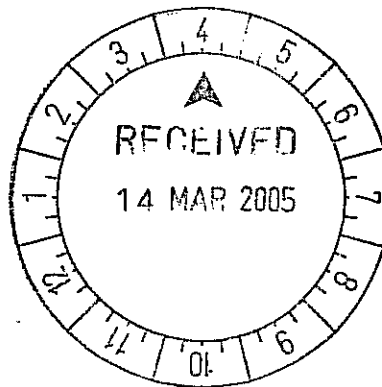


14 March 2005

Our Reference: 3684 JR



Mr Lyndon Rowe
Chairman
Economic Regulation Authority
GPO Box 8469
PERTH WA 6849

Dear Mr Rowe

SUBJECT: Submission regarding the Proposed Revised Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline

Pursuant to section 2.31 of the National Third Party Access Code for Natural Gas Pipeline Systems, North West Shelf Gas Pty Ltd (**NWSG**), on behalf of its joint venture participants, Woodside Energy Ltd., BP Developments Australia Pty Ltd, Shell Development (Australia) Proprietary Limited and ChevronTexaco Australia Pty Ltd, makes the following submission to the Economic Regulation Authority (**the Authority**) in respect of the proposed revisions to the Access Arrangement received by the Authority from DBNGP (WA) Transmission Pty Ltd on 21 January 2005 (**Proposed Revised Access Arrangement**).

The detailed submission, attached, indicates those aspects of the Proposed Revised Access Agreement which present a material concern to NWSG and the North West Shelf Joint Venture. Central to the submission is NWSG's contention that the proposed gas quality specification is manifestly unreasonable and inconsistent with industry and government expectations.

In respect of the attached submission, including the evidential support, NWSG wishes to emphasise the following points:

1. Industry and government have formed a reasonable expectation that the gas specification introduced by the Dampier to Bunbury Pipeline Regulations 1998 (WA), referred to as the "broadest specification" (**Regulations Broadest Specification**), will be the base gas quality specification in the Dampier to Bunbury Natural Gas Pipeline (**DBNGP**) on and from 1 July 2005.
2. The Proposed Revised Access Arrangement sets a range of upper and lower gas quality specifications for gas supplied to the DBNGP at the relevant Receipt and Delivery Points (**Operating Specification**) which are significantly tighter than the Regulations Broadest Specification.
3. The Proposed Revised Access Arrangement inaccurately describes an alternate gas specification in Item 3 of Schedule 2 as the "broadest specification" and imposes such onerous qualifications on a shipper's right to use this alternate gas specification that it is likely that the Operating Specification will be the base gas specification for the duration of the Proposed Revised Access Arrangement;

4. The Regulator must take into account the objective of the promotion of a competitive market and it is widely acknowledged that a tight gas specification has a negative effect on upstream competition and will limit the use of Western Australia's extensive gas resources, resulting in an absence of competitively priced domestic gas.
5. The Operating Specification is inconsistent with the gas specification for other Western Australian pipelines and Australian Standard AS 4564, presenting an impediment to inter-basin gas competition and security of supply through gas swaps. The Australian Competition and Consumer Commission in particular has noted the need to adopt flexible and consistent gas specifications as a means to achieving a more competitive gas industry.
6. In the Regulator's draft decision in respect of the proposed access arrangement submitted by Epic Energy (WA) Transmission Pty Ltd on 15 December 1999, the Regulator approved an amendment to include a gas quality specification at least as wide as the Regulations Broadest Specification, to apply from 1 July 2005. The Regulator withheld from imposing the Regulations Broadest Specification in his final decision on the basis of the limited access arrangement period, but indicated that consideration would need to be given to this issue at the time the access arrangement was reviewed.
7. In addition to its anti-competitive effect on the gas market, the Operating Specification will have significant financial and operational implications for gas producers. This will include the need to invest extra capital in treatment facilities and, in many cases, to adopt a sub-optimal sequence for developing gas fields.
8. The Proposed Revised Access Arrangement omits part haul services from the Reference Service and fails to include the part haul tariff arrangements which were included in the Regulations and the existing Access Arrangement. This will result in significant tariff increases over a short period for users with Delivery Points in the Pilbara Region and Carnarvon.
9. The Proposed Revised Access Arrangement provides no flexibility with respect to gas specification for gas delivered at a Multi-shipper Inlet Point, comprising a commingled inlet stream.
10. NWSG submits that the Proposed Revised Access Arrangement is unreasonable and a number of amendments must be made to allow for the inclusion of the Regulations Broadest Specification, the removal of the Operating Specification and alternate gas specification, the inclusion of a firm part haul service and the existing part haul tariff arrangements and the introduction of a notional "blended specification", as determined by the weighted average of all the operating specifications for which there are relevant shipping contracts delivering gas into that Inlet Point via a commingled gas stream.

If you have any questions regarding our submission, please contact Mr David Cullen, Marketing Manager at NWSG, on 9348 4146.

Kind regards



JOHN RICHARDS
General Manager

14 March 2005

North West Shelf Gas Pty Ltd

**Submission to the Economic Regulation Authority
regarding the Proposed Revised Access Arrangement
for the Dampier to Bunbury Natural Gas Pipeline, submitted
by DBNGP (WA) Transmission Pty Ltd on 21 January 2005**

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1 Overview

North West Shelf Gas Pty Ltd (**NWSG**) is pleased to make the following submission to the Economic Regulation Authority (**Authority**) regarding the proposed revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline (**DBNGP**) received by the Authority from DBNGP (WA) Transmission Pty Ltd (**DBNGPT**) on 21 January 2005 (**Proposed Revised Access Arrangement**).

NWSG acts as agent for five North West Shelf Joint Venturers (**NWSJVs**), these being Woodside Energy Ltd., Shell Development (Australia) Proprietary Limited, BP Developments Australia Pty. Ltd., BHP Billiton Petroleum (North West Shelf) Pty. Ltd. and ChevronTexaco Australia Pty. Ltd.

NWSG has gas transportation contracts with DBNGPT which provide for gas to be shipped through the DBNGP, from the NWSJVs' gas plant near Dampier to three of the NWSJVs' customers, namely Edison Mission Energy at Kwinana and Hamersley Iron and Robe River Iron Associates in the Pilbara. The NWSJVs also sell gas to Alinta, Alcoa and Western Power, who separately have transportation arrangements with DBNGPT.

The NWSJVs have been supplying domestic gas to Western Australian customers for over 20 years. During this time the gas supply has been both reliable and in conformance with the relevant specification. Approximately 80% of the gas which is transported through the DBNGP is gas sold by the NWSJVs.

We restrict our comments to areas which are of material importance to the NWSJVs. The absence of a submission on a particular aspect of the Proposed Revised Access Arrangement should not be in any way construed as indicating the NWSJVs' agreement with that aspect or any related issues.

2 Summary of Submission

- (a) The Proposed Revised Access Arrangement is manifestly unreasonable in that it:
 - (1) fails to adopt the gas specification introduced by the *Dampier to Bunbury Pipelines Regulations 1998* (WA) (**Regulations**), referred to as the “broadest specification” (**Regulations Broadest Specification**);
 - (2) sets a range of upper and lower gas quality specifications for gas supplied to the DBNGP at the relevant Receipt and Delivery Points (**Operating Specification**) which are significantly tighter than the Regulations Broadest Specification;
 - (3) inaccurately describes an alternate gas specification in Item 3 of Schedule 2 as the “broadest specification”;
 - (4) in any event, imposes strict qualifications on a shipper’s right to use the alternate gas specification, such that it is likely that the Operating Specification will be the base gas specification for the duration of the Proposed Revised Access Arrangement; and
 - (5) does not include a Part Haul Service as a Reference Service and fails to incorporate the Part Haul tariff arrangements which were included in the Regulations.
- (b) The Operating Specification is inconsistent with the expectations of industry and government that the Regulations Broadest Specification will be introduced on, and be available from, 1 July 2005 as the gas specification for the DBNGP.
- (c) The failure to introduce the Regulations Broadest Specification will have significant negative financial and operational implications for producers.
- (d) The Operating Specification will be an impediment to upstream competition and competitively priced gas. It will inhibit the potential for interstate, intrastate and inter-basin competition and gas trading.
- (e) The failure to include the existing Part Haul tariff arrangements will result in tariff increases for users with Delivery Points in the Pilbara Region and Carnarvon.
- (f) The failure to include the concept of a blended specification reduces shippers to a lowest common gas specification approach for dealing with gas quality determinations at multi-shipper receipt points.
- (g) NWSG respectfully submits that the following changes must be made to the Proposed Revised Access Arrangement:
 - (1) The Operating Specification be removed from Item 1 of Schedule 2 of the Proposed Revised Access Arrangement and replaced with the Regulations Broadest Specification;
 - (2) Item 3 of Schedule 2 be removed from the Proposed Revised Access Arrangement;
 - (3) Accordingly, clauses 2.8, 2.9 and 2.10 of the Proposed Revised Access Arrangement be removed from the Proposed Revised Access Arrangement;
 - (4) A part haul service be offered as a reference service and the existing part haul tariff arrangements be adopted in the Proposed Revised Access Arrangement; and

- (5) Clause 3.3(c) of the Proposed Revised Access Arrangement be modified to enable a notional “blended specification” as determined by the weighted average of all the operating specifications for which there are relevant shipping contracts delivering gas into that receipt point via a commingled gas stream.

3 The National Third Party Access Code for Natural Gas Pipeline Systems

3.1 The National Access Regime

In November 1997, the National Third Party Access Regime for Natural Gas Pipeline Systems was established by agreement between the Commonwealth, State and Territory Governments. The Gas Pipelines Access Law, including the National Third Party Access Code for Natural Gas Pipeline Systems (**Code**), implements the access objectives agreed by all jurisdictions. The Code was implemented via legislation in the participating States and Territories¹.

3.2 The requirement that the Proposed Revised Access Agreement is “reasonable” and the factors the Regulator is required to take into account

In considering whether to approve the Proposed Revised Access Arrangement, the Regulator must observe the process of assessment detailed in section 2.46 of the Code. Section 2.46 provides that the Regulator may approve a proposed Access Arrangement as revised only if it contains the elements and satisfies the principles set out in sections 3.1 to 3.10. Relevantly, section 3.2 requires the Access Arrangement, as revised, to include a description of one or more Services that are likely to be sought by a significant part of the market. Additionally, section 3.6 imposes a requirement that the terms and conditions on which the Service Provider will supply each Reference Service are reasonable, in the opinion of the Regulator.

Section 2.46 also requires the Regulator to take into account the factors described in section 2.24 of the Code, namely:

- (a) *the Service Provider’s legitimate business interests and investment in the Covered Pipeline;*
- (b) *firm and binding contractual obligations of the Service Provider or other persons (or both) already using the Covered Pipeline;*
- (c) *the operational and technical requirements necessary for the safe and reliable operation of the Covered Pipeline;*
- (d) *the economically efficient operation of the Covered Pipeline;*
- (e) *the public interest, including the public interest in having competition in the markets (whether or not in Australia);*
- (f) *the interests of Users and Prospective Users;*
- (g) *any other matters that the Relevant Regulator considers are relevant.*

In the Western Australia Supreme Court of Appeal case *Re Dr Ken Michael AM: Ex Parte Epic Energy (WA) Nominees Pty Ltd & Anor*² (**Epic Decision**), Parker J noted that “the Regulator is required by s2.24 to take the stipulated factors into account and to give the weight as fundamental elements in assessing a proposed Access Arrangement with a view to reaching a decision whether or not to approve it³”. Consideration was also given by the Court to the relationship between section 2.24 and the subsections which require “evaluation, the exercise of judgment, the formation of opinion or other exercises of

¹ In Western Australia, this legislation is the *Gas Pipeline Access (Western Australia) Act 1998* (WA), which contains the Code in schedule 2.

² [2002] WASCA 231. The paragraphs of the Epic Decision referred to in this submission are included in Attachment A to this submission.

³ The Epic Decision at paragraph 55.

discretion”, including section 3.2⁴. Parker J noted that in exercising such discretions, the Regulator requires policy guidance and that “*an obvious purpose and function of s2.24(a) to s2.24(g) is to provide that guidance*”⁵.

Therefore, in assessing whether, in the opinion of the Regulator, the Proposed Revised Access Arrangement is “reasonable”, the Regulator must give appropriate weight to each of the elements in section 2.24.

This submission considers aspects of section 2.24(a), (b), (d), (e), (f) and (g) of the Code.

⁴ The Epic Decision at paragraph 59

⁵ The Epic Decision at paragraph 59.

4 Absence of the Regulations Broadest Specification

4.1 Background

The Proposed Revised Access Arrangement sets out access contract terms and conditions for a period from 1 July 2005 to 1 July 2010. Clause 2 of the Proposed Revised Access Arrangement requires a shipper to deliver gas that meets the Operating Specification. Importantly, shippers cannot deliver gas of a specification that is outside the Operating Specification unless certain tests in clause 2.10 are satisfied, or the Operator otherwise permits the delivery of such gas in accordance with the limited circumstances prescribed by clause 2.8. In such an instance, however, the “relief” provided by clause 2.10 is not sufficiently broad so as to permit gas to be delivered in accordance with the Regulations Broadest Specifications. As is illustrated in this submission, NWSG believes that shippers will have considerable difficulty meeting the stipulated requirements.

If the Regulator ultimately approves the Proposed Revised Access Arrangement then one of the purported objects of the Regulations, namely, to allow a broader gas quality specification, will effectively be defeated. Because of the unlikelihood that a shipper will at any stage be permitted to deliver gas which does not meet the Operating Specification, in a practical sense, the Operating Specification will be maintained as the gas quality specification in the DBNGP until 2010.

4.2 The Regulations Broadest Specification and the Operating Specification

(a) The Regulations Broadest Specification

As indicated, the Regulations introduced the Regulations Broadest Specification in 1998⁶.

The Regulations Broadest Specification provided a less stringent gas quality specification than the then existing operating specification, allowing, in particular, for a higher maximum inert gas limit, a lower minimum Higher Heating Value (**HHV**) and a broader Wobbe Index specification and for the removal of the extractable LPG requirement from 1 July 2005.

As discussed in section 6 of this submission, it has long been anticipated by NWSG, industry and government that the Regulations Broadest Specification will be the gas specification adopted by the Proposed Revised Access Agreement for access contracts entered into after 1 July 2005 and will generally apply to all gas transmission contracts as the gas quality specification for the DBNGP.

(b) The Operating Specification

Item 1 of Schedule 2 of the Proposed Revised Access Arrangement details the Operating Specification⁷. The Operating Specification does not reflect the Regulations Broadest Specification.

NWSG submits that the Proposed Revised Access Arrangement should provide for the Regulations Broadest Specification to be the standard gas specification, as reasoned below, and should exclude all references to the Operating Specification.

⁶ The Regulations Broadest Specification is set out in Attachment B to this submission.

⁷ This is defined in clause 1.1 of the Proposed Revised Access Arrangement. It is set out in Attachment C to this submission.

4.3 **Clause 2.8 of the Proposed Revised Access Arrangement and the Permissible Specifications**

(a) Clause 2 of the Proposed Revised Access Agreement

Clause 2 of the Proposed Revised Access Agreement deals with gas specification. Clause 2.1 provides that gas supplied or delivered to the DBNGP must comply with the Operating Specification.

Clause 2.8 specifically deals with the circumstance where there is a change in law during the term of the Proposed Revised Access Arrangement which requires Operator to receive gas into the DBNGP which does not conform to the Operating Specification.

In the event that such a law is prescribed, clause 2.8 ensures that Operator retains the sole discretion to determine whether or not the Operating Specification is amended to accommodate the broader gas specification.

Clause 2.8 relevantly provides that if:

- (1) *at any time during the term of an Access Contract there is a change in Law which requires Operator to receive gas into the DBNGP with an operating specification for one or more components outside the Operating Specifications applying to the component or those components of the Operating Specifications ... (“Permissible Specifications”); and*
- (2) *there is no shipper with an Inconsistent Existing Contractual Specification; and*
- (3) *Operator actually receives into the DBNGP gas outside the Operating Specifications but within the Permissible Specification to such an extent that it is unable to comply with the Operating Specifications for a Delivery Point as set out in Schedule 2,*

then the Operator may notify the shipper that the Receipt and Delivery Point Operating Specifications are amended such that each component of the Permissible Specification which is broader than the corresponding component of the Operating Specification is substituted into Item 1 of Schedule 2.

Clause 2.8 therefore first requires the new gas specification which is prescribed by law to comply with clauses 2.8(b) and 2.8(c). Secondly, in the event that clauses 2.8(b) and (c) are satisfied, clause 2.8 further provides that Operator may nevertheless elect whether or not to amend the Operating Specification to reflect the Permissible Specification and allow deliveries of gas meeting the Permissible Specifications.

(b) Inconsistent Existing Contractual Specification

Under clause 2.8(b), Operator may refuse to give effect to any change of Law which introduces a new gas specification (**Permissible Specifications**) where there is any shipper with an Inconsistent Existing Contractual Specification. An Inconsistent Existing Contractual Specification is, in summary, described as a change to the Operating Specification to accommodate the Permissible Specifications which could render the shipper in material breach of an existing producer or supply contract⁸.

The requirement stipulated in clause 2.8(b) effectively provides that if at any stage during the term of the Proposed Revised Access Agreement there exists a producer or supply contract which requires the shipper to observe the Operating Specification, then that

⁸ Clause 2.8(f) and (g) of the Proposed Revised Access Agreement

contract will prevent Operator from introducing the Permissible Specification, notwithstanding its obligation at Law.

NWSG considers that this clause is problematic for a number of reasons.

Firstly, a contractual provision should not be used to prevent or delay the application of a Law.

Secondly, the entitlement to deliver gas in accordance with the Permissible Specifications should not be qualified by a requirement to ensure that it can be accommodated by existing contracts. NWSG submits that transport contracts should be able to accommodate the introduction of the Regulations Broadest Specification from 1 July 2005 and should, therefore, not be inconsistent with any broadening of the gas specification required by Law.

As this submission illustrates, the NWSJVs, industry and government have long been anticipating the introduction of the Regulations Broadest Specification from 1 July 2005. If shippers have made contractual arrangements in relation to access post-July 2005 that are inconsistent with the Regulations Broadest Specification, they have done so with full knowledge of this expectation. Shippers should not be protected from the consequences of the introduction of the Permissible Specification simply because they have not been sufficiently prudent to enter into a contract which accounts for what NWSG submits is the inevitable broadening of the gas quality specification in the DBNGP.

The qualification of “Inconsistent Existing Contractual Specification”⁹ may permit the Operator, in certain circumstances, to frustrate future statutory requirements as to gas quality. Clearly this cannot be intended and is prejudicial to the interests of users and prospective users of the DBNGP.

(c) Operator’s discretion

In the event that there is a change in Law which prescribes Permissible Specifications and the requirements detailed in clauses 2.8(b) and (c) are satisfied, Operator is not required as a matter of course to observe the Permissible Specifications. Instead, clause 2.8 only provides that the Operator may amend the Operating Specification so as to accommodate a broader gas specification required by Law. No time limits are set for the exercise of this discretion.

Consequently, a shipper has no certainty as to whether it can take advantage of any change in Law which broadens the gas specification in the DBNGP. A shipper would not appear to have any enforceable rights under clause 2.8 and must rely on Operator to exercise its discretion. Additionally, a shipper would find it considerably difficult to challenge a decision of the Operator under that clause.

(d) Other defects of clause 2.8 of the Proposed Revised Access Arrangement

The test for ‘Inconsistent Existing Contractual Specification’ is cast in terms of:

“the shipper could be in material breach of an existing producer contract or an existing gas supply contract”.

Use of the word “could” opens theoretical arguments in limited circumstances.

Relief from the restrictive Operating Specification may only be allowed on a “case by case” basis and does not generally permit a shipper to deliver gas within the Permitted Specifications.

⁹ Clause 2.8(b).

(e) Change of Law clause

NWSG notes that “change of law” clauses are not unusual in long term supply contracts and does not object to the Proposed Revised Access Arrangement containing a provision to that effect. However, for the reasons set out in this section 4.3 of this submission, the effective purpose of clause 2.8 is not to give effect to a change of Law, but to present an impediment to that change.

4.4 Clause 2.10 of the Proposed Revised Access Arrangement and the Item 3 Specification

(a) Background

The Operating Specification is the base gas quality specification for the duration of the Proposed Revised Access Arrangement. Clause 2.10 of the Proposed Revised Access Arrangement obliges the Operator to agree to a variation in gas specification within the “broadest specification” as detailed in item 3 of schedule 2 of the Proposed Revised Access Arrangement (**Item 3 Specification**)¹⁰, subject to certain qualifications.

The gas quality components in both the Operating Specification and the Item 3 Specification are generally tighter than Regulations Broadest Specification. This is discussed in more detail in sections 4.5 and 4.6 of this submission.

NWSG notes that the use of the term “broadest specification” in clause 2.10(a) in the Proposed Revised Access Agreement is intrinsically misleading and could facilitate inaccurate assumptions being made about the Item 3 Specification.

The significant differences between the Item 3 Specification and the Regulations Broadest Specification are set out in the following table:

Component	Item 3 Specification	Regulations Broadest Specification (Category A)
Maximum carbon dioxide (mol%)	4.0	3.6
Maximum inert gases (mol%)	6.0	6.5
Minimum higher heating value (MJ/m ³)	37.3	35.1
Minimum Wobbe Index	47.3	46.0
Maximum Wobbe Index	51.0	51.5
Minimum extractable LPGs (t/TJ)	n/a	Until 08:00 hours on 1 July 2005: 1.45 From 08:00 hours on 1 July 2005: 0:00

(b) Clause 2.10 of the Proposed Revised Access Arrangement

While clause 2.10 of the Proposed Revised Access Arrangement entitles a shipper to request delivery of gas within the Item 3 Specification, there are a number of substantial limitations on Operator’s obligation to accept such a request.

Clause 2.10(a) allows Operator to refuse any request to vary the gas specification for a Receipt Point where there is an objective risk that receiving such gas would render it incapable of complying with a Delivery Point Specification under a contract with any

¹⁰ The Item 3 Specification is set out in Attachment D to this submission.

other shipper. Additionally, a shipper's right to request a variation to the gas specification for a Receipt Point to the Item 3 Specification is further subject to there being no:

- (1) *material increase in Operator's costs;*
- (2) *material adverse effect on the capacity of the DBNGP (expressed in units of energy) to transport gas; or*
- (3) *adverse effect, in the opinion of the Operator, acting as a reasonable and prudent person, to the rights of any shipper¹¹(each of the above, a **Qualification**).*

Operator, therefore, has considerable scope to refuse to accept gas which conforms to the Item 3 Specification. In Qualifications (1) to (3) above, delivery can, however, be permitted after the parties have agreed the reasonable compensation to be paid by the shipper to the Operator.

Under the Proposed Revised Access Arrangement, a shipper has a very limited right to utilise the Item 3 Specification. Notwithstanding any operational impact that gas conforming to the Item 3 Specification may have on the DBNGP, the right to utilise the Item 3 Specification will invariably be compromised where the Operator has contracted with another shipper in a manner that triggers clause 2.10(a).

In the event that a shipper wishes to dispute a refusal by the Operator or the quantum of compensation, such dispute is a matter that is to be referred to the independent expert¹², with expectant cost and delay.

NWSG, therefore, has two issues with clause 2.10:

- (1) the Item 3 Specification is not as broad as the Regulations Broadest Specification; and
- (2) any request to utilise the Item 3 Specification is subject to such onerous requirements that there is a real risk that the Item 3 Specification (or any variation to the gas specification) will never apply to any shipper at any time during the term of the Proposed Revised Access Arrangement.

(c) Clause 2.10(d) of the Proposed Revised Access Arrangement

While it is NWSG's submission that clause 2.10 should be removed from the Proposed Revised Access Arrangement, NWSG makes the following comments on aspects of clause 2.10(d). NWSG requests that the Regulator consider these comments if the Regulator is minded to retain clause 2.10 or a derivation of it.

In relation to Qualification (1), reference is made to section 6.6 of this submission. This section clearly indicates that the financial impact of a broadening of gas specification was known by the DBNGP consortium (**Consortium**)¹³ (and Operator) at the time that it acquired the DBNGP.

Therefore, it should not be a factor that the Operator is entitled to take into account in its decision to accept or reject gas meeting the Item 3 Specification. If Operator is able to refuse a request to vary the gas specification on the basis of its financial impact, this will have the effect of producing a windfall for the Consortium.

¹¹ Clause 2.10(d) of the Proposed Revised Access Agreement.

¹² Clause 2.19(b) of the Proposed Revised Access Arrangement provides that any dispute under clause 2.10(a) or 2.10(d) is a Technical Matter which can be referred to the Independent Expert.

¹³ The Consortium comprises Diversified Utility and Energy Trusts, Alcoa of Australia Ltd and Alinta Limited.

Qualification (3) appears to be covered by clause 2.10(a), which permits the Operator to refuse to receive gas in accordance with the Item 3 Specification where the acceptance of such gas will conflict with a contractual specification of another shipper. A general, all-encompassing provision such as Qualification (3) should not be included, as its application and impact are impossible to measure. If the Operator has particular concerns that it believes need to be addressed, then they should be set out specifically, so all stakeholders can evaluate them.

4.5 The removal of the LPG requirement is linked to the broadening of the gas specification

Significantly, the Regulations Broadest Specification provides that, from 1 July 2005, the minimum extractable LPGs required is 0.00 t/TJ. The removal of the LPG obligation is inextricably linked to the broadening of other components of gas specification. The Regulations Broadest Specification makes corresponding changes to other gas quality components, including the HHV and the Wobbe Index.

As the LPG content directly impacts on the HHV, the concentration of LPGs needed in the gas stream will always be that volume which is necessary to ensure that the minimum HHV is met. Should only the LPG obligation be removed without a corresponding move in HHV and the Wobbe Index, gas producers will be required to continue to inject LPG to meet the tight HHV and the Wobbe Index.

Because of the inter-dependence of the HHV and LPG components, it is not sufficient for the Proposed Revised Access Arrangement to simply remove the reference to “Minimum extractable LPGs” from Item 1 of Schedule 2, without importing each other component of the Regulations Broadest Specification.

The following table indicates the different HHV, Wobbe Index and LPG components for the Regulations Broadest Specification, the Operating Specification and the Item 3 Specification:

Component	Regulations Broadest Specification	Operating Specification	Item 3 Specification
Minimum HHV (MJ/m ³)	35.1	37.3	37.3
Maximum HHV (MJ/m ³)	42.3	42.3	42.3
Minimum Wobbe Index	46.0	47.3	47.3
Maximum Wobbe Index	51.5	51.0	51.1
Minimum extractable LPGs (t/TJ)	Until 08:00 hours on 1 July 2005: 1.45 From 08:00 hours on 1 July 2005: 0:00	not prescribed	n/a

The effect of removing this reference is not to facilitate the complete removal of the LPG component from the gas specifications. Rather, the volume of LPGs required will be set by reference to the other components which make up the gas specification. If all other gas quality parameters remain the same under the Proposed Revised Access Arrangement, including the minimum HHV, then NWSG anticipates that it will still be required to deliver between 0.3 to 0.4 t/TJ of LPGs into the gas stream in order to comply with the Operating Specification.

4.6 Inert gases specification

NWSG is particularly concerned about the low maximum level of inert gases required by both the Operating Specification and the Item 3 Specification.

The Operating Specification requires 5.5 (mol%) maximum inert gases at Receipt Points and 6.0 (mol%) maximum inert gases at Delivery Points. This range is substantially lower than the Regulations Broadest Specification which allows 6.5 (mol%) (Category A Gas) and 7.0 (mol%) (Category B Gas). Additionally, the Australian Standard AS 4564¹⁴ (**Australian Standard**), the Alinta Distribution System, the Goldfields Gas Pipeline and the Parmelia Pipeline all allow 7.0 (mol%) of maximum inert gas.

The following table indicates the maximum inert gases (mol%) permitted for various pipelines in Western Australia and the Alinta Distribution System:

	Regulations Broadest Specification	Operating Specification	Item 3 Specification	Australian Standard / Alinta Distribution	Goldfields Gas Pipeline	Tubridgi Pipeline	Parmelia Pipeline
Maximum Inert Gas (mol%)	6.5 (Category A) 7.0 (Category B and C)	5.5 (Receipt Points) 6.0 (Delivery Points)	6.0	7.0	7.0	6.5	7.0

This table clearly indicates that the Operating Specification requires a comparatively low maximum inert gases level and is consequently tighter than gas quality specifications for other Western Australian pipelines and the Australian Standard.

The ongoing requirement to produce gas with the low levels of inert gases required by the Operating Specifications is inconsistent with the Regulations Broadest Specification and will have significant implications for gas producers and suppliers.

¹⁴ The Australian Standard imposes a specification for general purpose natural gas.

5 Promoting competition in gas markets

5.1 Market competition and the Regulator's obligation to take into account the need to promote a competitive market

The National Third Party Access Regime for Natural Gas Pipelines had, as its underlying objective, the need to achieve free and fair trade in gas. Central to this objective is the requirement to facilitate a competitive market for natural gas and to provide third party access to natural gas transmission and distribution pipelines where access would otherwise be constrained by the misuse of market power.

The Introduction to the Code provides that:

“The objective of this Code is to establish a framework for third party access to gas pipelines that:

- (1) facilitates the development and operation of a national market for natural gas; and*
- (2) prevents abuse of monopoly power; and*
- (3) promotes a competitive market for natural gas in which customers may choose suppliers, including producers, retailers and traders; and*
- (4) provides a right of access to natural gas pipelines on conditions that are fair and reasonable for both Service Providers and Users; and*
- (5) provides for resolution of disputes”.*

The Code's objectives strongly emphasise the need to promote consistency at a national level and to pursue a competitive gas market which allows customers to deal with suppliers of choice.

Against this statement of objectives, the Regulator is required to specifically consider the factors in section 2.24 when considering whether to approve an Access Arrangement. Section 2.24(d)¹⁵ directs the Regulator to consider the need to promote a competitive market. In the Epic Decision, Parker J noted that “...2.24(d) most naturally relates to the objective in the preamble of the promotion of a competitive market and, perhaps, also to the prevention of the abuse of monopoly power”¹⁶. Additionally, section 2.24(e)¹⁷ requires the Regulator to take into account the public interest, both in a general sense and in the specific context of having competition in markets. On this factor, Parker J indicated that “the notion of public interest in 2.24(e) is expressed first in its generality, and then more narrowly as the public interest in having competition in markets. In the latter and limited aspect, 2.24(e) is clearly reflecting the objective of the promotion of a competitive market stated in the preamble. The public interest at large, however, would have regards to wider considerations...”¹⁸.

It is clear from section 2.24 of the Code and the comments of Parker J that the Regulator must give adequate consideration to the need to promote an efficient and competitive gas market and, accordingly, whether any aspect of the Proposed Revised Access Agreement may obstruct or limit market competition.

¹⁵ Section 2.24(d) requires the Regulator to consider the economically efficient operation of the Covered Pipeline.

¹⁶ Paragraph 133 of the Epic Decision.

¹⁷ Section 2.24(e) requires the Regulator to consider the public interest, including the public interest in having competition in the markets (whether or not in Australia).

¹⁸ Paragraph 134 of the Epic Decision.

5.2 Upstream competition and competitively priced gas

(a) Limited resources and producers

A significant finding contained in the 1995 Report of the Office of Energy entitled “Review of the Gas Quality Specification for the Dampier to Bunbury Natural Gas Pipeline Western Australia” (**Report**)¹⁹ was that only about 20% of Western Australia’s vast gas resources (including probable and possible resources) fell within the existing DBNGP gas quality specification after moderate cost treatment²⁰. Since that time, the gas specification has not materially changed.

If only a limited amount of Western Australia’s gas resources are able to meet the gas specification without high cost treatment, then the number of gas suppliers to the DBNGP will also be proportionately small. This is primarily because only a limited number of suppliers will have access to fields which produce appropriate gas. Additionally, producers with reserves which would require high cost treatment to bring them within the gas specification are unlikely to be inclined to invest significant amounts of capital in treatment facilities for the purpose of supplying customers via the DBNGP.

The main consequence of having both limited reserves and limited suppliers is an absence of competition between suppliers. This will ultimately lead to an absence of competitively priced domestic gas for consumers. Additionally, it will lead to a depletion in certain gas fields which is unlikely to promote optimal offshore development sequencing.

In respect of this issue, the Report importantly notes that “*the widening of the gas quality specification for the DBNGP, as recommended in this report, will increase more than three times the gas resources that fall “within” specification after moderate cost treatment*”²¹ and indicates that this is important in order to “*ensure the availability of competitively priced gas*”²².

This view is consistent with the view espoused by the Office of Energy in Energy Bulletin 4²³, which notes that “*once implemented, a broader gas specification will result in greater use of the State’s extensive gas resources*”.

(b) The Parer Report

The 2002 report of the Ministerial Council on Energy entitled “Towards a truly national and efficient energy market”²⁴ (**Parer Report**) specifically recognised the importance of upstream competition. It expressed concern that, despite Australia having abundant gas resources, it had limited competition in gas supply and, in particular, noted the following passage from the submission of VENCorp supporting this concern:

“...the principal determinant of retail prices, especially in gas, is often the underlying contracts for supply. Competition in the downstream sectors can encourage new sources of supply and storage in the long run, but in the short run can do little more than make marginal improvements in operational efficiency, improve customer service, and reduce the extent of price discrimination among

¹⁹ The relevant pages of this Report are included in Attachment E to this submission.

²⁰ Page 58 of the Report.

²¹ Page 58 of the Report.

²² Page 58 of the Report.

²³ Energy Bulletin 4 is included in Attachment F to this submission.

²⁴ The Parer Report was published on 20 December 2002. The page referred to in this submission is included in Attachment G to this submission.

end users. Access to cost-competitive supplies is, therefore, a prerequisite for the entry of new retailers and the enhancement of retail competition...’²⁵.

The Parer Report clearly indicates the need to encourage and sustain competition between producers. Cost-competitive supplies are essential for a competitive market and are far more effective in encouraging market competition than downstream competition.

(c) The Energy for Minerals Development in the South West Coast Region of WA Report

The report recently prepared by the Western Australian Department of Industry and Resources entitled “Energy for Minerals Development in the South West Coast Region of WA” (**Energy Report**)²⁶ also strongly advocates the need to ensure the continued, competitive availability of gas to meet domestic requirements.

The Energy Report was commissioned primarily for the purpose of attracting private sector investment and stimulating development of the State’s mineral and petroleum resources. One of the key findings of the Energy Report is that *“should there be tightening of supply there could be upward pressure on domestic gas prices as more remote reservoirs are developed and in view of trade-offs between domestic and LNG market opportunities”²⁷*. In order to prevent significant increases in domestic gas prices, the Energy Report concludes both that *“the sale of gas to a substantive, domestic market opportunity should be attractive relative to the value of longer-term LNG sales foregone”* and that *“in addition to the cost of gas procurement, the availability and cost of transporting gas to the south west coast region needs to be considered”²⁸*.

If the Operating Specification is accepted, it can be expected that the amount of gas available for transportation through the DBNGP (being gas which can meet the gas specification with moderate cost treatment) will diminish over time. If domestic gas volumes diminish and the costs relating to procurement, treatment and transportation increase, this will lead to an upward pressure on domestic gas prices.

The Energy Report notes that this will have a significant impact on minerals development in Western Australia and, in particular, will jeopardise the key opportunities for expansion in the south west coast region of Western Australia.

5.3 Inter-state, intra-state and inter-basin competition and gas trading

(a) The Operating Specification is inconsistent with the Australian Standard and the standards of other WA pipelines

The Operating Specification detailed in the Proposed Revised Access Arrangement is inconsistent with the gas specification for each of the Goldfields Gas Pipeline, the Tubridgi Pipeline and the Parmelia Pipeline. As illustrated in section 4 of this submission, the maximum inert gases level for each of these pipelines reflects the Regulations Broadest Specification, while the Operating Specification, as discussed, contains tighter components. The difference in gas specification requirements for Western Australian gas pipelines is detailed in Attachment I to this submission.

In addition to being inconsistent with the gas specification for other Western Australian pipelines, the Operating Specification is also significantly different from the Australian

²⁵ Page 197 of the Parer Report.

²⁶ The pages referred to in this submission are included in Attachment H to this submission.

²⁷ Page 217 of the Energy Report.

²⁸ Page 217 of the Energy Report.

Standard, which reflects the gas specification for the majority of gas pipelines across the greater part of Australia.

The Regulations Broadest Specification, on the other hand, is substantially the same as the Australian Standard, with some minor differences in certain components needed to cater for the high-pressure, long distance pipelines in Western Australia.

The importance of maintaining a consistent approach to gas regulation in order to promote competitive outcomes and security of supply has been acknowledged by various industry groups and government bodies.

(b) Enhanced competition, swaps and security of supply

It has been long recognised that there are competitive advantages and enhancements to be obtained in terms of redundancy in the gas delivery system as a whole and security of supply by utilising the natural gas fields within the Perth Basin region to deliver gas to the Perth metropolitan area and southwards. The Mondarra gas storage facility is located in the Perth Basin adjacent to the DBNGP and there are other gas fields which are depleting and which may become suitable for gas storage. It is most important that the DBNGP gas specification does not operate to restrict the re-delivery of gas from gas storage facilities in the Perth Basin²⁹.

Gas from the DBNGP that is injected into these gas storage facilities will give rise to a contractual requirement to redeliver equivalent gas comprising co-mingled DBNGP gas and other gas within the storage reservoir. There should be no constraint imposed by the gas quality specification in the DBNGP that could affect the ability to redeliver this co-mingled stream.

As an enhancement to commercial competition, gas swaps, swing and other transactions can be agreed in relation to gas founded from different basins to enhance the services offered to gas purchasers. It is important that gas derived from the Perth Basin and from the Carnarvon Basin are each readily substitutable into the DBNGP. A narrower gas specification gives rise to the possibility that these opportunities could be frustrated.

(c) The position of the Australian Competition and Consumer Commission

Past decisions of the Australian Competition and Consumer Commission (ACCC) in respect of access arrangements reveal a push towards implementing a national gas specification standard as a means to achieving a more competitive industry. On various occasions, the ACCC has commented that changing gas specifications for pipelines in isolation would have little, if any, effect. What is required is the “*development and adoption of agreed national standards for the gas industry*”³⁰.

The ACCC has set strong precedents when dealing with gas specifications in access arrangements. The ACCC now requires the insertion in all access arrangements of a clause it refers to as a ‘trigger mechanism’. This clause is designed to ensure that if a gas specification standard is developed by the Australian Gas Association Gas Quality Specification Working Group (AGA), then this specification will take the place of the gas specifications listed in the access arrangement. The first instance of this trigger mechanism was in the ACCC’s Final Decision on the Central West Pipeline Access Arrangement. The ACCC framed this trigger clause as follows:

“In order for AGLP’s access arrangement for the Central West Pipeline to be approved, AGLP must amend the access arrangement to state that AGLP will, if

²⁹ The Parmelia Pipeline has a wider specification.

³⁰ ACCC, Final Decision Amadeus Basin to Darwin Pipeline Access Arrangement, 4 December 2002 at page 142. The relevant pages of this decision are included in Attachment J to this submission.

recommendations by the [AGA] to adopt more flexible gas specifications ... are approved, substitute that specification for the specification currently set out in ... the access arrangement³¹”.

This clause then became a precedent for the ACCC and was used in its draft decision on the Moomba to Sydney Pipeline³². After this draft decision was released, the ACCC called for public submissions. The NSW Ministry of Energy and Utilities responded that the AGA had developed a proposed specification standard and the NSW Government was working to implement it. The ACCC noted that the proposed specification was released in January 2003 as the Australian Standard. Accordingly, in its final decision, the ACCC amended the trigger clause to require that the access arrangement gas specifications comply specifically with the Australian Standard³³. A further example of the trigger clause is the ACCC’s Draft Decision on the Amadeus Basin to Darwin Pipeline Access Arrangement.

Tight gas specifications that result in a reduction in the number market participants, higher prices for consumers and increased barriers to entry into the market could clearly result in contraventions of the Trade Practices Act. The ACCC has specifically noted that “... *overly tight gas specifications may hinder potential for inter-basin gas competition...*³⁴”.

(d) The position of the Council of Australian Governments, the National Competition Council and APPEA

The Council of Australian Governments (COAG) has strongly promoted the benefits of free and fair trade in gas and has maintained the need to stimulate a more competitive framework for the gas industry.

In its “Communique” dated 24 February 1994³⁵, COAG noted that arrangements facilitating free and fair gas trade would lead to the best possible use of Australia’s gas resources and the lowest possible price for gas consumers.

Importantly, COAG supported the conclusion contained in a report of the Australian and New Zealand Minerals and Energy Council that “*a consistent, national approach characterised by free trade will also stimulate the gas industry by increasing the market area into which gas can be sold and facilitate exploration and development of production, transmission and distribution facilities*³⁶”.

In addition to COAG, the National Competition Council (NCC) has also indicated the need to phase out legislative and regulatory barriers to interstate and intrastate trading and to promote the ability of gas users to contract for gas supply directly with an upstream producer of choice.

³¹ ACCC, Final Decision Access Arrangement by AGL Pipelines (NWS) Pty Ltd for the Central West Pipeline, 30 June 2000 at page 111. The relevant pages of this decision are included in Attachment K to this submission.

³² ACCC, Draft Decision Moomba to Sydney Pipeline System Access Arrangement, 20 December 2000 at page 146. The relevant pages of this decision are included in Attachment L to this submission.

³³ ACCC, Final Decision Moomba to Sydney Pipeline System Access Arrangement, 2 October 2003 at page 252. The relevant pages of this decision are included in Attachment M to this submission.

³⁴ ACCC, Final Decision Access Arrangement by AGL Pipelines (NSW) Pty Ltd for the Central West Pipeline, 30 June 2000, page 111.

³⁵ Communique of 24 February 1994 is provided in Attachment N to this submission.

³⁶ Page 3 of Communique of 24 February 1994.

In its 2003 assessment of the National Competition Principles³⁷ (**2003 NCP Assessment**), the NCC noted that “*adoption of the national standard is an important element in building a national gas market*”³⁸. Although the NCC noted that this was not currently an issue for jurisdictions without an interstate pipeline, it indicated that the inconsistent application of the standard could impact on areas such as the construction, sale and use of gas appliances. Consequently, the NCC resolved to “*monitor how jurisdictions are implementing the national standard and any issues that may arise as a result of its partial application*”³⁹.

In its September 2004 issue of Flowline⁴⁰, the Australian Petroleum Production and Exploration Association Limited (**APPEA**) expressed concern that the Ministerial Council on Energy was tending toward over-regulation. In particular, APPEA put forward the view that “*Gas market participants should be able to freely trade between pipelines, regions and basins*”⁴¹. It was noted that trading was an “*efficient commercial activity*” and that it is used “*to help manage and optimise supply and demand*”⁴².

It is apparent that in order to optimise the use of gas resources in Australia, the ability to trade gas within and between states needs to be established and maintained. Gas trading between pipelines requires consistency of gas specification, without which gas produced to specification for one pipeline will be non-transferable to another pipeline. NWSG submits that, notwithstanding the DBNGP not currently being connected with an interstate pipeline, the DBNGP gas specification should be aligned with the Australian Standard so as to not impede the potential for inter-state connection in the future.

(e) The Regulator’s Final Decision

In the Regulator’s final decision dated 23 May 2003, in respect of the proposed access arrangement submitted by Epic Energy (WA) Transmission Pty Ltd on 15 December 1999⁴³ (**Final Decision**), consideration was given, in paragraph 555, to the submission by NWSG that the maximum limit on gas temperature should be increased to 60°C. In determining that the proposed maximum limit on gas temperature was reasonable, the Regulator specifically referred to “*common industry practice*”⁴⁴. This reference evidences the Regulator’s willingness to review and take into account common practices and standards relating to gas specification components.

5.4 The need to promote clean energy sources

In 2001, COAG, along with the Prime Minister and the Premiers and Chief Ministers, agreed that an Australian energy policy was needed to address, amongst other things, improving the sustainability of energy supply, especially in relation to greenhouse gas emissions. It was recognised that developing and using Australia’s abundant natural gas resources was an inherent part of this objective.

³⁷ The relevant pages of the 2003 NCP Assessment are included in Attachment O of this submission.

³⁸ Page 8.16 of the 2003 NCP Assessment.

³⁹ Page 8.16 of the NCP Assessment.

⁴⁰ The September 2004 issue of Flowline is included in Attachment P to this submission. It is referred to in this submission as “September Flowline”.

⁴¹ Page 6 of September Flowline.

⁴² Page 6 of September Flowline.

⁴³ The pages referred to are provided in Attachment Q to this submission.

⁴⁴ Paragraph 555 of the Final Decision.

During the next Access Period, the State and Federal Governments, along with industry, will be under increasing pressure to reduce greenhouse gas emissions. Notwithstanding the current Federal Government's unwillingness to ratify the Kyoto Protocol, greenhouse gas reduction programmes are being pro-actively instigated to reduce emissions and environmental targets are continuing to be tightened by environmental regulatory authorities.

Natural gas is the cleanest of the fossil fuels and is an efficient and reliable energy resource. However, gas must compete with alternative fuel sources and it, therefore, must be available at competitive prices to achieve a pre-eminent status amongst these other sources. As indicated by APPEA in its Flowline publication dated July 2004⁴⁵, "*given gas is a relatively clean fuel, more needs to be done to enhance the relative competitiveness of natural gas in domestic markets*"⁴⁶.

Consequently, it is important that the Proposed Revised Access Arrangement facilitates the availability of competitively priced gas. The introduction of a gas specification which inhibits the number of suppliers and the amount of available reserves is inconsistent with this aim.

⁴⁵ The July 2004 issue of Flowline is included in Attachment R to this submission. It is referred to in this submission as the July Flowline.

⁴⁶ Page 4 of the July Flowline.

6 Expectations for the Regulations Broadest Specification

6.1 NWSG, industry and government expectations

NWSG has a reasonable expectation that the Access Arrangement which is ultimately approved by the Regulator to come into effect on 1 July 2005 will contain a gas quality specification consistent with the Regulations Broadest Specification.

This expectation has been reinforced over a 10 year period through various government and industry activities and through regulatory and legislative means.

6.2 The 1995 report from the Office of Energy on gas quality specification

The introduction of the Regulations Broadest Specification was initially foreshadowed in a 1995 Report of the Office of Energy.

The Report recommended changes to the gas quality specification which are much more closely aligned with the Regulations Broadest Specification than the Operating Specification.

In respect of the requirement for extractable LPGs, the Report noted that *“competition in gas in the South West market is inhibited to the extent that third party shippers are required to meet an LPG specification of 1.45t/TJ”*⁴⁷ and recommended that this obligation be removed as soon as possible. The Report did acknowledge however that *“this may not be possible until the year 2005”* due to the requirement on AlintaGas⁴⁸, but suggested that earlier removal of the requirement on third party shippers should be considered⁴⁹. This generated an expectation that the LPG content requirement would be removed, at the very latest, on and from 1 July 2005.

Importantly, the Report also noted that high cost treatment was required to ensure that gas delivered to the DBNGP met the prevailing gas specification. In relation to the maximum inert gas levels specifically, the Report concluded that N₂ removal was *“high cost”*, *“prohibitive”* and *“currently uneconomic”*⁵⁰ and that only 31.1% of gas resources in WA could meet the Category A Total Inerts constraint⁵¹. This was a significant finding of the Office of Energy, prompting the recommendation that *“the current Total Inerts limit be widened”* and that the maximum Nitrogen equivalent gas be increased to 6.4 mol% (Category A), 7.0 mol% (Category B) and 7.0% (Category C)⁵².

6.3 The Dampier to Bunbury Pipeline Regulations 1998 (WA)

The Regulations recorded the introduction of the Regulations Broadest Specification by stipulating it as the minimum operating specification to be observed by parties entering into gas transmission agreements.

The Regulations permitted parties to negotiate their own gas specifications but provided a default operating specification, which represented the gas specification which parties were required to observe if they did not otherwise agree.

⁴⁷ Page 37 of the Report.

⁴⁸ Page 40 of the Report. The Report indicates that while the terms of the Wesfarmers LPG contract are confidential, AlintaGas advised that it is liable to pay compensation to Wesfarmers LPG if any supplier into the DBNGP provides gas with less than 1.45 t/TJ of LPG (page 36). The Report notes however that AlintaGas may give notice to withdraw from the contract in 2005 (page 39).

⁴⁹ Page 40 of the Report.

⁵⁰ Page 57 of the Report.

⁵¹ Page 59 of the Report.

⁵² Page 9 of the Report.

In the event that parties negotiating a gas transmission agreement wanted to diverge from the default operating specification, the Regulations prevented any component of gas specification from being less stringent than the corresponding component of the Regulations Broadest Specification.

Regulation 24(2) specifically provided that “*the operating specification for a category of gas is not to include a component that is less stringent than the corresponding component of the broadest specification of that gas*”. Consequently, although parties to a gas transmission agreement were given the flexibility to negotiate to their own gas quality specification, the Regulations Broadest Specification was included as the benchmark operating specification, effectively allowing parties to remove the extractable LPG component from 1 July 2005.

NWSG submits that contracts which were entered into after the statutory introduction of the Regulations Broadest Specification which do not accommodate a gas specification as broad as the Regulations Broadest Specification should be given minimal weight by the Regulator under section 2.24(b) of the Code. If, since 1998, shippers have made contractual arrangements in relation to access post July 2005 that are inconsistent with the Regulations Broadest Specification, they have done so despite the likelihood that the Regulations Broadest Specification will govern the gas specification in the DBNGP.

6.4 The decisions of the Regulator

The draft and final decisions of the Regulator in respect of the proposed access arrangement submitted by Epic Energy (WA) Transmission Pty Ltd further evidence a general understanding by both industry and government that the Regulations Broadest Specification would be introduced from 1 July 2005.

(a) The Draft Decision

In his draft decision dated 21 June 2001⁵³ (**Draft Decision**), the Regulator approved an amendment to the existing Access Arrangement to include a gas quality specification at least as wide as the Regulations Broadest Specification, to apply from 1 July 2005⁵⁴.

The Regulator specifically recognised that the gas specification set out in the proposed Access Arrangement was not the same as the Regulations Broadest Specification. In respect of this disparity, the Regulator noted that the differences were due, amongst other things, to “*the contractual obligations of Epic Energy in respect of the quality of gas delivered to the Wesfarmers LPG Plant*”⁵⁵. The Regulator accepted that such contractual obligations would continue until June 2005, during which time the gas quality specification provided in the proposed Access Arrangement would be appropriate.

However, in relation to the period following June 2005, the Regulator expressed the view that:

*“there is no reason for Epic Energy not to accept into the pipeline gas that meets the broadest specification currently set out in Schedule 1 of the [Regulations]. The Regulator will therefore require that the proposed Access Arrangement be amended to include a gas quality specification to apply from July 2005, where that gas specification is no more restrictive than the broadest specification currently set out in Schedule 1 of the [Regulations]”*⁵⁶.

⁵³ The pages referred to are provided in Attachment R of this submission.

⁵⁴ Amendment 9 of the Draft Decision.

⁵⁵ Part B, page 48 of the Draft Decision.

⁵⁶ Part B, page 48 of the Draft Decision.

The draft decision of the Regulator therefore clearly supported the introduction of the Broadest Specification from July 2005.

(b) The Final Decision

In his Final Decision, the Regulator abstained from imposing the Regulations Broadest Specification on the basis that Epic Energy's contractual obligations to supply gas with an extractable LPG content persisted until 1 July 2005, which was beyond the proposed end of the Access Arrangement period, being 31 December 2004. Despite being constrained by this limited period, the Regulator nevertheless commented that "*the State Government has indicated a general intent to move towards the broadest specification through the declaration of this specification in the Regulations*"⁵⁷ and that "*Epic Energy itself indicated that it is keen to move to the broadest specification*"⁵⁸. Ultimately however, the Regulator determined that "*consideration of the gas quality specification for future Access Arrangement periods...is a matter which consideration will need to be given at the time the Access Arrangement is reviewed*"⁵⁹.

The basis for the Regulator's decision not to impose the Regulations Broadest Specification, namely that it would be more appropriate to do so at the time the Access Arrangement is reviewed, suggested that the imposition of the Regulations Broadest Specification was a matter of timing, rather than a matter of contention. A failure to include the Regulations Broadest Specification in the Proposed Revised Access Agreement would, therefore, be inconsistent with previous views expressed by the Regulator and the prevailing market expectation that the 1 July 2005 start date will be met.

6.5 The letter from the Office of Energy regarding gas quality in the DBNGP

The expectations of government and industry were reinforced by the letter from the Office of Energy to the Regulator dated 2 April 2003⁶⁰ (**Letter**). The Letter formally acknowledges the Government's support for the "*broadening of gas specifications as per the [Regulations] and the DBNGP Access Manual*"⁶¹ and specifically advocates for "*the legislative requirement for a minimum LPG content to fall away post 1 July 2005*"⁶².

In respect of the introduction of the Regulations Broadest Specification and the removal of the LPG content requirement, the Letter notes that "*these specifications were arrived at after an extensive period of consultation and consideration. It is in the interest of competition in the upstream gas markets that specifications are not so restrictive as to impede the entry of new sources of natural gas into the DBNGP*"⁶³.

Importantly, the letter relays the Office of Energy's expectation that the Regulator's final decision will "*be able to accommodate the Broadest Specification and the removal of the LPG requirement post July 2005*". It is suggested that this is necessary to ensure that "*the various gas resources of Western Australia are utilised in the most efficient and economic way in the longer term and that industry is provided with clarity and continuity on the matter of gas specifications*".

⁵⁷ Paragraph 533 of the Final Decision.

⁵⁸ Paragraph 539 of the Final Decision.

⁵⁹ Paragraph 540 of the Final Decision.

⁶⁰ The Letter is included in Attachment T to this submission.

⁶¹ Page 1 of the Letter.

⁶² Page 1 of the Letter.

⁶³ Page 1 of the Letter.

The Letter effectively serves as a statement of the Government's position with respect to the gas specification in the DBNGP. NWSG acknowledges that the Authority has independent status and is not bound by the recommendations of Government. However, the position of Government is a worthy consideration and, because it was formed after extensive consultation, can be taken to reflect the general market position.

6.6 The Product Disclosure Statement of Diversified Utility and Energy Trusts

In November 2004, Diversified Utility and Energy Trusts (DUET) issued a Product Disclosure Statement⁶⁴ (**Statement**) which indicated the possibility of a forthcoming amendment to the gas specification requirements.

The Statement indicates, in section 8.2.1, that *"the key risks to DBNGP revenue are disruptions to the operation of, and quality of gas transported through, its gas transmission pipeline assets"*⁶⁵.

Section 8.5.8 of the Statement further notes that:

*"There may be an amendment to the gas composition specification to allow a wider range of inert gases within the current range of heating values...the gas composition change proposal may allow a wider range of inert gases...and reduction of LPG content in north west shelf gas"*⁶⁶.

The Statement provides an express acknowledgement from DUET, a 60% owner of the DBNGP, of the expectation that the gas specification requirements could be amended in the foreseeable future. Evidently, the strong probability of the introduction of changes to the gas specification requirements warranted disclosure to potential investors, as a matter that could affect the financial performance of DUET's investment in the DBNGP entities.

In addition to indicating the general expectation of DUET, the Statement also records DUET's acknowledgement that a change in gas quality specification was factored into the purchase price for the DBNGP when it was acquired by the Consortium on 27 October 2004. This is particularly relevant to the application of 2.24(a) of the Code⁶⁷, which requires the Regulator to take into account the Service Provider's legitimate business interests and investment in the pipeline.

In the Epic Decision, Parker J noted that *"the investment in this case is the purchase price"*⁶⁸ and that *"within the meaning of 2.24(a) both the investment and the legitimate business interests of Epic might properly extend to the recovery of that [purchase price], at least over the expected life of operation of the pipeline, together with an appropriate return on investment"*⁶⁹.

The Statement effectively confirms for the Regulator that a broader gas quality specification was accounted for in the formulation of the purchase price for the DBNGP. Therefore, in considering *"the Service Provider's legitimate business interests and investment in the pipeline"*, the Regulator should note that the "investment" already accounts for the broadening of the gas quality specification.

⁶⁴ The page referred to in this submission is included in Attachment U of this submission.

⁶⁵ Page 90 of the Statement.

⁶⁶ Page 97 of the Statement.

⁶⁷ Section 2.24(a) states that the Regulator must take into account the Service Provider's legitimate business interests and investment in the Covered Pipeline.

⁶⁸ Paragraph 130 of the Epic Decision.

⁶⁹ Paragraph 130 of the Epic Decision.

7 Failure to introduce the Regulations Broadest Specification

7.1 Code, financial and operational implications

(a) Section 3.2 of the Code

As indicated above, the introduction of the Regulations Broadest Specification has been actively foreshadowed in the market for almost a decade. In its letter of request to the Authority dated 12 November 2004⁷⁰, DBNGPT in fact states that “*almost all of the existing shippers have agreed to amend their existing contracts in relation to gas specification so that from 1 July 2005, the minimum LPG content for gas will be set at zero*”⁷¹. The Operation Specification does not, therefore, meet the commercial and contractual expectations of shippers and customers.

The Proposed Revised Access Arrangement must, as a minimum, include the elements described in section 3 of the Code. Section 3.2 requires the Access Arrangement to include a description of one or more Services that the Service Provider will make available to Users or Prospective Users, including “*one or more Services that are likely to be sought by a significant part of the market*”.

The market has a clear and demonstrable expectation that the Proposed Revised Access Arrangement will provide a service which conforms to the Regulations Broadest Specification. At this point, NWSG does not believe that it achieves the objective required by section 3.2 of the Code.

(b) Capital costs

The ongoing tight specification requirements also have financial and operational implications for gas producers. In order to deliver gas which conforms to this tight specification, producers must invest significant extra capital in treatment facilities and, in many cases, are required to adapt their production sequencing in order to preferentially develop fields with appropriate qualities.

(c) Operating costs

Additionally, significant operational costs have resulted from the need to comply with the extractable LPG requirement. Notwithstanding that the 1.45t/TJ minimum requirement will be removed, the ongoing requirement to introduce LPGs into the gas stream to ensure compliance with other components of the Operating Specification will continue to negatively impact on gas producers.

7.2 An anti-competitive outcome

As discussed in section 5 of this submission, the high cost of gas production resulting from a tight gas quality specification and the limited amount of gas reserves available in Western Australia to meet this specification after moderate cost treatment will result in a limited numbers of producers and insufficient competition in the upstream gas market.

⁷⁰ This letter is included in Attachment V of this submission.

⁷¹ Page 3 of the letter is provided in Attachment V of this submission.

8 Part Haul Service

The Proposed Revised Access Arrangement provides a Part Haul Service on as a Non-Reference Service only and does not incorporate the part haul tariff arrangements which were included in the Regulations and the existing Access Arrangement. For users with Delivery Points in the Pilbara Region and at Carnarvon, the failure to include such a Reference Service will result in an immediate exposure to a significant tariff increase. Such a tariff increase over a short period is contrary to the interests of those users, is anti-competitive and will impact on the feasibility of gas as an energy source in the relevant areas. In the Pilbara Region specifically, a significant increase in gas transmission costs could have serious consequences for existing operations and may jeopardise the feasibility of proposed industrial developments.

NWSG submits that the Proposed Revised Access Arrangement should include a Part Haul Reference Service which can be accessed by users at charges which are consistent with the charges that users would have paid under a contract entered into under the Regulations⁷².

This is consistent with the position of the Regulator as expressed in the Draft Decision, in which the Regulator required that *“some amendment be made...to ensure that for Users with delivery Points in Zone 1a there is no increase in gas transmission costs under the Reference Tariff relative to the tariff that Users would have paid under a contract entered into under the [Regulations]”*⁷³. This was affirmed by the Regulator in his Final Decision in which he noted that he still maintained the view that *“while some tariff charge may appropriately result from different cost allocations, that a substantial tariff increase within a short period for some Users, while tariffs for the pipeline as a whole generally decrease or are held approximately constant, is unreasonably contrary to the interests of Users”*⁷⁴.

In order to ensure the availability of competitive priced gas in the Pilbara Region and Carnarvon, NWSG submits that the Regulator must require the Proposed Revised Access Arrangement to include the Part Haul Service as a Reference Service and to adopt the existing part haul tariff arrangement.

⁷² The Regulator expressed the view that there should be no increase in gas transmission costs under the Reference Tariff relative to the Tariff that Users taking delivery of gas in the various zones would have paid under a contract entered into under the Regulations. See, for example, pages 263 and 274 of Part B of the Draft Decision and paragraph 394 of the Final Decision.

⁷³ Page 263 of Part B of the Draft Decision.

⁷⁴ Paragraph 424 of the Final Decision.

9 Blended Specifications

In addition to providing the Regulations Broadest Specification as the base gas quality specification for the DBNGP, NWSG submits that the Proposed Revised Access Arrangement should also provide flexibility with respect to gas specification for gas delivered at a Multi-shipper Inlet Point, comprising a commingled inlet stream.

Clause 3.3(c) of the Proposed Revised Access Agreement provides that the relevant specification quality components of a shipper's gas at a Multi-shipper Receipt Point are determined solely by that shipper's proportional share of the commingled inlet stream.

NWSG submits that clause 3.3(c) of the Proposed Revised Access Arrangement should be amended to enable a notional "blended specification", as determined by the weighted average of all the operating specifications for which there are relevant shipping contracts delivering gas into that Receipt Point via a commingled gas stream.

10 The submission of NWSG

10.1 The Proposed Revised Access Arrangement is unreasonable

As discussed in paragraph 3.2 of this submission, section 3.6 of the Gas Code requires the Regulator to be satisfied that the terms and conditions of the Proposed Revised Access Agreement are “reasonable”, before they are approved.

NWSG submits that both the Operating Specification and the Item 3 Specification are manifestly unreasonable and entirely inconsistent with the expectations of the NWSJVs, government and industry.

The NWSJVs have formed a reasonable expectation over the last decade that, as of 1 July 2005, the Regulations Broadest Specification will govern gas specification quality in the DBNGP. This expectation is consistent with the publicly acknowledged position of government and the understanding of industry, having been generated by the activities, reports and conclusions of various government and non-government bodies and associations and also by legislative and regulatory intervention.

The Operating Specification seriously jeopardises the long term competitiveness of domestic gas in Western Australia and is likely to lead to a reduction in both the number of suppliers and the volume of gas reserves suitable for shipment to Western Australian customers.

Gas producers will suffer serious financial and operational disadvantages if the Broadest Specification is not introduced. In addition to the need to continue sub-optimal offshore development sequencing, in some circumstances, producers will also be required to expend large amounts of capital to develop adequate treatment facilities.

By approving the Proposed Revised Access Arrangement, the Authority risks facilitating an upward spiral in domestic gas prices in Western Australia. This will restrict the development potential of minerals in Western Australia, particularly in the South West Coast Region and will force consumers to consider alternative fuel sources.

Finally, the Operating Specification will severely limit the potential for any intra-state and inter-state gas trading, restricting Australia’s ability to promote efficient use of gas by managing and optimising supply and demand.

In addition, a failure to adopt the existing part haul tariff arrangements will result in substantial tariff increases for users with Delivery Points in the Pilbara Region and at Carnarvon. This is contrary to the interests of those users and will have a serious impact on existing and future industrial development in those areas.

In respect of Multi-shipper Inlet Points, it is unreasonable to exclude the concept of “blended specification, as determined by the weighted average of all the operating specifications for which there are relevant shipping contracts delivering gas into that Inlet Point, via a commingled gas stream. The failure to include this concept reduces shippers to a lowest common gas specification approach for dealing with gas quality determinations at Multi-shipper Inlet Points.

10.2 NWSG’s proposed amendments

NWSG submits that:

- (1) the Operating Specification be removed from Item 1 of Schedule 2 of the Proposed Revised Access Arrangement and replaced with the Regulations Broadest Specification;
- (2) Item 3 of Schedule 2 be removed from the Proposed Revised Access Arrangement;

- (3) Accordingly, clauses 2.8, 2.9 and 2.10 of the Proposed Revised Access Arrangement be removed from the Proposed Revised Access Arrangement;
- (4) The Part Haul Service be included as a Reference Service and the existing Part Haul tariff arrangement be retained and
- (5) Clause 3.3(c) of the Proposed Revised Access Arrangement be modified to enable a notional “blended specification” as determined by the weighted average of all the operating specifications for which there are relevant shipping contracts delivering gas into that inlet via a commingled gas stream

NWSG further submits that if the Regulator’s approval of the Proposed Revised Access Arrangement is delayed for any reason, including the need to consider extensive public submissions, then as a temporary measure, the Regulator should amend the existing Access Arrangement to incorporate the Regulations Broadest Specification. NWSG emphasises the importance of introducing the Regulations Broadest Specification on and from 1 July 2005 and notes that the failure to achieve this timeframe cannot be adequately remedied by the subsequent approval of an Access Arrangement which incorporates the Regulations Broadest Specification with retrospective effect.

Glossary of terms used in this submission

ACCC means the Australian Competition and Consumer Commission.

APPEA means the Australian Petroleum Production and Exploration Associated Limited.

Australian Standard means Australian Standard AS 4564.

Authority means Economic Regulation Authority, which for purposes of the Code, is the Relevant Regulator.

COAG means the Council of Australian Governments.

Code the National Third Party Access Code for Natural Gas Pipeline Systems.

Consortium means the consortium comprising Diversified Utility and Energy Trusts, Aloca of Australia Ltd and Alinta Limited.

DBNGP means Dampier to Bunbury Natural Gas Pipeline.

DBNGPT means DBNGP (WA) Transmission Pty Ltd.

Draft Decision means the draft decision of the Regulator dated 21 June 2001, in respect of the proposed access arrangement submitted by Epic Energy (WA) Transmission Pty Ltd on 15 December 1999.

DUET means Diversified Utility and Energy Trusts.

Epic Decision means the Western Australia Supreme Court of Appeal case Re Dr Ken Michael AM: Ex Parte Epic Energy (WA) Nominees Pty Ltd & Anor [2002] WASCA, 231.

Energy Report means the report recently prepared by the Western Australian Department of Industry and Resources entitled "Energy for Minerals Development in the South West Coast Region of WA".

Final Decision means the final decision of the Regulator dated 23 May 2003, in respect of the proposed access arrangement submitted by Epic Energy (WA) Transmission Pty Ltd on 15 December 1999.

HHV means a lower minimum Higher Heating Value.

Item 3 Specification means the gas quality specification set out in Item 3 of Schedule 2 of the Proposed Revised Access Arrangement.

Letter means the letter from the Office of Energy to the Regulator dated 2 April 2003.

NCC means the National Competition Council.

NWSG means North West Shelf Gas Pty Ltd.

NWSJVs means North West Shelf Joint Venturers.

Operating Specification means the components of the gas quality specification which gas supplied to the DBNGP must comply with under the Proposed Revised Access Arrangement, as set out in Item 1 of Schedule 2 of the Proposed Revised Access Arrangement.

Parer Report means the 2002 report of the Ministerial Council on Energy entitled "Towards a truly national and efficient energy market".

Plant means the Wesfarmers owned and operated WLPG straddle plant.

Proposed Revised Access Arrangement means the proposed revisions to the Access Arrangement for the DBNGP received by the Authority from DBNGPT on 21 January 2005.

Regulations means the *Dampier to Bunbury Pipeline Regulations 1998* (WA).

Regulations Broadest Specification means the gas specification introduced by the Regulations referred to as the “broadest specification”.

Report means the report by the Office of Energy entitled “Review of the Gas Quality Specification for the Damper to Bunbury Natural Gas Pipeline Western Australia”, which was produced in November 1995.

Statement means the Produce Disclosure Statement issued by DUET in November 2004.

2003 NCP Assessment means the assessment of the National Competition Principles.

List of References referred to in the submission

‘Review of the Gas Quality Specification for the Dampier to Bunbury Natural Gas Pipeline’, Western Australia, November 2005.

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‘Towards a Truly National and Efficient Energy Market’ (Parer Report), Commonwealth of Australia.

‘Energy for Minerals Development in the South West Coast Region of Western Australia Study Report’, Sleeman Consulting, December 2004.

Final Decision ‘Access Arrangement proposed by NT Gas Pty Ltd for the Amadeus’, ACCC , 4 December 2002.

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