

Attachment 5

Letter GPSSC to Epic Energy dated 8 September 1997

See attached

Dampier to Bunbury Natural Gas Pipeline Gas Pipeline Sale Steering Committee

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28 The Esplanade
PERTH WA 6000
GPO Box W2030
PERTH WA 6001

8 September 1997

Mr Hugh R James
Chief Executive Officer
Epic Energy Pty Ltd
Level 36, Central Plaza One
345 Queen Street
BRISBANE QLD 4000

Dear Mr James

DBNGP Sale Process

The GPSSC is conducting a sale by tender, on behalf of the State, of the DBNGP Assets. The GPSSC is pleased to provide you with four copies of the IM. This IM is being provided to you, and persons acting on your behalf, subject to the terms of the Confidentiality Undertaking, the terms of the IM and this letter, for the purpose of evaluating the prospect of acquiring the DBNGP Assets.

Candidates should note that the GPSSC considers the information contained in the IM to be materially accurate as at 18 August 1997. The terms used in this letter have the meanings given to them in the IM, unless the context otherwise requires.

This letter details the key objectives of the State and the principal components of the DBNGP Sale process. It is structured as follows:

1. Objectives of the DBNGP Sale
2. Phase I: Invitation to Register Interest
3. Phase II: Non Binding Bids
4. Phase III: due diligence and Final Bids
5. Rules for submission of Final Bids under Phase III
6. Communication
7. Costs and expenses

Confidential

This document may contain commercially sensitive confidential information. Accordingly, it is not to be taken from it nor are copies to be made of it and it is not to be distributed or disclosed to any person without prior written authorisation of the Chairman, Gas Pipeline Sale Steering Committee.

1. Objectives of the DBNGP Sale

The State has a number of key objectives which it is seeking to achieve in relation to the DBNGP Sale, including:

- maximising the proceeds from the sale of the DBNGP Assets within the context of the objectives listed below;
- enhancing the operating efficiency and utilisation of the DBNGP Assets;
- reducing transmission prices;
- reducing future demands upon State capital;
- reducing the State's exposure to the business risks of the DBNGP Assets;
- minimising the impact of the sale upon the Transmission Division's workforce;
- facilitating the ongoing viability of the remaining AlintaGas businesses; and
- reducing the potential for conflicts of interest which might potentially compromise the efficient operation of the DBNGP Assets and the operation of a competitive gas market in the State.

2. Phase I: Invitation to Register Interest

Phase I covered the period prior to the despatch of the IM in which parties interested in participating in the DBNGP Sale registered interest with the GPSSC.

3. Phase II: Non Binding Bids

Phase II commences upon the despatch of the IM. The information about the DBNGP Assets made available during Phase II will be confined to information contained in the IM, unless the GPSSC decides to distribute further information to Candidates during this phase. Candidates are asked to submit a non binding bid ("Non Binding Bid") on or before 5:00 p.m. (Western Standard Time) Friday 24 October 1997, to the State, care of:

Mr Graham Baker
Head of Project
GPSSC Working Group
Gas Pipeline Sale Steering Committee
Level 15 The Griffin Centre
28 The Esplanade
PERTH WA 6000

A Non Binding Bid received after the relevant time will only be considered at the sole discretion of the GPSSC.

A complying Non Binding Bid (“Complying Non Binding Bid”) must be submitted for a Candidate to be eligible to proceed to Phase III.

A Complying Non Binding Bid must address the matters detailed in 3.1 to 3.6 inclusive below.

3.1 Identity, structure and financial resources of the Candidate

Each Candidate must provide a full description of its form and structure, including, where relevant, full identification of the principal parties intended to contribute to the acquisition of the DBNGP Assets (“Principals”), the place of incorporation and principal nature of business of each Principal and the manner in which each Principal intends to participate in the acquisition of the DBNGP Assets through the Candidate.

Specifically, a Candidate must provide:

3.1.1 Details of each Principal

The full name, address, telephone number and facsimile number of each Principal involved in the Candidate’s bid, including a main contact for each Principal, as well as such other details which clearly identify the Principals who are participating in the Non Binding Bid through the Candidate.

3.1.2 Details of Candidate structure

The legal structure of the Candidate, whether a joint venture, partnership, corporation or otherwise, and the extent and form of participation of each Principal and any affiliations which exist between Principals.

3.1.3 Financial information and beneficial ownership

Annual reports of the Candidate (if any) and each Principal for the last three years, including the audited, consolidated (if applicable) profit and loss and balance sheets of the entity which will be the ultimate holding company of each Principal’s interest in the Candidate, and credit ratings, if any, for that entity published by generally accepted credit rating agencies. Information as to the beneficial ownership of each Principal and its ultimate holding company is also required.

3.1.4 Financial resources of each Principal

Information sufficient to clearly demonstrate the ability or capacity of each Principal to finance its participation in the acquisition of the DBNGP Assets.

3.1.5 Conditions on transaction completion

Information clearly identifying any conditions applying to the Candidate, and any Principal, under any relevant law, regulation, stock exchange listing rule, memorandum or articles of association, existing contractual condition or other constraining factor, which would prevent or delay the Candidate or any Principal from completing the transaction proposed in the Non Binding Bid submission at the time it is made. Where any such condition is identified, the Candidate must outline the nature of the condition and any relevant time period for resolution.

or satisfaction of the condition, and the proposed course of action for achieving that resolution or satisfaction.

3.1.6 Effective operation

Clear definition of the manner in which any necessary senior management functions will be provided, and the other principal functions required for the assumption of ownership and effective operation of the DBNGP Assets will be fulfilled or provided, by the Candidate following the sale, including any input to be specifically sourced from any of the Principals.

3.2 Non Binding Bid Price

A Non Binding Bid must state clearly the Australian dollar price offered by the Candidate ("Bid Price") for the DBNGP Assets. Any proposed non cash consideration must be fully disclosed including, where relevant, the methodology for valuation of that consideration. The State's preference is for cash consideration.

Stamp duty payable to the State on any aspect of a Candidate's bid structure will be considered to be part of the sale consideration for the purposes of evaluating Non Binding Bid submissions. Candidates are advised that no exemptions will be given on the payment of stamp duty payable to the State in connection with the sale of the DBNGP Assets. Candidates must provide details on the estimated amount of stamp duty, and a breakdown of that estimate by category and amount, which would be expected to be payable by them to the State.

3.3 Key assumptions supporting Bid Price

Candidates must provide detailed information on the key qualitative and quantitative assumptions supporting the Bid Price. Specifically, a Non Binding Bid must include detail on the following matters:

3.3.1 Tariff path

The estimated path of tariffs in Australian dollars for the next 10 years, and the principal assumptions underlying those tariffs for the DBNGP under the Transitional Access Regime (recognising the proposed capped tariff arrangements) and the new regulatory regimes that are expected to govern future ownership and operation of the pipeline. The tariffs detailed under this requirement will not be binding upon the Acquirer but will be used by the GPSSC to evaluate the deliverability of Non Binding Bids and the consistency of Non Binding Bids with the State's objectives.

3.3.2 Pipeline capacity demand

The assumed growth in demand for natural gas transport capacity in the DBNGP over the next 10 years, in Tj/day, and the location and estimated amount of that demand along the DBNGP.

3.3.3 Pipeline expansion plans

One of the State's major considerations in selling the DBNGP Assets is to ensure that gas transmission capacity will be readily available to support economic development in the State. Candidates must demonstrate expertise in enhancing pipeline capacity (including relevant examples), their commitment to enhancing the capacity of the DBNGP and their ability to access the financial resources required to support such future capacity expansion. Candidates

must provide in their Non Binding Bids an indication of the location and length of looping and compressor enhancement which they would propose, as well as any other technical information they would require, in order to clearly define the way in which additional capacity is expected to be added to the DBNGP in the future by them.

The State will expect Candidates, in their Final Bid, to identify the potential to enhance the capacity and operating efficiency of the DBNGP and to reflect the value of that enhancement potential in their Final Bid.

3.3.4 Income tax

Candidates should be aware of the Federal Treasurer's Press Release of 4 August 1997 dealing with the policy in respect of exempt entity assets that become depreciable for taxation purposes. A copy of that statement is available from the GPSSC upon request.

Candidates are to make their own assessments as to the capital allowance base which will apply for taxation purposes and incorporate that in their Final Bid, if they are selected to proceed to that stage.

In the meantime, Candidates should note that the Auditor General issued his audit opinion on the relevant AlintaGas accounts for the year ended 30 June 1997 on 25 July 1997. The State is vigorously protesting the announced change to policy detailed in the Press Release with the Commonwealth, including whether the announced change should apply to sales processes already clearly underway and is advocating that if the change is implemented financial statements for 30 June 1997, on which audit opinions had been issued prior to 4 August 1997, should be acceptable for the basis of the capital allowance position for tax depreciation purposes.

Purely for the purpose of permitting comparisons between Candidates at the Non Binding Bid stage, Candidates must prepare their Non Binding Bids on the basis that the Acquirer will have an income tax deduction entitlement to a capital allowance base of \$940 million, which includes \$32.6 million in respect to the Stage 2 Enhancement forecast to be spent in the six months to 31 December 1997.

Candidates must provide details of all other income tax treatments adopted for the purpose of their Non Binding Bid.

3.4 Strategic objectives

Candidates must provide information on their strategic plans for the DBNGP Assets. This information should clearly detail any significant changes which the Candidates would propose to make to the gas transmission business if selected as the Acquirer of the DBNGP Assets.

3.5 Intended operating arrangements and credentials

Sufficient information must be provided within Non Binding Bids to demonstrate the credentials of the Candidate and its related Principals to operate the DBNGP. If the Candidate or the Principal(s) are not intended to be the operator, then the credentials of the proposed operator of the DBNGP must be provided. If a separate operator is proposed, then full details

which clearly identify that person, their legal structure, beneficial ownership, financial capacity and expertise must be provided in the Non Binding Bid.

3.5.1 Operating experience

Candidates must demonstrate that they possess, either directly or through committed arrangements with third parties, expertise in providing reliable gas transmission services and in ensuring security of supply.

3.5.2 Employee integration

Candidates must include a description of their proposals with respect to the integration of the existing employees of the Transmission Division into the new operations.

3.6 Plans for financing of Final Bid proposal

Candidates are advised that a Final Bid conditional on financing will not be acceptable. In their Non Binding Bids, Candidates are required to provide complete details of the way in which the Bid Price will be financed by the Candidate in the Final Bid, and details of any conditions precedent with respect to financing at the time of submission of the Non Binding Bid. Candidates will be required to either satisfy or remove these conditions, other than third party regulatory approvals, prior to their submission of a Final Bid.

Specifically, Non Binding Bids must include detail on the following matters:

3.6.1 Amount and providers of debt finance

Non Binding Bids must provide detailed information on the amount and form of debt financing to be utilised by the Candidate in acquiring the DBNGP Assets. The amount of each form of debt intended to be used to finance the acquisition, including conventional bank or project debt, bond financing and other forms of subordinated or mezzanine debt financing, must be identified. Information must be provided on the expected providers of each element of debt finance as well as the level and form of commitment of those providers to the Candidate's acquisition proposal.

3.6.2 Equity to be contributed by Principals

Non Binding Bids must clearly identify the amount of equity to be provided by each of the Candidate's Principals and the form of that equity contribution. Detail must be provided on all forms of equity, including convertible and preferred securities, which are elements of the acquisition capital structure. Candidates must clearly identify any approvals required or other procedural steps complied with before a Principal's equity contributions can be made, including approvals from a Principal's Board of Directors and any regulatory bodies.

3.7 Innovative bids

Candidates should be aware that this is their only opportunity to put their best bid forward for consideration and to qualify for the later phases of the DBNGP Sale.

Consequently, Candidates should use the opportunity to put their best bid forward and, in so doing, are encouraged to submit innovative bid proposals to best meet the objectives of the State.

3.8 External Advisers

A list of any external advisers (including investment bankers, financial and legal advisers) who are expected to work with Candidates or their Principals should be included in the Non Binding Bid.

3.9 Evaluation criteria for short-listing of Candidates

In evaluating Candidates for the purpose of inviting parties to participate in Phase III, the State will consider a number of factors which will include, without limitation, the price indicated by the Candidate in its Non Binding Bid, the Candidate's financial and operating strength and reputation and the Candidate's ability to consummate a transaction with the State in a manner which will best meet the State's objectives set out above.

It is intended that shortly after completion of Phase II, the GPSSC will notify Candidates as to whether or not they will be invited to participate in Phase III. The State intends to limit the number of parties invited to participate in Phase III. The State reserves the right, in its sole discretion and without recourse, to decide which Candidates will be invited to participate in Phase III and to reject any Non Binding Bid from further consideration, without disclosing the reason for any invitation or rejection.

4. Phase III: due diligence and Final Bids

Candidates participating in Phase III will be provided with the Asset Sale Agreement, specifying the terms upon which the State intends to effect the DBNGP Sale. Under the currently proposed procedures, those Candidates will be given the opportunity to conduct due diligence prior to submission of Final Bids.

It is intended that the due diligence procedures will include an opportunity for Candidates to meet the management of the Transmission Division, have access to selected DBNGP facilities and access to a data room. Further details of the due diligence procedures will be provided at the appropriate time to the Candidates participating in Phase III.

All Final Bids must be submitted in accordance with the "Rules for submission of Final Bids under Phase III" set out below. The State will evaluate the Final Bids as promptly thereafter as is reasonably practicable following their submission.

5. Rules for submission of Final Bids under Phase III

The following rules will govern the content and procedure for submission of Final Bids. It is intended that Final Bids shall be in the form of a letter, executed by the Candidate, accompanied by a signed copy of the Asset Sale Agreement.

1. All Final Bids must include a purchase price for the DBNGP Assets. Only Final Bids which are specific as to price and, where relevant, the form of consideration will be considered
2. The GPSSC will not request that any particular income tax treatments be adopted in the Final Bids. Candidates will need to form their own views on what income tax treatments they anticipate at that time.

Candidates will be required, in their Final Bids, to state the income tax treatments adopted in relation to their Final Bid and to demonstrate, with supporting detail, the extent to which any difference between their Final Bid and their Non Binding Bid is attributable to differences between their approach to income tax for the purposes of the Final Bid and the approach requested by the GPSSC, and any other income tax treatment adopted by the Candidate, in their Complying Non Binding Bids.

Candidates who wish to seek an advance opinion or private binding ruling from the Australian Taxation Office in relation to income tax issues associated with the acquisition of the DBNGP Assets should direct their enquiries to:

Mr Greg Janes
Assistant Commissioner
Privatisation Specialisation
990 Whitehouse Road
BOX HILL VIC 3128

Telephone: 613 9275 2937
Facsimile: 613 9275 2606

3. In addition to any variations in income tax approaches (discussed in 2 above), Candidates will be asked to indicate any material variations in any assumptions on any other matter which Candidates have made for the purpose of the Final Bid when compared with their Complying Non Binding Bid.
4. Candidates should be aware that Australian regulatory bodies or agencies may be involved in reviewing proposals by Candidates in respect of their acquisition of the DBNGP Assets. Candidates are encouraged to contact these bodies, including, without limitation, the Australian Competition & Consumer Commission and the Foreign Investment Review Board, in relation to their proposals.
5. Candidates should keep the GPSSC informed of the progress of any discussions they, or their advisers, have with any regulatory body or agency, including, without limitation, the Australian Tax Office, the Australian Competition & Consumer Commission and the Foreign Investment Review Board, in relation to their proposed purchase of the DBNGP Assets.
6. Final Bids must be sent to the State, care of Mr Graham Baker, Head of Project, GPSSC Working Group, Gas Pipeline Sale Steering Committee, Level 15, The Griffin Centre, 28 The Esplanade, Perth, Western Australia, 6000, on or before a date that will be specified and notified to Candidates by the GPSSC.
7. The State reserves the right to discuss with a Candidate at any time the terms of the Final Bid submitted for the purpose of addressing the terms of their bid in any respect.

8. Each Final Bid shall constitute an irrevocable and binding offer from the Candidate which shall be open for acceptance by the State for a period of time to be determined by the State and advised to Candidates.
9. The State shall have the discretion to accept or reject any Final Bid and shall have no obligation to accept any Final Bid, whether or not any such Final Bid represents the highest Final Bid price.
10. The Government reserves the right, in its sole discretion, at any time and from time to time, to determine and change the procedures that will apply in connection with the proposed sale, or suspend or cancel the proposed sale, without any obligation to provide notice or reasons to any person and without liability on the part of the State, the Government, the Minister for Energy, AlintaGas, the GPSSC or its Working Group, nor by any adviser or consultant to any of them, nor by any director, officer, shareholder, partner, affiliate, employee or agent of any of the aforementioned persons ("Relevant Persons"), or any of them, to any person for costs or claims of any nature whatsoever.

Candidates should be aware that the Government is prepared to vary from the sale process outlined in this letter and fast track the sale at any time if it considers this approach will best meet the objectives of the State.

11. The completion and implementation of the sale process is subject to the required new legislation being enacted by the Parliament and new regulations not being disallowed by the Parliament. It is the Government's intention to submit to Parliament that new legislation for enactment, and to lay before Parliament the new regulations, to enable the sale to be completed and implemented in the manner proposed by the Government. However, no representation or warranty is made by the Relevant Persons, or any of them, that the new legislation will be passed or that the intended new regulations will not be disallowed by the Parliament or, if passed or not disallowed, that the intended legislation or regulations will be in the form proposed by the Government and reflected in the IM.
12. It is a condition of the sale process that Candidates do not, in connection with the sale of the DBNGP Assets and without the prior written authority of Mr Graham Baker, Head of Project, GPSSC Working Group, contact any Minister, AlintaGas, including its management and employees, relevant unions, relevant employees of the State, relevant departments or agencies of the State. Any unauthorised contact with any such person, union, department or agency could result in disqualification of the Candidate from the sale process.

6. Communication

All communications, enquiries and requests for information relating to the DBNGP Sale should be made in writing and may be sent by facsimile, post or other delivery to:

Mr Graham Baker
Head of Project
GPSSC Working Group
Level 15, Griffin Centre
28 The Esplanade
PERTH WA 6000
Telephone: 618 9486 3284
Facsimile: 618 9486 3199

7. Costs and expenses

Each Candidate will bear all costs of its own investigation and evaluation of the DBNGP Assets, including the fees and disbursements of its own counsel and advisers, whether its Non Binding Bid or Final Bid is accepted or rejected for any reason.

Yours sincerely

GRAHAM BAKER
HEAD OF PROJECT