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By Facsimile: 9213 1999

14 March 2005

Dear Madam

**ISSUES PAPER – PROPOSED REVISIONS TO THE ACCES ARRANGEMENT FOR
THE DBNGP**

We act for Newmont Australia Ltd and we enclose our client's submission.

Should you have any queries, please contact Stephen Hicks.

Yours faithfully
MAXIM LITIGATION CONSULTANTS

Maxim Litigation Consultants

Stephen Hicks
Consultant



SUBMISSION BY NEWMONT AUSTRALIA LTD
REGARDING PROPOSED REVISED ACCESS ARRANGEMENT
FOR THE DBNGP

1. This submission addresses the Proposed Revised Access Arrangement dated 21 January 2005 and the ERA's Issues Paper dated 25 January 2005.

Services Policy

2. The Services Policy does not comply with the Code in certain respects.
3. The proposed Tf service is a fully interruptible service and for that reason it is not a service likely to be sought by a significant part of the market. In fact the Operator is offering to any prospective shipper an alternative service it describes as the T1 service which provides for interruptions but specifies that any interruption will apply on a pro rata basis to all shippers (see the Standard Shipper Contract - Full Haul T1 at clause 17.9). The T1 service is in fact attractive to the market and is a service likely to be sought by a significant part of the market and should be the Reference Service offered in the Access Arrangement.
4. The minimum contract term of 5 years for the Reference Service is too short and is not likely to be sought by a significant part of the market. Regardless of the use to which the gas is to be put, the capital costs associated with the use of gas will compel users and shippers to a time frame of at least 15 – 20 years. Prospective shippers and users cannot be expected to make commitments to the expenditure of capital and engage in long term planning where the Reference Service is only on offer for 5 years. An appropriate term for the Reference Service is 20 years; with premiums to be specified for shorter term contracts.

Reference Tariff and Reference Tariff Policy

5. The Reference Tariff Policy does not comply with the Code in certain respects.
6. The methodology adopted to determine the Reference Tariff adopts variables which cannot be justified. The Market Risk Premium of 6% is excessive given that the DBNGP is at capacity and fully contracted and a premium of 4-5% is more appropriate. Various experts have expressed concerns that a Market Risk Premium of 6% is based on outdated historical records; that Market Risk Premiums have arguably declined in more recent times; and that its use based on historical and nominal values may be inconsistent with the application of WACC to a revalued asset base. Further, the Beta value of 1.2 is excessive given that the DBNGP is at capacity and fully contracted and therefore cannot be considered any more risky than the general stock market. A Beta value of 0.7 to 0.8 is more appropriate given the low commercial risk associated with the pipeline.
7. It is not appropriate for the Reference Tariff to be escalated for the full rate of inflation. Any escalation should be discounted to 67% of the inflation rate (as previously proposed for the Reference Service) which is considered more appropriate.

8. The proposed Fixed Principles should not be permitted and do not comply with the Code. The Code specifies that the Access Arrangement be reviewed periodically having regard to the factors specified in the Code and it is unlawful to attempt to constrain a future regulator in a future review of the Code by fixing certain principles until 2031. Recent experience has shown that when the DBNGP is not being operated in the optimum manner then there are adverse consequences for Western Australian industry and the public generally. In the light of this recent experience it would be unwise to burden both the Operator and Shippers with certain principles which may appear attractive in 2005 but may be particularly unattractive viewed at certain intervals in the next 26 years. It is preferable for the Operator and Shippers, and Western Australian Industry and public, that the DBNGP Access Arrangement be thoroughly reviewed at regular intervals as specified in the Code without any fixed principles.
9. The proposed penalty charges are excessive and bear no relationship to the actual costs which would be incurred by the Owners if shippers do not comply with contractual conditions. The penalties should be reduced from \$15/Gj to (say) twice the price of replacement gas purchases, or \$4-5/Gj.

Terms and Conditions for the Tf Service

10. The Terms and Conditions for the Tf Service do not provide for capacity expansion. This is a relevant consideration for the supply of the Reference Service and is reasonable and should be provided for in the Access Arrangement. In fact the Operator is offering to any prospective shipper a capacity expansion option which provides certain rights to additional capacity (see clause 16 of the Standard Shipper Contract – Full Haul T1) and a similar condition should be provided in the Access Arrangement.
11. The gas quality specification for the Tf Service should be broadened to ensure alignment with the specifications for the Goldfields Gas Pipeline and the Parmelia Pipeline. This will facilitate the exchange of gas between these various pipelines, encourage gas on gas competition and encourage additional gas suppliers to enter the market. The government of Western Australia in the report "Energy for Minerals Development in the South West Coast Region of WA" identifies that competitive gas is critical to the State's development. The NCC Final Recommendation on the Application for Revocation of Coverage of the Parmelia Pipeline dated February 2002 identifies the advantages of a uniform specification and that there exists an opportunity to change the DBNGP specification from June 2005. A broader specification is likely to be required by a significant proportion of the market because it will enable users to source gas from a larger pool of gas suppliers. The opportunity should be taken now to broaden the Access Arrangement gas specification to enable these outcomes to be achieved.

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Dated 14 March 2005

