in the rate of return from the real, pre-tax WACC of 8.21% to a rate of return of 9.6%.

WAGN contends that the Draft Decision has derived the rate of return incorrectly, and thereby arrived at a figure of 6.89% rather than 9.6%. The reasons for this are set out in detail below.

Moreover, WAGN contends that the Draft Decision should have reflected the steps referred to in paragraphs (b)-(f) above. However, the Draft Decision appears to automatically equate the rate of return which satisfies Rule 87 with the outcome produced by the applying the Sharp-Lintner CAPM in accordance with Rule 87(2)(b). The reasons why WAGN contends that there should be an upwards adjustment to the figure of 8.21% are set out in below.

2.3.4 Proper interpretation of Rules 87(1) and 87(2)

The overriding objective of a regulatory rate of return is prescribed by section 24(5) of the NGL. A reference tariff should allow for a return commensurate with the regulatory and commercial risks involved in providing the reference service to which that tariff relates.

Section 24(5) does not provide that a reference tariff should allow for a return based upon a generic capital asset pricing model. Such an interpretation would be contrary to section 7 of schedule 2 of the NGL, which requires a provision of the NGL to be interpreted so as to best achieve the purpose or object of the NGL in preference to any other interpretation.

In conformity with section 24(5), Rule 87(1) of the NGR provides that the rate of return on capital is to be commensurate with prevailing conditions in the market for funds and the risks involved in providing reference services. Again, Rule 87(1) does not state that a rate of return which complies with its requirements will be the result of applying a particular type of generic capital asset pricing model.

Rule 87(2) obviously provides a mechanism to be adopted in "determining" a rate of return. It is significant that the rate of return is to be "determined" not "calculated". The process of determination implies that judgments will be made in the process of a determination. In other words, Rule 87(2) is predicated upon a process of determination, which involves judgments, in order to achieve a rate of return which complies with Rule 87(1).

Rule 87(2)(b) provides the approaches to be "used" in making a determination. It does not prescribe the result of a determination. Rule 87(2) prescribes a methodology to be used in the process of a determination. In fact, as the next section demonstrates, Rules 87(2)(a) and (b) are not prescriptive in nature. This indicates that the approaches prescribed in Rule 87(2)(a) and (b) are not intended to produce an outcome independent of a determination which complies with Rule 87(1).

It is important to emphasise that the real, pre-tax WACC is conceptually distinct from the regulatory rate of return which is required by Rule 87. The Australian Competition Tribunal has noted:

. . . the use of the WACC formula is only a means to an end, which is to estimate the required rate of return for an investment with certain characteristics of riskiness and debt.[2]

[2] *Application by Telstra Corporation Limited ABN 33 051 775 556* [2010] ACompT 1, paragraph 422.

2.3.5 Rule 87(2) does not prescribe the way in which the rate of return is to be determined

The process of estimation and calculation which the ERA has carried out is not sufficient to establish the regulatory rate of return required by Rule 87 of the NGR.

Rule 87(2)(b) requires only:

- use of a well accepted approach, which incorporates the costs of equity and debt;
- use of a well accepted financial model; and
- use of benchmark levels of efficiency, and use of benchmark standards as to gearing and other financial parameters for a going concern and as reflect in other respects best practice.

In this context, there are a number of well accepted approaches which incorporate the cost of equity and the cost of debt. In the process of estimation and calculation which has produced 6.89% (real, pre-tax), the ERA has used a weighted average of the cost of equity and the cost of debt. It could have used another approach, such as the nominal post-tax approach of the Australian Energy Regulator, which does not use a WACC.

There are also a number of well accepted financial models which might be used. In the process of estimation and calculation which has produced a real, pre-tax WACC of 6.89%, the ERA has used the Sharpe-Lintner CAPM to determine the cost of equity. It could have used another financial model, such as the dividend growth model, for the same purpose.

Benchmarking cannot occur in the abstract, and requires consideration of many factors including the reliability of gas suppliers, the locations of pipeline assets, the ways in which those assets are operated and maintained, the state of capital markets, and the creditworthiness of counterparties. In respect of gearing and other financial parameters, the use of benchmarks is further qualified by a requirement to take into account best practice. Practice is responsive to conditions and context: what is best practice in one context may not be best practice in another. In consequence, the requirements to use benchmark levels of efficiency, and to use benchmark standards as to gearing and other financial parameters, call for judgement and therefore admit a range of possible outcomes. In the process of estimation and calculation which has produced a real, pre-tax WACC of 6.89%, the ERA has assumed a benchmark standard as to gearing of 60% debt, 40% equity, when financial theory and a review of business practice both indicate that other values might be assumed.

Consequently, Rule 87(2) does not prescribe the exclusive approach to be used in determining a rate of return (beyond requiring that it incorporates the cost of equity and the cost of debt). Further, it does not prescribe the form of well accepted financial model which is to be used (although it indicates that the Sharpe-Lintner CAPM is such a

model); and it does not prescribe benchmarks for efficiency, and benchmark standards for gearing and other financial parameters.

Hence, a WACC determined in accordance with the requirements of Rule 87(2) cannot necessarily be assumed to be the rate of return commensurate with prevailing market conditions in the market for funds and the risks involved in providing the reference services. The obvious and only purpose of Rule 87(1) is to overcome this difficulty, and to ensure that the WACC derived by whatever approach is used is then adjusted in making a determination of an appropriate regulatory rate of return.

2.3.6 Risks not taken into account by Sharp-Lintner CAPM

The cost of equity, and the cost of debt, for a service provider which achieves benchmark levels of efficiency, and which meets benchmark standards as to gearing and other financial parameters, will not usually be directly observable. If the cost of equity and the cost of debt cannot be directly observed, they may be estimated using models developed by economists for explaining the processes through which the prices of, or expected rates of return on, financial assets are generated.[3]

Rule 87(2) anticipates the need to estimate the cost of equity and the cost of debt, and requires the use of a well accepted financial model such as the Sharpe-Lintner CAPM. In Australian regulatory practice, the CAPM has been regarded as the only well accepted model capable of explaining the price of equity. A different model has usually been used to estimate the cost of debt, although the Sharpe-Lintner CAPM could be used for this purpose.

The Sharpe-Lintner CAPM (like all other asset pricing models) is a simplified description of a complex reality.

The Sharpe-Lintner CAPM explains the expected rate of return on an asset as the sum of a risk free rate of return and a premium for risk. This may be represented in the following way:

$E(r_e) = r_{rf} + [E(r_m) - r_{rf}] \times \beta$,

where:

- $E(r_e)$ denotes the expected rate of return on the asset in question;
- r_{rf} denotes a risk free rate of return;
- $E(r_m) - r_{rf}$ is the market risk premium; and
- β denotes the asset's beta.

[3] Suppose today's price of a financial asset is p_t, and the asset provides a return x_{t+1} tomorrow. The rate of return on the asset expected by an investor today is $r_{t+1} = x_{t+1}/p_t - 1$: the asset's price and the expected rate of return are directly, but inversely, related.

The Sharpe-Lintner CAPM is derived from a model of choice in which investors choose, at a point in time, portfolios of assets which yield returns one period later. The following assumptions are made for the derivation:

- quantities of the assets are fixed, and the assets are perfectly divisible and perfectly liquid (marketable);
- the market in which the assets are traded is perfectly competitive: investors take the market prices of the assets as given;
- there are no restrictions on the short selling of assets, no transaction costs are incurred when assets are traded, and there are no taxes;
- one of the assets available in the market is a risk free asset: investors can borrow and lend, in unlimited amounts, at the rate of return on this risk free asset (the risk free rate of rate of return) which is fixed and determined outside the model;
- the return on a portfolio of assets is not known with certainty at the time the portfolio is chosen, but all investors know the true joint probability distribution of returns at the end of the period (the assumption of homogeneous expectations); and
- investors maximise the expected utility of end-of-period wealth by choosing among alternative portfolios which can be ranked in terms of expected portfolio return and risk, with risk measured as the variance, or standard deviation, of portfolio return.

These assumptions imply, among other things, that all investors hold the same portfolio of assets. This portfolio, the market portfolio, comprises every asset held in a proportion which is the ratio of the total market value of the asset to the market value of all assets.

The premium for risk in the Sharpe-Lintner CAPM is the product of the market risk premium and the asset's beta. The market risk premium is the difference between the expected rate of return on the market portfolio and the risk free rate of return. Beta measures the contribution which the asset makes to the risk of the market portfolio. That is, the risk which the Sharpe-Lintner CAPM takes into account in explaining the price of an asset is the contribution made by the asset in question to the riskiness of the market portfolio.

When the Sharpe-Lintner CAPM was first derived in the 1960s, this was an important theoretical insight into the relationship between expected rate of return and risk. When the assumptions listed above are made, the variance or "riskiness" of the return on the asset – its "own risk" – is not a factor which explains the expected rate of return. This insight – and not the model's superiority in estimating rates of return – is the reason why the Sharpe-Lintner CAPM is a well accepted financial model.

That the Sharpe-Lintner CAPM does not provide good estimates or forecasts of expected rates of return became apparent when the first econometric tests of the model

were carried out in the late 1960s and early 1970s.[4] Subsequent studies, using more refined statistical methods, continued to show that the Sharpe-Lintner CAPM was not a particularly good model of asset pricing.[5]

A number of the assumptions listed above are questionable, and have been identified as possible causes of the empirical failure of the Sharpe-Lintner CAPM.

The model of choice from which the Sharpe-Lintner CAPM is derived is a simple model. The only economic activity which is modelled is the buying and selling of financial assets. In consequence, the Sharpe-Lintner CAPM explains expected rates of return in terms of only one type of risk (the contribution of the asset being priced to the riskiness of the market portfolio).

The model of choice from which the Sharpe-Lintner CAPM is derived does not incorporate the buying and selling of goods and services, their production, technological change, government and the regulation of economic activity, or economic growth. The Sharpe-Lintner CAPM cannot, therefore, provide a comprehensive explanation of the risks which determine expected rates of return. In particular, the Sharpe-Lintner CAPM cannot explain expected rates of return in terms of technological and regulatory risks, risks which are potentially important for gas pipeline systems (they are risks involved in delivering reference services (Rule 871(1), and commercial and regulatory risks involved in providing a reference service to which a reference tariff relates (NGL, section 24(5)). The effects of these risks are excluded by the form of the model of choice from which the Sharpe-Lintner CAPM is derived.[6]

---

4 See, for example, Irwin Friend and Marshall Blume (1970), "Measurement of Portfolio Performance Under Uncertainty", American Economic Review, 60(4): 561-575; Fisher Black, Michael C. Jensen and Myron Scholes (1972), "The Capital Asset Pricing Model: Some Empirical Tests", in Michael C. Jensen (ed.), *Studies in the Theory of Capital Markets*, New York: Praeger; Marshall E. Bloom and Irwin Friend (1973), "A New Look at the Capital Asset Pricing Model", Journal of Finance, 28(1): 19-33; Marshall E. Bloom and Frank Husic (1973), "Price, Beta, and Exchange Listing", Journal of Finance, 28(2): 283-299; and Eugene F. Fama and James D. MacBeth (1973), "Risk, Return, and Equilibrium: Empirical Tests", Journal of Political Economy, 81(3): 607-636.

5 See, for example, Rolf W. Banz (1981), "The Relationship Between return and Market value of Common Stocks", Journal of Financial Economics, 9: 3-18; Marc R. Reinganum (1982), "Misspecification of Capital Asset Pricing: Empirical Anomalies Based on Earnings' Yields and Market values", Journal of Financial Economics, 9: 19-46; Michael R. Gibbons (1982), "Multivariate Tests of Financial Models: A New Approach", Journal of Financial Economics, 10: 3-27; Robert F. Stambaugh (1982), "On the Exclusion of Assets from Tests of the Two Parameter Model: A Sensitivity Analysis", Journal of Financial Economics, 10: 237-268; Jay Shanken (1987), "Multivariate Proxies and Asset Pricing Relations: Living with the Roll Critique", Journal of Financial Economics, 18: 91-110; and Eugene F. Fama and Kenneth R. French (1992), "The Cross Section of Expected Stock Returns", Journal of Finance, 47(2): 427-465.

6 That technological and other risks may be important in the explanation of asset prices is indicated by the growing number of pricing models developed within a general equilibrium framework incorporating production as well as exchange and consumption. These models are relatively new and untested. See, for example, John H. Cochrane (1996), "A Cross-Sectional Test of an Investment-Based Asset Pricing Model", Journal of Political Economy, 104(3): 572-621; Urban J. Jermann (1998), "Asset pricing in production economies", Journal of Monetary Economics 41: 257-275; Joao F. Gomes, Leonid Kogan and Lu Zhang (2003), "Equilibrium Cross Section of Returns", Journal of Political Economy, 111(4): 693-732, Leonid Kogan (2004), "Asset prices and real investment", Journal of Financial Economics, 73: 411-431; and Joao F. Gomes, Leonid Kogan and

The Sharpe-Lintner CAPM is derived from a model of choice in which investors choose, at a point in time, portfolios of assets which yield returns one period later. This model of choice does not explicitly incorporate time, and yet time is fundamental to issues of investment and return. When time is explicitly introduced into the model, the expected rate of return must not only compensate investors for bearing market risk (the key insight of the Sharpe-Lintner CAPM); it must also compensate them for the bearing of the risk of unfavourable shifts in the set of investment opportunities over time. If economic circumstances change, the explanation of the Sharpe-Lintner CAPM is inadequate, and a second risk factor is required to explain asset prices.[7]

The risk captured by the Sharpe-Lintner CAPM is commonly referred to as systematic risk. Systematic risk is described, somewhat loosely, as the risk which is measured by the covariation of asset return with another variable representing the state of the economy (in the case of the Sharpe-Lintner CAPM, the expected rate of return on the market portfolio). Equally loosely, risks which are independent of the state of the economy, but which affect the returns on particular assets, are called "unsystematic" or "idiosyncratic" risks.

Systematic risk is, from the perspective of the Sharpe-Lintner CAPM, the only type of risk for which investors are compensated by market rates of return. Underlying the Sharpe-Lintner CAPM is a view that investors do not need to be exposed to idiosyncratic risks. By holding well diversified portfolios, they can limit the risk to which they are exposed to systematic risk (which, because it is economy-wide, cannot be eliminated by diversification). Market rates of return do not, therefore, need to compensate investors for bearing idiosyncratic risks.

The view that portfolio diversification limits the risk to which investors are exposed to systematic risk is a theoretical view. It is a conclusion reached in a process of reasoning from certain premises. It is not a statement of fact. Investors typically do not hold well diversified portfolios of assets.[8] A large percentage of household wealth is held in the form of human capital, sole proprietorships, partnerships, pension plans, superannuation funds, and residential real estate. Among institutional investors, an increasing amount of wealth is allocated to a limited number of asset types including private equity, venture capital, commercial real estate, and hedge fund investments.

This failure to hold well diversified asset portfolios is not, as some have suggested, the result of investor irrationality, and something which should therefore be ignored. Recent theoretical research has shown that when some investors hold expectations about investment opportunities and expected returns which are different from the expectations

Motohiro Yogo (2009), "Durability of Output and Expected Stock Returns", Journal of Political Economy, 117(5): 941-986.

[7] Robert Merton (1973). "An Intertemporal Capital Asset Pricing Model", Econometrica, 41(5): 867-887.

[8] See, for example, John Y. Campbell, Martin Lettau, Burton G. Malkiel and Yexiao Xu (2001), "Have Individual Stocks Become More Volatile? An Empirical Exploration of Idiosyncratic Risk", Journal of Finance, 56(1): 1-43.

held by other investors (that is, when expectations are not, as assumed for Sharpe-Lintner CAPM derivation, homogeneous), optimal portfolios will not be well diversified, and idiosyncratic factors are important in explaining asset prices.[9]

This research is being carried out within a conceptual framework in which investors are assumed to maximise expected utility subject to constraints on investment and consumption opportunities, including constraints on wealth and on the availability of information.[10] It is being carried out within the "rational actor" framework of standard microeconomic theory. This was the framework within which the Sharpe-Lintner CAPM was derived.

Periodically, concern has been expressed over the naivety of the psychological foundations of the rational actor framework and, more specifically, over the presumption of expected utility maximization. During the 1980s, these concerns, and the fact that rational actor models did not seem to provide adequate explanations of financial markets, drove the emergence of a new conceptual framework – behavioural finance – based on more realistic psychological foundations, and supported by experimental and empirical analysis.[11]

After reviewing the then recent research on asset pricing models which relates a stochastic discount factor to macroeconomic risks, and nearly two decades of work in behavioural finance, Campbell concluded his 2000 survey of asset pricing:

Despite the promise of such [stochastic discount factor] *research, in my opinion it is unrealistic to hope for a fully rational, risk based explanation of all the empirical patterns that have been discovered in stock returns. A more reasonable view is that rational models of risk and return describe a long-run equilibrium toward which financial markets gradually evolve. Some deviations from such models can be quickly arbitraged away by rational investors; others are much harder to arbitrage and may disappear only after a slow process of learning and institutional innovation*.[12]

---

9 The models are relatively new and untested, but are indicative of a growing areas of research in asset pricing. See, for example, George M. Constantinides and Darrell Duffie (1996), "Asset Pricing with Heterogeneous Consumers", Journal of Political Economy 104(2): 219-240; John Y. Campbell, Martin Lettau, Burton G. Malkiel and Yexiao Xu (2001), "Have Individual Stocks Become More Volatile? An Empirical Exploration of Idiosyncratic Risk", Journal of Finance, 54(1): 1-43; Alon Brav, George M. Constantinides, Christopher C. Geczy (2002), "Asset Pricing with Heterogeneous Consumers and Limited Participation: Empirical Evidence", Journal of Political Economy, 110(4): 793-824; Fangjian Fu (2009), "Idiosyncratic Risk and the cross-section of expected stock returns", Journal of Financial Economics, 91: 24-37; Francis A. Longstaff (2009), "Portfolio Claustrophobia: Asset Pricing in Markets with Illiquid Assets", American Economic Review, 99(4): 1119-1144.

10 On the issues with expected utility maximisation, see Mark Machina (1987), "Choice Under Uncertainty: Problems Solved and Unsolved", Journal of Economic Perspectives, 1(1): 121-154.

11 A brief history of behavioural finance and a review of the earlier literature is provided by Robert J Shiller (2003), "From Efficient Markets Theory to Behavioral Finance", Journal of Economic Perspectives, 17(1): 83-104.

12 John Y. Campbell (2000), "Asset Pricing at the Millennium", Journal of Finance, 55(4), 115-1567.

The research which has been undertaken within the behavioural finance paradigm provides further reasons to expect that the Sharpe-Lintner CAPM does not provide a complete view of the economic processes through which asset prices are determined.

There are, then, at least six reasons why the Sharpe-Lintner CAPM cannot prescribe the expected rate of return on an asset, and why Rule 87(2), when applied using the Sharpe-Lintner CAPM, cannot be prescriptive about the rate of return. These are:

- empirical research has shown that the Sharpe-Lintner CAPM does not provide good estimates of expected rates of return on financial assets;
- the Sharpe-Lintner CAPM explains expected rates of return in terms of only one type of risk; the effects of other types of risks, in particular, technological and regulatory risks, although potentially important, are excluded by the form of the model of choice from which the CAPM is derived;
- the Sharpe-Lintner CAPM is essentially a static model; when the dynamics of investment behaviour are taken into account another risk factor is required to explain asset prices;
- the Sharpe-Lintner CAPM does not take into account the effects of idiosyncratic risks on asset prices; the effects of these risks are assumed to be eliminated by portfolio diversification, but the required diversification is not supported by the evidence;
- for derivation of the Sharpe-Lintner CAPM, investor expectations about investment opportunities and returns are assumed to be homogeneous; recent theoretical research, which examines the implications of the more reasonable view that investor expectations are heterogeneous, finds that optimal portfolios will not be well diversified, and idiosyncratic factors are important in explaining expected rates of return; and
- dissatisfaction with the naive psychological foundations of the rational actor framework of financial economics has led to the emergence of behavioural finance, which further challenges the adequacy of the Sharpe-Lintner CAPM as an explanation of the economic processes through which asset prices are generated.

When applied using the Sharpe-Lintner CAPM, Rule 87(2) cannot be seen as prescriptive, and a WACC determined in accordance with the guidance provided by Rule 87(2) cannot be assumed to be the rate of return required by Rule 87 of the NGR.

2.3.7 WAGN's amendments to the access arrangement proposal to address matters raised in Required Amendment 8

Real, pre-tax WACC: approach

A nominal pre-tax weighted average of the costs of equity and debt has been calculated using the formula:

$WACC_{nominal\ post\text{-}tax} = E(r_e) \times 1/[1 - t \times (1 - \gamma)] \times E/V + E(r_d) \times D/V$,

where:

- $E(r_e)$ is the nominal post-tax expected rate of return on equity;
- E/V is the proportion of equity in total financing;
- $E(r_d)$ is the nominal pre-tax expected rate of return on debt;
- t is the tax rate;
- γ (gamma) is the proportion of tax collected at the corporate level which is to be credited against personal tax payments (γ is a measure of the value of imputation credits); and
- D/V is the proportion of debt in total financing.

A real pre-tax WACC has been obtained by removing expected inflation from the nominal pre-tax WACC:

$WACC_{real\ pre\text{-}tax} = (1 + WACC_{nominal\ pre\text{-}tax})/(1 + \pi^e) - 1$.

The cost of equity has been calculated using the Sharpe-Lintner CAPM:

$E(r_e) = r_{rf} + [E(r_m) - r_{rf}] \times \beta$.

The cost of debt ($E(r_d)$) has been calculated using the financial model:

$E(r_d) = r_{rf} + DRP + \kappa$,

where:

- r_{rf} is the nominal risk free rate of return;
- DRP is the debt risk premium; and
- κ is the allowance for debt raising costs.

Estimates of parameters

Calculation of a real, pre-tax WACC using the approach and financial models represented by the formulae above requires estimates of:

- nominal risk free rate of return;
- market risk premium;
- equity beta;
- debt risk premium;

- debt raising costs;
- tax rate
- gamma;
- gearing; and
- expected inflation.

The estimates which WAGN has made are set out in Table 3.

Table 3
Parameter estimates for calculation of a real, pre-tax WACC

Parameter		Estimate	Basis
Nominal risk free rate of return	r_{rf}	5.02%	Estimated as the average of daily yield data, reported by the Reserve Bank of Australia for the 20 trading days to 23 September 2010, for Australian Government securities with terms to maturity of 10 years.
Market risk premium	$E(r_m) - r_{rf}$	6.50%	WAGN estimate
Equity beta	β	0.80	Estimate from Draft Decision
Debt risk premium	DRP	4.10%	WAGN estimate
Debt raising costs	κ	0.29%	Estimate from Draft Decision (12.5 basis points), plus pre-financing costs estimated at 16.3 basis points
Tax rate	t	30.00%	Statutory tax rate
Gamma	γ	0.20	WAGN estimate
Gearing: debt to total value	D/V	60.00%	Estimate from Draft Decision
Gearing: equity to total value	E/V	40.00%	Estimate from Draft Decision
Expected inflation	π^e	2.60%	Estimate from Draft Decision

Calculation of real, pre-tax WACC

Cost of equity:

$$E(r_e) = r_{rf} + [E(r_m) - r_{rf}] \times \beta$$
$$= 5.02\% + 6.50\% \times 0.80$$
$$= 10.22\%$$

Cost of debt:

$$E(r_d) = r_{rf} + DRP + \kappa$$
$$= 5.02\% + 4.10\% + 0.29\%$$
$$= 9.41\%$$

Nominal pre-tax WACC:

$WACC_{nominal\ pre\text{-}tax}$ = $E(r_e) \times 1/[1 - t \times (1 - \gamma)] \times E/V + E(r_d) \times D/V$
= 10.22% x 1/[1 - 30.00% x (1 - 0.20)] x 40.00% + 9.41% x 60.00%
= 11.03%

Real pre-tax WACC:

$WACC_{real\ pre\text{-}tax}$ = $(1 + WACC_{nominal\ pre\text{-}tax})/(1 + \pi^e) - 1$
= (1 + 11.03%)/(1 + 2.60%) - 1
= 8.21%

A real, pre-tax WACC which complies with the applicable requirements of Rule 87(2) of the NGR is 8.21%.

Satisfying the criteria of Rule 87(1)

Is the real, pre-tax WACC of 8.21%, obtained through a process of estimation and calculation guided by Rule 87(2), the rate of return required by Rule 87(1)? Is it commensurate with prevailing conditions in the market for funds and the risks involved in providing the reference services?

Some elements of the process of estimation and calculation through which the real, pre-tax WACC has been obtained, are commensurate with prevailing conditions in the market for funds in the sense that they have been estimated using current financial market data. Other elements of the process of estimation and calculation are not values determined by conditions in financial markets, and are not meaningfully assessed for commensurability with prevailing conditions in those markets.

Nominal risk free rate of return

The nominal risk free rate of return used in calculating the real, pre-tax WACC - 5.02% - was estimated using current financial market data (data for 20 trading days to 30 September 2010). It is commensurate with prevailing conditions in the market for funds.

Market risk premium

A market risk premium of 6.50% has been used to calculate the real, pre-tax WACC of 8.21%.

The market risk premium is the difference between the expected rate of return on a market portfolio, and the risk free rate of return.

The market risk premium is not the difference between the realised or actual rate of return on the market portfolio and the risk free rate of return, although this difference -

the historical excess return - may be used to make an estimate of the market risk premium.

In estimating the market risk premium in the context of determining the rate of return for the WAGN GDS, the ERA:

- referred to the historical excess returns which Australian regulators have previously taken to be estimates of the market risk premium; and
- followed the approach it has previously taken, an approach which the ERA states is consistent with historical regulatory practice that a market risk premium of 6 per cent is within the reasonable range of values.

The ERA gave no consideration to the questions of what factors might determine the market risk premium, whether those factors had changed and, if they had changed, how the market risk premium might respond to the changes.

The ERA gave no consideration to these questions despite the fact that:

- the market risk premium is not well understood (and remains a "puzzle" some 25 years after being given that designation by Mehra and Prescott);[13] and
- there were major changes in global financial markets during 2007 and 2008 (Global Financial Crisis).

Prior to the Global Financial Crisis, economist Martin Weitzman observed, in the context of an examination of the market risk premium:

. . . markets are behaving as if investors fear some unknown hidden randomness that isn't obvious from the data. People are acting in the aggregate like there is much more marginal-utility–weighted subjective variability about future growth rates than past observations seem to support.[14]

Then came the Global Financial Crisis. The fears to which Weitzman referred to were realised, and it is reasonable to expect that expectations adjusted. That adjustment, as Weitzman makes clear, will not be obvious from past observations. The ERA's long term historical averages tell us nothing about current expectations and the way in which they adjusted. Furthermore, any indications which might have been provided by past adjustments to "crises" have been "smoothed out" by the averaging process. The ERA's Figures 4 to 8 do not tell us much about expectations and about the way in which they adjust.

---

13 Rajnish Mehra and Edward C Prescott (1985), "The Equity Premium: A Puzzle", Journal of Monetary Economics, 15 145-161.

14 Martin L Weitzman (2007), "Subjective Expectations and Asset-Return Puzzles", American Economic Review, 97(4): 1102-1130.

Evidence which was available - but not for Australian financial markets - indicated that the adjustment process was likely to be slow: in the order of 3.5 years.[15] In these circumstances, taking the long term historical average as an estimate of the market risk premium during for the next access arrangement period - during a period when the expectations are continuing to adjust to the effects of the Global Financial Crisis, cannot - and does not - lead to a rate of return which is commensurate with prevailing conditions in the market for funds.

An alternative method of measuring the market risk premium is required - a method which adopts a forward-looking view and is able to capture expectations over the next access arrangement period. Value Advisor Associates provided such an estimate for WAGN using its so called Implied Volatility Approach.

The problem which the Implied Volatility Approach seeks to address cannot be ignored. The ERA's argument against use of this approach, which is summarized in paragraph 577 of the Draft Decision, might have some merit if another alternative were available (and if it were properly cast to apply the criteria of the NGL, and not of the National Electricity Rules). The ERA, however, has not proposed such an alternative.

WAGN has therefore retained a value of the market risk premium above the long term average, but below the value which was used in the access arrangement revisions proposal submitted on 29 January 2009, and which was based on data from the immediate aftermath of the Global Financial Crisis.

Unlike the long term historical average, WAGN's estimate of the market risk premium of 6.5% is indicative of current conditions in the market for funds.

Debt risk premium

In assessing the rate of return, WAGN has used a debt risk premium of 4.10%. That premium was estimated using current financial market data: it is commensurate with prevailing conditions in the market for funds.

The debt risk premium of the Draft Decision – 3.293% – was determined, by the ERA, using information on the cost of debt which was available from the CBASpectrum service. The debt risk premium which WAGN had proposed in the access arrangement revisions submitted to the ERA on 29 January 2010 was determined using data which were available from the Bloomberg service.

[15] Carmen M Reinhart and Kenneth S Rogoff (2009), "The Aftermath of Financial Crises", American Economic Review Papers and Proceedings, 99(2): 466-472.

The necessary information on the cost of debt which the ERA previously sourced from CBASpectrum is no longer available. CBASpectrum ceased to publish fair value estimates during August 2010.

WAGN notes that only a small number of BBB debt issues is available – and has been available – for "testing" the predictive accuracy of fair value curves. That data is not sufficient to allow – nor has it previously been sufficient to allow – rejection of the Bloomberg curve.

WAGN has, therefore, estimated the current debt risk premium using information from the Bloomberg service. WAGN's approach is essentially that which was set out in its submission lodged with the ERA on 29 January 2010 (and, in particular, in a report from Second Opinion Financial Advisory which was Attachment 9 to that submission).

The estimate is based primarily on the premium implied by the Bloomberg BBB band fair value curve for 6 years duration (the longest duration currently available). The BBB band curve has been extrapolated using the change in the premium obtained from the Bloomberg AAA fair value curves for 6 years and 10 years. The extrapolation yields an estimate of the debt risk premium of 4.10%.

Debt raising costs

An allowance for debt raising costs comprises:

- 12.5 basis points for debt facility establishment costs; and
- an annualised allowance of 16.3 basis points for recovery of "pre-financing" costs.

In paragraph 697 of the Draft Decision, the ERA stated that it did not approve WAGN's proposal in relation to pre-financing costs. The reasons given for this were in paragraphs 694 to 696:

694. The Authority is of the view that it is not appropriate to include the pre-financing cost to the cost of debt. To do so would be inconsistent with recognised regulatory practice and the Authority's usual approach. The Authority is not satisfied that SOFA, on behalf of WAGN, has established any convincing reason for departing from the approach adopted by most Australian regulators.

695. The Authority accepts Alinta's view that there may be some double counting of WAGN's pre-financing cost if it is included in the cost of debt.

696. The Authority is not aware of any decisions by Australian regulators in which pre-financing cost are included in the cost of debt.

In paragraph 694 the ERA argued that no convincing reason had been established for departing from prior practice. This was not correct. The reason was provided on page 143 of WAGN's Submission:

Ratings agencies now expect that businesses with significant debt portfolios, which require periodic refinancing, have the refinancing in place at least three months before existing facilities terminate. Businesses which cannot show that refinancing has been secured in advance of existing facility termination face the risk of unfavourable credit assessment and potentially higher borrowing costs.

In a letter dated 7 January 2010, Second Opinion Financial Advisory (SOFA) drew WAGN's attention to the issue of pre-financing, referring the concerns of rating agency Standard and Poor's, and providing the basis for estimation of the costs (16.3 basis points). SOFA's letter was provided as Attachment 10 to WAGN's Submission.

WAGN notes that the issue of pre-financing emerged during 2007-2008. In April 2008, Standard and Poor's advised in its e-publication *RatingsDirect on the Global Credit Portal*, that:

As maturities move into the forward 12-month time horizon we will start placing more weight within the short-term rating analysis on the materiality of upcoming maturities and the company's refinancing strategy and execution ability. To avoid negative rating consequences, the ideal progression would be:

- *12-to-18 months ahead of maturity, the company would have a detailed and credible refinancing plan (including a contingency plan);*
- *No less than six months ahead of the maturity, the company would have documentation substantially in place for the replacement debt issue/s; and*
- *No less than three months ahead of the maturity, the refinancing would be essentially completed, committed or underwritten.*[16]

Pre-financing now imposes a real cost on service providers. If that cost is not taken into account in the setting of reference tariffs, those tariffs will be artificially low. Artificially low reference tariffs will be an inducement for inefficient (inadequate) investment in the WAGN GDS, and for inefficient (excessive) use of natural gas services by consumers of natural gas. They will be consistent with the requirement of the national gas objective for the promotion of efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas.

In paragraph 695 of the Draft Decision, the ERA stated that it accepted Alinta's view that there may be some double counting of WAGN's pre-financing cost if it is included in the cost of debt. The implication here, is that the allowance of 12.5 basis for debt raising costs points already included some allowance for pre-financing costs. However, as noted in the Draft Decision, that allowance was based on work by the Allen Consulting Group in 2004. It was based on work carried out well before pre-financing and its costs became an issue.

[16] At *www.standardandpoors.com/ratings direct*.

The Draft Decision gives no consideration to these matters, stating only that the making of an allowance for pre-financing costs would be inconsistent with recognised regulatory practice. Consistency with recognised regulatory practice is not, however, an applicable requirement of the NGL and NGR. Nor is it an applicable criterion prescribed in the NGL and NGR.

WAGN has therefore retained an allowance of 16.3 basis points for pre-financing in its allowance for debt raising costs.

Gamma

A value of gamma of 0.20 has been retained. For the reasons set out below, this value of gamma is commensurate with prevailing conditions in the market for funds.

Paragraph 626 of the Draft Decision indicates that the value of gamma is to be estimated as the product of:

- the fraction of imputation credits created that are assumed to be distributed to shareholders (the payout ratio, F); and
- the market value of imputation credits distributed as a proportion of their face value (θ).

Following the approach of the Australian Energy Regulator, the ERA has estimated the value of the payout ratio, F, to be 1.0. Two reasons were given for this estimate of F:

- it was consistent with the standard assumption of valuation practice that all free cash flows are paid out to investors (Draft Decision, paragraph 629); and
- it was consistent with the Officer WACC which is takes a view of cash flows in perpetuity, and which includes a simplifying assumption that cash flows are fully distributed at the end of each period (Draft Decision, paragraph 630).

In addition, the ERA noted two opinions of the Australian Energy regulator:

- the Australian Energy Regulator considers that the assumption of a zero value for retained imputation credits is inconsistent with the Officer WACC framework; and
- the Australian Energy Regulator is of the view that the actual payout ratio is unlikely to be significantly less than 1.0, based on an observed payout ratio from tax statistics of 71% and the assumption that retained imputation credits have a positive value.

On the basis of these two reasons and two opinions, the ERA concluded that a payout ratio of 1.0 was appropriate (Draft Decision, paragraph 633).

The ERA proposed a range for the estimate of θ: 0.37 to 0.81.

The lower limit of this range was obtained from a study by SFG Consulting in 2009 (which sought to replicate earlier work for the Australian Energy Regulator by Beggs and Skeels (Draft Decision, paragraph 343). The upper limit was an estimate made from taxation statistics by the Australian Energy Regulator (Draft Decision, paragraph 636).

The midpoint of the ERA's range for θ was 0.6. Having determined that a value of F of 1.0 was appropriate, the ERA concluded that a reasonable value for gamma was 0.6.

Although the ERA's approach to the estimation of gamma has the appearance of being reasonable:

- the ERA has relied on theoretical argument for a value of F of 1.0 (albeit argument supported by the opinion of the Australian Energy Regulator); and
- the ERA has adopted an upper limit for θ (0.81) which is unreasonably high, consistent with upward bias imparted by the method of estimation.

Empirical evidence on the value of F was provided by WAGN in its submission lodged with the ERA on 29 January 2010 and, in particular, in a report from consultants NERA, which was Attachment 8 to that submission.

The NERA report also provided evidence in relation to the appropriate value of θ.

When this evidence is considered, a reasonable range for gamma is between zero and 0.4. WAGN has retained the estimate of 0.2.

Cost of equity

The real, pre-tax WACC of 8.21% was determined using the CAPM to estimate the cost of equity. Applying the CAPM yielded a (nominal, post-tax) return to, or cost of, equity of 10.22%.

To ascertain whether this cost of equity was commensurate with conditions in the market for funds and the risks involved in providing the reference services WAGN:

- examined the equity returns obtained from a number of alternative asset pricing models; and
- engaged finance consultants SFG to estimate the return on equity which prospective investors might reasonably expect.

Economics consultants NERA were retained, by WAGN, to estimate the parameters of Black's Capital Asset Pricing Model, the Fama-French three factor model, and a zero-beta version of the Fama-French model. The zero-beta version of the Fama-French model, like Black's Capital Asset Pricing Model, gives recognition to the fact that investors are not able to borrow and lend freely at the risk free rate of return.

The results from NERA's work are summarized in Table 4. NERA's report for WAGN was provided as Attachment 11 to the submission which accompanied the access arrangement proposal which WAGN lodged with the ERA on 29 January 2010.

Table 4
Rate of return on equity parameter estimates

Asset pricing model	Zero-beta premium[1]	Betas		
		Market	HML	SMB
Black's Capital Asset Pricing Model	0.065	0.80		
Fama-French three-factor model		0.65	0.38	0.44
Fama-French (zero beta) three factor model	0.065	0.65	0.38	0.44

1 WAGN estimate.

Costs of equity calculated using each of these three models, and using estimates of other parameters made using current financial market data, are set out below.

Black's Capital Asset Pricing Model

$E(r_e) = r_{rf} + z + [E(r_m) - r_{rf} - z] \times \beta$
$r_{rf} = 5.02\%$
$z = 6.50\%$
$E(r_m) - r_{rf} = 6.50\%$
$\beta = 0.80$
$E(r_e) = 5.02\% + 6.50\% + [6.50\% - 6.50\%] \times 0.80$
$= 11.52\%$

Fama-French three factor model

$E(r_e) = r_{rf} + [E(r_m) - r_{rf}] \times b + HML \times h + SMB \times s$
$r_{rf} = 5.02\%$
$E(r_m) - r_{rf} = 6.50\%$
$b = 0.65$
$HML = 3.61\%$
$h = 0.38$
$SMB = 2.58\%$
$s = 0.44$
$E(r_e) = 5.02\% + 6.50\% \times 0.65 + 3.61\% \times 0.38 + 2.58\% \times 0.44$
$= 11.76\%$

Fama-French (zero beta) three factor model

$E(r_e) = r_{rf} + z + [E(r_m) - r_{rf} - z] \times b + HML \times h + SMB \times s$
$r_{rf} = 5.02\%$
$z = 6.50\%$
$E(r_m) - r_{rf} = 6.50\%$

b	=	0.65
HML	=	3.61%
h	=	0.38
SMB	=	2.58%
s	=	0.44
$E(r_e)$	=	5.02% + 6.50% + [6.50% - 6.50%] x 0.65 + 3.61% x 0.38 + 2.58% x 0.44
	=	14.03%

SFG sought to estimate the return on equity expected by investors from data drawn from recent equity analysts' reports for six energy infrastructure businesses. These businesses were seen as being comparable to WAGN in the sense that an investment in any of them would be regarded by investors as an alternative to an investment in WAGN.

SFG found that the forecasts of dividend yield which the analysts had made for each of the six comparable businesses averaged 10.5%. Moreover, the forecasts had been quite stable in the recent past.

SFG also advised that data from recent equity raisings indicated that investors were currently seeking yields averaging around 15% but noted that, with only four observations available, reliance should not be placed on these forward-looking dividend yields. Nevertheless, the range - 10.26% to 21.48% - indicated that a dividend yield estimate of 10.5% may be conservative.

The dividend yield is only one component of the return available to equity investors. Those investors would also expect a component of return from stock price appreciation. SFG noted that the average forecast price appreciation from the data available from the equity analysts' research reports was 11.3%. However, the range was wide: 1.8% to 22.4%.

SFG therefore adopted a conservative view of price appreciation and concluded that a reasonable estimate of the expected nominal return on equity, based on current analysts' forecasts, was in the range 13% to 14%. In arriving at this range, SFG assumed:

- real stock price appreciation of 0% to 1% (in circumstances where real output (GDP) is forecast to grow by between 2.5% and 3.5%); and
- price inflation of 2.5% (being the mid-point of the Reserve Bank of Australia's medium term target range for inflation).

SFG also applied a simultaneous estimation technique to jointly estimate dividend yield and expected long term share price appreciation. This was done in a way which reconciled each equity analyst's yield and growth forecasts with the same analyst's price projection, thereby removing the effects of potential biases in the forecasts. The

simultaneous estimation technique also produced a range of for the expected nominal return on equity of 13% to 14%.

SFG's report is attached as Annexure 2 to this submission.

As noted above, WAGN's application of the Sharpe-Lintner CAPM in a process of estimation and calculation guided by Rule 87(2) yielded an expected nominal rate of return on equity of 10.22%.

Estimates of the expected nominal rate of return on equity made using three other financial models were:

- Black's Capital Asset Pricing Model: 11.52%;
- Fama-French three factor model: 11.76%; and
- Fama-French (zero beta) three factor model: 14.03%.

From forecasts in recent equity analysts reports for comparable energy infrastructure businesses, SFG estimated that the cost of equity was in the range 13% to 14%.

There is a clear pattern in these results.

The CAPM does not adequately take into account systematic risks as they affect expected rates of return on equity, and takes no account of idiosyncratic risk. It provides the lowest rate of return: 10.22%.

Black's Capital Asset Pricing Model was derived in a way which addressed one of the more contentious assumptions made for derivation of the CAPM. It was derived without assuming unrestricted borrowing and lending at the risk free rate of return. Black's Capital Asset Pricing Model does not take into account a view of systematic risk which is different from that taken into account in the CAPM and, like the CAPM, Black's Capital Asset Pricing Model takes no account of idiosyncratic risk.

The difference between the expected nominal rate of return on equity obtained from Black's Capital Asset Pricing Model (11.52%) and the rate obtained from the CAPM is 1.3%. This difference is a measure of the error attributable to the inappropriate assumption about borrowing and lending at the risk free rate made for CAPM derivation.

A broader - although by no means complete - view of systematic risk is incorporated in the Fama-French three factor model and, in consequence, that model produces a higher rate of return than the CAPM. This broader view of risk adds around 150 basis points to the nominal expected rate of return on equity. Like the CAPM, the Fama-French three factor model takes no account of idiosyncratic risk.

The zero beta version of the Fama-French three factor model "corrects" the assumption about unrestricted borrowing and lending at the risk free rate of return, and thereby adds around 230 basis points to estimate of the nominal rate of return on equity obtained using the "uncorrected" Fama-French model.

In summary, the CAPM yields a rate of return on equity of 10.2%. Correcting for one of the more contentious assumptions made in its derivation adds at least 130 basis points, increasing the equity rate of return to around 11.5%. Broadening the concept of risk (but not comprehensively, and without taking into account idiosyncratic risk) adds another 150 basis points, increasing the rate of return to 13.0%. This is the lower limit of the range of expected nominal rates of return on equity estimated by SFG.

SFG's range incorporates a comprehensive view of risk to the extent that equity analysts use all of the available information - about the economy and, about the specific businesses - when making their projections of dividend yields.

Specific business risks which would be taken into account were those analysts to make projections of dividend yields for WAGN can be broadly classified as commercial and regulatory risks (as in section 24(5) of the NGL).

The specific business risks to which WAGN is exposed are set out and discussed in Annexure 3.

A nominal expected rate of return on equity of 13.0% is, then, commensurate with prevailing conditions in the market for funds and commensurate with the risks involved in providing reference services using the WAGN GDS.

This nominal rate of return on equity can be used, as shown below, to calculate a real pre-tax WACC (assuming, as above, a cost of debt of 9.41%, and an estimate of gamma of 0.20).

Nominal pre-tax WACC:

$$\begin{aligned} WACC_{\text{nominal pre-tax}} &= E(r_e) \times 1/[1 - t \times (1 - \gamma)] \times E/V + E(r_d) \times D/V \\ &= 13.0\% \times 1/[1 - 30.00\% \times (1 - 0.20)] \times 40.00\% + 9.41\% \times 60.00\% \\ &= 12.49\% \end{aligned}$$

Real pre-tax WACC:

$$\begin{aligned} WACC_{\text{real pre-tax}} &= (1 + WACC_{\text{nominal pre-tax}})/(1 + \pi^e) - 1 \\ &= (1 + 12.49\%)/(1 + 2.60\%) - 1 \\ &= 9.64\% \end{aligned}$$

Through the way in which it has been calculated, the real pre-tax WACC of 9.64% is commensurate with prevailing conditions in the market for funds and with the risks

involved in delivering the reference services. It can, therefore, be used as the rate of return required by Rule 87(1) of the NGR.

In response to the matters raised in Required Amendment 8 of the Draft Decision, WAGN has amended the reference tariffs of the access arrangement proposal. The total revenue and the reference tariffs of the Revised Proposed Access Arrangement for the WAGN GDS have been determined using a rate of return of 9.6% (real, pre-tax).

2.4 Forecast operating expenditure: network costs

2.4.1 Required Amendment 8

The Authority requires Annexure A and sections 1 and 2 of Annexure B of WAGN's proposed access arrangement to be amended as follows:

Annexure A

Replace the haulage reference tariffs set out under Annexure A with the haulage reference tariffs set out in Table 27.

. . .

2.4.2 A revised access arrangement proposal incorporating Required Amendment 8 would not comply or be consistent with the requirements of the *NGL* and the *NGR*

The haulage reference tariffs set out in Table 27 of the Draft Decision have been determined from total revenue calculated using a forecast of operating expenditure which did not include estimates of certain costs which WAGN expected to incur as a result of delays in the implementation of the NGL and the NGR in Western Australia.

In paragraph 861 of the Draft Decision, the ERA advised that it was of the view that the costs of delay "do not meet the criteria in rule 91(1) of the NGL". (WAGN presumes the criteria to which the ERA referred are those of Rule 91(1) of the NGR.)

Rule 91(1) of the NGR states:

Operating expenditure must be such as would be incurred by a prudent service provider acting efficiently, in accordance with accepted good industry practice, to achieve the lowest sustainable cost of delivering pipeline services.

The ERA was of the view that WAGN could have lodged its access arrangement revisions proposal without delay, at the end of the current access arrangement period (that is, by 31 March 2009). Instead, WAGN sought, from the ERA, extensions of time to submit the revisions. The application for the first of these extensions was made in January 2009. In these circumstances, the costs of delay were, in the ERA's opinion, not costs which would have been incurred by a prudent service provider acting efficiently, in accordance with accepted good industry practice, to achieve the lowest sustainable cost of delivering pipeline services.

Faced with the very real prospect of a major change in regulatory regime - the replacement of the regime of the *Gas Pipelines Access Law* and the *National Third Party Access Code for Natural Gas Pipeline Systems*, with the regime of the NGL and the NGR - and knowing that, once the change in regulatory regime had occurred, the new regime would govern key aspects of WAGN's business, WAGN decided to prepare and submit its access arrangement revisions under the scheme of the new regime.

When WAGN commenced preparation of the revisions, early in 2008, the form of the new regime was thought to be known: the NGL and the NGR were already in effect in other jurisdictions - and the Western Australian Government had clearly indicated its intentions (through the signing the Australian Energy Markets Agreement in 2004) to implement the new regime in Western Australia.

On 16 May 2008, the ERA had issued guidelines - *Authority Guidelines Gas Access Arrangement Revisions Process* - which were based on imminent implementation of the NGL and the NGR. Moreover, the *National Gas Access (Western Australia) Bill 2008* was being drafted, and would soon be introduced into Parliament (on 18 June 2008).

On 7 August 2008, an early State election was called and the *National Gas Access (Western Australia) Bill* lapsed. The Bill was subsequently re-introduced into the Western Australian Parliament on 26 November 2008. Proceeding cautiously, WAGN sought further time in which to submit its proposed revisions. In January 2009, WAGN requested that the ERA approve a new revisions submission date of 30 September 2009. The ERA subsequently approved the date. Neither the ERA, nor WAGN, anticipated that that there would be a need for further a further extension of time.

WAGN continued to prepare proposed revisions to the Access Arrangement for the WAGN GDS in accordance with the requirements of the NGL and the NGR.

There were, however, further delays. The *National Gas Access (WA) Act 2009* did not receive assent until 1 September 2009. Even then, regulations which were foreshadowed in the legislation, and which would impact on gas distribution system reference tariffs, still had to be made. The *National Gas Access (WA) (Local Provisions) Regulations 2009* were not published until 31 December 2009.

In 2008, WAGN decided to proceed with preparation of the access arrangement revisions proposal in accordance with the regulatory regime of the NGL and the NGR. WAGN reviewed that decision periodically throughout the period until the revisions were submitted on 29 January 2010.

Throughout, WAGN's decisions on whether to proceed under the regime of the NGL and the NGR were decisions made under uncertainty. There was a possibility that the new regulatory regime would not come into effect as early as expected, and that this would impact on WAGN's cash flow.

WAGN sought advice from the parties best able to inform it on these matters: the Office of Energy and the ERA. This advice was always qualified - there were uncertainties in the political process - but those who were responsible advised that the process of implementing the change to the new regime was proceeding.

Reverting to preparation of the access arrangement revisions proposal under the regime of the *Gas Pipelines Access Law* and the *National Third Party Access Code for Natural*

Gas Pipeline Systems would be a long and difficult process, with the risk that the change would be "undone" by the new regulatory regime becoming the law in Western Australia before the revisions were submitted.

In retrospect, WAGN should not have decided to prepare its access arrangement revisions proposal under the scheme of the NGL and the NGR as these would eventually be implemented in Western Australia. In retrospect, the costs which WAGN will incur as a result of the delay in the implementation of Rule 91(1) appear - as the ERA has concluded - imprudent.

But a view in retrospect ignores the fact that decisions were made, over a period of time, in conditions of uncertainty.

A more reasonable view would consider WAGN's circumstances, and the information which was available to WAGN, as it proceeded with proposed revisions to the Access Arrangement for the WAGN GDS.

On this view, WAGN's decision making was sound. WAGN chose to adopt and work with the new regulatory regime, which had now been implemented elsewhere in Australia, which would govern its future operations in Western Australia, and which was about to be implemented in the State. There were, however, unexpected delays in the implementation of the new regime, and additional costs would, in consequence be incurred by WAGN. These additional costs were not, in the circumstances, imprudent.

They were costs which, if ignored, would lead to revised reference tariffs which under-recover WAGN's costs. These tariffs would be an inducement for inefficient (inadequate) investment in the WAGN GDS, and for inefficient (excessive) use of natural gas services by consumers of natural gas. They would not promote economic efficiency, and would not be consistent with the requirements of section 24(3) of the NGL. Nor would the reference tariffs be consistent with the promotion of efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas: they would not be consistent with the national gas objective.

WAGN has not amended its access arrangement proposal, as required by Required Amendment 8, by removing these costs from the forecast of operating expenditure used to determine total revenue and the revised reference tariffs for the WAGN GDS.

2.5 Forecast operating expenditure: working capital

2.5.1 Required Amendment 8

The Authority requires Annexure A and sections 1 and 2 of Annexure B of WAGN's proposed access arrangement to be amended as follows:

Annexure A

Replace the haulage reference tariffs set out under Annexure A with the haulage reference tariffs set out in Table 27.

. . .

2.5.2 A revised access arrangement proposal incorporating Required Amendment 8 would not comply or be consistent with the requirements of the *NGL* and the *NGR*

Required Amendment 8 requires replacement of the haulage reference tariffs set out in Annexure A of the proposed revised Access Arrangement with the haulage reference tariffs set out in Table 27 of the Draft Decision. The tariffs set out in Table 27 have been determined assuming, among other things, that no allowance is to be made for the cost of working capital.

The requirement that no allowance be made for the cost of working capital is somewhat puzzling given the extensive discussion on the reasons for recognising that cost set out in the ERA's December 2009 Final Decision on revisions the access arrangement for Western Power's South West Interconnected Network. An allowance for working capital was also approved by the ERA's in its May 2010 Final Decision on proposed revisions to the access arrangement for the Goldfields Gas Pipeline.

Allowances for the cost of working capital have also been approved by regulators in other jurisdictions, although not by the Australian Energy Regulator and the Australian Competition and Consumer Commission (ACCC).

In not accepting the cost of working capital as a cost of operating the WAGN GDS, the ERA has relied on the advice of the Allen Consulting Group which was provided to the ACCC. In a report prepared for the ACCC in March 2002, the Allen Consulting Group purported to demonstrate that the end-of-year cash flow modelling typically used for regulated tariff determination implicitly provided an adequate allowance for working capital when combined with the usual practice of monthly billing.

The Allen Consulting Group report was based on a theoretical calculation, and neither the ACCC, nor the ERA in the context of assessing proposed revisions to the Access Arrangement for the WAGN GDS, gave consideration to the specific circumstances of the service provider.

When consideration is given to WAGN's specific circumstances, the requirement for working capital exceeds any working capital "benefit" of the type identified by the Allen Consulting Group.

This can be seen from Table 5 and Table 6.

Table 5
Working capital implicit in annual tariff determination and monthly billing
($ million, December 2009)

	PV	2010(1)	2010/11	2011/12	2012/13	2013/14
Return on capital base	304.865	37.110	72.964	68.817	64.960	61.014
Return on working capital	8.571	0.781	1.951	2.005	1.951	1.883
Depreciation	89.818	1.700	22.300	22.231	21.991	21.596
Efficiency carryover	15.539	3.421	4.456	2.975	3.250	1.438
OPEX	234.473	36.088	55.728	51.604	47.308	43.745
Total Revenue	**653.266**	**79.099**	**157.398**	**147.633**	**139.460**	**129.676**
Revenue from sales	**657.880**					
Difference	**4.614**					
Revenue from sales						
Service A1	24.227	2.512	5.509	5.499	5.430	5.277
Service A2	22.863	2.530	5.201	5.196	5.045	4.890
Service B1	37.435	3.799	8.422	8.636	8.406	8.173
Service B2	38.529	3.542	8.086	8.932	9.004	8.965
Service B3	519.956	43.9	110.2	125.3	121.9	118.7
Total tariff revenue	**643.010**	**56.240**	**137.447**	**153.521**	**149.808**	**145.993**
Revenue (prudent discounts)	12.100	1.570	3.010	2.770	2.512	2.238
Ancillary service revenue	2.770	0.358	0.694	0.623	0.571	0.524
Revenue from sales	**657.880**	**58.168**	**141.151**	**156.915**	**152.891**	**148.755**
Working capital						
Equivalent annual benefit		1.071	1.169	1.275	1.391	1.517
Working capital facility		**11.157**	**12.172**	**13.280**	**14.488**	**15.807**

In the top part of Table 5, WAGN has shown the present values of the total revenue, year by year across the next access arrangement period, and for that period as a whole (the second column of the table), calculated from monthly expenditure profiles. The monthly expenditures have been discounted at the rate of return (9.6% real, pre-tax). The present value of the (monthly) total revenue is $653.3 million.

The lower part of Table 5 shows the present value of revenue WAGN would expect to receive (at the tariffs of Table 27 of the Draft Decision) calculated from a monthly profile of receipts. The present value of the (monthly) receipts is $657.8 million. In the circumstances of WAGN's business, the cash flow benefit identified by the Allen Consulting Group is in the order of $4.6 million (present value, over a period of 4.5 years).

This cash flow benefit is equivalent to an annual benefit of $1.1 to $1.5 million. That annual benefit would, in turn, support - pay for - a working capital facility of up to $15.8 million.

WAGN's net working capital requirement, and the cost of providing that working capital requirement are, then, as shown in Table 6.

Table 6
Net working capital requirement and return on working capital
($ million, December 2009)

	2010(1)	2010/11	2011/12	2012/13	2013/14
Working capital requirement	**16.855**	**22.227**	**24.924**	**26.464**	**27.861**
Deduct: working capital	11.157	12.172	13.280	14.488	15.807
Net working capital requirement	**5.698**	**10.055**	**11.644**	**11.976**	**12.054**
Return on working capital	**0.274**	**0.965**	**1.118**	**1.150**	**1.157**

Were WAGN to submit an amendment to the access arrangement proposal for the WAGN GDS which included Required Amendment 8, the revised access arrangement proposal would not comply with the applicable requirements of the *NGL* and the *NGR*, and would not be consistent with the applicable criteria of the *NGL* and the *NGR*.

If the return on working capital were not included in the total revenue for the WAGN GDS, the reference tariffs determined using that total revenue would under-recover WAGN's costs. They would be inconsistent with the requirement of section 24(3) that the service provider be provided with effective incentives to promote economic efficiency, and they would be inconsistent with the promotion of efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas. The reference tariffs would be inconsistent with the national gas objective.

WAGN has not, therefore, amended the total used to determine the tariffs in Table 27 of the Draft Decision. WAGN has included in its calculation of total revenue, the purpose of determining revised reference tariffs for the WAGN GDS, the return on working capital shown in Table 6 above.

2.6 Forecast operating expenditure: unaccounted for gas

2.6.1 Required Amendment 8

The Authority requires Annexure A and sections 1 and 2 of Annexure B of WAGN's proposed access arrangement to be amended as follows:

Annexure A

Replace the haulage reference tariffs set out under Annexure A with the haulage reference tariffs set out in Table 27.

. . .

2.6.2 A revised access arrangement proposal incorporating Required Amendment 8 would not comply or be consistent with the requirements of the *NGL* and the *NGR*

Were WAGN to submit an amendment to the access arrangement proposal for the WAGN GDS which included Required Amendment 8, the revised access arrangement proposal would not comply with the applicable requirements of the *NGL* and the *NGR*, and would not be consistent with the applicable criteria of the *NGL* and the *NGR*.

Required Amendment 8 requires replacement of the haulage reference tariffs set out in Annexure A of the proposed revised Access Arrangement with the haulage reference tariffs set out in Table 27 of the Draft Decision. The tariffs set out in Table 27 have been determined assuming, among other things, that the forecast cost of unaccounted for gas (UAFG) included in the forecast of operating expenditure, included in the total revenue, is to be calculated at a rate not reflective of the real UAFG rate relating to total gas delivered from the WAGN GDS.

The forecast of UAFG used in determining the forecast of operating expenditure shown in Table 22 of the Draft Decision, and in determining the tariffs of Table 27, is shown in Table 7 below.

Table 7
Unaccounted for gas adjusted by the ERA

	2010(1)	2010/11	2011/12	2012/13	2013/14
Cost ($ million, December 2009)	4.1	8.7	8.9	9.2	9.4

The actual UAFG rate for the WAGN GDS, as measured to the end of June 2010, is higher than the rate in the Draft Decision.

In arriving at its conclusion regarding the UAFG rate, the ERA formed the view that the volume of UAFG reported for 2008 was anomalous as a result of the Varanus Island incident (Draft Decision, paragraph 854). No reason was provided for this view. The ERA noted the reduction in gas supply caused by the incident, but offered no reason

why a lower volume of gas hauled through the WAGN GDS might be expected to lead to an anomalous level of UAFG.

Irrespective of whether the figure for 2008 is anomalous, the rate of UAFG has been significantly higher during 2009 and 2010 than the rate used in the Draft Decision

In 3 of the 5 years of the current access arrangement period, the actual rate of UAFG has been higher than the Authority's proposed forecast rate. Rather than the UAFG rate for 2008 being anomalous, the rates for 2006 and 2007 might be anomalies.

In paragraph 855 of the Draft Decision, the ERA refers to data in its *2007/08 Performance Monitoring Report: Gas Distributors*. The annual quantity of UAFG for the WAGN GDS shown in that report is for the period of 12 months to 31 December of the preceding year. To obtain its UAFG rate, the ERA appears to have divided this quantity by total throughput to 30 June of the following year. Clearly this does not provide an accurate measure of the rate of UAFG for a given year: the period over which UAFG was measured was different from the period over which throughput was measured. This was likely to understate the UAFG rate.

The ERA was been advised of this, but responded on 10 February 2010, that "the Secretariat's view is that, providing the data is applied consistently, the proportion can be meaningful and comparable on a year on year basis".

The quantity of UAFG is calculated by REMCO, an independent third party. The REMCO quantity is used for the calculation of the quantity of gas WAGN which WAGN must purchase - and pay for - to replace gas which is unaccounted for.

WAGN notes that its Asset Management Plan reports UAFG for the financial year 2007/08 calculated from internal data, and not from the REMCO data. The figure from the Asset Management Plan is not necessarily comparable with data from REMCO.

WAGN recognises that there has been a long term rise in UAFG. However, the reasons for this are not clear. WAGN's construction and maintenance methods have not changed materially over the current access arrangement period. WAGN has held discussions on the issue with Energy Safety, which has proposed an independent study into the causal factors determining UAFG. WAGN notes that, were the proposed study to be undertaken, it would take at least one year to complete. If the study were to clearly identify the causes of a rise in UAFG, WAGN would then need to plan and carry out corrective works across its network. WAGN is, in these circumstances, of the view that it will not be able to effect a change in the rate of UAFG during the next access arrangement period (that is, before July 2014).

WAGN has not provided for either the Energy Safety study, or possible remedial work, in the capital and operating expenditure estimates for the period 2010 to 2013/14.

The ERA proposed forecast rate of UAFG significantly understates the current rate. Were WAGN to adopt this rate, and use it to calculate the cost of purchasing gas to replace UAFG, reference tariffs determined using that cost would under-recover WAGN's costs, and would not promote economic efficiency. They would be inconsistent with the requirement of section 24(3) that the service provider be provided with effective incentives to promote economic efficiency, and they would be inconsistent with the promotion of efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas. They would be inconsistent with the national gas objective.

WAGN has not, therefore, amended the rate of UAFG for the purpose of calculating the forecast operating expenditures of its access arrangement proposal, and for the purpose of determining revised reference tariffs.

2.7 Forecast operating expenditure: Efficiency gains and losses

The Non-Capital Cost efficiency carryover mechanism which was in effect during the current access arrangement period allows WAGN to take account of any changes in the scope of the activities which were used in establishing the efficiency benchmarks of the mechanism. During the current access arrangement period there has been a large real increase in the price of gas purchased to replace UAFG relative to the gas price used to establish the efficiency benchmarks. This large real increase in gas price has been treated as a scope change for the purpose of applying the efficiency carryover mechanism.

3 REFERENCE TARIFFS

3.1 Demand forecasts

3.1.1 ERA assessment of forecasts

In relation to forecast volumes of gas hauled through the WAGN GDS, the key paragraphs of the Draft Decision are:

932. The Authority is satisfied that the volume forecasts in relation to A1, A2, B1 and B2 customers meet the requirements of rule 74 of the NGR.

938. Given these factors the Authority is not satisfied that WAGN's forecast of volumes of gas delivered to B3 customers has a reasonable basis or is the best forecast in the circumstances (rule 74 of the NGR).

The key paragraphs in relation to customer numbers are:

944. The Authority has noted above some concerns in relation to WAGN's forecasts of customer numbers by tariff class. However, the Authority considers that these forecasts are sufficient for the purpose of this draft decision.

945. The Authority will require WAGN's forecast customer numbers to be updated following the publication of this draft decision to incorporate the most recent data.

The ERA concludes as follows.

946. The Authority approves WAGN's forecast volumes of gas delivered to A1, A2, B1 and B2 customers.

947. The Authority does not approve WAGN's forecast volumes of gas delivered to B3 customers. For the purpose of the draft decision the Authority has assumed a forecast volume of 18.5 GJ for each B3 customer.

948. The Authority approves WAGN's forecast customer numbers by tariff class for the purpose of this draft decision.

949. The Authority requires WAGN to provide updated information on forecast volumes and customer numbers, as discussed above, following publication of the draft decision.

3.1.2 WAGN's response

All Tariff Classes

Customer numbers have been updated using actual data to 30 June 2010. The actual customer base as at 30 June 2010 has been used as the starting point for an amended forecast of the customer base. Trends in consumption per customer to 30 June 2010 have been used in forecasting total volume for B1, B2 and B3 customers. This is a change in approach for B1 and B2 customers which, for reasons of consistency in the 29 January submission, were based on forecasts which WAGN obtained from NIEIR. The NIEIR forecasts consistently overstate usage for B1 and B2 customers. The NIEIR forecast for B3 customers was close to the "actuals" for the period to 30 June 2010.

Tariff Class A1

Customer numbers have been adjusted to "actuals" at 30 June 2010, with the result that forecast customer numbers are reduced by 1 to 2 per year.

Total volume for the six months to June 2010 - 2,989 TJ - was only 3.2% below NIEIR's forecast.

WAGN has therefore continued to rely on the forecast total volume from the (April 2009) NIEIR report, without regard to the change in customer numbers. The forecast is based on a general view of conditions in the Western Australian economy, rather than on a view of the circumstances of individual customers. WAGN notes that the impact of a change of 100 TJ is only about $4,000 annually.

Tariff Class A2

Per customer volumes for customers in Tariff Class A2 are shown in Table 8.

Table 8
Volume (GJ) per customer: Tariff Class A2

	2005	2006	2007	2008	2009	2009/10
Volume (GJ)	23,139	20,573	20,243	18,809	19,053	19,223

Tariff Class A2 customers have exhibited declining average usage.

The total volume for the six months to June 2010 was only 0.3% above the NIEIR forecast. WAGN has therefore continued to use that forecast. WAGN notes that the impact of a change of 50 TJ is only about $80,000 annually.

Tariff Class B1

Over the past two years, WAGN has been connecting between 30 to 50 new B1 customers annually. As shown in Table 9, the forecast of the number of B1 connections in the access arrangement revisions proposal submitted in January 2010 was lower than recent experience.

Table 9
New customer connections: Tariff Class B1

	Actual	Actual	January revisions proposal			
	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14
Number	58	47	-3	8	26	27

For its amendments to the access arrangement proposal, WAGN has forecast 40 new B1 customer connections per year. This forecast is at the upper limit of the range proposed by NIEIR in April 2009. Nevertheless, it is consistent with the new connection rate for Tariff Class B1 for the period from January to June 2010.

WAGN notes that it has adjusted its forecast connections capital expenditure to be consistent with the larger forecast number of connections.

The NIEIR April 2009 forecast overstated B1 usage, which has been declining regardless of economic conditions. The decline is attributed to the commercial end-users in this class adopting, over time, more energy efficient - and hence, lower cost - equipment. The declining trend in average B1 usage is shown in Table 10. The table below illustrates the consistently declining trend in average usage compared to the April 2009 NIEIR forecast.

Table 10
Volume (GJ) per customer: Tariff Class B1

	2005	2006	2007	2008	2009	2009/10	2010/11	2011/12	2012/13	2013/14
Actual	1,757	1,567	1,549	1,449	1,379	1,350				
NIEIR (April 2009)				1,458	1,437	1,379	1,367	1,381	1,428	1,461

For its amendments to the access arrangement proposal, WAGN has assumed that B1 average usage remains constant, at the actual level for 2009/10, for the period 2010 to 2013/14. This may be an overstatement of B1 gas volumes. The actual B1 average for the six months to 30 June 2010 was 1.7% below forecast.

Tariff Class B2

WAGN connects about 500 new B2 customers annually. As shown in Table 11, the forecast of the number of B2 connections in the access arrangement revisions proposal submitted in January 2010 was lower than recent experience.

Table 11
New customer connections: Tariff Class B2

	Actual	Actual	January revisions proposal			
	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14
Number	591	590	-72	48	249	264

For its amendments to the access arrangement proposal, WAGN has forecast 400 new B2 customer connections per year. This is consistent with the new connection rate for Tariff Class B2 for the period from January to June 2010.

WAGN notes that it has adjusted its forecast connections capital expenditure to be consistent with the larger forecast number of connections.

Average B2 usage has declined regardless of economic conditions because the largest group of new B2 customers is at the low end of the usage distribution. This group comprises customers who were previously classified as B3, but who now require larger meters to accommodate the higher peak loads of larger instantaneous water heaters, space heaters for larger open plan houses, and gas heaters for swimming pools and spas.

The April 2009 NIEIR forecast of average usage in Tariff Class B2 has been reasonably accurate to 30 June 2010 (see Table 12), and has been retained for the amended access arrangement proposal.

Table 12
Volume (GJ) per customer: Tariff Class B2

	2005	2006	2007	2008	2009	2009/10	2010/11	2011/12	2012/13	2013/14
Actual	178	191	182	179	160	157				
NIEIR (April 2009)				178	167	157	155	155	158	159

Tariff Class B3

Paragraph 947 of the Draft Decision requires use of a forecast of 18.5 GJ per B3 customer in the amended access arrangement revisions proposal. The reasons given for the use of this forecast are as follows.

- *The forecasts relied on by WAGN were prepared in the shadow of the Global Financial Crisis that occurred in 2008 and extended into 2009. However, the economic conditions which were presumed for the purpose of the forecast for the second half of 2009 and into 2010 have largely been avoided. The market for gas distributed by the WAGN GDS has therefore not been as greatly impacted as was forecast for the first half-year of the forthcoming access arrangement period and the recovery towards a long-term growth trend appears to be more rapid than was forecast.*
- *The Federal Government announced in April 2010 that its proposed carbon pollution reduction scheme has been deferred until at least 2012 such that the impact of this scheme on gas prices will not occur until at least 2012/13. This will reduce the gas price assumptions used by WAGN's consultants for the period from 2010/2011 to 2012/13.*
- *The State Government has announced a more rapid phase-in of cost-reflective pricing for a competing source of energy, electricity supplied to residential and commercial small use customers.*
- *Given the difficulty in forecasting heat degree day figures, particularly over a relatively short 4.5 year period, their impact is likely to be minimal or be overcome by the impact of other more certain and influential factors, such as those discussed immediately above.*
- *The trough in B3 connections for 2009/10 was not as dramatic as that forecast by WAGN's consultants in April 2009. Therefore, the rapid rise in connections forecast toward 2013/14 might not be supported by pent up demand. It is not clear whether the impact of factors such as market promotion by WAGN and projected retail prices for gas over the period to 2013/14 have been taken into account in relation to this aspect of the forecast.*
- *The variation in B3 connections, and therefore throughput, can be influenced by WAGN promoting greater usage of gas by existing customers and increased customer connections to gas. WAGN has proposed to significantly increase its marketing budget under the proposed revised access arrangement.*

None of these reasons is consistent with the facts. Average gas use per B3 customer has declined. In weather adjusted terms, B3 average use is now below the forecast of average use which WAGN submitted to the ERA as part of its January 2010 access arrangement revisions proposal (see Table 13).

Table 13
Volume (GJ) per customer: Tariff Class B3

	2005	2006	2007	2008	2009	2009/10	2010/11	2011/12	2012/13	2013/14
Actual	19.98	18.61	18.25	18.48	17.70	17.92				
Actual[1]	19.83	18.30	18.84	17.95	18.20	17.68				
January forecast				18.15	18.12	17.84	17.46	17.16	17.16	17.16

[1] Weather normalized.

The data clearly indicate that there is no basis for assuming an average B3 usage of 18.5 GJ per year. B3 usage continues to decline, and the forecast which WAGN provided in January 2010 continues to be the best estimate in the circumstances.

For the purpose of preparing the amended access arrangement proposal, WAGN has obtained a revised forecast of residential customer connections from Economics Consulting Services. This revised forecast, and the corresponding January 2010 forecast, are presented in Table 14

Table 14
New customer connections: Tariff Class B3

	2009/10	2010/11	2011/12	2012/13	2013/14
Revised forecast	17,657[1]	18,600	20,500	21,000	21,400
January 2010 forecast	15,650	15,630	17,232	18,999	20,639

[1] Actual.

WAGN's amended forecast for total B3 volume, and the corresponding January 2010 forecast, are presented in Table 15.

Table 15
Total volume (TJ): Tariff Class B3

	2010(1)	2010/11	2011/12	2012/13	2013/14
Revised forecast	4,638[1]	10,709	10,830	11,154	11,486
January 2010 forecast	4,603	10,662	10,732	11,013	11,323

[1] Actual.

Despite an increase in the number of connections, and colder than average winter, total B3 volume was only 0.15% above the forecast for the six months to 30 June 2010.

WAGN has proposed to significantly increase its marketing budget, but expects that this will do no more than limit the decline to a level consistent with forecast average B3 usage.

3.2 Reference tariff structure

3.2.1 Required Amendment 8

The Authority requires Annexure A and sections 1 and 2 of Annexure B of WAGN's proposed access arrangement to be amended as follows:

Annexure A

Replace the haulage reference tariffs set out under Annexure A with the haulage reference tariffs set out in Table 27.

. . .

3.2.2 A revised access arrangement proposal incorporating Required Amendment 8 would not comply or be consistent with the requirements of the *NGL* and the *NGR*

Were WAGN to submit an amendment to the access arrangement proposal for the WAGN GDS which included Required Amendment 8, the revised access arrangement proposal would not comply with the applicable requirements of the *NGL* and the *NGR*, and would not be consistent with the applicable criteria of the *NGL* and the *NGR*.

Required Amendment 8 requires replacement of the haulage reference tariffs set out in Annexure A of the proposed revised Access Arrangement with the haulage reference tariffs set out in Table 27 of the Draft Decision. The tariffs set out in Table 27 have been determined assuming, among other things, a significantly lower total revenue.

The revised reference tariffs of Table 27 would, if implemented, result in recovery of a lower proportion of total revenue via the standing (fixed) charge, and recovery of a higher proportion via the usage (variable) charge, relative to what was the case for the tariffs in Annexure A of the proposed revised Access Arrangement which was submitted to the ERA on 29 January 2010.

Where, as is the case, a decline in volume per customer connection is expected, but the magnitude of that decline is uncertain, the structure of the reference tariffs in Table 27 increases the risk of WAGN not being able to recover its efficiently incurred costs.

WAGN has therefore amended the tariff structures for the A2, B1, B2 and B3 services so that they now have two usage blocks. Having two usage blocks will allow:

- a larger proportion of fixed cost recovery at lower volumes per customer connection by raising the usage charge rate in the first usage band
- a reduction in the variability of revenues due to forecasting error or the impact of external factors such as increasing energy use efficiency and warmer weather;
- a lower usage charge in the second block which is more reflective of the marginal cost to provide additional usage services (while the overall structure of the tariff gives recognition to the fact that costs are largely fixed).

3.3 Reference tariff variation in accordance with formula

3.3.1 Required Amendment 8

The Authority requires Annexure A and sections 1 and 2 of Annexure B of WAGN's proposed access arrangement to be amended as follows:

. . .

Annexure B (sections 1 and 2)

- *Inflation - tariffs need to be set to account for inflation by adjusting the real tariffs modelled, using 31 December 2009 dollars, based on CPI (All Groups, Eight Capital Cities) at the end of each modelling period;*
- *Regulatory operating costs - clause 2.3(c), which includes the 2009 regulatory operating costs under the tariff variation mechanism for the 1 July 2011 adjustment, should be deleted;*
- *Regulatory capital costs - references to regulatory capital expenditure should be deleted; and*
- *The real pre-tax rate of return should be amended to 6.89 per cent.*

3.3.2 A revised access arrangement proposal accommodating Required Amendment 8 would not comply or be consistent with the requirements of the *NGL* and the *NGR*

Were WAGN to submit an amendment to the access arrangement proposal for the WAGN GDS which incorporated Required Amendment 8, the revised access arrangement proposal would not comply with the applicable requirements of the NGL and the NGR, and would not be consistent with the applicable criteria of the NGL and the NGR.

Inflation

Required Amendment 8 requires that the formula for reference tariff variation set out in clause 2 of Annexure B of the proposed revised Access Arrangement for the WAGN GDS be amended to provide for inflation adjustment using the CPI (All Groups, Eight Capital Cities) at the end of each modelling period, and not using the CPI (All Groups, Perth) applied in the way which had been proposed by WAGN.

As explained in section 2.1 of this submission, were WAGN to submit an amendment to the access arrangement proposal for the WAGN GDS which provided for inflation adjustment using the CPI (All Groups, Eight Capital Cities) at the end of each modelling period, and not as was proposed by WAGN, including in the reference tariff variation mechanism of Annexure B, the revised access arrangement proposal would not comply with the applicable requirements of the NGL and the NGR, and would not be consistent with the applicable criteria of the NGL and the NGR.

Regulatory operating costs

Required Amendment 8 requires that the formula for reference tariff variation set out in clause 2 of Annexure B of the proposed revised Access Arrangement for the WAGN GDS be amended by deleting clause 2.3(c) (which provided for WAGN's recovery of unanticipated regulatory costs incurred in 2009).

The 2009 regulatory operating costs which are to be recovered through the operation of clause 2.3(c) were operating expenditures which would have been incurred by a prudent service provider acting efficiently, in accordance with accepted good industry practice, to achieve the lowest sustainable cost of delivering pipeline services. They are costs of a type which WAGN would have recovered via the regulatory cost factor (R factor) mechanism within the tariff variation mechanism of the current Access Arrangement for the WAGN GDS if they had not been incurred in the last year of the current access arrangement period.

In approving the inclusion of the regulatory cost factor in the reference tariff variation mechanism in 2005, the ERA recognised that a service provider has limited ability to control the level of regulatory costs because these costs may be affected by regulatory events outside of the service provider's direct control (2005 Final Decision on proposed revisions to the Access Arrangement for the MWSW GDS, paragraph 576).

When there has been an interval of delay (as there has been in the case of the current WAGN access arrangement revisions proposal), the operation of Rule 92(3) may be taken into account in fixing the reference tariffs for the next access arrangement period (Rule 92(3)(b)). It is, then, open to the ERA to take into account the tariff variation which would have resulted if tariff variation had been possible in the last year of the access arrangement period when fixing the reference tariffs for the new access arrangement period.

WAGN has not, therefore, deleted clause 2.3(c) of the proposed revised Access Arrangement.

Regulatory capital costs

Required Amendment 8 requires that the formula for reference tariff variation set out in clause 2 of Annexure B of the proposed revised Access Arrangement for the WAGN GDS be amended by deleting references to regulatory capital expenditure (which explicitly provided for WAGN's recovery of unanticipated regulatory costs which were capital expenditures).

No reason of substance was provided for this required amendment. The ERA stated, in paragraph 1017 of the Draft Decision, that the inclusion of such costs in a tariff variation mechanism was not consistent with the NGL and the NGR. How, or why, it is not consistent with the NGL and the NGR is not made clear.

Clause 2 of Annexure B continues to allow reference tariff variation for differences between actual and forecast regulatory operating expenditures. There is no logical reason why it should not also allow for tariff variation for differences in regulatory capital expenditures, provided the tariff variation does no more than recover the unanticipated return and depreciation.

Certainly, reference tariff variation, having effect over a single year, should not be able to recover, within that year the full amount of any unanticipated regulatory capital expenditure. (This was possible under the reference tariff variation mechanism of the current access arrangement.)

WAGN has not, in these circumstances, deleted references to regulatory capital expenditure from clause 2 of Annexure B of the proposed revised Access Arrangement.

Rate of return

The formulae of clause 2 of the reference tariff variation mechanism set out in Annexure B of the proposed revised Access Arrangement for the WAGN GDS used the variable "WACC". The value to be assigned to "WACC" was 11.1 per cent, which was the proposed rate of return (real, pre-tax weighted average cost of capital) determined in accordance with Rule 87 of the NGR.

Required Amendment 8 requires that the value of "WACC" be amended to 6.89 per cent.

As explained in section 2.3 of this submission, were WAGN to submit amendments to the access arrangement proposal for the WAGN GDS which included total revenue and reference tariffs determined using a rate of return of 6.89 per cent, and not a rate of return of 9.6%, the revised access arrangement proposal would not comply with the applicable requirements of the NGL and the NGR, and would not be consistent with the applicable criteria of the NGL and the NGR.

In response to the matters raised in Required Amendment 8 of the Draft Decision, WAGN has amended the rate of return, and the value of the variable "WACC" in clause 2 of Annexure B, to 9.6% (real, pre-tax).

3.4 Reference tariff variation as a result of cost pass through

3.4.1 Required Amendment 7

The Authority requires clauses 3.1(iv)(A) and (B) and 3.1(v) of Annexure B of the proposed access arrangement to be deleted.

3.4.2 A revised access arrangement proposal accommodating Required Amendment 7 would not comply or be consistent with the requirements of the *NGL* and the *NGR*

Were WAGN to submit an amendment to the access arrangement proposal for the WAGN GDS which incorporated Required Amendment 7, the revised access arrangement proposal would not comply with the applicable requirements of the NGL and the NGR, and would not be consistent with the applicable criteria of the NGL and the NGR.

Required Amendment 7 requires deletion, from the reference tariff variation mechanism of the proposed revised Access Arrangement, of provisions which allow the pass through to reference tariffs of:

- capital and operating expenditures arising from the introduction of an emissions trading scheme, or from the introduction of a fee, penalty or tax on greenhouse gas emissions or concentrations (clauses 3.1(iv)(A) and 3.1(iv)(B)); and
- an increase in the price of gas purchased to replace unaccounted for gas when this change exceeds the change due to inflation as measured by the change in CPI (All Groups, Perth) (clause 3.1(v)).

Government introduction of an emissions trading scheme; government introduction of a fee, penalty or tax on greenhouse gas emissions of concentrations; and a supplier-imposed increase in the price of gas purchased under WAGN's gas purchase contract, all have the effect of causing the unit costs of providing reference services to deviate from the reference tariffs at which those services are to be provided. Furthermore, they are all, at the present time, events about which there is considerable uncertainty. Nevertheless, should any or all of them occur, the reference tariffs established for the WAGN GDS will cease to be economically efficient: they will no longer recover the efficient costs of providing reference services.

The reasons given in the Draft Decision (in paragraph 1034) for deletion of clauses 3.1(iv)(A) and (B) of Annexure B (which pertain to an emissions trading scheme, and to taxes on greenhouse gas emissions) are that:

. . . it would not be appropriate to include arrangements for an emissions trading scheme (clause 3.1(iv)(A)) or a tax on greenhouse gas emissions (clause 3.1(iv)(B)) as a cost pass through event for WAGN until the particulars of such a scheme have been clarified through legislation. The Authority notes that there is considerable uncertainty about whether such legislation may come into effect during the term of the forthcoming access arrangement. The Authority also notes that WAGN can resubmit a revised access arrangement at any time during the course of the forthcoming access arrangement period.

These reasons do not address the issues which necessitate inclusion of clauses 3.1(iv)(A) and (B) and 3.1(v) in Annexure B of the Access Arrangement for the WAGN

GDS. They do not address the possibility of economically inefficient outcomes - outcomes inconsistent with the revenue and pricing principles of the section 24 of the NGL, and with the national gas objective.

WAGN acknowledges that there is considerable uncertainty about the relevant legislation. However, this uncertainty is not intrinsically different from the uncertainty associated with other events, such the opportunity to connect a new large end-user of gas to the network. The potential requirement is known well in advance, but the timing and the costs of responding to that requirement will not be known with precision until a "contract" (the law implementing an emissions trading scheme, a commercial agreement with a large end-user) has been negotiated.

Those who drafted the NGR clearly intended that such uncertainty could be dealt with, not by making estimates which would, in all likelihood, turn out to be wrong, but by providing for a range of mechanisms which would allow the variation of reference tariffs in response.

That the form of legislation relating to the carbon emissions trading scheme and the tax on greenhouse emissions referred to at clauses 3.1(iv)(A) and (B) of Annexure B of the proposed revised Access Arrangement may still be subject to change and may not become law at all is not a relevant consideration in determining if those clauses should be included in the Access Arrangement. Rule 97(1)(c) is intended to allow Reference Tariffs to be amended by an event that is yet to occur (or an event that might occur).

As pointed out in the Draft Decision, one way of varying the reference tariffs in response to an emissions trading scheme, or to a tax on greenhouse gas emissions, would be for WAGN to submit new revisions to the Access Arrangement. Indeed, this is the way in which the implications of those measures would have to be dealt with in the longer term. It is, however, an inappropriate response for the next access arrangement period. The access arrangement revisions process takes approximately two years (12 months of preparation, followed by 12 months of regulator review). Without a variation, reference tariffs will remain at inefficient levels for as long as two years after introduction of an emissions trading scheme, or a tax on greenhouse gas emissions.

The deletion of clauses 3.1(iv)(A) and (B) creates uncertainty for WAGN in that it is not clear how the costs arising from the enactment of the legislation referred to will be regulated by the Access Arrangement. The ERA's conclusion at paragraph 1034 of the Draft Decision that WAGN can resubmit a revised Access Arrangement (presumably in the event that the legislation is enacted) is inconsistent with the national gas objective in that the cost of re-submitting is an inefficient use of resources when the issue can be dealt with in via the current revisions process.

Rule 97(1) provides an alternative: variation of the reference tariff as a result of a cost pass through for a defined event.

WAGN has anticipated the introduction of an emissions trading scheme, and the possibility of government introduction of a fee, penalty or tax on greenhouse gas emissions of concentrations, which have the effect of causing the costs of providing reference services to deviate from the reference tariffs at which those services are to be provided. These events are appropriately dealt with via cost pass through in reference tariff variation mechanism of the Access Arrangement. They are events which have a high likelihood of occurring before the end of the next access arrangement period but, at present, there is uncertainty about their timing about the magnitude of the effects on WAGN's costs.

WAGN has not, therefore, amended its access arrangement proposal as required by Required Amendment 7. WAGN has retained its proposed cost pass through mechanism as the most appropriate way, within the scheme of the NGL and the NGR, of dealing with short term economic inefficiency resulting from government introduction of an emissions trading scheme, or a fee, penalty or tax on greenhouse gas emissions of concentrations.

WAGN notes that the Australian Energy Regulator has approved a cost pass through event referring to a carbon emissions trading scheme (paragraph 12.5 of the Access Arrangement for the Wagga Wagga gas distribution network approved by the national regulator on 23 April 2010).

The requirement of Required Amendment 7, that clause 3.1(v) of Annexure B of the proposed access arrangement be deleted is also inconsistent with the economic efficiency focus of the NGR, and with the concern for economic efficiency in the national gas objective and in the revenue and pricing principles of section 24 of the NGL.

The reasons given in the Draft Decision (in paragraph 1036) for deletion of clause 3.1(v) of Annexure B are that:

. . . the Authority does not consider the inclusion of these costs [costs of unaccounted for gas] *as a cost pass through event on the basis that these costs have been included in WAGN's proposal based on its tender information. The Authority notes that there are two elements to the issue of the costs for UAFG. In regard to the first issue relating to the price of UAFG, the Authority considers that this matter is adequately dealt with in WAGN's proposal based on the Authority accepting WAGN's tender price for UAFG. In regard to the second issue relating to the volume the Authority considers that WAGN is best placed to manage the risk of UAFG volumes differing from forecast volumes.*

These reasons for deletion of clause 3.1(v) of Annexure B show a very considerable misunderstanding of the purpose of the clause, and of the way in which it is to operate.

First, clause 3.1(v) does not allow the pass through, to varied reference tariffs, of costs of gas purchased to replace unaccounted for gas where those costs have already been included in the total revenue from which reference tariffs have been determined. Clause

3.1(v) is clear: the costs which can be passed through are "*those additional to the amount forecast for the purpose of determining Total Revenue for Haulage Tariffs of the Current Access Arrangement Period*."

The ERA's conclusion - "*. . . the Authority considers that this matter is adequately dealt with in WAGN's proposal based on the Authority accepting WAGN's tender price for UAFG*" - is, in these circumstances, incorrect.

The need to pass through these additional amounts is driven by provisions in the agreement which has resulted from WAGN's calling for tenders for the supply of gas.

If that variation leads to prices paid by WAGN which increase at a higher rate than the rate at which reference tariffs are adjusted for inflation (via the reference tariff variation formula) of clause 2 of Annexure B, the difference - to the extent that it is attributable to price increase alone - is to be recoverable as a cost pass through to the reference tariffs in accordance with clause 3.1(v).

Clause 3.1(v) of Annexure B is, WAGN believes, clear in its specification that the only increase in the cost of gas purchased which is recoverable via pass through to varied reference tariffs is an increase attributable to an increase in the price of gas above the rate of inflation. Clause 3.1(v) does not allow WAGN to recover increases in the cost of gas purchased to replace unaccounted for gas where those increases are attributable to volumes purchased which are different from those assumed for calculation of the total revenue from which the revised reference tariffs have been determined.

WAGN acknowledges and accepts the point made in the last sentence of paragraph 1036 of the Draft Decision that it (WAGN) is best placed to manage the risk of UAFG volumes differing from forecast volumes.

Now that an agreement is in place, WAGN cannot manage the price at which it purchases gas. WAGN is "locked in" to the pricing provisions of that agreement (which was the outcome of a competitive tender process). If this price increases at a rate higher than the rate at which the reference tariffs for the WAGN GDS are adjusted for inflation, those reference tariffs will under-recover the costs which WAGN had incurred. They will be an inducement for inefficient (inadequate) investment in the WAGN GDS, and for inefficient (excessive) use of natural gas services by consumers of natural gas. They will not be consistent with the revenue and pricing principles of section 24 of the NGL, or with the national gas objective.

WAGN has not, therefore, amended its access arrangement proposal, and deleted clause 3.1(v) of Annexure B as required by Required Amendment 7.

3.5 Ancillary services: Reference Tariffs

Required Amendment 1 required that ancillary services be specified as reference services. WAGN has complied with this requirement. The terms and conditions associated with each Ancillary Service are detailed in the Access Arrangement.

Having identified the ancillary services as reference services, WAGN has established reference tariffs for those services. The reference tariffs are the unit costs of providing the services.

3.6 WAGN's further submissions made in addressing Required Amendment 7

In addressing Required Amendment 7, WAGN makes the following further submissions concerning a significant error in the of interpretation clause 3.3 of Annexure B of the proposed revised Access Arrangement.

WAGN is concerned that the issues which these submissions address, and not the requirements of the NGL and the NGR for a reference tariff variation mechanism, may have led the ERA to requiring all or part of Required Amendment 7 when that should not have been the case.

WAGN's concerns are reinforced by paragraph 1035 of the Draft Decision, which states:

The Authority cannot approve a reference tariff variation mechanism, including by way of a cost pass through, unless it has considered the factors in rule 97(3) of the NGR. The Authority does not consider that there is any material inconsistency between WAGN's proposal with respect to the proposed cost pass through and those factors the Authority must have regard to pursuant to rule 97(3) of the NGR.

In paragraph 1037 of the Draft Decision, the ERA states:

. . . under WAGN's proposal the cost pass through events would have no impact on tariffs for the forthcoming access arrangement period on the basis that under section 3.3 of Annexure B it is proposed that any costs associated with these events would be incorporated into tariffs for the access arrangement following the forthcoming access arrangement (2014-2019).

Furthermore, the ERA advises, in paragraph 1039, that if clauses 3.1(iv)(A) and 3.1(v) of Annexure B of the proposed revised Access Arrangement are deleted, it approves the reference tariff variation mechanism:

. . . based on its understanding that the cost pass through events set out under clause 3.3 of Annexure B are not intended to affect tariffs during the forthcoming access arrangement period . . .

The ERA's understanding that the cost pass through events set out under clause 3.1 of Annexure B are not intended to affect tariffs during the forthcoming access arrangement period is incorrect. If a cost pass through event were to occur, WAGN would expect to vary - at that time - one or more of its haulage tariffs to recover costs incurred, or forecast to be incurred, in accordance with clause 3.2 of Annexure B of the proposed revised Access Arrangement.

A tariff variation mechanism of the type required by Rule 92 of the NGR, and which complies with Rule 97, does not have the effect of changing the total revenue for the current access arrangement period, and therefore does not have the effect of varying

reference tariffs as a consequence of a change in total revenue. The reference tariffs are varied only in accordance with the predetermined rules which are the tariff variation mechanism.

Clause 3.3 states WAGN's intention to take into account, in the determination of total revenue, the costs associated with a cost pass through event (which has given rise to a tariff variation) when the Access Arrangement for the WAGN GDS is next revised.

The role of clause 3.3 is most clear in the case when the costs associated with a cost pass through event are capital expenditures. WAGN would not expect to be able to pass through a cost which was a capital expenditure for recovery via a variation of the reference tariffs which apply during the current access arrangement period. Nevertheless, WAGN would expect to be able to recover, via variation of the reference tariffs, from the time the cost pass through event occurred, return and depreciation on the capital expenditure. Assuming the capital expenditure in question is conforming capital expenditure (in accordance with Rule 79), WAGN would expect to be able to add the expenditure to the capital base at the commencement of the next access arrangement period. In anticipation of this, clause 3.3(a) requires that, when such an amount is added to the opening capital base for the next access arrangement period, it is adjusted for any recovery of depreciation which has already been effected through operation of the tariff variation mechanism during the current access arrangement period.

Part B

SUBMISSIONS IN RESPONSE TO THE DRAFT DECISION: PART B

Terms used in this submission that are defined in the Access Arrangement or the Template Haulage Contract (Reference Documents) have the meaning given to them in the Reference Documents unless the contrary is expressed. A reference in this response to the term the "national gas objective" has the meaning that term has in the National Gas Access Law and includes a reference to the Efficient Services Concept (as defined below in the commentary in relation to Required Amendment 2)

Required Amendment 1 The proposed access arrangement should be amended to include descriptions of the following ancillary services as Pipeline Services (collectively ancillary services): a) deregistration service for Services A1, A2, B1, B2 and B3; b) apply meter lock service for Services B2 and B3; c) remove meter lock service for Services B2 and B3; d) disconnection service for Services B2 and B3; and e) reconnection service for Services B2 and B3. The proposed access arrangement should be amended to specify the ancillary services as Reference Services.	WA Gas Networks Pty Ltd (**WAGN**) has elected to adopt the suggestion of the ERA referred to in Required Amendment 1.	The Access Arrangement and Template Haulage Contract have been amended as described in the amended Access Arrangement and the amended Template Haulage Contract to include the Pipeline Services referred to in Amendment 1 of the Draft Decision on WA Gas Networks Revisions Proposal for the Access Arrangement for the Mid-West and South-West Gas Distribution Systems dated 17 August 2010 (**Draft Decision**) as Reference Services.

Required Amendment 2 Clause 5.2 of the proposed access arrangement should be deleted and replaced with the following clause 5.2: 5.2 Application information An application for access to a pipeline service must be in writing and must: a) state the time or times when the pipeline service will be required and the capacity that is to be utilised; and b) identify the entry point where the user proposes to introduce natural gas to the pipeline and the exit point where the user proposes to take natural gas from the pipeline; and c) state the relevant technical details (including the proposed gas specification) for the connection to the pipeline, and for ensuring safety and reliability of the supply of natural gas to, or from, the pipeline.	The National Gas Access Law and National Gas Rules create a framework for regulating the form of the Access Arrangement and are not intended to be a prescriptive. National Gas Rule 100 only requires that the Access Arrangement must be "consistent" with the national gas objective, the National Gas Rules and the Procedures defined in National Gas Rule 135E thus indicating that there will be a number of different forms that might be appropriate provided all can be said to be consistent (**Framework Concept**). By requiring National Gas Rule 112 to be inserted into the Access Arrangement materially in the form set out in the National Gas Rules the ERA has failed to have regard to the Framework Concept and in particular the national gas objective which requires "efficient operation and use of, natural gas services" in the context of "safety, reliability and security of supply of natural gas". (**Efficient Services Concept**). It is neither efficient nor safe and will give rise to issues of reliability of supply to leave the determination of the "relevant technical details" (National Gas Rule 112(2)(c)) to the Prospective User. The reference to "relevant technical details" can only be the relevant technical details specified by WAGN as WAGN is the person licensed to construct, operate and maintain the gas distribution under	Clause 5.2 has been amended as described in the amended Access Arrangement to better identify the information that a Prospective User must provide in order to commence an Application Process for the reasons set out in the commentary.

	Licence GDL8, Version 5, 06 August 2010 (**Licence**). The relevant technical details will vary depending on the particular application. As such, while some types of information will be required for all applications there will be some information that is particular to the circumstances. As such it is consistent with the national gas objective that WAGN have a power to request information from a Prospective User. If the Prospective User does not satisfy National Gas Rule 112(c) (and that is likely if WAGN does not have a power to request information from a Prospective User) then there is no request for the purposes of National Gas Rule 112 and obligation on WAGN to respond or to inform the Prospective User how the application might be amended such that it does comply (thus leading to inefficiency in the application process and increasing the likely hood of an access dispute arising). The Prospective User does not construct, operate or maintain the pipeline. As such (in absence of engaging expertise which will increase the cost of gas to End Users thus being contrary to the national gas objective) a Prospective User will not be able to determine precisely what technical information is required and so will not be able to comply with National Gas Rule 112.	

	Given the analysis (above) the ERA's Required Amendment 2 is inconsistent with the national gas objective. The current wording of paragraph 5.2 (a) and (b) of the Access Arrangement is appropriate in that it is consistent with the national gas objective to include WAGN's minimum prudential and insurance requirements and the proposed System Pressure Protection Plan as part of the request for access (i.e. it is not efficient to make an offer to provide Reference Services which terms will include detailed provisions in relation to security, insurance and system pressure protection if it is apparent in the request that the Prospective User will not be able to comply with some of the material terms of the offer). Notwithstanding the analysis above WAGN has considered the assessment of the ERA at paragraphs 172 to 175 of the Draft Decision and accepts that the Application Procedure would benefit from some amendment to better articulate the type of information that a Prospective User must provided (please refer to clause 5.2 in the amended Access Arrangement). WAGN has elected to adopt a materially similar approach to the Application Procedure as that approved by the Australian Energy Regulator (**AER**) in the Access Arrangement for the Jemena Gas Networks NSW gas distribution network approved by	

	the AER on 28 June 2010 (**Jemena Decision**) (Please refer to Schedule 5 – Request for Service). The approach is materially consistent in that it identifies certain required technical information that must be in an Application (please refer to Annexure F of the Access Arrangement) and contemplates that the Prospective Users must meet some further requirements that will be identified by WAGN (i.e. the reference in the Jemena Decision to the Prospective User satisfying "Service Provider's prudential requirements")	
Required Amendment 3 Clauses 5.3(a) and 5.3(c) to (h) of the proposed access arrangement should be deleted.	Paragraph 5.3(a) of the Access Arrangement has been amended to reflect the amendments to paragraph 5.2. WAGN is of the view that the amendments made address the ERA concerns at paragraphs 182 and 183 of the Draft Decision. The ERA's comments in regards to paragraphs 5.3(c) to (h) of the Access Arrangement at paragraph 185 of the Draft Decision are without regard to the Framework Concept and are inconsistent with the national gas objective in that the amendment suggested by the ERA will introduce ambiguity into the Access Arrangement leading to inefficiencies and increase the likelihood of an access dispute As drafted paragraphs 5.3(c) to (h) regulate how a Prospective User can accept an Investigation	Paragraph 5.3(a) of the Access Arrangement has been amended to reflect the amendments to paragraph 5.2 for the reasons set out in the commentary. Paragraphs 5.3(c) to (h) of the Access Arrangement have been retained without amendment for the reasons set out in the commentary.

	Proposal and Access Offer and how long the respective offers are open for. The removal of paragraphs 5.3(c) to (h) increases uncertainty and the chances of an access dispute arising. In particular, and in absence of a definitive period before an Access Offer lapses, the effect of the amendment by the ERA is that it reserves capacity on the WAGN GDS until the Prospective User informs WAGN that it declines the capacity described in the Access Offer. As such it is a barrier to entry for other Prospective Users. As drafted the provisions of paragraphs 5.3(c) to (h) of the Access Arrangement provide certainty with regard to the offer and acceptance process contemplated by National Gas Rule 112 and so is consistent with the national gas objective. In addition, the ERA has failed to take into account National Gas Rule 112 (5). Paragraph 5.3(g) of the Access Arrangement is materially consistent with that National Gas Rule.	
Required Amendment 4 Clause 5.5 of the access arrangement should be deleted.	At paragraph 203 of the Draft Decision the ERA contemplates that paragraph 5.5 of the Access Arrangement cannot be assessed as it applies to Pipeline Services generally and not just Reference Services.	Paragraph 5.5 of the Access Arrangement has been retained in the amended Access Arrangement with the addition of the words “Subject to the National Gas Access Law and National Gas Rules” to clause 5.5(a) for the reasons set out in the commentary.

	The ERA appears to be confusing the terms and conditions that WAGN will provide the Pipeline Services on (in which case it is only the Reference Services that is relevant -National Gas Rule 48(1)) and the matters that WAGN will have regard to prior to providing a Pipeline Service. National Gas Rule 112 regulates requests for access and applies to Pipeline Services as a whole (i.e. not just Pipeline Services that are Reference Services). As such there is no basis under the National Gas Access Law or National Gas Rules for the commentary of the ERA in relation to Required Amendment 4. Notwithstanding the analysis (above) the intent of paragraph 5.5 of the Access Arrangement is to set out the process that WAGN undertakes to determine if it should provide the Pipeline Services requested as contemplated by National Gas Rule 112(3)(a). Such a process necessitates pre-conditions and restrictions that may result in a refusal to offer the Pipeline Services requested (see National Gas Rule 112(3)(a)(i) which contemplates that the request for access may be refused) or an offer which may be subject to conditions (National Gas Rule 112(3)(a)(ii)). With reference to paragraph 206 of the Draft Decision the reference to sections 187 and 188 of the National Gas Access Law is relevant in that they are indicative of when access will not be granted in the context of	

	an access dispute and an arbitration so are also relevant to WAGN's decision to grant access (i.e. a prudent covered pipeline service provider would not grant access if the events or circumstances referred to in those sections were to occur if access was granted). As such paragraph 5.5 of the Access Arrangement is consistent with the Framework Concept and the national gas objective. With reference to paragraph 207 of the Draft Decision the ERA has not identified the parts of paragraph 5.5 of the Access Arrangement that relate specifically to a queuing policy. WAGN has reviewed paragraph 5.5 of the Access Arrangement and confirms it considers there are no provisions that relate solely to a queuing policy (noting that a queuing policy has not been included in the Access Arrangement). As such there does not appear to be any basis for the commentary of the ERA at paragraph 207 of the Draft Decision. WAGN confirms that expressing the process under 112(3)(a) as a precondition is an approach that has been approved by the AER (please refer to paragraph 5.2 of the Access Arrangement for the Wagga Wagga gas distribution network approved by the AER on 23 April 2010). WAGN also confirms that the use of the words "pre-conditions to and restrictions on" in the context of determining an application from a Prospective User is	

	used at clause 46 of Part A of the Current Access Arrangement. WAGN considers that the concept of the process that WAGN has to undertake to determine if it should provide a Pipeline Service under the National Gas Rules is materially consistent with the evaluation process under the National Third Party Access Code for Natural Gas Pipeline Systems (**Code**). Notwithstanding the above WAGN has considered the concerns of the ERA referred to in the Draft Decision in regards to the application process and has made amendments to the clause inserting the word reasonable where appropriate.	
Required Amendment 5 Clause 5.7 of the access arrangement should be deleted. The access arrangement should be amended to include provisions consistent with clauses 28 to 34 of the current access arrangement.	WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 5.	Clause 5.7 of the Access Arrangement has been amended as described in the amended Access Arrangement. The amendment is materially consistent with the ERA's Required Amendment 5 in that it has reintroduced the different options for a Prospective User to satisfy the requirement of a System Pressure Protection Plan Consequential amendments have been made to the Template Haulage Contract at clause 5.10 to include the indemnity referred to as "Option 3" at clause 29 of Part A of the Current Access Arrangement (WAGN has also made reference to the relevant provisions of clause 7.2 and 7.4 of

		the Template Haulage Contract to reflect the circumstances that might arise in the event that Option 3 is selected).
Required Amendment 6 The Authority requires clause 9.1(b) of the access arrangement to read: (b) For the calculation of the Opening Capital Base for the WAGN GDS for the Next Access Arrangement Period, each of: (i) the Opening Capital Base for the Current Access Arrangement Period (adjusted for any difference between estimated and actual capital Expenditure included in that Opening Capital Base); (ii) Conforming Capital Expenditure made, or to be made, during the Current Access Arrangement Period; (iii) any amounts added to the Capital Base under rule 82, rule 84 and rule 86 of the National Gas Rules; (iv) depreciation over the Current Access Arrangement Period (calculated in accordance with paragraph 9.1(a)); (v) redundant assets identified during the course of the Current Access Arrangement Period; and (vi) the value of Pipeline Assets disposed of during the Current Access Arrangement Period; is to be escalated, at the rate of inflation as measured by the	WAGN relies on the commentary and analysis at Section 2.2 of Part A .	The amendments referred to at Required Amendment 6 have not been adopted for the reasons set out in the commentary.

CPI All Groups, Eight Capital Cities, and expressed in the prices prevailing on a date nominated by WAGN (provided that date is a date on or prior to the end of the Current Access Arrangement Period).		
Required Amendment 7 The Authority requires clauses 3.1(iv)(A) and (B) and 3.1(v) of Annexure B of the access arrangement to be deleted.	WAGN relies on the commentary and analysis at Section 3.3 of Part A	Clauses 3.1(iv)(A) and (B) and 3.1(v) of Annexure B of the Access Arrangement have been retained without amendment in the amended Access Arrangement for the reasons set out in the commentary.
Required Amendment 8 The Authority requires Annexure A and sections 1 and 2 of Annexure B of WAGN's access arrangement to be amended as follows: Annexure A Replace the haulage reference tariffs set out under Annexure A with the haulage reference tariffs set out in Table 27. Annexure B (sections 1 and 2) • Inflation - tariffs need to be set to account for inflation by adjusting the real tariffs modelled, using 31 December 2009 dollars, based on CPI (All Groups, Eight Capital Cities) at the end of each modelling period; • Regulatory operating costs - clause 2.3(c), which includes the 2009 regulatory operating costs under the tariff variation mechanism for the 1 July 2011 adjustment, should be deleted;	WAGN relies on the commentary and analysis at Sections 2 and 3 of Part A	Annexure A and sections 1 and 2 of Annexure B of the Access Arrangement have been retained without amendment in the amended Access Arrangement for the reasons set out in the commentary.

• Regulatory capital costs - references to regulatory capital expenditure should be deleted; and • The real pre-tax rate of return should be amended to 6.89 per cent.		
Required Amendment 9 The Authority requires clause 11.1(b)(i) of WAGN's access arrangement to be deleted.	WAGN has elected to adopt the suggestion of the ERA in relation to clause 11.1(b)(i) referred to in Required Amendment 9.	Clause 11.1(b)(i) of the Access Arrangement has been deleted from the amended Access Arrangement for the reasons set out in the commentary.
Required Amendment 10 The Template Haulage Contract should be amended as follows: a) Delete clauses 1.1(a)(i), 1.1(a)(ii)(A) and 1.1(a)(ii)(D), and replace with a clause which provides for compliance by the user with the pre-condition to access in clause 5.7 of the access arrangement as a pre-condition to provision of the reference service under the haulage contract. b) Delete clauses 1.1 (b), (c), (d), (e), (f).	Clauses 1(a)(i) and 1.1(a)(ii)(A) have been retained. The amendments made by WAGN in relation to the System Pressure Protection Plan (see above at Required Amendment 5) mean that clauses 1(a)(i) and 1.1(a)(ii)(A) accord materially with the suggested amendments of the ERA. Clause 1.1(a)(ii)(D) has been deleted as this is one of the options that a User may adopt by way of the SPPP (see above at Required Amendment 5). There is no basis under the National Gas Access Law or National Gas Rules for the conclusion of the ERA at paragraph 1244 of the Draft Decision to determine that clauses 1.1(b) to (f) are procedural and not matters that go to "compliance of WAGN's proposed variations". In considering any provision of the Template Haulage	Clauses 1(a)(i) and 1.1(a)(ii)(A) of the Template Haulage Contract have been retained in the Amended Template Haulage Contract for the reasons set out in the commentary. Clause 1.1(a)(ii)(D) of the Template Haulage Contract has been deleted from the Amended Template Haulage Contract for the reasons set out in the commentary. Clauses 1.1 (b), (c), (d), (e), (f). of the Template Haulage Contract have been retained in the Amended Template Haulage Contract without amendment for the reasons set out in the commentary.

	Contract the ERA is required to consider the competing interests of WAGN and the Users in the context of the national gas objective (i.e. it is insufficient for the ERA to have just had regard to WAGN's compliance with the national gas objective). The deletion of clauses 1.1(b) to (f) is inconsistent with the national gas objective in that the amendment suggested by the ERA will introduce ambiguity into the Template Haulage Contract leading to inefficiencies and increase the likelihood of a dispute With reference to the National Gas Rules, National Gas Rule 48(1)(d)(ii) requires the "terms and conditions on which the Reference Service will be provided" to be referred to in the Access Arrangement. Clauses 1.1(b) to (f) are terms and conditions on which the Reference Services will be provided. The provisions reflect the law relevant to conditions precedent (ie they are intended to address the key areas of dispute that have arisen in the context of conditions precedent and the resulting judicial determinations). As such they are not procedural matters but terms and conditions that provide certainty in respect to the party's rights and obligations thus being consistent with the national gas objective. By executing the Template Haulage Contract WAGN commits to providing the Reference Services to the	

	relevant Prospective User subject to satisfaction of the conditions precedent. Without clauses 1.1(b) to (f) there is no obligation on the Prospective User to endeavour to satisfy the conditions precedent and no entitlement of WAGN to terminate in the event that they are not satisfied within a specific period. In effect this means the Prospective User has indefinitely reserved the capacity referred to in the Template Haulage Contract as WAGN will not be able to offer that capacity to another Prospective User creating a barrier for entry to those other Prospective Users. The suggestion of the ERA at paragraph 1244 of the Draft Decision (that the parties are free to agree such matters for themselves) is an agreement to agree so unenforceable at law. In the event that the parties do not agree then WAGN is bound to offer the Reference Services on the terms set out in the draft Template Haulage Contract which will cause the reserve of capacity referred to above.	
Required Amendment 11 Clause 2(b) of the Template Haulage Contract should be amended to read: This Haulage Contract: b) ends on the earlier of: i) when the access arrangement is revised or expires in	The amendments to clause 2(b) of the Template Haulage Contract are inconsistent with the National Gas Access Law and the National Gas Rules for the reasons described in the commentary in relation to Required Amendment 37.	Clause 2(b) of the Template Haulage Contract has been retained in the Amended Template Haulage Contract without amendment for the reasons set out in the commentary.

accordance with the NGL and NGR and <user> does not agree to continue this Haulage Contract on the basis of the Haulage Contract being varied to incorporate the terms and conditions of the access arrangement which replaces the current access arrangement. ii) when <user> is no longer entitled to take delivery of Gas at any Delivery Point under this Haulage Contract; or iii) when it is terminated under clause 14 or as otherwise provided for under this Haulage Contract.		
Required Amendment 12 Clauses 4.2(a)(ii), 4.2(a)(iii) and 4.2(b)(v) should be deleted from the Template Haulage Contract.	Contrary to the view expressed by the ERA at paragraph 1265 of the Draft Decision clause 4.2(a)(ii) of the Template Haulage Contract is materially consistent with clause 3(2)(b) of Part C of the Current Access Arrangement. There is therefore no basis for the conclusion of the ERA that clause 4.2(a)(ii) of the Template Haulage Contract ought to be deleted. Given the existence of clause 3(2)(b) of Part C of the Current Access Arrangement. WAGN will be under a less favourable commercial position if clause 4.2(a)(ii) of the Template Haulage Contract is deleted (the ERA's rationale for deleting was that the addition of the clause was going to place WAGN in a more favourable commercial decision). The potential for additional costs arising from the less favourable commercial position is not reflected in the Reference Tariffs and so clause 4.2(a)(ii) of the Template	Clauses 4.2(a)(ii), 4.2(a)(iii) and 4.2(b)(v) of the Template Haulage Contract have been retained in the Amended Template Haulage Contract without amendment for the reasons set out in the commentary.

	Haulage Contract must be retained. The addition of the reference to Force Majeure in clause 4.2(a)(iii) and 4.2(b)(v) of the Template Haulage Contract was required to remove potential ambiguity in the wording of the Current Access Arrangement documents. As stated the Current Access Arrangement contains clause 3(2)(b) which contemplates that a Tariff (as defined) is still payable even though the requested Service (as defined) is not able to be provided or undertaken. In contrast clause 37(3) of Part C of the Current Access Arrangement contemplates that if WAGN claims Force Majeure the User (as defined) is not required to pay the Tariff (as defined and including the standing charge). WAGN confirms that the ERA has required an equivalent provision to clause 37(3) of Part C of the Current Access Arrangement to be included in the Amended Template Haulage Contract. The release from the obligation of a User to pay if WAGN relies on Force Majeure is inconsistent with the National Gas Access Law and National Gas Rules. Force Majeure requires “any occurrence or circumstance which is not within a Party's control and which the Party, by applying the standard of a reasonable and prudent person, is not able to prevent or overcome” (see the definition in the Template	

	Haulage Contract). By definition Force Majeure relates to matters not within the control of WAGN but are risks that arise from the performance of the Reference Services. As such any provision that denies WAGN the opportunity to be paid the Reference Tariffs during an event of Force Majeure is inconsistent with the revenue and pricing principles in section 24 of the National Gas Access Law (i.e. WAGN will be required to incur the costs associated with Force Majeure and will not be able to recover those costs, or at least a part of the costs, by the Reference Tariffs). In addition, denying WAGN the opportunity to be paid the Reference Tariffs during an event of Force Majeure is inconsistent with the national gas objective. A gas distribution system by its nature has a high ratio of fixed cost to total costs (please refer to Section 12.4 of the Amended Access Arrangement Information). Not allowing WAGN to recover some of those costs (in the event of a Force Majeure the costs able to be claimed would be the Standing Charges referred to in Annexure A of the Access Arrangement) is inconsistent with the national gas objective in that it: 1. prevents the fixed costs from being shared by all of the Users (and ultimately the End	

	Users); 2. is likely to be a serious impediment to WAGN in obtaining finance or increase the cost of obtaining that finance; and 3. discourages WAGN from investing in the gas distribution system because of the financial risk associated with the event of Force Majeure. WAGN confirms that the AER has approved: 1. a cost pass through event referring to the concept of force majeure (please refer to paragraph 12.5 of the Access Arrangement for the Wagga Wagga gas distribution network approved by the AER on 23 April 2010); 2. a cost pass through event referring to concepts similar to that of force majeure (please refer to definition of "Business Continuity Event" and "General Pass Through Event" referred to in clause 3(C)(b) of paragraph 12.5 of the Access Arrangement for the Jemena Gas Networks NSW gas distribution network approved by the AER on 28 June 2010); and 3. the obligation to continue to pay notwithstanding force majeure (please refer to clause 26.5 and 26.6 of the Reference Services Agreement in the Access Arrangement for the Jemena Gas	

	Networks NSW gas distribution network approved by the AER on 28 June 2010).	
Required Amendment 13 Clause 5.3 of the Template Haulage Contract should be retitled: 'Start Date and End Date for the receipt and delivery of gas'.	WAGN has elected to adopt the suggestion of the ERA in relation to clause 5.3 of the Template Haulage Contract.	Clause 5.3 of the Template Haulage Contract has been amended as described in amended Template Haulage Contract for the reasons set out in the commentary.
Required Amendment 14 Clause 5.5(a) of the Template Haulage Contract should be amended as follows: (a) Subject to clause 5.5(b), <User> may request <Service Provider> to: i) add a new Delivery Point to the Delivery Point Register; ii) increase the Contracted Peak Rate for a Delivery Point to which Service A1, Service A2 or Service B1 applies; or iii) change the End Date for a Delivery Point to a date which is later than the End Date specified in the Delivery Point Register for the Delivery Point, and~~, if <Service Provider> agrees~~, <Service Provider> must make appropriate adjustments to the Delivery Point Register, subject to <Service Provider> withholding consent on reasonable grounds, based on technical or commercial considerations Clause 5.5(b)(i) should be deleted	In drafting the Access Arrangement and the Template Haulage Contract WAGN has endeavoured to align the documents such that there is consistency between the two. Currently, the Access Arrangement and the Template Haulage Contract contemplate that all Users (whether they are a party to an existing Haulage Contract or not) will be treated equally in relation to applications for additional Capacity. Required Amendment 14 contemplates that WAGN is obligated to treat applications from Users who are already a party to an existing haulage contract differently. This is inconsistent with the National Gas Access Law and the National Gas Rules which contemplate equal treatment for all Users. The amendments also create a potential breach of contract in that WAGN may be bound contractually to follow a different application process than that described in the Access Arrangement. As such the requested amendments create uncertainty and inefficiency contrary to the national gas objective. Required Amendment 14 is also inconsistent with the	Clauses 5.5 of the Template Haulage Contract have been retained in the amended Template Haulage Contract without amendment for the reasons set out in the commentary.

	view expressed by the ERA at paragraph 216 of the Draft Decision which confirms in relation to the process for access an "orderly process ……. is consistent with the national gas objective". The introduction of the concept of only being able to withhold consent "on reasonable grounds based on technical or commercial considerations" is a limitation not contemplated by National Gas Rule 112 (the relevant National Gas Rule for an application for additional capacity). National Gas Rule 106 which relates to the changing of receipt and delivery points does contemplate such a limitation as materially consistent words to those inserted by the ERA in clause 5.5(a) are used in National Gas Rule 106(1)(b). Clearly, Parliament has drawn a distinction between a request to change a receipt or delivery point which limits a service provider's ability to withhold consent (National Gas R106(1)(b) noting that WAGN has amended its Draft Template Haulage Contract to account for the distinction - see Required Amendment 45) and a request for access to additional capacity which has no such limitation. The provisions of clause 5. 5 of the template Haulage Contract are appropriate as drafted because: 1. requiring a current User to make an application using the same process as a new	

	User means a single point of entry for all Users and so consistent with the national gas objective; 2. the concern of the ERA referred to at paragraph 1302 is addressed by confirmation in paragraph 5.5 of the amended Access Arrangement (see above and the commentary at Required Amendment 4); 3. the commentary of the ERA at paragraph 1301 that WAGN would already have all of the information that would be required does not take into account that haulage contracts are long term agreements and is appropriate that WAGN be entitled to consider the information relating to the User's prudential and financial ability whenever a further request for Haulage Services is made as a User's ability to perform its obligations in the past is not determinative of its future ability; and 4. the provisions as drafted are materially consistent with the Current Access Arrangement (see clause 56 of Part A of the Current Access Arrangement) and there is no apparent material difference between the intent of the National Gas Access Law and the Code in regards to applications from existing Users.	

Required Amendment 15 Clause 5.6 of the Template Haulage Contract should be amended as follows: • Delete clause 5.6(a) and replace with the following: (a) No later than 30 days prior to the End Date, <Service Provider> will give written notice to <user> specifying the procedure to Deregister the Delivery Point. (b) If on the End Date for a Delivery Point no other user is identified as the Current user for the Delivery Point under the Retail Market Rules or <user> has not applied for an extension to the End Date, then <user> must request <Service Provider> to Deregister the Delivery Point. • Renumber clause 5.6(b) as 5.6(c).	WAGN has elected to adopt the suggestion of the ERA in relation to clause 5.6 of the Template Haulage Contract materially in the form suggested by the ERA.	Clause 5.6 of the Template Haulage Contract has been amended as described in the amended Template Haulage Contract for the reasons set out in the commentary. The amendment is materially in the form requested by the ERA.
Required Amendment 16 Annexure A to the Template Haulage Contract should be amended as follows: • Delete 1(a) and replace with "the gas specification requirements detailed under the Gas Standards (Gas Supply and System Safety) Regulations 2000".	WAGN has elected to adopt the suggestion of the ERA in relation to Annexure A to the Template Haulage Contract materially in the form suggested by the ERA. WAGN has not adopted the suggestion of the ERA in its entirety because some of the components of the gas quality specification referred to by the ERA in Required Amendment 16 are not suitable for the Parmelia Pipeline.	Annexure A of the Template Haulage Contract has been amended as described in the amended Template Haulage Contract for the reasons set out in the commentary. The amendment is materially in the form requested by the ERA

• Rename 1(b) to 1(c), • Insert 1(b) as "the gas specification requirements detailed under part 1 of Schedule 1 (Western Australian standard specification) under Gas Supply (Gas Quality Specifications) Regulations 2010". • Delete the table under Annexure A.		
Required Amendment 17 Clauses 5.8(b) and 5.8(d)(iii) should be deleted from the Template Haulage Contract.	WAGN has elected to adopt the suggestion of the ERA in relation to clauses 5.8(b) and 5.8(d)(iii) of the Template Haulage Contract.	Clauses 5.8(b) and 5.8(d)(iii) of the Template Haulage Contract have been deleted from the amended Template Haulage Contract for the reasons set out in the commentary.
Required Amendment 18 Clause 5.9(a) of the Template Haulage Contract should be amended to read: For each Gas Day, <user> must ensure that it ~~delivers~~ procures the injection of an amount of Gas into each Sub-network that is equal to the ~~<user>~~ <user>'s good faith estimate, acting as a reasonable and prudent person, of the quantity of Gas ~~receives from that Sub-network on~~ that <user> is likely to withdraw from the Sub-network on that Gas Day.	WAGN does not control the amount of gas that is injected into, or taken from, its gas distribution system. The only person that can exert control is the User that contracts with the End Users and the owners of the relevant interconnected transmission pipelines. In the event that gas in does not equal gas out in respect to any one User then the possible consequences are: 1. where there is more Gas injected than taken then the distribution system will be over pressurised; or 2. where there is less gas injected than taken in absence of a swing service (as defined in the Retail Market Rule) system depressurisation of the gas distribution system may occur.	Clause 5.9(a) of the Template Haulage Contract has been retained in the amended Template Haulage Contract without amendment for the reasons set out in the commentary.

	Given WAGN's inability to manage any of the identified consequences (and the possible damage that might arise to the gas distribution system in the event of over pressurisation or depressurisation) it is appropriate that User has an absolute obligation. For the reasons set out above the amendment requested by the ERA is inconsistent with the national gas objective in that it is neither efficient nor safe and will give rise to issues of reliability of supply as the form of Clause 5.9(a) required by the ERA allows there to be a discrepancy between amounts injected and amounts withdrawn. As drafted by the ERA provided the User has made a "good faith estimate" of the gas that is "likely" to be withdrawn WAGN will be denied a remedy for loss or damage caused by the imbalance even though it has no ability to control the circumstances giving rise to an imbalance. WAGN confirms that the AER has approved an absolute obligation to balance gas in to gas out (please refer to clause 7.6 of the Reference Services Agreement in the Access Arrangement for the Jemena Gas Networks NSW gas distribution network approved by the AER on 28 June 2010).	
Required Amendment 19	WAGN does not agree that there is any possibility for inconsistency between clause 5.9(d)(iii) and clause	Clauses 5.9(d)(iii) and 5.10(a) of the Template Haulage Contract has been amended as set out in the amended

Clause 5.10(a) of the Template Haulage Contract should be deleted.	5.10(a) of the Draft Template Haulage Contract. (and notes that the ERA does not identify any inconsistency). In order to deal with the ERA's perception that there may be inconsistency WAGN has elected to delete 5.9(d)(iii) and amend clause 5.10(a) of the Draft Template Haulage Contract.	Template Haulage Contract for the reasons set out in the commentary.
Required Amendment 20 The words 'be it direct or indirect' should be deleted from clause 5.11(d) of the Template Haulage Contract.	WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 20.	Clause 5.11(d) of the Template Haulage Contract has been amended as described in the amended Template Haulage Contract for the reasons set out in the commentary.
Required Amendment 21 Clause 6.6(e) of the Template Haulage Contract should be amended to read: Subject to clause 6.6(f) and clause 20.2, <Service Provider> may disclose to an operator of an Interconnected Pipeline information which <Service Provider> determines, as a reasonable and prudent network operator, to be the minimum amount of information required to be disclosed for operational reasons relating to the interconnection of that, or any other, Interconnected Pipeline with the WAGN GDS.	WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 20. WAGN has also re-considered the definition of Interconnection Event. Currently as drafted the definition only addresses the circumstances in which the relevant contract terminates (i.e. "is not or ceases to be"). It may be that the relevant contract has not been terminated but either party to the Interconnection Agreement may have a right to Curtail or refuse to accept. WAGN has added in wording to address this issue. Please refer to the amended definition of Interconnection Event. The amendment is required as the definition of Interconnection Event as drafted is inconsistent with the national gas objective in that there is some ambiguity in regards to WAGN's rights to Curtail or	Clause 6.6(e) of the Template Haulage Contract has been amended as described in the amended Template Haulage Contract for the reasons set out in the commentary. The definition of Interconnection Event has been amended as described in the amended Template Haulage Contract for the reasons set out in the commentary.

	refusal to accept. WAGN notes the provisions that regulate WAGN's liability in the event that it Curtails or refuses to accept Gas (clause 6.6(b)) have not been amended so a User's rights under the Haulage Contract have not been affected.	
Required Amendment 22 Clause 6.7(b) of the Template Haulage Contract should be amended to read: If, in the course of installing user Specific Delivery Facilities or Standard Delivery Facilities, <Service Provider> causes damage to land or premises including the opening or breaking up any sealed or paved surface, or damaging or disturbing any lawn, landscaping or other improvement, then <Service Provider> will if necessary and in its absolute discretion acting as a reasonable and prudent person either: i) fill in any ground to restore it to approximately its previous level; or ii) at <User>'s expense and without after obtaining prior consent from <User>, restore the land or premises including the sealed or paved surface, lawn, landscaping or other improvement to the extent reasonably practicable.	The intent of the clause 6.7(b) of the Template haulage Contract as drafted was to provide WAGN with the ability to avoid being involved in a dispute with an End User for compensation by providing WAGN an entitlement to make good and claim the costs from the User. As drafted by the ERA there is an obligation to consider the alternative as a reasonable and prudent person. In some circumstances this may require WAGN to request consent from the User to restore to the condition prior to undertakings the works. There is no obligation on the User to act as a reasonable and prudent person in giving its consent or any time frames within which to provide the consent. As such the amendments suggested by the ERA are inconsistent with the national gas objective (they lack certainty and so will give rise to inefficiencies and will likely lead to a dispute). WAGN elects to revert to the position under the Current Access Arrangement. In addition WAGN has	Clause 6.7(b) of the Template Haulage Contract has been amended as described in the amended Template Haulage Contract for the reasons set out in the commentary.

	also inserted words that were unintentionally omitted from clause 6.7(b) and 6.7(e) of the Draft Template Haulage Contract. The words are "maintaining or operating" to match the use of those words in clause 6.7(a) and 6.7(c).	
Required Amendment 23 Clause 7.3(b) of the Template Haulage Contract should be amended to read b) at any time at least ~~10~~ 30 days after giving <User> written notice,	WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 23. WAGN has also added words to clarify that the rights under clause 7.3(b) are in addition to any rights it may have at law.	Clause 7.3(b) of the Template Haulage Contract has been amended as described in the amended Template Haulage Contract for the reasons set out in the commentary.
Required Amendment 24 Clause 7.4 of the Template Haulage Contract should be amended so that clause 7.4(i) is deleted.	WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 23.	Clause 7.4(i) of the Template Haulage Contract has been deleted from the amended Template Haulage Contract for the reasons set out in the commentary.
Required Amendment 25 Clause 7.5(a) of the Template Haulage Contract should be amended to read: In order to effect a Curtailment under this Haulage Contract (including under clause 7.2) <Service Provider> ~~may~~ must issue a notice to <User> requiring <user> to: i) Curtail receiving Gas at one or more Delivery Points and Curtail delivering Gas to every associated Receipt Point; and ii) comply with any other condition necessary to effect the Curtailment or refusal to accept Gas.	The ERA appears to confusing the provisions of clauses 7.5 and 7.6 with a notice under clause 7.8(c). The intent of clauses 7.5 and 7.6 is that instead of WAGN curtailing or refusing to accept then WAGN "may" direct a User to curtail or refuse to accept using its rights under its contractual arrangements or under the *Energy Coordination Act 1994.* WAGN has amended clauses 7.5 and 7.6 to clarify the intent of the clauses.	Clause 7.5(a) of the Template Haulage Contract has been amended as described in the amended Template Haulage Contract for the reasons set out in the commentary.

Required Amendment 26 Clause 7.6(a) of the Template Haulage Contract should be amended to read: In order to enforce a refusal to accept Gas under clause 7.4, <Service Provider> ~~may~~ must issue a notice to <User> requiring <user> to: i) cease delivering Gas to a Physical Gate Point or Receipt Points and Curtail taking delivery from any and all associated Delivery Points; and ii) comply with any other condition necessary to effect the Curtailment or refusal to accept Gas.	The ERA appears to confusing the provisions of clauses 7.5 and 7.6 of the Template Haulage Contract with a notice under clause 7.8(c). The intent of clauses 7.5 and 7.6 is that instead of WAGN curtailing or refusing to accept then WAGN "may" direct a User to curtail or refuse to accept using its rights under its contractual arrangements or under the *Energy Coordination Act 1994.* WAGN has amended clauses 7.5 and 7.6 to clarify the intent of the clauses.	Clause 7.6(a) of the Template Haulage Contract has been amended as described in the amended Template Haulage Contract for the reasons set out in the commentary.
Required Amendment 27 Clause 7.8(a) of the Template Haulage Contract should be amended to read: When exercising its rights under clauses 7.2, 7.3 or 7.4, <Service Provider> shall determine, ~~in its absolute discretion~~ acting as a reasonable and prudent service operator: i) which Delivery Points it will Curtail and the order of that Curtailment; or ii) the quantity of Gas that it refuses to accept delivery of and Receipt Points at which it will refuse to accept, as the case may be.	WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 27 save that the term "network operator" will be used.	Clause 7.8(a) of the Template Haulage Contract has been amended as described in the amended Template Haulage Contract for the reasons set out in the commentary.
Required Amendment 28	The amendment suggested by the ERA is inconsistent with the national gas objective in that it	Clause 7.8(d) of the Template Haulage Contract has been included as described in the amended Template Haulage

Insert a new clause as 7.8(d) to read: d) <Service Provider> will where practicable use reasonable endeavours to provide <User> with reasonable on-going notice during a period of Curtailment under clause 7.2 or refusal to accept delivery of Gas under clause 7.4 as to the magnitude and expected duration of the ongoing Curtailment or refusal to accept delivery of Gas. Existing clause 7.8(d) should consequentially be renumbered as clause 7.8(e).	might be interpreted as a requirement to give a notice notwithstanding that the magnitude and expected duration of the curtailment is no different to that set out in the notice referred to at clause 7.8(c) of the Template Haulage Contract (so the amendments suggested by the ERA will introduce ambiguity into the Template Haulage Contract leading to inefficiencies and increase the likelihood of a dispute). WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 28 save that the obligation to provide ongoing notice is only when the magnitude and expected duration is materially greater than that described in clause 7.8(c) of the Template Haulage Contract.	Contract for the reasons set out in the commentary.
Required Amendment 29 Clause 9.1 of the Template Haulage Contract should be amended to delete clause 9.1(c) which sets out WAGN's proposed revised invoicing procedure. Clause 9.1 of the Template Haulage Contract should be amended to include an invoicing procedure consistent with clause 30(2) of Part C of the current access arrangement.	National Gas Rule 100(b) requires the terms of the Access Arrangement to be consistent with the Procedures (meaning the Retail Market Rules). WAGN confirms that the some of the amendments requested by the ERA do not comply with the Retail Market Rules and so do not comply with National Gas Rule 100(b) (see below in regards to how a User must respond to a payment claim in that it must provide two notices in a specific form). WAGN has not endeavoured to incorporate the parts of the ERA's Requested Amendment 29 that do accord with National Gas Rule 100(b) and has instead explained	Clause 9 of the Template Haulage Contract has been retained in the amended Template Haulage Contract without amendment except for the deletion of clauses 9.2(c)(iv) 9.4(c) for the reasons set out in the commentary.

	its reasoning for the wording of clause 9 in the Template Haulage Contract (below). As the sub-clauses of clause 9 of the Template Haulage Contract cross refer to each other (see for example clause 9.1(c)(B) and (E). WAGN has elected to provide commentary on clause 9 generally and will rely on that commentary for each of the ERA's Required Amendments that refer to clause 9). In some circumstances (identified below) the Retail Market Rules do not regulate the circumstances contemplated by the Template Haulage Contract. In those circumstances, as required by National Gas Rule 48(d)(ii), WAGN has included the applicable terms and conditions. Notwithstanding the commentary (above) WAGN has reflected on the ERA's Requested Amendments in relation to clause 9 and, where appropriate and consistent with the Retail Market Rules, has made some minor amendments to the clauses (which are described below). Clause 20.4 of the Template Haulage Contract contemplates that any information provided under the Template Haulage Contract must be provided in accordance with the Retail Market Rules (to the extent that they apply). The provisions of clause 9.1 of the Template Haulage Contract have been drafted	

	such that they are materially consistent with the Retail Market Rules (including the relevant B2B procedures) and the current practice of Users and WAGN in relation to payment claims. The procedures set out at clause 9.2(a) of the Template Haulage Contract are materially consistent with the Retail Market Rules B 2 B procedures (see REMCo B2B SID v3.2 2005 06 01 page 132) which requires two separate notices to be provided. The notices are the NetworkDUoSBillingNotification transaction carrying dispute details in a CSV format and a NetworkDUoSBillingNotification transaction with details attached in a CSV format). In addition, the procedures set out at clause 9.2(a) are consistent with current practice. Prior to the FRC Implementation all of the participants in the market agreed that the bulk of the line items could be verified and the relevant notices issued within 3 business days of receipt of a payment claim. The participants also agreed that payment within 10 Business Days of a payment claim was appropriate (which is why the processes described in clause 9.2 are contemplated to be completed within 10 Business Days of a payment claim). The procedures set out at clause 9.2(b)(ii) are materially consistent with Retail Market Rules	

	B2B procedures (see REMCo B2B SID v3.2 2005 06 01 page 132 which requires a NetworkDUoSBillingNotification transaction where the details of the resolution are provided in CSV format). The format of the file, which is an auto-system-generated aseXml does not allow a column in which to provide a reason for the decision). REMCo B2B SID v3.2 2005 06 01 page 132 contemplates that there will consultation between WAGN and the User in relation to any disputed item ("It is envisaged that email or phone will be utilised to resolve the billing dispute.."). As a matter of practice this occurs between WAGN and the Users and this process is used to confirm the reason for the decision and determine if the decision has been correctly made. The "Resolution Notification" referred to in clause 9.2(b) is the confirmation of WAGN's findings following the consultation process. Resolution of the dispute means that WAGN agrees or disagrees with the User. In the event that the User is not satisfied with WAGN's decision then it may dispute the issue further under clauses 9.4 or 18. The procedure set out at clause 9.2(c)(iii) is materially consistent with current practice and the Retail Market Rules B 2 B procedures. Clause 9.2(c)(iii) operates in	

	the event that the "Resolution Notification" referred to in clause 9.2(b) confirms that WAGN does not agree that a line item in the payment claim was incorrect. In the event that the User is not satisfied with WAGN's decision then it may dispute the issue further under clauses 9.4 or 18. Clause 9.2(c)(iv) was inserted to clarify the process in the event that WAGN does not provide a Resolution Notice. After further consideration of the intent of the payment process WAGN agrees it is a risk that WAGN can manage and does not object to the deletion of clause 9.2(c)(iv). Clause 9.2(f) is not referred to in Retail Market Rules B 2 B procedures. It operates in the event that WAGN has made a final payment claim but the subsequent process under 9.2 indicates there needs to be an adjustment of that payment claim. Given the parties have agreed a procedure to correct payment claims it is appropriate that the same procedure is followed. (i.e. the payment claim process). Clause 9.4(c) is not referred to in Retail Market Rules B2B procedures and was inserted to clarify the process in the event that WAGN does not provide a Retrospective Resolution Notice. After further consideration of the intent of the payment process WAGN agrees it is a risk that WAGN can manage and	

	does not object to the deletion of clause 9.4(c). Clause 9.5 is not referred to in Retail Market Rules B 2 B procedures. It operates in the event that WAGN determines there is an error in a payment claim (i.e. grants WAGN a similar right to that of User under clause 9.4). In the event that the User is not satisfied with WAGN's decision under clause 9.5 then it may dispute the decision under clause 18.	
Required Amendment 30 Clause 9.2(a) of the Template Haulage Contract should be amended to provide that the user should: i) be given at least 10 (rather than 3) business days to respond to a payment claim as to whether any line items are disputed; ii) do so in a single return notice (rather than separate notices); and iii) provide details of the reasons for any dispute (which is not provided for under WAGN's revisions proposal); and iv) if the user does not dispute any line item the user should be taken to agree to pay (rather than having to lodge a payment notice). Clause 9.2 of the Template Haulage Contract should be	Please refer to the commentary in relation to Required Amendment 29.	Clause 9 of the Template Haulage Contract has been retained in the amended Template Haulage Contract without amendment except for the deletion of clauses 9.2(c)(iv) and 9.4(c) for the reasons set out in the commentary.

amended to delete clause 9.2(b) regarding the giving of a resolution notification by WAGN, and all provisions contingent on that notification, namely 9.2(c) to (h). Clause 9.2 of the Template Haulage Contract should be amended to be consistent with the provisions of: i) clauses 30(3) & (4) of Part C of the current access arrangement with respect to adjustments for payments under disputed invoices; ii) clause 32(1) of Part C of the current access arrangement with respect to the interim payment of disputed invoices; and iii) clauses 32(2) and (3) of Part C of the current access arrangement with respect to the payment of interest on resolution of invoice disputes.		
Required Amendment 31 Clause 9.4 of the Template Haulage Contract should be amended to delete clause 9.4(a) regarding the giving of a retrospective resolution notification by WAGN, and all provisions contingent on that notification, namely 9.4(b) to (i). Clause 9.4 of the Template Haulage Contract should be amended to be consistent with the provisions of clause 33 of Part C of the current access arrangement with respect to correction of payment errors.	Please refer to the commentary in relation to Required Amendment 29.	Clause 9 of the Template Haulage Contract has been retained in the amended Template Haulage Contract without amendment except for the deletion of clauses 9.2(c)(iv) and 9.4(c) for the reasons set out in the commentary.
Required Amendment 32 Clause 9.5 of the Template Haulage Contract should be	Please refer to the commentary in relation to	Clause 9 of the Template Haulage Contract has been retained in the amended Template Haulage Contract

amended to delete clause 9.5(a) regarding the giving of a retrospective error notification by WAGN, and all provisions contingent on that notification, namely 9.5(b) and 9.5(c). Clause 9.5 of the Template Haulage Contract should be amended to be consistent with the provisions of clause 33 of Part C of the current access arrangement with respect to correction of payment errors.	Required Amendment 29.	without amendment except for the deletion of clauses 9.2(c)(iv) and 9.4(c) for the reasons set out in the commentary.
Required Amendment 33 Clauses 9.6(a) and 9.6(b) of the Template Haulage Contract should be deleted.	WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 33.	Clauses 9.6(a) and 9.6(b) of the Template Haulage Contract has been deleted from the amended Template Haulage Contract.
Required Amendment 34 Clauses 10.1 and 10.2 of the Template Haulage Contract should be deleted.	Contrary to the view of the ERA expressed at paragraph 1518 of the Draft Decision the ERA is not being asked to determine matters relating to tax regulation. The clauses are dealing with contractual issues arising from legislative matters that parties undertaking arms length negotiations are required to agree upon. National Gas Rule 48(1)(d)(ii) requires these to be included in the haulage contract (thus deletion of the clauses is contrary to National Gas Rule 48(1)(d)(ii)). The Reference Tariffs are expressed to be GST exclusive (please refer to clause 2.2 of Annexure A of the Access Arrangement) and the Reference Tariffs	Clauses 10.1 and 10.2 of the Template Haulage Contract have been retained in the amended Template Haulage Contract without amendment for the reasons set out in the commentary.

	are not exempt from GST as there is a taxable supply for the purposes of the GST Law. In absence of clause 10.2 of the Template Haulage Contract the Reference Tariffs will be deemed to be inclusive of GST. As such, the deletion of clause 10.2 is inconsistent with the revenue and pricing principles in section 24 of the National Gas Access Law in that the ERA is denying WAGN the opportunity to recover the efficient cost of providing the Reference Services (i.e. WAGN will be required to pay the GST on the Reference Tariffs without a right to claim that GST from the User). WAGN confirms the AER has approved a GST clause when Reference Tariffs are expressed to be GST exclusive (please refer to clause 23 of the Reference Services Agreement in the Access Arrangement for the Jemena Gas Networks NSW gas distribution network approved by the AER on 28 June 2010). The rationale for the inclusion of clause 10.1 is similar to that of 10.2 in that the basis for the calculation of the reference tariff is that it is on a tax free basis except those taxes that might arise by way of haulage (but not taxes relating to receipt and delivery). As such the deletion of clause 10.1 is also inconsistent with the revenue and pricing principles in section 24 of the National Gas Access Law in that the ERA is denying WAGN the opportunity to recover the efficient	

	cost of providing the Reference Services (in the event that such costs from taxes arise). The suggestion of the ERA at para 1519 of the Draft Decision (that the parties are free to agree such matters for themselves) is, in addition to not complying with Rule 48(1)(d)(ii), an agreement to agree (so unenforceable at law). In the event that the parties do not agree then WAGN is bound to offer the Reference Services on the terms set out in the Template Haulage Contract meaning the Reference Tariffs are offered inclusive of GST (even though that is not the basis upon which they have been calculated) and without agreement on what taxes are included in the Reference Tariffs. WAGN refers to clause 11 of Part C of the Current Access Arrangement and confirms that the effect of the indemnity provided under clause 11(2)(b) is materially similar to the approach taken by WAGN in relation to clauses 10.1 and 10.2 of the Template Haulage Contract. For the reasons set out above clauses 10.1 and 10.2 are consistent with the National Gas Access Law and the National Gas Rules.	
Required Amendment 35 Clause 11 of the Template Haulage Contract should be	Please refer to the commentary in relation to	Clause 11 of the Template Haulage Contract has been retained without amendment in the amended Template

amended by inserting under a new clause 11(c), the equivalent of clause 37(3) of the current access arrangement. Clause 11(b) should also be amended so that it is subject to clause 11(c).	Required Amendment 12.	Haulage Contract for the reasons set out in the commentary.
Required Amendment 36 Clause 12.1(b) of the Template Haulage Contract should be amended by deleting the words '10 Business Days' in the first line and inserting the words '20 Business Days'.	WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 36	Clause 12.1(b) of the Template Haulage Contract has been amended as described in the amended Template Haulage Contract.
Required Amendment 37 Clauses 12.2, 12.3, and 12.4 should be deleted from the Template Haulage Contract.	At paragraph 1546 of the Draft Decision the ERA incorrectly concludes that there are no equivalent clauses in the Current Access Arrangement to clauses 12.2, 12.3, and 12.4. WAGN refers the ERA to clause 34 of Part C of the Current Access Arrangement and confirms that clauses 12.2, 12.3, and 12.4 regulate similar events as clause 34 of Part C of the Current Access Arrangement was intended to regulate (the provisions in the Current Access Arrangement regulate Reference Services and Reference Tariffs upon variation of the access arrangement). WAGN refers to the ERA's rationale for not allowing clauses 12.2, 12.3, and 12.4 in that the clauses bind the service provider and User to rights and obligations	Clauses 12.2, 12.3, and 12.4 of the Template Haulage Contract have been amended as described in the amended Template Haulage Contract for the reasons set out in the commentary.

	that are created by a subsequent access decision (paragraph 1549 of the Draft Decision). WAGN also refers the ERA to Required Amendment 11 and confirms that the affect of the amendments that the ERA has requested is that the clause binds the service provider and User to rights and obligations that are created by a subsequent access decision. Given the analysis above the only difference between clauses 12.2, 12.3, and 12.4 and Required Amendment 11 is the level of detail that WAGN has included. WAGN refers to the analysis of the ERA at paragraphs 1547 and 1548 of the Draft Decision and confirms that the ERA has interpreted the haulage contract as being a statutory obligation to provide Reference Services as the terms and conditions do not survive the variation or termination of the Access Arrangement. WAGN does not object to this interpretation but notes there are two distinct sets of obligations (the statutory obligation to offer the Haulage Services on the terms and conditions approved by the ERA and the contractual rights and obligations that arise once the offer is accepted) and that there is nothing in the National Gas Access Law or the National Gas Rules that expressly confirms the view expressed by the ERA. Given the absence of any express statutory provision that confirms the affect of the variation of the Access Arrangement (in	

	that it may vary the Reference Tariffs, the Reference Services or the terms and conditions on which those tariffs and services are provided) it is appropriate that the terms and conditions confirm that they are amended by the variation of an Access Arrangement (clause 12.4 in the Template Haulage Contract). Clauses 12.2 and 12.3 provide a process to regulate the circumstances where there has been an amendment of a Reference Service (either the activities undertaken by WAGN that relate to the Reference Service or a change in description but not necessarily a change to the activates that comprise the Reference Service) and are intended to replace clause 34 of Part C of the Current Access Arrangement. The amendments that the ERA have suggested should be made to clause 2(b) and the deletion of clauses 12.2, 12.3, and 12.4 are inconsistent with the national gas objective in that they are ambiguous and likely to give rise to a dispute in that 1. there is no time within which the User is to agree to be bound by the amendments (clause 2(b)); 2. there is no specified form which the User has to communicate its acceptance (clause 2(b)); and 3. the absence of detail referred to at items 1	

	and 2 (above) in the event of variation to the Access Arrangement is (in effect) a reservation of capacity until items 1 and 2 can be determined (which might be lengthy and by way of the dispute resolution process); 4. clause 12.4 provides certainty in respect to the affect of the variation of the Access Arrangement (in absence of any express statutory provisions); and 5. Clauses 12.2 and 12.3 provide an orderly and efficient process to regulate the more material amendments to Reference Services that may occur through the variation of the Access Arrangement. Notwithstanding the analysis above WAGN has considered the submissions of the ERA and acknowledges that clauses 12.2, 12.3, and 12.4 are complex and can be simplified. The amendments WAGN has made are set out in the amended Draft Haulage Contract.	
Required Amendment 38 Clause 12.5 should be deleted from the Template Haulage Contract.	WAGN has elected to adopt the suggestion of the ERA in relation to clause 12.5 referred to in Amendment 38	Clause 12.5 of the Access Arrangement has been deleted from the amended Template Haulage Contract.
Required Amendment 39 Clause 12.6 should be deleted from the Template Haulage	Please refer to the commentary in relation to	Clause 12.6 of the Template Haulage Contract has been retained in the amended Template Haulage Contract

Contract.	Required Amendment 37.	without amendment for the reasons set out in the commentary.
Required Amendment 40 Clause 12.7 should be deleted from the Template Haulage Contract.	Please refer to the commentary in relation to Required Amendment 37. Notwithstanding that analysis WAGN considers that by addition of the words "without making provision for how this Haulage Contract will terminate" the ERA's concerns have been addressed.	Clause 12.7 of the Template Haulage Contract has been retained in the amended Template Haulage Contract without amendment except for the addition of the words "without making provision for how this Haulage Contract will terminate".
Required Amendment 41 Clause 12.8 should be deleted from the Template Haulage Contract.	Clause 12.8 is dealing with contractual issues arising from legislative matters that parties undertaking arms length negotiations are required to agree upon. National Gas Rule 48(1)(d)(ii) requires these to be included in the haulage contract (thus deletion of clause 12.8 is contrary to National Gas Rule 48(1)(d)(ii)). The analysis of the ERA at paragraphs 1575 to 1578 of the Draft Decision suggests that the terms of a haulage contract are unaffected by a change in law for the period of the Access Arrangement. There is no basis for this proposition under the National Gas Access Law of the National Gas Rules. That a change of law might arise during the term of the Access Arrangement and amend the obligations of WAGN under the Template Haulage Contract is apparent (i.e.	Clause 12.8 of the Template Haulage Contract has been retained in the amended Template Haulage Contract without amendment save for the removal of the word "material" and the consequential amendments required because of the amendments to clause 18 required by the ERA (see Required Amendment 54) for the reasons set out in the commentary.

	the Access Arrangement contemplates that the costs from such changes will be passed through - please refer to Annexure B of the Access Arrangement and the concept of "Cost Pass Through Events"). The ERA appears to be confusing the concepts of complying with a change in law (which WAGN and a User must do) and wether WAGN is entitled to a variation to the Reference Tariffs because of the change in law). Clause 12.6 of the Template Haulage Contract contemplates that amendments may need to be made to the Template Haulage Contract arising from a change in law and that a dispute may arise if there is uncertainty as to the changes that are required to be applied. As such the clause is consistent with the terms of the Access Arrangement and also consistent with the national gas objective as it describes an efficient and definite process that the parties must follow in the event of the prescribed event (in this regard WAGN considers that the word "material" should be deleted in order to allow all Regulatory Events to be regulated by this clause). In addition, the ERA appears to have misinterpreted the affect of clause 12.8 of the Template Haulage Contract. In paragraph 1576 and 1577 of the Draft Decision the ERA opines that the clause (in effect) allows WAGN to unilaterally vary the terms of the	

	Template Haulage Contract. In the event that there is a change of law that affects the Template Haulage Contract there is no entitlement for WAGN to decide how the Template Haulage Contract is to be varied if the parties cannot agree. This is decided by the arbitrator who will determine how the terms of the Template Haulage Contract will be varied (if at all) such that they comply with the change of law. Given the analysis above the deletion of clause 12.8 is inconsistent with the national gas objective in that the amendment suggested by the ERA will introduce ambiguity into the Template Haulage Contract leading to inefficiencies and increase the likelihood of a dispute WAGN confirms that the AER has approved a change of law provision that is materially similar to clause 12.8. Please refer to clause 18.13 of the terms and conditions for the Access Arrangement of the Wagga Wagga gas distribution network approved by the AER on 23 April 2010.	
Required Amendment 42 Clause 12.9 should be deleted from the Template Haulage Contract.	WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 42	Clause 12.9 of the Template Haulage Contract has been deleted as described in the amended Template Haulage Contract.
Required Amendment 43 Clause 13.3(c)(i) of the Template Haulage Contract should	Required Amendment 43 relies on the same analysis that the ERA has relied upon for Required	Clause 13.3(c)(i) 13.3(c)(ii) and of the Template Haulage Contract have been retained in the amended Template

be amended to read: (i) Third Party making an Application under and the transfer being subject to, the Application Procedure ~~(including in particular the pre-conditions to and restrictions on the provision of Pipeline Services specified in the Access Arrangement);~~ Clause 13.3(c)(ii) should read: (ii) Third Party complying with one or more pre-conditions to and restrictions on the provision of Pipeline Services specified in the ~~Access Arrangement~~ Template Haulage Contract, as directed by <Service Provider> in writing;	Amendment 4. WAGN relies on the commentary that it made in relation to Required Amendment 4.	Haulage Contract without amendment for the reasons set out in the commentary.
Required Amendment 44 Clause 13.5(c) of the Template Haulage Contract should read: (c) A quote provided under clause 13.~~3~~5(b) does not limit the costs which must be reimbursed under clause 13.5(a) provided that it is prepared in good faith.	WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 44	Clause 13.5(c)of the Template Haulage Contract has been amended as described in the amended Template Haulage Contract
Required Amendment 45 Clause 13.6(a) of the Template Haulage Contract should read: (a) <User> may novate this Haulage Contract with <Service Provider>'s prior written consent, and such consent must not be unreasonably withheld. <Service Provider>'s consent will not be unreasonably withheld if it is withheld on the ground that, if the novation occurred, there would be, in <Service	WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 45 in relation to addition of the words "acting as a reasonable and prudent person" in clause 13.6(a). Required Amendment 45 in relation to the amendment of clause 13.6(b)(i) relies on the same analysis that the ERA has relied upon for Required	Clause 13.6(a)of the Template Haulage Contract has been amended as described in the amended Template Haulage Contract Clause 13.6(b)(i) of the Template Haulage Contract has been retained in the amended Template Haulage Contract without amendment for the reasons set out in the commentary.

Provider>'s opinion acting as a reasonable and prudent person, an increase in the commercial or technical risk to <Service Provider>. • Clause 13.6(b)(i) of the Template Haulage Contract should read: (i) the person to whom it is proposed the Haulage Contract will be novated to complying with one or more pre-conditions to and restrictions on the provision of Pipeline Services specified in the ~~Access Arrangement~~ Template Haulage Contract, as directed by <Service Provider> in writing;	Amendment 4. WAGN relies on the commentary that it made in relation to Required Amendment 4.	
Required Amendment 46 Clauses 13.7(b)(iii) and 13.7(c) should be deleted.	The amendments requested by the ERA have deleted the specific provisions that require the User to comply with the Application Procedure in relation to changing a receipt point or delivery point (clauses 13.7(b)(iii) and 13.7(c) of the Template Haulage Contract) and so create uncertainty and inefficiency in the sense that it is unclear precisely what information WAGN may require from a User. As such the amendments required by the ERA are inconsistent with the national gas objective. Required Amendment 46 is also inconsistent with the view expressed by the ERA at paragraph 216 of the Draft Decision which confirms in relation to the process for access an "orderly process " ……. "is consistent with the national gas objective". WAGN acknowledges National Gas Rule 106(1)(b)	Clause 13.7(b)(iii) and 13.7(c) of the Template Haulage Contract has been retained in the amended Template Haulage Contract without amendment for the reasons set out in the commentary.

	and has amended the drafting of clause 13.7 of the Template Haulage Contract to deal with the concerns of the ERA at paragraphs 1623 and 1624 of the Draft Decision. WAGN notes National Gas Rule 106(2) and confirms its view that provided National Gas Rule 106(1)(b) is complied with there is nothing to prevent WAGN requiring a User to comply with the Application Procedure. The provisions of clause 13.7(b)(iii) and 13.7(c) of the amended Template Haulage Contract are appropriate because: 1. requiring a User to make an application to change a receipt or delivery point means a single point of entry for all applications; 2. the concern of the ERA referred to at paragraph 1623 and 1624 of the Draft Decision have been addressed; 3. the commentary of the ERA at paragraph 1624 of the Draft Decision does not take into account that haulage contracts are long term agreements and it is appropriate that WAGN be entitled to consider a User's ability to comply with the terms of the Template Haulage Contract whenever a further request for Haulage Services is made as a User's ability to perform its obligations in the past is not determinative of its future ability; and	

	4. the provisions as drafted are materially consistent with the Current Access Arrangement (see clause 42 of Part A of the Current Access Arrangement i.e. the Current Access Arrangement requires an application to be made) and there is no apparent material difference between the intent of the National Gas Access Law and the Code in regards to such applications from existing Users.	
Required Amendment 47 Clause 14.2(b) should be amended to read: (b) if <user> is in default under any other Haulage Contract between the parties with the <Service Provider>;	WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 47 save that it has elected to refer to any agreement under which WAGN provides "Pipeline Services" to the User. The suggested amendment by the ERA is ambiguous and uncertain and so contrary to the national gas objective as "Haulage Contract" as defined means "this agreement…." such that the clause would read: "if <User> is in default under any other this agreement … between the parties with the <Service Provider>" WAGN has elected to refer to Pipeline Services and not Reference Services as a default under an agreement relating to Pipeline Services may well impact upon WAGN ability to provide Reference Services. As such the use of the broader term is consistent with the national gas objective.	Clause 14.2(b)of the Template Haulage Contract has been amended as described in the amended Template Haulage Contract

Required Amendment 48 Clauses 15.2(c) to 15.2(k) of the Template Haulage Contract should be deleted. Annexure B to the Template Haulage Contract should be deleted.	There is no basis under the National Gas Access Law or National Gas Rules for the conclusion at paragraph 1654 of the Draft Decision to determine that clauses 15.2(c) to (k) relate to commercial arrangements between contracting parties and not to matters that go to compliance of "WAGN's proposed revisions with the national gas objective". In forming this view the ERA have failed to apply the National Gas Access Law and National Gas Rules as parliament intended. The ERA is bound to consider the National Gas Access Law and National Gas Rules as a whole. The ERA has determined incorrectly that the detailed bank guarantee provisions are merely a matter of WAGN's compliance with the national gas objective (paragraph 1654 of the Draft Decision). In considering any provision of the Template Haulage Contract the ERA is required to consider the competing interests of WAGN and the Users in the context of the national gas objective (i.e. it is insufficient for the ERA to have just had regard to WAGN's compliance with the national gas objective). Rule 48(1)(d)(ii) requires the "terms and conditions on which the Reference Service will be provided" to be referred to in the Access Arrangement. Clauses 15.2(c) to (k) are terms and conditions on which the Reference Services will be provided. The provisions reflect the law relevant to bank guarantees (i.e. they	Clauses 15.2(c) to 15.2(k) of the Template Haulage Contract have been retained in the amended Template Haulage Contract without amendment for the reasons set out in the commentary.

	are intended to address the key areas of dispute that have arisen in the context of bank guarantees and the resulting judicial determinations). As such they are not procedural matters but terms and conditions that provide certainty in respect to the party's rights and obligations thus being consistent with the national gas objective. The suggestion of the ERA at paragraph 1654 of the Draft Decision (by implication) that the parties are free to agree such matters for themselves is, in addition to not complying with Rule 48(1)(d)(ii), an agreement to agree (so unenforceable at law). In the event that the parties do not agree then WAGN is bound to offer the Reference Services on the terms set out in the draft Template Haulage Contract meaning it will have an entitlement to request security but not to direct the form, when it is to be provided or how it is to be accessed. WAGN refers to section 28(2)(b) of the National Gas Access Law. Such is the uncertainty created by the amendments suggested by the ERA WAGN considers the ERA should have regard to the revenue and pricing principles in section 24 of the National Gas Access Law. The intent of clauses 15.2(c) to 15.2(k) are to provide certainty in respect to WAGN's ability to recover the Reference Tariffs in the event that a User is unable, or elects not to, pay.	

	The amendments required by the ERA would present WAGN with material legal issues with regard to WAGN's ability to rely on the bank guarantees. As such, the ERA is denying WAGN the opportunity to recover the efficient costs of providing the Reference Services (drawing down on the bank guarantee being recovery of the efficient costs of providing the services). As such it is contrary to the national gas objective for the ERA to approve a bank guarantee to be provided but not the form of bank guarantee, when it is to be provided or when WAGN may access the bank guarantee. The deletion of clauses 15.2(c) to (k) will introduce ambiguity into the Template Haulage Contract leading to inefficiencies and increase the likelihood of a dispute this being inconsistent with the national gas objective.	
Required Amendment 49 Clause 15.3 of the Template Haulage Contract should be amended to delete clauses 15.3(a) to 15.3(c) and to replace these clauses with insurance requirements consistent with clause 61 of Part C of the current access arrangement.	There is no basis under the National Gas Access Law or National Gas Rules for the conclusion at paragraph 1663 of the Draft Decision to determine that clause 15.3 relates to commercial arrangements between contracting parties and not to matters that go to compliance requirements of WAGN with the national gas objective. In forming this view the ERA have failed to apply the National Gas Access Law and	Clause 15.3 of the Template Haulage Contract has been retained in the amended Template Haulage Contract without amendment except for the reduction in the Standard & Poor rating from "AA" to "A" for the reasons set out in the commentary.

	National Gas Rules as parliament intended that being the ERA is bound to consider the National Gas Access Law and National Gas Rules as a whole. The ERA has determined incorrectly that the detailed insurance provisions go beyond WAGN's compliance with the national gas objective (paragraph 1663 of the Draft Decision). In considering any provision of the Template Haulage Contract the ERA is required to consider the competing interests of WAGN and the Users in the context of the national gas objective (i.e. it is insufficient for the ERA to have just had regard to WAGN's compliance with the national gas objective). Rule 48(1)(d)(ii) requires the "terms and conditions on which the Reference Service will be provided" to be referred to in the Access Arrangement. Clause 15.3 and 15.2 are terms and conditions on which the Reference Services will be provided. The provisions materially reflect insurance provisions that are commonly included in commercial agreements that have been subject to third party review (see for example the insurance provisions of the Standards Australia suite of agreements such as AS 4000).The detailed provisions are intended to identify precisely what each parties obligations are in relation to insurance and so are not procedural matters but terms and conditions that provide certainty in respect to the party's rights and obligations. As such the	

	inclusion of the clauses is consistent with the national gas objective and deletion inconsistent in that deletion will introduce ambiguity leading to inefficiencies and increase the likelihood of a dispute. With reference to the requirement that WAGN insert the current insurance provisions in clause 61 of Part C of the Current Access Arrangement the ERA has failed to have regard to the national gas objective. As stated above it is not just WAGN's compliance with the national gas objective that the ERA must consider. The insurance provisions (as drafted) regulate the Users obligations appropriately with regard to the national gas objective because they: 1. consider the financial standing of the insurer meaning there is a better chance of the insurances responding in the event of an incident; 2. they include a requirement to carry product liability (which the Current Access Arrangement does not) which is the type of insurance that will respond in the event that the User does not comply with the gas quality specifications in the Template Haulage Contract; 3. includes a requirement for a cross liability clause to support the current requirement that WAGN's interests be noted on the policy; and	

	4. are materially consistent with the form required by other agreements that have been reviewed by a third party (see above). The suggestion of the ERA at paragraph 1665 of the Draft Decision that the parties are free to agree such matters for themselves is, in addition to not complying with Rule 48(1)(d)(ii), an agreement to agree (so unenforceable at law). In the event that the parties do not agree then WAGN is bound to offer the Reference Services on the terms set out in the draft Template Haulage Contract meaning there is, at best, uncertainty as to the matters referred to above and at worst no entitlement to require the matters to be appropriately addressed. WAGN refers to section 28(2)(b) of the National Gas Access Law. Such is the uncertainty created by the amendments suggested by the ERA WAGN considers the ERA should have regard to the revenue and pricing principles in section 24 of the National Gas Access Law. The intent of clause 15.3 of the Template Haulage Contract is to provide certainty in respect to WAGN's ability to rely on the insurance proceeds in the event of a claim by WAGN on a User. The amendments required by the ERA materially reduce the chance of the insurance proceeds being available. As such, the ERA is denying WAGN the opportunity to recover the efficient costs of providing	

	the Reference Services (being compensated by the proceeds from the insurance provisions being the recovery of the efficient costs of providing the Reference Services). Notwithstanding the above analysis WAGN has reconsidered the requirement for the insurer to have a Standard & Poors rating of "AA" and considers that the rating is arguably higher than that required by the national gas objective and considers a reduction to "A" is appropriate.	
Required Amendment 50 Clause 16.1(b)(i) and (ii) of the Template Haulage Contract should be amended to read: (i) any refusal to accept gas at a Receipt Point or Curtailment of Gas deliveries to <user>, undertaken in accordance with the terms of this Haulage Contract or otherwise pursuant to Law; (ii) any non-delivery of Gas into the WAGN GDS <u>where non-delivery has not been caused, or contributed to, by the <Service Provider>;</u>	WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 50 save that WAGN has amended clause 16.1(b)(ii) to confirm that WAGN acting in accordance with its rights under the Template Haulage Contract is not included in the words "caused, or contributed to, by the Service Provider".	Clause 16.1(b)(i) of the Template Haulage Contract has been amended as described in the amended Template Haulage Contract. Clause 16.1(b)(ii) of the Template Haulage Contract has been amended as described in the amended Template Haulage Contract. The amendment is materially in the form requested by the ERA.
Required Amendment 51 Clause 16.4 of the Template Haulage Contract should be	The rationale for the inclusion of an indemnity in relation to a Downstream Person is referred to at page 28 of the AAI of the Current Access Arrangement (please refer to the amended AAI dated	Clause 16.4 of the Template Haulage Contract has been retained in the amended Template Haulage Contract without amendment for the reasons set out in the

amended to delete any reference to the 'Upstream Person'.	29 July 2005). The information in the AAI for the Current Access Arrangement refers to possible claims being made by Downstream Persons against WAGN for consequential loss or damage. It is possible that an Upstream Person may also make a claim for consequential loss or damage against WAGN . There is no objective basis for distinguishing between claims made by Downstream Persons and Upstream Persons. As the ERA accepts that WAGN should be protected from claims made by Downstream Persons (and that it is consistent with the national gas objective) it must also accept that WAGN should be protected from claims from Upstream Persons (and that to make a finding to the contrary is inconsistent with the national gas objective). The inclusion of Upstream Person is reflective of the operation of the gas market in Western Australia in that the owner of the gas distribution system is not the same person that retails gas. WAGN does not have a contractual relationship with the persons most likely to make a claim against it (i.e. both downstream and upstream). In these circumstances it is appropriate that a User uses the contractual relationship it has with an Upstream Person and limit WAGN's liability.	commentary. Please note that WAGN has included the words "including negligence" in clause 16.3 after the word "tort" to confirm that the exclusion of liability for Indirect Damage includes liability for negligence. The addition of the words "including negligence" have been included such that it is consistent with the definition of "Claim"(where those words are used in the context of the word "tort").
Required Amendment 52	WAGN has elected to adopt the suggestion of the	Clause 16.8 of the Template Haulage Contract has been

Clause 16.8 of the Template Haulage Contract should be deleted.	ERA referred to in Required Amendment 52.	amended as described in the amended Template Haulage Contract.
Required Amendment 53 Clauses 17.1 to 17.3 of the Template Haulage Contract should be deleted and replaced with equivalent provisions to those in clause 60 of Part C of the current access arrangement.	There is no basis under the National Gas Access Law or National Gas Rule law for the conclusion at paragraph 1698 of the Draft Decision to determine that clauses 17.1 to 17.3 relate to commercial arrangements between contracting parties. In forming this view the ERA have failed to apply the National Gas Access Law and National Gas Rules as parliament intended. The ERA is bound to consider the National Gas Access Law and National Gas Rules as a whole. The ERA has determined incorrectly that the warranty provisions cannot be included as they are not a matter that goes to WAGN's compliance with the national gas objective (paragraph 1698 of the Draft Decision). In considering any provision of the Template Haulage Contract the ERA is required to consider the competing interests of WAGN and the Users in the context of the national gas objective (i.e. it is insufficient for the ERA to have just had regard to WAGN's compliance with the national gas objective). Rule 48(1)(d)(ii) requires the "terms and conditions on which the Reference Service will be provided" to be referred to in the Access Arrangement. Clauses 17.1	Clauses 17.1 to 17.3 of the Template Haulage Contract have been retained without amendment for the reasons set out in the commentary.

	to 17.3 are terms and conditions on which the Reference Services will be provided. As such they are not procedural matters but terms and conditions that provide certainty in respect to the party's rights and obligations thus being consistent with the national gas objective. The suggestion of the ERA at paragraph 1654 of the Draft Decision (by implication) that the parties are free to agree such matters for themselves is, in addition to not complying with Rule 48(1)(d)(ii), an agreement to agree (so unenforceable at law). In the event that the parties do not agree then WAGN is bound to offer the Reference Services on the terms set out in the Template Haulage Contract (so with only the representations and warranties set out in the Template Haulage Contract). The ERA determines at paragraph 1697 of the Draft Decision that there are currently no specific representations and warranties in the Current Access Arrangement. The ERA appears to have misinterpreted clause 60 of the Part 3 of the Current Access Arrangement. That clause calls up a number of representations and warranties. While clauses 17.1 to 17.3 are more detailed than the representations and warranties in clause 60 of the Part 3 of the Current Access Arrangement none of the representations and warranties is oppressive and all	

	are consistent with the national gas objective. In addition to the above analysis WAGN has considered the submissions of Alinta referred at paragraphs 1693 to 1695. In regards to: **Alinta submission:** The provisions of clauses 17.1(b), (c), (d) and (e) should also contain a materiality threshold. **WAGN response:** The warranties requested are materially consistent with provisions in commercial agreements. There is no reasonable basis as to why Alinta should not be able to warrant the matters referred to in clauses 17.1(b), (c), (d) and (e). **Alinta submission:** Clause 17.1(h) Given the significance of the consequences of a breach of warranty under the Haulage Contract, it is not appropriate to include a warranty that can be triggered by the threat of an action or proceeding. The warranty is too broad and should be deleted. **WAGN response:**	

	The warranties requested are materially consistent with provisions in commercial agreements. In any event clause 17.1(h) requires the action to "materially affect". **Alinta submission:** Clause 17.1(m) User has contractual arrangements with pipeline operators and gas suppliers, and can seek to enforce its rights under those arrangements – however User cannot procure their compliance with the Retail Market Scheme. Service Provider has its own contractual arrangements with operators of interconnected pipelines and should seek to enforce any compliance directly. Clause 17.1(m) should be deleted **WAGN response:** The clause is appropriate given it is limited by the words "to the extent necessary to permit the parties to perform their respective obligations under this Haulage Contract".	
Required Amendment 54 Clause 18.2 of the Template Haulage Contract should be	WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 54 save that WAGN has included a reference to the dispute resolution process under the Retail Market Scheme	Clause 18.1 of the Template Haulage Contract has been added as described in the amended Template Haulage Contract.

amended to revert back to the two alternatives for the parties to proceed to arbitration as set out in clause 56 of Part C of the current access arrangement, with appropriate references to the NGL.	and inserted a new clause 18.1. Consequential amendments have been made to clauses 12.2 and 12.6	The amendment is materially in the form requested by the ERA in relation to clause 18.2.
Required Amendment 55 Clause 18.3(f) of the Template Haulage Contract should be deleted.	There is no basis under the National Gas Access Law or National Gas Rule for the comment of the ERA at paragraph 1728 of the Draft Decision that the Template Haulage Contract should not have fundamental changes to the National Gas Access Law procedure. The procedures for dispute resolution under the Template Haulage Contract and the National Gas Access Law can be different as they deal with different subject matters and are intended to be exclusive of each other. In any event the amendment is not fundamental. As drafted clause 18.3(f) allows the parties to agree whether the rules of evidence will apply or not and in absence of agreement the arbitrator is empowered to make the decision (which may be that the rules of evidence do not apply). As drafted the provisions provide flexibility and enable the parties or the arbitrator to modify the process to best suit the dispute.	Clause 18.3(f) of the Template Haulage Contract has been retained in the amended Template Haulage Contract without amendment for the reasons set put in the commentary.
Required Amendment 56 Clause 20.1 of the Template Haulage Contract should be	There is no basis under the National Gas Access Law or National Gas Rules for the conclusion at Paragraph 1744 of the Draft Decision to determine that clause 20.1 relates to commercial arrangements between	Clause 20.1 of the Template Haulage Contract has been retained in the amended Template Haulage Contract without amendment for the reasons set put in the commentary.

deleted.	contracting parties and not to matters that go to compliance of "WAGN's proposed Template Haulage Contract with the national gas objective". In forming this view the ERA have failed to apply the National Gas Access Law and National Gas Rules as parliament intended. The ERA is bound to consider the National Gas Access Law and National Gas Rules as a whole. The ERA has determined incorrectly that the ownership of intellectual property is to be determined solely with reference to WAGN's compliance with the national gas objective (paragraph 1744 of the Draft Decision). In considering any provision of the Template Haulage Contract the ERA is required to consider the competing interests of WAGN and the Users in the context of the national gas objective (i.e. it is insufficient for the ERA to have just had regard to WAGN's compliance with the national gas objective). Rule 48(1)(d)(ii) requires the "terms and conditions on which the Reference Service will be provided" to be referred to in the Access Arrangement. Clause 20.1 is a term and condition on which the Reference Services will be provided. The provisions regulate the ownership of intellectual property relevant to the WAGN GDS. As such they are not procedural matters but terms and conditions that provide certainty in respect to the party's rights and obligations thus being	

	consistent with the national gas objective. The suggestion of the ERA at paragraph 1744 of the Draft Decision (by implication) that the parties are free to agree such matters for themselves is, in addition to not complying with Rule 48(1)(d)(ii), an agreement to agree (so unenforceable at law). In the event that the parties do not agree then WAGN is bound to offer the Reference Services on the terms set out in the Template Haulage Contract meaning there is uncertainty as to the effect of one party providing information to another. In addition it does not provide WAGN with express property rights in relation to intellectual property. The amendment suggested by the ERA is inconsistent with the approach taken by the ERA in relation to other property rights (i.e. the ERA has approved provisions that confirm that WAGN owns the Standard Delivery Services and the User Specific Delivery Services). Lastly, the provisions in clause 20.1(b) reflect the operation of the gas market in Western Australia in that the operation of the gas distribution system and the retail arrangements are undertaken by separate entities and under different licence regimes. As such it is not a matter that can be left for the parties to endeavour to agree on (i.e. WAGN requires ownership in all documents evidencing the location,	

	dimensions and specifications of the WAGN GDS as WAGN is responsible under the Licence for the construction, operation and maintenance of that system).	
Required Amendment 57 Clause 20.2 of the Template Haulage Contract should be deleted.	The basis for Required Amendment 57 is ambiguous and conflicts with Required Amendment 21. Paragraph 1749 of the Draft Decision refers just to clause 20.2(c) and confirms it is not in the Current Access Arrangement. The ERA then determines at paragraph 1751 of the Draft Decision that clause 20.2 is not approved (despite a similar provision in the Current Access Arrangement) please refer to clause 66 of Part C of the Current Access Arrangement and Required Amendment 21 making express reference to clause 20.2).	Clause 20.2 of the Template Haulage Contract has been retained in the amended Template Haulage Contract without amendment for the reasons set out in the commentary.
Required Amendment 58 Clause 20.4 of the Template Haulage Contract should be amended to read: (b) Where information is not exchanged in accordance with clause 20.4(a), <Service Provider> or <User> may recover from the person providing or requesting the information the reasonable additional costs involved in dealing with the	WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 58.	Clause 20.4 of the Template Haulage Contract has been amended as described in the amended Template Haulage Contract.

information.		
Required Amendment 59 Clause 20.5 of the Template Haulage Contract should be deleted.	WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 59.	Clause 20.5 of the Template Haulage Contract has been deleted as described in the amended Template Haulage Contract.
Required Amendment 60 Clause 21.4 of the Template Haulage Contract should be deleted.	The clauses are dealing with contractual matters arising from legislative matters that parties undertaking arms length negotiations are required to agree upon. National Gas Rule 48(1)(d)(ii) requires these to be included in the haulage contract (thus deletion of the clauses is contrary to National Gas Rule 48(1)(d)(ii)). The Reference Tariffs have been calculated on a basis that they are exclusive of any stamp duty that may be payable on the Template Haulage Contract and that each party pay its own legal costs. As such the deletion of clause 21.4 is inconsistent with the revenue and pricing principles in section 24 of the National Gas Access Law in that the ERA is denying WAGN the opportunity to recover the efficient cost of providing the Reference Services (in the event a duty arises or a claim that WAGN ought to pay the other parties costs). The suggestion of the ERA at paragraph of the Draft	Clause 21.4 of the Template Haulage Contract has been retained in the amended Template Haulage Contract without amendment for the reasons set out in the commentary.

	Decision 1786 (that the parties are free to agree such matters for themselves) is, in addition to not complying with Rule 48(1)(d)(ii), an agreement to agree (so unenforceable at law). In the event that the parties do not agree then WAGN is bound to offer the Reference Services on the terms set out in the Template Haulage Contract meaning the Reference Tariffs are offered without agreement on the duty that may be payable or how the parties costs are to be managed (even though that is not the basis upon which they have been calculated). For the reasons set out above clause 21.4 is consistent with the National Gas Access Law and the National Gas Rules.	
Required Amendment 61 Clause 22.1 of the Template Haulage Contract should be amended as follows: 1) The definition of CPI should refer to 'CPI All Groups Eight Capital Cities'. 2) The following definitions should read the same as the corresponding definitions in the NGL and NGR: a) Access Arrangement; b) Delivery Point;	The following is a list of the items that comprise Required Amendment 61 with WAGN's response being included after the relevant item. Where WAGN has elected not to adopt the suggestion by the ERA it does so because the amendment suggested by the ERA is inconsistent with the national gas objective in that the amendment suggested by the ERA will introduce ambiguity into the Template Haulage Contract leading to inefficiencies and increase the likelihood of a dispute. The suggestions put forward by the ERA are in bold with WAGN's response underneath in regular text.	To the extent that WAGN has elected to adopt Required Amendment 61 the amendments are described in the commentary column and have been included in the amended Template Haulage Contract.

c) End user; d) National Gas Rules; e) Receipt Point; f) Regulator; and g) User. 3) The following definitions should read as follows: a) 'REMCo' means the Retail Energy Market Company Limited (ABN 15 103 318 556), or any other corporation managing the retail energy market. b) 'REMCo Registry' has the meaning given to that term in the Retail Market Rules, as amended from time to time, or any other rules applying to the retail energy market. c) 'Retail Market Rules' means the rules applying under the Retail Market Scheme, as amended from time to time, or any other scheme applying to the retail energy market. d) 'Retail Market Scheme' means the retail market scheme, including the Retail Market Rules, approved under section 11ZOJ of the Energy Coordination Act 1994 (WA) as applying in respect of the WAGN GDS, as amended from time to time, or any other scheme applying to the retail energy market. 4) The terms 'Service Provider' and 'Covered Pipeline Service Provider' should read: 'Service Provider' has the meaning given to that term under the National Gas Access Law and for the purposes of this Haulage Contract, WAGN is the Covered Pipeline Service	WAGN has assumed that the reference by the ERA to aligning a definition with that in the "NGL" means aligning it with the relevant definition in the National Gas Access Law. The reference to the "NGL" is a generic statement that does not take into account the manner in which the National Gas Access Law was enacted in Western Australia. The definition of National Gas Access Law refers to section 7 of the *National Gas Access Western Australia) Act 2009 (WA)* which calls up the modified text of the relevant South Australian legislation. **The definition of CPI should refer to 'CPI All Groups Eight Capital Cities'.** The ERA has relied upon the same analysis for this item as it has for Required Amendment 6. WAGN relies on the commentary that it made in relation to Required Amendment 6 (noting that a reference to CPI is no longer required in the Draft Haulage Contract. WAGN has elected not to adopt the suggestion of the ERA referred to in Required Amendment 61 in relation to the definition of CPI. **The following definitions should read the same as the corresponding definitions in the NGL and NGR** **Access Arrangement** The reference to Access Arrangement in the National Gas Access Law is a generic description. The intent	

Provider for the WAGN GDS. 'Covered Pipeline Service Provider' means a service provider that provides or intends to provide Pipeline Services by means of a covered pipeline.	of the definition of Access Arrangement in the Template Haulage Contract is to cross reference the Template Haulage Contract to the Access Arrangement (i.e. the access arrangement specific to the WAGN GDS). WAGN has elected not to adopt the suggestion of the ERA referred to in Required Amendment 61 in relation to the definition of Access Arrangement. **Delivery Point** The reference to Delivery Point in the National Gas Rules encompasses two concepts (delivery and receipt) and is a generic description. The Template Haulage Contract deals with those two concepts separately and is specific to the WAGN GDS (the definition of Delivery Point in the Template Haulage Contract refers to the Delivery Point Register meaning that a Delivery Point is only those parts of the WAGN GDS referred to in the Delivery Point Register). WAGN confirms that the AER has approved a materially similar approach to the definition of Delivery Point. Please refer to Glossary section of the Wagga Wagga Access Arrangement for the Wagga Wagga gas distribution network approved by the AER on 23 April 2010. WAGN has elected not to adopt the suggestion of the ERA referred to in Required Amendment 61 in	

	relation to the definition of Delivery Point. **End user** The definition of End User in the National Gas Access Law is generic and so broader than the use of the term "End User" in the Template Haulage Contract (i.e. an End User is specific to the WAGN GDS and is only someone who proposes, or does, acquire Gas from a User at a Delivery Point). WAGN has elected not to adopt the suggestion of the ERA referred to in Required Amendment 61 in relation to the definition of End User. **National Gas Rules** WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 61 in relation to the definition of National Gas Rules. **Receipt Point** The reference to Receipt Point in the National Gas Rules encompasses two concepts (delivery and receipt) and is a generic description. The Template Haulage Contract deals with those two concepts separately and is specific to the WAGN GDS (the definition of Receipt Point contemplates that WAGN will designate a Receipt Point for a Sub-network).	

	WAGN confirms that the AER has approved a materially similar approach to the definition of Receipt Point. Please refer to Glossary section of the Wagga Wagga Access Arrangement for the Wagga Wagga gas distribution network approved by the AER on 23 April 2010. WAGN has elected not to adopt the suggestion of the ERA referred to in Required Amendment 61 in relation to the definition of Receipt Point. **Regulator** WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 61 in relation to the definition of Regulator. **User** There is no basis for the request by the ERA as the definition of User in the Template Haulage Contract already refers to the National Gas Access Law. WAGN has elected not to adopt the suggestion of the ERA referred to in Required Amendment 61 in relation to the definition of User. **The following definitions should read as follows:** **'REMCo' means the Retail Energy Market Company Limited (ABN 15 103 318 556), or any other corporation managing the retail energy market.**	

	The words “retail energy market” are broader than the gas retail market that REMCO regulates. WAGN has elected not to adopt the suggestion of the ERA referred to in Required Amendment 61 in relation to the definition of REMCo. **‘REMCo Registry’ has the meaning given to that term in the Retail Market Rules, as amended from time to time, or any other rules applying to the retail energy market.** With the introduction of the words “as amended from time to time” the ERA has assumed an inconsistent position with regard to that which they should regulate. Under Required Amendment 62 the ERA determines that matters of interpretation are for the parties to decide. Under this amendment they are requesting the insertion of as “amended from time to time” which would have the same affect as clause 22.2(b) (i) which the ERA has requested be deleted. With the introduction of the words “or any other rules applying to the retail energy market” the ERA has introduced words that are not in the definition of “REMCo Registry” as described in the Retail Market Rules. The words “retail energy market” are broader than the gas retail market that the Retail Market Rules regulate. **Retail Market Rules’ means the rules applying under the Retail Market Scheme, as amended from time to time, or any other scheme applying to the retail energy market.**	

	With the introduction of the words “as amended from time to time” the ERA has assumed an inconsistent position with regard to that which they should regulate. Under Required Amendment 62 the ERA determines that matters of interpretation are for the parties to decide. Under this amendment they are requesting the insertion of as “amended from time to time” which would have the same affect as clause 22.2(b) (i) which the ERA has requested be deleted. The words “retail energy market” are broader than the gas retail market that the Retail Market Rules regulate. **‘Retail Market Scheme’ means the retail market scheme, including the Retail Market Rules, approved under section 11ZOJ of the Energy Coordination Act 1994 (WA) as applying in respect of the WAGN GDS, as amended from time to time, or any other scheme applying to the retail energy market.** With the introduction of the words “as amended from time to time” the ERA has assumed an inconsistent position with regard to that which they should regulate. Under Required Amendment 62 the ERA determines that matters of interpretation are for the parties to decide. Under this amendment they are requesting the insertion of as “amended from time to time” which would have the same affect as clause 22.2(b) (i) which the ERA has requested be deleted. The words “retail energy market” are broader than the gas retail market that the Retail Market Rules	

	regulate. **The terms 'Service Provider' and 'Covered Pipeline Service Provider' should read:** **'Service Provider' has the meaning given to that term under the National Gas Access Law and for the purposes of this Haulage Contract, WAGN is the Covered Pipeline Service Provider for the WAGN GDS.** **'Covered Pipeline Service Provider' means a service provider that provides or intends to provide Pipeline Services by means of a covered pipeline.** The definition of "Service Provider" has been amended materially in the form requested by the ERA save that WAGN has elected to incorporate the concept of "Service Provider" in addition to "Covered Pipeline Service Provider". The definition of "Covered Pipeline Service Provider" has been included save that the definition relies on the definition in the National Gas Access Law.	
Required Amendment 62 Clause 22.2 of the Template Haulage Contract should be deleted.	There is no basis under the National Gas Access Law or National Gas Rules for the conclusion at paragraph 1818 of the Draft Decision to determine that clause 22.2 relates to commercial arrangements between contracting parties and not to matters that go to compliance with the national gas objective. In forming	Clause 22.2 of the Template Haulage Contract has been retained in the amended Template Haulage Contract without amendment for the reasons set put in the commentary.

	this view the ERA have failed to apply the National Gas Access Law and National Gas Rules as parliament intended. The ERA is bound to consider the National Gas Access Law and National Gas Rules as a whole. In considering any provision of the Template Haulage Contract the ERA is required to consider the competing interests of WAGN and the Users in the context of the national gas objective (i.e. it is insufficient for the ERA to have just had regard to WAGN's compliance with the national gas objective). Rule 48(1)(d)(ii) requires the "terms and conditions on which the Reference Service will be provided" to be referred to in the Access Arrangement. Clauses 22.2 are the terms and conditions on which the Reference Services will be provided. Clause 22.2 deals with common interpretation issues that commercial agreements regulate. In absence of such a clause there is uncertainty as to how the terms of the haulage contract will be interpreted. This means an increased possibility of disputes arising. The provisions of clause 22.2 reflect the law relevant to interpretation issues (i.e. they are intended to address the key areas of dispute that have arisen in the context of interpretation issues). As such they are not procedural matters but terms and conditions that	

	provide certainty in respect to the party's rights and obligations thus being consistent with the national gas objective and to delete them is inconsistent with that principal. The suggestion of the ERA at paragraph 1618 of the Draft Decision (by implication) that the parties are free to agree such matters for themselves is, in addition to not complying with Rule 48(1)(d)(ii) an agreement to agree (so unenforceable at law). In the event that the parties do not agree then WAGN is bound to offer the Reference Services on the terms set out in the draft Template Haulage Contract meaning it will have to offer the Reference Services without the certainty provided by the inclusion of clause 22.2. WAGN also considers that the statement at paragraph 1818 of the Draft Decision that the "Template Haulage Contract is not a complete document" is wholly inconsistent with the intent of including the Template Haulage Contract in the Access Arrangement (please refer to WAGN's submissions referred to at paragraphs 1214 and 1215 of the Draft Decision and the ERA's approval of that approach at paragraph 1219 of the Draft Decision). WAGN confirms that clause 22.2 is materially consistent with the Schedule 1 of Part A of the Current Access Arrangement. WAGN also confirms that the AER has approved an interpretation clause in	

	an agreement to provide Reference Services. Please refer to clause: 1. 1 of the terms and conditions for the Wagga Wagga Access Arrangement for the Wagga Wagga gas distribution network approved by the AER on 23 April 2010; and 2. 1.2 of the Reference Services Agreement in the Access Arrangement for the Jemena Gas Networks NSW gas distribution network approved by the AER on 28 June 2010.	
Required Amendment 63 The following clauses of the Template Haulage Contract: a) Clauses 2(c) of Schedules 1 and 2; b) Clause 2(d) of Schedule 3; and c) Clauses 2(b) of Schedules 4 and 5 should be amended to read as follows: <Service Provider> will own, operate and maintain, and may from time to time modify, subject to consultation with <User>, any User Specific Delivery Facilities.	WAGN confirms that the relevant wording in the Access Arrangement is materially consistent with the same provisions in the Current Access Arrangement (see Schedule 1 to 4 Part C of the Current Access Arrangement). Required Amendment 63 is inconsistent with the national gas objective in that: 1. the Standard Delivery Facilities and User Specific Delivery Facilities are the property of WAGN (so WAGN is conferring with someone with no property interest in the assets); 2. the requested amendment will prevent WAGN from modifying its property without consultation (such modifications are likely to be required for safety or operational matters which the User is not qualified to comment	Clauses 2(c) of Schedules 1 and 2; Clause 2(d) of Schedule 3; and Clauses 2(b) of Schedules 4 and 5, of the Template Haulage Contract have been retained without amendment in the amended Template Haulage Contract for the reasons set put in the commentary.

	on); 3. the User has contractual rights in the event that the modification causes the haulage of gas to be interrupted (so it is inefficient to introduce additional procedural requirements into the process); 4. there are already notice provisions in the event that the modifications result in a need to curtail (see clause 7 of the Template Haulage Contract); 5. there is uncertainty as to what comprises a "consultation"; and 6. the conferral process may place WAGN in breach of its obligations under the Licence (see below). Under the Licence WAGN is required to classify any gas leak in its gas distribution system as described in Appendix G of AS4645-2005 (this is a requirement of Schedule 2 of the *Gas Standards (Gas Supply and System Safety) Regulations 2000* by the incorporation of AG 603-1978 which has been now replaced by AS4645-2005). In the event that the gas leak is classified as a Class 1 incident then WAGN must "immediately" (please refer to Appendix G of AS4645-2005) commence action to investigate and repair the leak. In these circumstances it will not be possible to consult with	

	the User prior to modification.	

Required Amendment 64
The following clauses of the Template Haulage Contract should be deleted:
a) Clauses 2(e) of Schedules 1 and 2;
b) Clause 2(f) of Schedule 3;
c) Clauses 2(d) of Schedules 4 and 5;
d) Clauses 9(c)(ii) of Schedules 1 and 2;
e) Clauses 8(c)(ii) of Schedules 3 to 5;
f) Clauses 7(c)(ii) of Schedules 4 and 5;
g) Clauses 9(c)(ii) of Schedules 4 and 5;
h) Clauses 10(c)(ii) of Schedules 4 and 5; and
i) Clauses 11(c)(ii) of Schedules 4 and 5.
	Required Amendment 64 is inconsistent with the national gas objective in that clause 8.3(a) contains acknowledgements that WAGN's ability to provide the Reference Services relies on a User providing unfettered access but does not expressly grant unfettered access (unfettered access is granted by the provisions referred to in Required Amendment 64). Without the entitlements in the clauses referred to in Required Amendment 64 there is no express obligation on the User to provide unfettered access.	The clauses referred to in Required Amendment 64 have been retained in the amended Draft Template Haulage Contract without amendment for the reasons set out in the commentary.

Required Amendment 65 Clauses 4(b) of Schedules 1 to 3 of the Template Haulage Contract should be amended as follows: b) Notwithstanding clause 4(a) of this Schedule the pressure described at clause 4(a) of this Schedule will be amended from time to time to the pressure that <Service Provider> and <User> agree determines, in its absolute discretion from time to time, as the minimum nominal operating pressure for the	Required Amendment 65 is inconsistent with the national gas objective in that the purpose of clause 4(b) was to allow WAGN to amend the relevant minimal nominal operating pressure in the event that it was required for operating or maintenance purposes or because of unforseen system issues. As redrafted by the ERA the clause 4(b) is an agreement to agree and is unenforceable at law leaving WAGN with no ability to amend the relevant operating pressure in the	Clause 4(b) of Schedules 1 to 3 of the Template Haulage Contract have amended as described in the amended Template Haulage Contract for the reasons set out in the commentary.

main to which the Delivery Point is connected.	circumstances described above. In addition Required Amendment 63 is inconsistent with the national gas objective in that: 1. the requested amendment assumes that a User has the technical ability to meaningfully partake in discussion regarding the minimum nominal operating pressure of the WAGN GDS (which is unlikely given the different roles the retail gas market requires WAGN and a User to perform so the process adds no value and will be inefficient); 2. the User's has contractual rights in the event that the amendment of the minimum nominal operating pressure causes the haulage of gas to be interrupted (so it is inefficient to introduce additional procedural requirements into the process); and 3. the requirement that the parties agree (in addition to being unenforceable at law) may place WAGN in breach of its obligations under the Licence (see below). Under the Licence WAGN is required to classify any gas leak in its gas distribution system as described in Appendix G of AS4645-2005 (this is a requirement of Schedule 2 of the *Gas Standards (Gas Supply and System Safety) Regulations 2000* by the incorporation of AG 603-1978 which has been now	

	replaced by AS4645-2005). In the event that the gas leak is classified as a Class 1 incident then WAGN must "immediately" (please refer to Appendix G of AS4645-2005) commence action to investigate and repair the leak. In these circumstances it will not be possible to consult with the User prior to modification. WAGN has considered the concerns of the ERA at paragraph 1840 of the Draft Decision and believes the insertion of the words as a "reasonable and prudent network operator" addresses those concerns.	
Required Amendment 66 Clause 5(b) of Schedules 1 and 2 of the Template Haulage Contract should read: (b) <Service Provider> will ~~endeavour to~~ take such Telemetry readings each day.	WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 66.	Clause 5(b) of Schedules 1 and 2 of the Template Haulage Contract have been amended as described in the amended Template Haulage Contract
Required Amendment 67 Clause 8(c) of Schedule 1 of the Template Haulage Contract should be amended to either make notification mandatory or confer a right upon a user to have a flow control installed.	WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 67.	Clause 8(c) of Schedule 1 of the Template Haulage Contract has been amended as described in the amended Template Haulage Contract
Required Amendment 68 The following clauses of the Template Haulage Contract should be deleted:	The basis for Required Amendment 68 is ambiguous in that the commentary of the ERA refers to the issue of an exclusion of liability contained in one sub clause of the clauses referred to in Required Amendment 68	Clause 9 of Schedules 1 and 2; Clause 8 of Schedule 3; and; and

a) clause 9 of Schedules 1 and 2 b) clause 8 of Schedule 3; and c) clauses 7 of Schedules 4 and 5	and then purports to delete the entire clause (which deals with deregistration of delivery points). To the extent that Required Amendment 68 relates to the deletion of the sub-clause that regulates liability WAGN elects to adopt the suggestion of the ERA.	Clauses 7 of Schedules 4 and 5, have been amended as described in the amended Template Haulage Contract insofar far as those clauses purport to limit WAGN's liability for failing to deregister a Delivery Point.
Required Amendment 69 Clause 6.4(a)(ii) of the access arrangement should be deleted.	Required Amendment 69 relies on the same analysis that the ERA has relied upon for Required Amendment 4. WAGN relies on the commentary that it made in relation to Required Amendment 4.	Clause 6.4(a)(ii) of the Access Arrangement has been retained in the amended Access Arrangement without amendment for the reasons set out in the commentary.
Required Amendment 70 Clauses 7.1, 7.2 and 7.3 of the access arrangement should be deleted and replaced with the following: 7.1 Extensions of high pressure pipelines i) If WAGN proposes a high pressure pipeline extension of the covered pipeline it must apply in writing to the Authority for a decision on whether the proposed extension will be taken to form part of the covered pipeline and will be covered by this access arrangement. The application must describe the extension and set out why the extension is necessary. ii) The application referred to in (i) above must be made before the proposed high pressure pipeline extension comes into service. iii) After considering WAGN's application and undertaking such consultation as the Authority considers appropriate the	There is no basis for the amendments referred to in Required Amendment 70 under the National Gas Access Law or the National Gas Rules. WAGN also confirms that Required Amendment 70 is inconsistent with the national gas objective as it is ambiguous, requires inefficiencies and increases the likelihood of a dispute in that: 1. clause 7.1(v) of the suggested amendment states an "extension under clause 7.1" will not affect Reference Tariffs during the Current Access Arrangement Period but the clause does not refer to extensions under clause 7.2 so it is uncertain if these might affect Reference Tariffs; 2. there is no time within which the ERA has to	Clause 7.1, 7.2 and 7.3 of the Access Arrangement have been retained in the amended Access Arrangement with some minor amendments for the reasons set out in the commentary.

Authority will inform WAGN of its decision. iv) The Authority's decision referred to in (iii) above may be made on such reasonable terms as determined by the Authority and will have the effect stated in the decision. v) An extension under this clause 7.1 will not affect reference tariffs during a current access arrangement period. 7.2 Extensions of medium and low pressure pipelines i) Any low or medium pressure pipeline extension of the covered pipeline will be treated as part of the covered pipeline and accordingly covered by this access arrangement. ii) No later than 20 business days following the expiration of the financial year WAGN must notify the Authority of all low and medium pressure pipeline during that year including all extensions commenced in progress or completed.	make its decision under clause 7.1(iii); 3. the term "high pressure pipeline extension" is not defined in the Access Arrangement; and 4. the information referred to at clause 7.2(ii) is already provided to the ERA under another process.	
Required Amendment 71 The second sentence of clause 8.1(a) of the access arrangement should be deleted. Clause 8.1(a)(iv) of the access arrangement should be deleted. The Template Haulage Contract should be amended to insert a term in identical terms to clause 8 of the access arrangement as amended in this draft decision.	WAGN elects to adopt the analysis of the ERA at paragraph 1993 of the Draft Decision and amend the references to clauses 5.3 and 5.4 of the Template Haulage Contract to clause 13.7 of the Template Haulage Contract.	Clause 8.1(a) of the Access Arrangement has been amended as described in the amended Access Arrangement for the reasons set out in the commentary.
Required Amendment 72	Required Amendment 72 uses the same analysis that the ERA has relied upon for Required Amendment 6.	The definition of CPI of the Access Arrangement has been retained in the amended Access Arrangement without

The definition of CPI in clause 12 of the access arrangement should be amended to CPI All Groups, Eight Capital Cities.	WAGN relies on the commentary that it made in relation to Required Amendment 6.	amendment for the reasons set out in the commentary.
Required Amendment 73 The following definitions should be amended to read the same as the corresponding definitions in the NGL and NGR: a) Delivery Point; b) National Gas Access (WA) Legislation; c) National Gas Regulations d) National Gas Rules; e) Receipt Point; f) Reference Tariff Variation Mechanism; and g) User.	The following is a list of the items that comprise Required Amendment 73 with WAGN's response being included after the relevant item. Where WAGN has elected not to adopt the suggestion by the ERA it does so because the amendments suggested by the ERA are inconsistent with the national gas objective in that the amendment suggested by the ERA will introduce ambiguity into the Template Haulage Contract leading to inefficiencies and increase the likelihood of a dispute. The suggestions put forward by the ERA are in bold with WAGN's response underneath in regular text. WAGN has assumed that the reference by the ERA to aligning a definition with that in the "NGL" means aligning it with the relevant definition in the National Gas Access Law. The reference to the "NGL" is a generic statement that does not take into account the manner in which the National Gas Access Law was enacted in Western Australia. The definition of National Gas Access Law refers to section 7 of the *National Gas Access Western Australia) Act 2009 (WA)* which calls up the modified text of the relevant South Australian legislation. **The following definitions should be amended to read the same as the corresponding definitions in**	To the extent that WAGN has elected to adopt Required Amendment 73 the amendments are described in the commentary column and have been included in the amended Template Haulage Contract.

	the NGL and NGR: **Delivery Point** WAGN relies on its commentary in relation to the definition of "Delivery Point" under Required Amendment 61. **National Gas Access (WA) Legislation** This defined term does not appear in this form in either the National Gas Access Law or the National Gas Rules. **National Gas Regulations** WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 73 in relation to the definition of National Gas Regulations. **National Gas Rules** WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 73 in relation to the definition of National Gas Rules. **Receipt Point** WAGN relies on its commentary in relation to the definition of "Receipt Point" under Required Amendment 61. **Reference Tariff Variation Mechanism**	

	WAGN has elected to adopt the suggestion of the ERA materially in the form requested. **User** There is no basis for the request by the ERA as the definition of User in the Access Arrangement already refers to the National Gas Access Law.	
Required Amendment 74 Retail Market Rules' means the rules applying under the Retail Market Scheme, as amended from time to time, or any other scheme applying to the retail energy market. 'Retail Market Scheme' means the retail market scheme, including the Retail Market Rules, approved under section 11ZOJ of the Energy Coordination Act 1994 (WA) as applying in respect of the WAGN GDS, as amended from time to time, or any other scheme applying to the retail energy market.	Required Amendment 74 uses the same analysis that the ERA has relied upon for Required Amendment 61. WAGN relies on the commentary that it made in relation to Required Amendment 61.	The definitions referred to in Required Amendment 74 have been retained in the amended Access Arrangement without amendment for the reasons set out in the commentary.

4 ANNEXURE 1

WAGN response to ERA on *EnergySafety* Report

5 ANNEXURE 2

Strategic Finance Group

The required return on equity commensurate with current conditions in the market for funds

6 ANNEXURE 3

<Confidential>