DAMPIER TO BUNBURY NATURAL GAS PIPELINE

PROPOSED ACCESS ARRANGEMENT UNDER THE NATIONAL ACCESS CODE

RESPONSE TO COURT DECISION PUBLIC VERSION

Submission CDS#1: Overarching Submission

11 December 2002

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1. Opening Remarks

1.1 On 14 August 2001 Epic Energy took the significant step of launching a Supreme Court of WA action for judicial review of the Regulator's Draft Decision in relation to the proposed Access Arrangement for the DBNGP. It did not do that lightly. In fact it chose to go then in order to provide a more expeditious outcome than would have occurred if it had waited until the Final Decision. This was coupled with the considerable pressure from its Banking syndicate which resulted from the issue of the Draft Decision, which meant that Epic Energy had to take a proactive approach.

1.2 Without doubt that course has led to a considerable delay in the Regulator being able to issue his Final Decision. However, Epic Energy wishes to place on the record that it has been pleased with the Regulator's proactive approach after the hearing of the Court case in continuing to progress his consideration of material filed in relation to the Draft Decision.

1.3 While different views may be expressed, Epic Energy believes that the Court's decision handed down on 23 August 2002 had significant consequences nationally for the application of the Code. It essentially changes the way the Code should be applied from how it has been applied by Regulators in the Eastern States to date. This significance has been referred to in a number of forums. The Draft Decision sought to maintain some consistency with the approach adopted by those Regulators.

1.4 The Court's Decision will provide some invaluable guidance to the Regulator on this changed approach and Epic Energy believes it paves the way for a completely different approach to be taken – one more consistent with the intent of the Competition Principles Agreement and the observations of the Hilmer Committee, as noted by the Court in its Decision.

1.5 As outlined below, Epic Energy has endeavoured to corral together all the relevant information along with further information, in a series of further submissions, to assist the Regulator in this task, given the quantum of information already before him. Epic Energy acknowledges that the Regulator appreciates the need to move forward expeditiously and is doing what he can to achieve that. Epic Energy looks forward to putting the issues between it and the Regulator associated with the legal proceedings to one side and to proceed forward with the Regulator to resolve this matter as expeditiously as possible.

2. Introduction

2.1 This submission is one of a number of submissions being made to the Regulator in response to the decision of the Full Court of the Supreme Court of Western Australia ("Court") on 23 August 2002 in relation to Epic Energy's legal challenge of the Regulator's draft decision issued on 21 June 2001 ("Court Decision").[1]

2.2 In response to the Court's reasons for decision, the Regulator issued an Information Paper on 2 September 2002 which outlines the process the Regulator intends to follow in light of the Court's decision.

2.3 The Information Paper provides (as suggested by the Court Decision) that the regulatory decision making process should proceed in accordance with the Code subject to the Regulator allowing all interested parties a reasonable time to prepare and provide submissions to the Regulator which have regard to the reasons in the Court Decision and their effects on matters identified in the Draft Decision as being the reasons for requiring amendments to the proposed Access Arrangement.

2.4 As part of that process, the Regulator required all submissions to be provided to him by a specified date (which was extended to 8 November 2002).

2.5 The Regulator closed the public consultation period, notwithstanding the fact that the declaratory orders remained to be finalised. In fact, as at the date of this submission – more than 3 months after the Court Decision – the orders are still outstanding.

2.6 The delay in finalising the orders has occurred notwithstanding the fact that Epic Energy proposed the declaratory orders suggested by the Court in paragraph 223 of the Court Decision. The Regulator has not agreed to them.

2.7 While Epic Energy is conscious of the need to progress the regulatory approval process as expeditiously as possibly, it has challenged the reasonableness of closing the public consultation process before the declaratory orders are granted.

2.8 Epic Energy's reasons have been outlined in correspondence with the Regulator and accordingly, Epic Energy does not intend to restate them in this submission, suffice it to say that without the orders finalised or being provided access to all the information relating to the sales process that is in the Regulator's possession or control, it is difficult for any party, including Epic Energy, to make proper submissions on "the effects of the reasons in the Court Decision on matters identified in the Draft Decision [by the Regulator] as being the reasons for requiring amendments to the proposed access arrangement."

2.9 Nevertheless, Epic Energy has elected to participate in the public consultation process because it is driven by expediency.

[1] Re Dr Ken Michael AM; Ex parte Epic Energy (WA) Nominees Pty Ltd & Anor [2002] WASCA 231 11 December 2002

2.10 This submission and the others that are being simultaneously provided to the Regulator as part of his deliberations are therefore being provided on the basis that the declaratory orders will reflect those suggested by the Court in para 223 of the Court Decision.

2.11 In preparing these submissions it is also important to note that Epic Energy has not had access to all the information which the Regulator has relied on to date. Furthermore, there is additional information which Epic Energy believes the Regulator should obtain but which Epic Energy has been unable to for one reason or another.

2.12 Therefore, because:

(1) the Full Court has not yet made final orders in the above proceedings;
(2) the Regulator has not disclosed all information that he has relied upon or intends to rely upon; and
(3) Epic Energy has urged the Regulator to exercise his information collection powers under Schedule 1 to the Gas Pipelines Access (Western Australia) Act 1998 (WA) ("Act") to obtain further information;

Epic Energy reserves the right to file further submissions after the final form of declaration is known and the information is released.

2.13 This submission acts as an overarching submission for a number of submissions, each of which deals with a particular issue stemming from the Court Decision and/or the Draft Decision. The submissions provide further information in relation to each issue and where appropriate, summarise Epic Energy's position on each issue that has been put forward to the Regulator in prior papers. Some of these submissions are provided on a confidential basis. As has been the practice to date, Epic Energy will shortly provide the Regulator with revisions of those submissions with the confidential information deleted which can therefore be released publicly.

2.14 The submissions are as follows:

Identifier	Submission Title
CDS#1	Overarching Submission
CDS#2	Substantive submissions concerning the Regulator's assessment of the Reference Tariff and the Reference Tariff Policy
CDS#3	DBNGP Sale Process
CDS#4	The Deferred Recovery Account
CDS#5	Response to Draft Decision Amendments
CDS#6	Response to Third Party Submissions

2.15 Submission CDS#2 is a submission concerning the effect of the Court decision on the Regulator's assessment of Epic Energy's proposed access arrangement, in particular the proposed reference tariff and reference tariff

policy components of the access arrangement. The submission has been prepared in collaboration with Epic Energy's legal and regulatory advisors and has been endorsed by them.

2.16 Submission CDS#3 is a submission which pulls together factual information already provided together with further factual information relating to the sale process for the DBNGP. This is particularly important given that the proposed access arrangement is so intrinsically linked to the circumstances surrounding the sale of the DBNGP. This submission should be read together with the earlier submissions provided by Epic Energy on this issue (both before and following the draft decision).

2.17 Submission CDS#4 is a submission which contains a further report from the Brattle Group further explaining the deferred recovery account and the regulatory model that underpins the tariffs proposed by Epic Energy in its access arrangement and their consistency with the Code.

2.18 Submission CDS#5 contains responses to specific amendments in the Regulator's Draft Decision. However, it should be noted that as the access arrangement must be treated as a single complete package, it is difficult for Epic Energy to commit to any definitive response to certain amendments when it is unclear as to the outcome of the Regulator's assessment process.

2.19 Submission CDS#6 is a response to issues raised in the more than 100 submissions filed since the draft decision.

3. The Court Decision – Impact on assessment of Epic Energy's proposed access arrangement

3.1 Submission CDS#2 contains a detailed analysis of the Court Decision from Epic Energy's legal advisers and a detailed list of propositions adopted by the Court.

3.2 It is important that the Regulator consider this submission together with the other submissions being lodged simultaneously with it, not only because of the fact that the declaratory orders are yet to be finalised, but also because of the importance of the Court Decision in relation to how the Regulator must proceed with his assessment of the proposed Access Arrangement. As stated above in section 2 of this submission, the next decision that the Regulator makes will effectively be a matter of "sudden death" for Epic Energy, particularly given Epic Energy's circumstances.

3.3 Accordingly, Epic Energy urges the Regulator to indicate whether he has any disagreement with the substance of this submission and any of the accompanying submissions prior to him making his next decision. The importance of this can not be underestimated by the Regulator.

3.4 Without wanting to detract from the importance for the Regulator to read the entirety of Submission CDS#2 and risking placing greater importance on some aspects of it over other aspects of it, following are the key aspects of the advice and its impact on the Regulator's task of assessing the proposed access arrangement.

Nature of the assessment process

3.5 The first important issue to be dealt with is the nature of the assessment process which s.2.24 requires the Regulator to follow in making a final decision, whether to approve a proposed Access Arrangement. This was carefully considered by the Full Court.

3.6 The Full Court held that:

(a) the Code establishes a single process of assessing a proposed Access Arrangement and deciding whether or not to approve it;[2]

(b) in that process, the Regulator is required by s.2.24 to take the stipulated factors into account and to give them weight as fundamental elements;[3]

(c) the process of assessment includes giving weight as a fundamental element to the s.2.24 factors in the consideration of s.3.1 to 3.20, including the consideration of s.8 as incorporated through ss.3.4 and 3.5;[4]

[2] Reasons para 58.
[3] Reasons para 55.
[4] Reasons paras 61-69.

(d) consideration of ss.3.4 and 3.5 involves an evaluation and exercise of judgment and discretion, taking due account of inter-related matters;[5]

(e) assessing whether a proposed Reference Tariff and Reference Tariff Policy comply with s.8 principles does not involve the Regulator undertaking calculations producing fixed results and a fixed "yes" or "no" answer, but involves considering whether the proposed Reference Tariff and Reference Tariff Policy are consistent with the stated "principles" (not prescriptions) – the notion of compliance does not involve a single uniquely correct outcome, but a determination whether the proposal is reasonable within s.8;[6]

(f) in evaluating the application of ss.3.4 and 3.5 (ie, in considering compliance with the s.8 principles), the factors in s.2.24 are applicable and guide the Regulator in the exercise of the discretions contemplated by the last paragraph of s.8.1.[7]

3.7 Therefore, the correct approach to assessing a proposed Access Arrangement and deciding whether it should be approved may be explained as follows:

(a) there is a single, overall process of assessment, which involves inter-related components or elements – it does not involve a series of individual, final decisions which severally and mechanically produce an outcome;
(b) of necessity, the initial consideration of matters of detail under s.3.1 to 3.20 (including s.8) will be to an extent provisional in nature, for the proposal must be assessed overall and in an integrated manner, taking full account of the interaction between factors with proper weight being given to the s.2.24 factors, before final views are formed; and
(c) a central feature of the process is an evaluation of the proposed Access Arrangement, and the supporting case propounded by the service provider, having regard to the s.2.24 factors and the weight to be accorded to them as fundamental elements in the particular circumstances of the case.

3.8 In light of these principles, the sole question for the Regulator pursuant to s.2.16 is whether the proposed Access Arrangement should be approved. The task is not for the Regulator to calculate his own version of a Reference Tariff or Reference Tariff Policy or to determine his own version of a proposed Access Arrangement.

3.9 Further, any attempt to segment the process of assessment and approval into sequential and component parts denies the fundamental nature of the process as a single one, and precludes attainment of the harmony and consistency which is achieved by a proper understanding and application of

[5] Reasons paras 57-63.
[6] Reasons paras 64-68.
[7] Reasons paras 69, 203.

the s.2.24 factors. The Regulator's counsel accepted this form of analysis in argument on 28 November 2002.[8]

3.10 In carrying out this assessment process, the Court did not hold that considerations of economic theory should be accorded any overarching significance. Rather, the Court emphasised that it is the factors in s.2.24(a)-(g) which are to be given weight as fundamental elements of the assessment process, and these may accommodate wider considerations than simply economic policy objectives, such as "embracing the protection of the interests of owners of pipelines", which may extend to "the assurance of fair and reasonable conditions being provided where [the] private rights [of pipeline owners] are overborne by a statutory scheme".[9]

3.11 On this issue, it could even be argued that the conclusion of the Court was that economic theory itself was not driven to replicating a theoretically competitive outcome that equated to lowest possible costs. It's conclusion as to what was meant by the term "competitive market" is an example of this where the Court concluded that it meant a "workably competitive market".

Matters relevant to Regulator's consideration of access arrangement in light of proper construction of the Code.

3.12 In light of the above conclusions drawn by the Court as to the proper construction of the Code, the factual matters which Epic Energy considers should be recognised as having fundamental weight throughout the entire assessment process (subject to particular provisions of the Code) due to the operation of s.2.24 are outlined in detail in Epic Energy's submissions CDS#2 and CDS#3 filed simultaneously with this submission.

3.13 In summary, they are as follows:

(a) the sale process for the DBNGP was designed and sanctioned by the State Government and the Minister for Energy to achieve the maximum commercial price in an arms-length transaction for the sale of an infrastructure asset, in respect of which there was no existing market structure to facilitate a sale. The State's objectives behind the sale were clearly represented in documentation and statements at the time of the sale and confirmed following it;

(b) the State was therefore conscious of the need to ensure that there was certainty in relation to the other major elements that affected the price – tariffs and expansion.

(c) the bid price tendered by Epic Energy represented a sound commercial assessment of the value of the pipeline in the circumstances then prevailing and anticipated;

(d) judged by reference to the conduct of other potential investors in the market for the pipeline, the price paid by Epic Energy could not be

[8] Transcript p 699.
[9] Reasons para 134, see also for example, paras 130-133, 179-184, 205-206, 223.

regarded as reckless, mistaken or highly speculative. Moreover, the independent commercial assessment of the banks financing Epic Energy justifies the commercial reasonableness of Epic Energy's bid price. [deleted – confidential];

(e) [deleted – confidential];

(f) [deleted – confidential];

(g) The principal users of the pipeline are Alcoa, AlintaGas (now itself privatised) and Western Power. The expectations of at least AlintaGas and Western Power prior to commencement of the Code,[10] were that tariffs would be and remain in the order of $1/GJ to Perth;[11]

(h) the State Government made a conscious decision to accept the highest bid for the DBNGP, based on a tariff of $1/GJ applying from Dampier to Perth, rather than to accept the bid offering the lowest tariff. [deleted – confidential];

(i) it is legitimate for Epic Energy to pass on to shippers any capitalised monopoly profits charged by the State to Epic Energy as part of the bid price;

(j) Epic Energy should be allowed to earn an appropriate return on investment to permit it: (i) to stay in business; (ii) to ensure the safe and reliable operation of the pipeline; (iii) to take account of regulatory risk and the fact that the DBNGP came under independent regulation for the first time immediately after the sale; (iv) to provide a reasonable and commercial return to Epic Energy's funders; and (v) to provide Epic Energy's owners with the incentive to advance further equity to expand the DBNGP;

(k) the price paid by Epic Energy, in the circumstances outlined in subparagraphs (a) to (i) above, could not be regarded as reckless, mistaken or highly speculative;

(l) [deleted – confidential];

(m) the fixed and binding contractual arrangements entered into by Epic Energy as a direct result of purchasing the DBNGP, which oblige Epic Energy to pay the banks interest of approximately $[deleted – confidential] million per annum, and to repay a principal amount of $[deleted – confidential] billion, expiring on [deleted – confidential];

(n) historically, significantly high tariff levels applied when the DBNGP was owned by the State, and the direct consequence of its sale was a reduction in tariff levels by approximately 20%;

[10] Which are also relevant under s 8.10(g) - Reasons para 169.
[11] See s 8 of CDS#3.

(o) the undertaking by Epic Energy as part of its purchase to expand the DBNGP's capacity at a cost of $875 million over ten years, subject to demand, without increasing the tariff on an incremental basis – and Epic Energy has already implemented approximately $125 million of that amount on that basis;

(p) Epic Energy's expectations were, in fact, that it would be given the opportunity to earn a stream of revenue to recover the capital costs of the acquisition over the expected life of the pipeline and an appropriate return. Those expectations were reasonable given:

a. it was not a feature of the regulatory regime under the Code (to the extent it was then in prospect) that only "efficient" capital investment should be considered or that only "regulated" revenues would be recovered;[12]
b. the legitimate business interests of a service provider were to be taken into account under the Code as a fundamental factor in the assessment of an access arrangement and those interests could include monopoly returns; and
c. the price it paid was reasonable in all the known and anticipated circumstances and was the subject of an arms-length transaction with the State, which was the vendor;

(q) Epic Energy's proposed reference tariff is comparable to, or below, the tariff levels which apply to comparable pipelines throughout Australia and the rest of the world.

3.14 Given the above facts and the fundamental importance to be afforded to the factors in section 2.24 and the harmony of many of those factors with the principles contained in section 8.1, Epic Energy considers that it has demonstrated that its proposed access arrangement must be accepted by the Regulator.

[12] Reasons paras 204-207.

4. Preliminary matters critical to Regulator's assessment process

4.1 There are two final preliminary matters that need to be raised at this point of the assessment process.

Request for Meeting

4.2 First, Epic Energy requests that it be afforded an opportunity to meet with the Regulator to discuss aspects of the information contained in this and the accompanying submissions. In this respect, Epic Energy will contact you to arrange a mutually convenient time for this meeting.

Release of Information

4.3 The second matter relates to the disclosure by the Regulator of any other information or advice that the Regulator obtains from any source and which he intends to rely upon for the purposes of reviewing his Draft Decision and proceeding with the regulatory approval process.

4.4 While Epic Energy has raised this issue in previous correspondence to the Regulator, it is important that it be formally raised in this submission.

4.5 The process the Regulator has implemented for the remainder of the regulatory approval process for the DBNGP access arrangement amounts to a matter of "sudden death" for Epic Energy. Accordingly, it is essential that Epic Energy and other affected parties be given a full and wholesome opportunity to consider and respond to **all and any** information that is relevant to the Regulator's assessment of the proposed access arrangement **before** the next decision is issued by the Regulator.

4.6 It is important for the Regulator to understand why there is the need for the process to be transparent is of upmost importance in this case. The Court concluded that at law, Epic Energy made out a sufficient case to warrant the grant of the prerogative relief it was seeking. However, for the following reasons, the Court elected not to exercise its discretion to grant such relief in this case:

(a) The circumstances of Epic Energy are such that it would be adversely affected if the regulatory approval process was forced to be recommenced from the beginning;
(b) The Court expected that the Regulator, in proceeding with the regulatory approval process, would allow all affected parties a reasonable time to prepare and provide submissions that have regard to the Court's decision and its effect on the amendments identified in the Regulator's draft decision; and
(c) In addition, and probably most importantly, the Regulator undertook that it would adhere to the Court's decision in the remaining steps of the regulatory approval process.

4.7 In these circumstances, leaving aside legalities, Epic Energy suggests that it is only fair that if the Regulator proposes to act on (or for that matter disregard or consider irrelevant) material which potentially affects Epic Energy (whether positively or negatively), Epic Energy should have the opportunity of considering the material and responding to it as part of its submissions that are made to the Regulator before he acts. Epic Energy cannot see that there is any public interest which would be served by not revealing to it (prior to the next decision) advice or information which the Regulator may have received that is relevant to the Regulator's assessment of the proposed Access Arrangement for the DBNGP.

4.8 It is in the public interest that all arguments, both for and against Epic Energy's proposals, should be available for public scrutiny and debate subject only to necessary preservation of confidentiality (where not to do so would cause detriment). It is only by that process that the Regulator can be sure that all available positions have been canvassed, and that he has all the necessary information before him to form a proper judgment.

4.9 While Epic Energy places emphasis upon the inherent fairness of the situation to support this point, it also seems to accord with the legal position concerning procedural fairness. As a statutory decision maker, the Regulator is required to observe the requirements of natural justice unless these are excluded by legislative intention. In addition Parliament is not taken to have excluded these requirements, except where particular words clearly show such an intention. The Gas Pipelines Access (Western Australia) Act does not reveal any intention to exclude the requirements of natural justice. In fact, the whole process of assessment of an Access Arrangement contained in the Code with the requirements of a draft decision followed by a final decision and the possibility of a further final decision, is aimed at ensuring that there is proper disclosure and discussion of all relevant material at every stage.

4.10 Further, the Regulator has the power to obtain information or a document from a person which may assist him in the performance of his duties. This power is contained in s.41 of Schedule 1 to the Gas Pipelines Access (Western Australia) Act.

4.11 Consistent with the above comments urging fulsome transparency in the process, if the Regulator obtains information pursuant to a s.41 Notice, and the person providing the information does not state that the information is confidential or commercially sensitive, that information should be disclosed before the next decision is issued. However, if the person providing the information states that it is confidential or commercially sensitive, in assessing whether the Regulator should disclose it, the Regulator should have regard to whether its disclosure to Epic Energy (or to any other person) would cause detriment to the person providing the information or document or whether the public interest in disclosure would outweigh any such detriment.

4.12 Epic Energy considers that very little of the information surrounding the circumstances of the sale of the DBNGP could presently cause detriment to any person if revealed publicly. In fact it is useful to note that all bidders involved in the sale of the DBNGP, other than Epic Energy, are no longer

bound to keep details of the sale process confidential (although Epic Energy has claimed that even it is not bound by confidentiality constraints in this regard because of a repudiation of the Confidentiality Release Deed by AlintaGas). This is discussed in more detail later on in the submission.

4.13 [deleted – confidential].

4.14 Consistent with the above, there is an important public interest in the circumstances of the sale process now being publicly known, given that this will materially affect the Reference Tariff and Reference Tariff Policy in the proposed Access Arrangement.

4.15 [deleted – confidential].

4.16 In the event that notwithstanding these points, the Regulator remains concerned about continuing confidentiality obligations, to assist matters, Epic Energy is prepared to procure undertakings to the Regulator that if he discloses any information obtained under a s.41 Notice to Epic Energy's independent legal or other expert advisers, these persons will keep that information confidential unless released from that undertaking by the Regulator or the Court. This will at least allow Epic Energy's advisors to consider the relevant material and make submissions to the Regulator (or take other action) concerning his powers under s.42.

4.17 Therefore, in assessing whether any detriment will be caused by disclosing information or documents obtained under a s.41 Notice to an adviser of Epic Energy, the Regulator should take into account the confidentiality undertaking which Epic Energy will procure from these persons and the limited nature of the requirement to disclose (i.e. Epic Energy staff will not see the documents without your consent or an order of the Court).

4.18 Epic Energy again requests that the Regulator provide it with a copy of any s.41 Notice which he has served or does serve for the purposes of assessing the proposed Access Arrangement for the DBNGP. Epic Energy has a legitimate interest in the type of information which the Regulator is seeking, as it is information which concerns Epic Energy's proposed Access Arrangement. Further, Epic Energy would be entitled to a copy of any s.41 Notice pursuant to the Freedom of Information Act 1992 (WA), legislation from the application of which the Regulator is not exempt in respect of documents which relate "to a matter of an administrative nature concerning the Regulator" (see clause 7A of Schedule 2). The nature of the inquiries which the Regulator carries out are evidently "of an administrative nature". Epic Energy accepts, of course, that the Freedom of Information Act, in itself, would not entitle it to any information or document that the Regulator obtained in response to a s.41 Notice.

4.19 Epic Energy has sought the Regulator's assurance that he will provide it with a copy of any s.41 Notice that he issues or has issued, in particular, those which relate to his further consideration of the Draft Decision. Also, Epic Energy has sought the Regulator's assurance that where necessary, he will take into account the confidentiality undertaking proposal, outlined above, in

assessing whether to disclose to Epic Energy any information or document obtained in response to a s.41 Notice.

Additional information to be obtained under section 41 powers

4.20 There are two further categories of information that Epic Energy believes the Regulator must disclose to all stakeholders and allow them to comment on before he proceeds with the next step in the regulatory approval process. The first category relates to any advices received by the Regulator from various expert consultants engaged by him for the purposes of the regulatory approval process. As such the advice provided by them is no different from that provided to the Regulator by interested parties. Hence all parties to this process, including Epic Energy, should be given an opportunity to review and comment on that material, irrespective of whether that material is relied upon by the Regulator for the purposes of performing his statutory functions. This is important not only to ensure procedural fairness, but also to ensure that the Regulator receives a complete and fair balance of views that he considers in making his deliberations.

4.21 The second category of information relates to the information concerning the circumstances of the sale of the DBNGP that Epic has not been able to access for one reason or another. This information is highly relevant and Epic Energy simply can not access. However, the Regulator can and it will therefore be necessary for the Regulator to use his information collection powers to obtain. This information is identified in Submissions CDS#2 & CDS#3. It includes the following:

- A complete list of questions and answers made to the GPSSC by all bidders in the process. This documentation we understand is retained by the Office of Energy.
- Details of the complying and non complying final bids lodged by the other bidders for the purchase of the DBNGP, including but not limited to the price bid. Once again, this information is retained by the Office of Energy.
- Details of financial analyses and any due diligence enquiries conducted by the banks which financed the purchase.
- information concerning the reason why the Price Waterhouse report was commissioned, from the relevant people involved in preparing it, for example Mr Paul Baxter (PriceWaterhouseCoopers). Further, the Regulator should obtain the correspondence leading to the terms of reference for the preparation of the report, including the initial letter of engagement and the subsequent letter refining the initial terms of engagement (which Epic Energy understands was dated 8 July 1997).
- Details of any analyses conducted by the GPSSC as to the financial viability of bidders which lodged final binding bids.

4.22 Epic Energy would be happy to assist in this respect by drafting the necessary section 41 notices to access this information. The Regulator will appreciate that that is not dissimilar to the issue of summonses in a Court process.