

Attachment 6

**Special Report of the Western Australian Auditor General – Sale of the
Dampier to Bunbury Natural Gas Pipeline, dated May 1998**

See attached.



AUDITOR GENERAL
Western Australia

**Sale of the
Dampier to Bunbury
Natural Gas Pipeline**



AUDITOR GENERAL

Western Australia

THE SPEAKER
LEGISLATIVE ASSEMBLY

THE PRESIDENT
LEGISLATIVE COUNCIL

**SPECIAL REPORT.— SALE OF THE DAMPIER TO BUNBURY NATURAL GAS
PIPELINE**

This Special Report has been prepared consequent to the requirement of Section 53 (1) of the *Dampier to Bunbury Pipeline Act 1997*.

As requested by Parliament, the Report examines certain matters relating to any obligations, duties or liabilities imposed on, or any indemnities or guarantees given by, the State arising from the sale of the Dampier to Bunbury Natural Gas Pipeline.

In order to more fully inform the Parliament, the Report includes additional information obtained under section 80 of the *Financial Administration and Audit Act 1985*. In the main this additional information relates to warranties given and the framework that will regulate the operations of the Pipeline.

A handwritten signature in black ink, appearing to read 'D D R Pearson'.

D D R PEARSON
AUDITOR GENERAL

May 20, 1998

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Overall Findings

- *Overall, the sale was a significant commercial transaction with appropriate checks and balances in place to protect the Government and Western Australian taxpayers.*
- *The obligations, duties and liabilities imposed on the State were regular and consistent with such an asset sale transaction.*
- *No guarantees were issued, and whilst seven indemnities were granted this was an understandable course of action in the circumstances.*
- *The warranties given by AlintaGas are not unusual in an asset sale of this kind, with circumstances covered by the warranties not having arisen in the past.*

Introduction

The Government-owned Dampier to Bunbury natural gas pipeline was sold in March this year to a private sector operator (the Buyer) for over \$2.3 billion.

The sale of this significant State asset means that the transmission of gas to West Australian consumers, previously the responsibility of the Gas Corporation trading as AlintaGas, is now undertaken by the private sector.

The sale was enabled by Parliament passing the *Dampier to Bunbury Pipeline Act 1997* (the Act) in November 1997 and assented to on December 12, 1997.

To assure the Parliament, and hence the people of Western Australia, that ongoing obligations arising from the sale were disclosed, Section 53 of the Act directed the Auditor General to examine and report on "certain matters" relating to "any obligations, duties, or liabilities imposed on, or any indemnities or guarantees given by, the State", within 60 days of settlement of the Asset Sale Agreement.

Based on legal advice, it was concluded that the term "State" excludes AlintaGas and all other Government agencies because the Section only envisages guarantees or indemnities given at a whole-of-government level.

This report has been prepared to satisfy this direction of the Parliament.

INTRODUCTION

Report Coverage

In order to more fully inform the Parliament of the impacts of this transaction, information beyond the requirements of Section 53 has been included in this report.

That additional information, reported under section 80 of the *Financial Administration and Audit Act 1985*, was obtained through enquiry and obtaining written confirmations from agencies. It includes details of:

■ Warranties

AlintaGas (the seller) has agreed to certain warranties that are included in the Asset Sale Agreement. Details of these warranties are provided later in this report.

■ The Regulatory Framework

The sale of the pipeline does not eliminate government's responsibility to the community for assuring an adequate supply of gas. To this end, a regulatory framework exists to ensure continuity in the supply of gas and safety in the management of the pipeline, thereby enabling government to continue to meet this obligation.

Details of that framework and the key stakeholders in the process are outlined later in this report.

Matters Not Covered

This report does not address the tender process followed in effecting the sale of the pipeline, nor the quantum of sale proceeds or costs incurred.

A summary of the Asset Sale Agreement is not given although extracts are included where relevant.

Examination Approach

The approach adopted primarily involved a review of the Asset Sale Agreement, aspects of the tenders and minutes of Gas Pipeline Sale Steering Committee (GPSSC) meetings. Complementing this has been the obtaining of legal advice and, interviews with key staff and consultants supporting the GPSSC, with key staff from AlintaGas and those agencies responsible for implementing the regulatory framework.

The interviews and legal advice were supplemented by obtaining written confirmations from each of these parties.

Conclusions

- *Normal obligations, duties and liabilities consistent with an asset sale transaction of this magnitude were imposed on the State.*
- *No guarantees were issued by the State.*
- *Seven indemnities were granted by the State:*
 - *one each in favour of the six directors of AlintaGas in recognition of the Ministerial direction to them to sell the pipeline; and*
 - *another in favour of the Buyer which leaves unchanged the risks to the State associated with the supply of gas to Alcoa.*

Background

The sale of the pipeline, previously owned by the Gas Corporation trading as AlintaGas, was effected by the Dampier to Bunbury Natural Gas Pipeline Sale Agreement (the Asset Sale Agreement) signed on March 3, 1998 with the effective sale date being March 25, 1998. Basically the transaction represented a transfer of ownership of the physical assets and related contracts from the State to a private sector operator for cash consideration.

The Asset Sale Agreement refers to the sale of the Dampier to Bunbury Natural Gas Pipeline 'system' because the following are included in the sale (as detailed in the Transfer Order):

- Assigned assets including the relevant transmission assets, freehold land, intellectual property rights, books and records, access rights, shipper contracts, the Alcoa Agreement and operating and revenue contracts.

The Transfer Order also specifies certain assets which are excluded from transfer (the excluded assets), the main one being any right, title or interest in the DBNGP corridor which passed to the DBNGP Land Access Minister.

- Assigned liabilities which are essentially those relating to the assigned assets.

Again certain liabilities are excluded from transfer (the excluded liabilities). These mainly relate to existing legal claims, taxation payments and asset related borrowings.

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The proceeds realised on the sale of the pipeline were:

	\$million
Sale proceeds	2 303
Stamp duties	<u>104</u>
Total	<u>2 407</u>

Legal advice is that in Section 53 "the State" refers to obligations, duties or liabilities imposed on, or indemnities or guarantees issued by, "the Government" and does not include a reference to AlintaGas nor to any other state agency despite the fact that AlintaGas and other agencies are all agents of the Crown.

Findings

Obligations, Duties and Liabilities

The obligations, duties and liabilities imposed on the State are essentially procedural matters which have all been satisfied and are reported in Appendix A.

AlintaGas has agreed to various obligations and warranties, which are detailed later in this report. Additionally, other agencies, such as the Department of Minerals and Energy, which administers the pipeline licence PL40 issued to the Buyer under the *Petroleum Pipeline Act 1969*, have taken on additional regulatory obligations. These are outlined in Appendix B.

Indemnities

The Asset Sale Agreement required the State to issue the following indemnities:

Nature of Indemnity	How requirement was satisfied
The provision of an indemnity in favour of the Buyer in relation to certain aspects of the Alcoa Agreement.	Executed by the Treasurer on March 3, 1998 and by the Buyer on March 25, 1998. This indemnity covers the period from completion to June 30, 2005.
The provision of an indemnity in favour of each of the six AlintaGas directors against any liability incurred as a consequence of acting in accordance with a Ministerial direction.	Issued by the Treasurer on March 3, 1998. This indemnity is for the period that such directors continue to have any liability.

■ Buyer's Indemnity

The Treasurer, on behalf of the State, has given an indemnity in favour of the Buyer against any consequences of "State Action" or "Force Majeure attributable to governmental action of the State of Western Australia" (State Force Majeure) under the Alcoa Agreement. Prior to the sale of the pipeline, the Alcoa Agreement was between Alcoa of Australia Ltd (Alcoa) and AlintaGas.

The indemnity simply indemnifies the Buyer against the consequences of State Action or State Force Majeure occurring under the Alcoa Agreement. Previously AlintaGas accepted this liability directly on behalf of the State.

Definitions of State Action and of State Force Majeure are set out in Appendix D.

Claims can only be made by Alcoa on the Buyer and, therefore, by the Buyer on the State, where there is "State Action". The bare essence of State Action is any one of the following which adversely affects Alcoa's rights under the Agreement or prevents or restricts Alcoa from utilising gas to be transported under the Agreement:

- legislation which modifies the rights or increases the obligations of Alcoa;
- any breach of the obligations assumed by the State under clause 20 of the Alcoa State Agreement. It is important to note that the Alcoa State Agreement is an entirely separate agreement to the Alcoa Agreement the subject of the State indemnity, and clause 20 of the Alcoa State Agreement prevents discriminatory action against Alcoa (clause 20 is included in the definitions in Appendix D); and
- any other discriminatory action taken against Alcoa by the State or any agency, instrumentality or local or other authority.

Since the State entered into the Alcoa Agreement in 1983, there have been no events which have given rise to "State Action" and, similarly, no claims under "State Action" have been lodged by Alcoa under the indemnity provided. It seems remote therefore that a claim will arise under the indemnity provided to the Buyer. In addition, the regulatory framework in place is designed to minimise conditions which could give rise to State Action.

There have however been two claims by Alcoa both of which arose, as claimed by Alcoa, as a consequence of breach of contract. The first was in 1986 which has been settled, and the second in 1994 resulting from an alleged break in gas supply

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causing loss to Alcoa. A claim was lodged and is still under dispute. The following note appeared in the annual financial statements of AlintaGas at June 30, 1997:

"A legal action was filed in 1994 by Alcoa of Australia Ltd against SECWA (which by the Transfer Order was transferred to AlintaGas) for damages suffered as a result of an interruption to its supply of gas in August 1988. The amount of the claim is approximately \$29.7 million plus interest. AlintaGas is defending this claim through its insurers and believes that its insurers will indemnify AlintaGas to a maximum of \$30 million. In addition, there are contractual and other indemnities which AlintaGas believe will cover any liability it incurs."

Under the Asset Sale Agreement, this claim is an "excluded liability" meaning that it is not transferred to the Buyer, remaining a contingent liability of AlintaGas.

■ Indemnity to the Six AlintaGas Directors

Whilst the Directors of AlintaGas are subject to Ministerial direction, the *Gas Corporation Act 1994* provides them with significant autonomy in managing AlintaGas' affairs. This Act also states that the Directors have the same fiduciary relationship with AlintaGas as Directors of a company under the Corporations Law and must always act in the best interests of AlintaGas. Sub-section 6.(2) was inserted in the *Dampier to Bunbury Pipeline Act 1997* giving the Minister for Energy the power to direct the Directors with respect to the performance of the function relating to the disposal of the pipeline.

On March 3, 1998, the Minister for Energy made the following direction:

"The Corporation is to execute the Asset Sale Agreement on the day instructed by the GPSSC (Gas Pipeline Sale Steering Committee), and in doing so the Board is not required to adopt a resolution that it approves the terms of the Asset Sale Agreement."

Arguably the legal duties imposed upon the Directors still remained notwithstanding the Ministerial power to direct and the Ministerial directions which were made under that power.

To further protect the Directors from any exposures under the *Gas Corporation Act 1994*, the Treasurer, for and on behalf of the State, entered into deeds indemnifying each of the six Directors against any liability incurred as a consequence of acting in accordance with the above Ministerial direction. The deed is intended to indemnify the Directors for any loss they become liable to pay in respect of any wrongful act committed in the discharge of their duties, provided the wrongful act was performed in accordance with a direction given or purported to be given by the Minister under Section 6(2) of the Act.

This indemnity is in excess of and does not extend to cover the Directors to the extent that relevant insurance policies taken out by AlintaGas covers them and the terms and conditions of such policies apply such that no overlap of indemnity is provided. However, this indemnity applies to cover the Directors to the extent that such insurance policies do not apply to claims the subject thereof.

Other Guarantees

This examination found no evidence of any other indemnities or guarantees given by the State.

Legal advice on Section 53 suggested that Parliament should be made aware of any favourable position on rates or taxes, any preferred bidder status on future projects or any concessions on tariffs which may have been given to the successful bidder.

This examination revealed no evidence of any such arrangements having been entered into with the successful Buyer.

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of the Financial Administration and Audit Act 1985

WARRANTIES AGREED BY ALINTAGAS

Conclusions

- *Warranties provided by AlintaGas are not unusual in an asset sale of this kind with circumstances of the nature covered by those warranties not having arisen in the past.*

Background

As a party to the Asset Sale Agreement AlintaGas agreed to certain warranties when selling the pipeline. The warranties provided were in the main set by the Gas Pipeline Sale Steering Committee in the belief that this would enhance the sale price. In addition, there were a number of other obligations, duties or liabilities imposed upon AlintaGas under the Asset Sale Agreement, which are regarded as normal commercial obligations, duties or liabilities imposed on a vendor of such a significant and complex asset.

Findings

Warranties

The contractual liability of AlintaGas in respect of the pipeline sale is limited to the warranties expressly provided by it under the Asset Sale Agreement. Claims against AlintaGas are limited in the following way:

- Claims must be made within the 365 days from and including March 25, 1998;
- No claim which is individually less than \$250 000 can be made; and
- There is an upper limit of liability of \$50 million by AlintaGas for all claims in aggregate.

To date no claims under these warranties have been lodged by the Buyer.

With the exception of items referred to as "excluded liabilities" (see definition in Appendix D) and those matters disclosed to the Buyer, there have been no situations in the past which, if they arose now, would give rise to a claim under the warranty provisions of the Asset Sale Agreement. In addition, as part of the sale of the pipeline, AlintaGas conducted an extensive due diligence process in respect of the assets being sold from which it concluded they were in adequate working order at completion.

As part of the Asset Sale Agreement, AlintaGas assigned to the Buyer a number of existing operating contracts, enhancement contracts, premises leases, revenue contracts, software licences and DBNGP shipper contracts. No residual obligation rests with AlintaGas under any of these contracts because these obligations have all been transferred to the Buyer. A formal program of notification of contract counterparties has been undertaken so that each counterparty should know that AlintaGas is now no longer a party to the contracts and each counterparty is to deal with the Buyer.

Other Obligations, Duties or Liabilities (Obligations)

AlintaGas has confirmed that, in all material aspects, obligations arising in terms of the Asset Sale Agreement have been performed.

THE REGULATORY FRAMEWORK

Conclusions

- *A comprehensive framework for the regulation of the pipeline exists.*
- *Regulation of access to transmission capacity and tariffs exists for the period to January 1, 2000, to be followed by the application of the National Access Code subject to Parliament's enactment of complementary legislation.*
- *To the extent that the State can make reasonable legislative provision to assure continuity of gas supply from a privately owned gas pipeline, the provisions in place provide a high level of such assurance.*

Background

Prior to the sale of the pipeline, AlintaGas was responsible under the *Gas Corporation Act 1994* for the obligations, duties and liabilities arising from both the transmission and distribution of gas into the South West. AlintaGas' performance has been overseen by the Minister for Energy with the assistance of the Coordinator of Energy. These responsibilities in respect of gas transmission, have been transferred under legislation in part to the new owner of the pipeline and in part to the State as a result of the sale of the pipeline. In particular, the State has had to assume more explicit responsibility for the regulation of access to capacity and to tariffs on the pipeline as set out in:

- the *Dampier to Bunbury Pipeline Act 1997*;
- the *Dampier to Bunbury Pipeline Regulations 1998*; and
- the associated Access Manual.

These pieces of new legislation and the owner's Access Manual, which is subject to approval of the Coordinator of Energy, essentially replace similar functions previously performed under the *Gas Corporation Act 1994*, the *Energy Corporations (Powers) Act 1979* and the *Gas Transmission Regulations 1994* (now only applicable to existing shipper contracts until they expire or are renegotiated) prior to completion of the sale. Issues of access, contract terms and conditions and of tariffs are dealt with in some detail in the new legislation and Access Manual for the period to January 1, 2000. The Government has undertaken in an Intergovernmental Agreement signed on November 7, 1997 to introduce complementary legislation to implement the National Access Code to cover this pipeline beyond January 1, 2000.

The purpose of this section, in conjunction with Appendix B, focuses on how the revised regulatory arrangements put in place at the time of the sale are intended to assure a continuous supply of gas in a safe manner and at acceptable standards.

Findings

The monitoring and control environment to be directly or indirectly applicable to the new owners of the pipeline includes:

- *Petroleum Pipelines Act 1969*
- *Petroleum Pipelines Regulations 1970*
- *Dampier to Bunbury Pipeline Act 1997*
- *Dampier to Bunbury Pipeline Regulations 1998*
- *Petroleum Safety Bill 1998*
- *Schedule of General Requirements for Occupational Health and Safety 1993*
- *DBNGP Access Manual*
- *Energy Coordination Act 1994*
- *Energy Coordination Amendment Bill 1997*
- *Energy Corporations (Powers) Act 1979*
- *Environmental Protection Act 1986*
- *Gas Pipeline Access (WA) Bill 1998*
- *Gas Standards Act 1972*
- *Gas Undertakings Act 1947*
- *The Fuel, Energy and Power Resources Act 1972*

This regulatory framework is administered by a range of State agencies who play an essential role in the framework. The key stakeholders in the framework and their interrelationships are set out below. The roles and responsibilities of these various agencies are detailed in Appendix B to this report.

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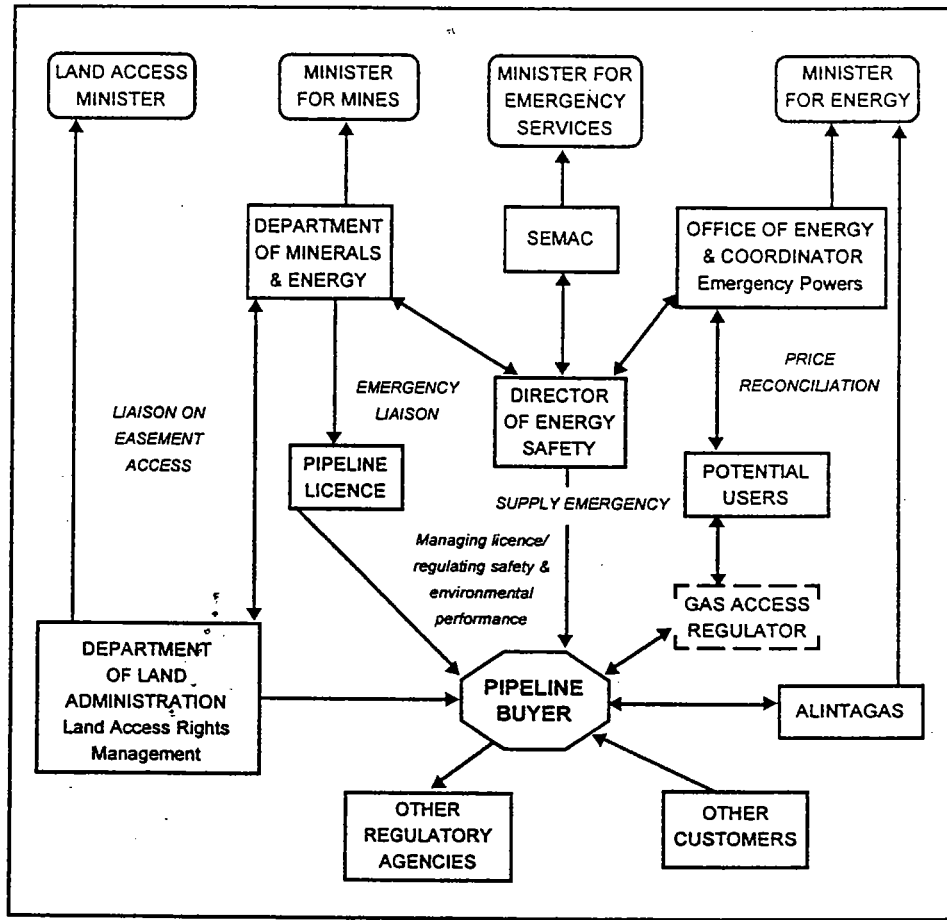


Figure 1: Agencies involved in regulating the Pipeline

Source: OAG

Details of Obligations, Duties and Liabilities imposed on the State under Section 53

Nature of Obligation, Duty or Liability	How this was satisfied
Approval of execution by AlintaGas of transfer of the share in Dampier to Bunbury Employment Pty Ltd. (Note 1)	Executed by the Minister for Energy on March 23, 1998.
Publish a notice in the gazette stating that land identified in the relevant schedule becomes land in the DBNGP corridor. (Note 2)	Executed by the DBNGP Land Access Minister on March 19, 1998.
Conferral of Access Rights upon AlintaGas in respect of land in the DBNGP corridor. (Note 3)	Executed by the DBNGP Land Access Minister on March 19, 1998.
Cancellation of Access Rights conferred on AlintaGas on March 19, 1998 (Note 3)	Executed by the DBNGP Land Access Minister on March 20, 1998.
Publish an order in the gazette designating additional land to be land in the DBNGP corridor. (Note 3)	Executed by the DBNGP Land Access Minister on March 20, 1998.
Conferral of Access Rights upon AlintaGas in respect of the land in the expanded DBNGP corridor (Note 3)	Executed by the DBNGP Land Access Minister on March 20, 1998.
Approval of the assignment of access rights conferred on AlintaGas to the Buyer. (Note 3)	Executed by the DBNGP Land Access Minister on March 20, 1998, became effective on March 25, 1998.
Make and publish in the gazette a Transfer Order transferring the pipeline assets from AlintaGas to the Buyer pursuant to Section 15 of the Act. (Note 4)	Executed by the Minister for Energy on March 20, 1998, became effective on March 25, 1998.
Issue a petroleum pipeline licence, under the <i>Petroleum Pipelines Act 1969</i> , to the Buyer. (Note 5)	Issued by the Minister for Mines on March 20, 1998, became effective on March 25, 1998.

Notes:

1. This company was established to engage those employees working in the AlintaGas Transmission Division who were offered the opportunity to transfer their employment to the Buyer. This offer was made to 137 employees and taken up by 131 of them. As part of the offer of transfer, the following conditions were included:
 - All existing leave entitlements, including sick leave, were to transfer in full or be paid out, at the option of each employee, by March 25, 1998 (details of the contracts and other conditions offered are summarised in Appendix C); and

APPENDIX A

- AlintaGas may be required to compensate these employees for any discount imposed by the Government Employees Superannuation Board (GESB) on members' benefits. State government employees who resign from the public service may transfer their benefits to another qualifying superannuation fund and in so doing, the GESB would, as is normally the case, apply a discount of 1.75 per cent for each year of service remaining until the age of 55. Where employees elect to transfer benefits out of the GESB, AlintaGas will pay the discount determined to a superannuation fund of each employee's choice. The employees must specify the selected fund within six months or risk losing entitlement to this compensation.
2. The pipeline corridor is the strip of land generally 30 metres wide containing the gas pipeline. The Act refers to the need for the DBNGP Land Access Minister to gazette this.
 3. Prior to the sale of the pipeline, AlintaGas had easement rights granted by underlying land owners or statutory rights of entry and access to the DBNGP corridor in its role as operator and regulator of the pipeline. All these rights passed to the DBNGP Land Access Minister. No licensing regime existed. In order for access to be transferred to the Buyer, it was first necessary for AlintaGas to be given formal access under the new Act. Additional land was then designated in the DBNGP corridor and at the same time access rights were cancelled. Access to this expanded corridor was then granted to AlintaGas, which was assigned to the Buyer as part of the sale process. The additional land relates to land outside the initial DBNGP corridor, incidental to the operation of the pipeline and containing airstrips, access to water bores etc.
 4. Transfer of the pipeline assets was effected on completion at which time the balance of the purchase price and related stamp duties were paid by the Buyer.
 5. An early step in applying the regulatory framework to the Buyer is the issue of a petroleum pipeline licence which has now occurred. The licence is administered by the Department of Minerals and Energy.

The Roles and Responsibilities of Government Agencies in the Regulatory Framework

The State has taken steps to minimise its risk in relation to management of the pipeline by subjecting the Buyer to an existing regulatory framework.

This framework is designed to minimise risk by assuring continuity in the supply of gas to Alcoa and other users. The agencies involved, and their responsibilities, are detailed below.

Department of Minerals and Energy (DME)

On March 20, 1998, but effective from settlement, the Minister for Mines, pursuant to the provisions of the *Petroleum Pipelines Act 1969*, issued the Buyer with pipeline licence PL40 to operate a pipeline from the inlet point at the Burrup Peninsula to the Clifton Metering Station, including lateral lines, for the conveyance of petroleum being natural gas within the licensed area and along the route defined in the licence. The licence is for 21 years being a period ending on the same date as the corridor access period granted by the DBNGP Land Access Minister.

There are a number of inherent risks to the State in entering into a long term licensing arrangement with a private operator. These include non-performance of licence requirements, a change of ownership of the Buyer, insolvency potentially leading to gas supply difficulties and litigation between the State and the Buyer.

These risks should be viewed in the context of the legally enforceable and therefore more explicit requirements placed on the Buyer through the licence (and the other regulations referred to below) than applied to AlintaGas in the past. Beyond the risks identified here, there are undoubtedly a range of risks which will need to be managed. Some may not become clear until the licence has been running for some time.

APPENDIX B

Pipeline licence PL40 is unique as it is the first petroleum pipeline licence to be granted for an existing pipeline. It is also unique in respect of the multi-user nature of its corridor. Thus the generic format of a pipeline licence has had to be adapted to cover the operations phase only, by excluding design and construction. The only new provision that was incorporated in PL40 for the first time, is one which enables DME to require an "independent study" in respect of safety and health and in respect of the investigation of an accident or a dangerous occurrence. Since the issue of pipeline licence PL40, this new requirement has become standard in all subsequent licences.

The licence issued by the Minister for Mines imposes the following conditions on the Buyer and on DME:

The Buyer

■ *Specifications*

The licence specifies a series of operational Australian Standards covering the operations, maintenance and inspection over areas such as the pipeline, concrete structures, above-ground pipe work, pressure vessels, electrical work, structural steel work, lightning protection and pressure relief valves which must be complied with. It also details the existing pipeline design basis and pipeline facilities.

■ *Conditions*

The licence requires the Buyer to satisfy a series of conditions including:

- maintain adequate pressure control facilities;
- maintain a system for the control of corrosion and stress corrosion;
- ensure the pipeline is adequately earthed against electrical interference;
- the need to, at defined intervals, provide DME with a written report assessing the pipeline's integrity. Such report must detail any such aspect of the pipeline which could cause a hazard to the pipeline, workers and the general public plus details of remedial action taken, or proposed to be taken, in relation to those aspects. This assessment must cover cathodic potential and wall thickness;
- the conduct of external surveys of the pipeline after each major storm;
- the patrolling on a regular basis of the pipeline to assure adequate security and safe operation of the pipeline;
- the need to comply with the maintenance plans, safety plans, operational plans, emergency response plans and maintenance procedures which were applied by AlintaGas;

- within six months of March 20, 1998, develop a Safety Management System acceptable to DME and the continued operation of the pipeline by the Buyer shall be contingent upon the implementation of this System by the Buyer; and
- the need for the Buyer to maintain and operate the pipeline in accordance with defined quality management systems.

DME

DME administers the licence primarily with respect to worker and public safety and environment issues. It must ensure compliance, at all times by the Buyer, with the conditions of the licence. Specifically the licence empowers DME to:

- request the Buyer to conduct tests of the condition, operational capability, maintenance standards, modifications or variations of the pipeline and, if required, arrange for an inspector to witness these tests;
- request written reports of assessments of the pipeline's integrity;
- require an independent study of the safety and health of the pipeline or parts thereof or of any accident or a dangerous occurrence at the pipeline; and
- audit any aspect of the pipeline's operation, inspection or maintenance.

Satisfying these requirements entails DME assessing the Buyer's Safety Management System, conducting regular system and compliance audits, investigating incidents and managing third party interference.

It is clear from the above that DME is able to provide a high level of assurance that the Buyer operates the pipeline in a safe manner meeting acceptable operational standards. This should help to assure continuity in the delivery of gas. It is clearly an obligation of the Buyer to operate the pipeline in a safe manner.

Office of Energy (OOE)

The OOE provides policy advice and coordinates economic and commercial matters in the Western Australian energy sector. Importantly, it also regulates technical and safety factors. The OOE is a relatively new agency which provides support to the statutory offices of the Coordinator of Energy and to the Director of Energy Safety under the *Energy Coordination Act, 1994*. The roles of these offices include:

■ Coordinator of Energy (The Coordinator)

The Coordinator assists the Minister for Energy in planning and coordinating energy supply in Western Australia. Schedule 3 of the *Dampier to Bunbury Pipeline Act 1997* empowers the Coordinator to become involved in supply system emergencies that may, for example, affect gas supply. Supply system emergencies are events where the supply of gas from the pipeline is seriously affected to the extent that life or property may be endangered; or the supply of gas to AlintaGas' tariff customers (or to any other significant proportion of the users of pipeline gas) may be reduced or terminated.

In the case of such an emergency the Buyer, as operator of the pipeline, may take any immediate measures to avoid or mitigate the emergency, or to ensure the continued transport of gas, in a manner that it deems appropriate. The Coordinator is to be notified of the emergency as soon as practicable.

The Coordinator has the power to make orders to provide for the transport and supply of gas including the curtailment or termination of gas supply to any gas customer. However, the Coordinator may exempt customers from the orders and can discontinue supply to any person considered to be contravening an emergency order.

If Schedule 3, or the provision of an order under that Schedule, is found to be inconsistent with a safety provision (the effect of which is to protect a person from injury or property from damage) of the *Petroleum Pipelines Act 1969* or of a licence under this Act, the safety provisions prevail and any inconsistent provision of Schedule 3 or the order has no effect.

Schedule 3 to the Act also enables the Coordinator to make orders in the event where the supply of gas to AlintaGas tariff customers, or to any other significant proportion of the users of pipeline gas, is to be reduced to make orders to provide for the transport and supply of gas.

■ Director of Energy Safety

The Director of Energy Safety primarily oversees the energy safety needs of the State in relation to safety, quality, reliability and metering of electricity and gas generally. In the case of gas, DME regulates gas transmission (and therefore the pipeline) with the Director of Energy Safety regulating gas distribution. This requires a focus on the licensing, and associated safety and standards, of electrical and gas workers and contractors. In addition and, more importantly, the Director of Energy Safety assists the Coordinator in exercising the emergency powers referred to above.

In relation to emergency planning and responses, safety can be administered through two agencies (DME and OOE) perhaps leading to duplication in terms of the safe operation of the pipeline.

This potential duplication has been acknowledged and DME and OOE are developing a memorandum of understanding recognising DME's role in maintaining worker and public safety aspects of the pipeline without impinging on OOE's requirements concerning gas supply.

Gas Transmission Price Regulations

Effective from settlement, the maximum price the Buyer can charge for gas transportation services provided by the pipeline has been set via the provisions of the *Dampier to Bunbury Regulations 1998*.

The maximum prices that can be charged for full haul T1 Capacity at 100 per cent load factor for the next two years to December 31, 1999 are:

1998 \$1.18 per GJ delivered (equates with price charged by AlintaGas prior to settlement)

1999 \$1.09 per GJ delivered

The price in 1997 was \$1.264 per gigajoule for full haul T1 Capacity at 100 per cent load factor.

An essential element of complying tenders was a requirement for the pipeline bidders to state their firm intentions for a commercially viable tariff path beyond January 1, 2000. The successful bidder tendered on the basis of \$1.00 per gigajoule T1 Capacity to Kwinana, decreasing in real terms beyond January 1, 2000.

Commencing January 1, 2000, the National Third Party Access Code for Natural Gas Pipeline Systems (the Code) will be in existence and will be the mechanism for determining transmission prices throughout Australia.

The transmission price is to be set in accordance with the principles of the Code and approved by a yet to be appointed new Gas Access Regulator. The Buyer's undertaking on tariffs will be available to the Gas Access Regulator when making the price determination. No evidence was disclosed of the State having given specific undertakings to any party regarding tariffs to be agreed by the Gas Access Regulator beyond January 1, 2000.

APPENDIX B

Department of Environmental Protection and the Environmental Protection Authority

The Buyer will be subject to the normal requirements of the *Environmental Protection Act 1986* and its Regulations. Accordingly it will need to ensure compliance with the legislation, particularly regarding approvals for environmentally significant new developments, and those controls relating to gas emissions, smells and noise levels.

Department of Land Administration (DOLA)

The sale of the pipeline has resulted in DOLA taking on additional regulatory obligations in relation to land access.

Prior to the sale of the pipeline the right of access to the land on which the pipeline assets are situated was administered and controlled by AlintaGas. As part of the Act the documented and statutory rights formally held and exercised by AlintaGas were transferred to the DBNGP Land Access Minister who is now responsible for the administration and management of granting access to the corridor. To assist in the performance of this function, the Minister has arranged for DOLA to provide support.

Under the Act, a right of access to the corridor has been granted by the DBNGP Land Access Minister to AlintaGas. AlintaGas assigned the access right to the Buyer pursuant to the Transfer Order. The Access Rights are for a period of 21 years with the option, should the DBNGP Land Access Minister approve the extension of this period, of the right for further periods of not more than 21 years.

The DBNGP Land Access Minister has the right to approve access by other persons to the corridor. This access can be granted to any persons to construct or operate a pipeline or any incidental purpose.

Unless the approval of the DBNGP Land Access Minister has been obtained first, land in the corridor can not be used nor can any statutory power be exercised on, or in respect of, the corridor in any way that could materially interfere with the exercise of current or future access rights.

Other Emergency Power Arrangements

In addition to the above, other emergency arrangements in place include:

- The *Fuel, Energy and Power Resources Act 1972* contains emergency provisions for dealing with fuel, energy and power resource shortages. These emergency provisions require the Governor to declare a state of emergency after which a Minister is made responsible for the emergency, and regulations can be made to control the situation.
- State Emergency Management Advisory Committee (SEMAC), an emergency management framework chaired by the Commissioner of Police and reporting to the Minister for Emergency Services, has measures for coordinating emergency efforts and related support services which could be relevant to a major gas pipeline emergency.

In particular, the OOE's Director of Energy Safety is chairman of the 'Lifelines Committee' and also has a seat on SEMAC itself. The Lifelines Committee was recently created to foster close emergency management liaison between utilities and similar service providers and the Buyer will be invited to participate in this forum.

Summary of Contracts of Employment and other Employment Conditions offered to AlintaGas Staff

Only staff working in the Transmission Division of AlintaGas received the Offers of Employment summarised below. The terms and conditions of employment are detailed in the documents identified as the proposed Dampier to Bunbury Natural Gas Pipeline – ASU Award 1997 and included:

- All service recognised by SECWA and AlintaGas will be recognised as service, for all purposes of the proposed Award and the Agreement, with the Buyer.
- A capped transfer allowance for each employee be paid by AlintaGas comprising a minimum payment plus an incremental payment for every completed year of service.
- The employee's accrued annual leave and long service leave, unless specifically requested by the employee to be paid out by AlintaGas, will be transferred to the Buyer.
- If the employee is a member of the Gold State Superannuation Scheme he/she will be reimbursed the 1.75 per cent discount to be applied by the GESB if benefits are transferred from the Scheme. Reimbursements calculated at completion will be made to the employer's new superannuation fund. The employee will have up to six months after commencing employment with the Buyer to make a decision in relation to withdrawing from the Gold State Scheme and accessing the top-up payment.
- Employees currently acting in alternative positions will continue to do so at the discretion of their Supervisor.
- The Buyer guarantees that each employee accepting the offer is guaranteed two years employment from the date of completion.

Glossary of Terms

This glossary covers terms in the Asset Sale Agreement and other relevant documentation related to the Pipeline Sale.

“Access Right” means a conferral of rights pursuant to Section 34 of the Act.

“Act” means the *Dampier to Bunbury Pipeline Act 1997*.

“Alcoa Agreement” means the agreement dated February 7, 1983 between Alcoa and The State Energy Commission of Western Australia (SECWA) originally titled “Natural Gas State Agreement”, as amended from time to time, for the provision of gas transmission capacity in the pipeline.

“Alcoa State Agreement” – this agreement is separate from the Alcoa Agreement. Clause 20 (Taxes and Charges) of the Alcoa State Agreement stipulates:

“the State shall not impose nor permit nor authorise any of its agencies or instrumentalities or any local or other authority to impose discriminatory taxes, rates or charges of any nature whatsoever on or in respect of the titles, property or other assets, products, materials or services used or produced by or through the operations of the Company or any adjacent subsidiary or associated company in the conduct of business incidental to the Company’s business hereunder nor will the State take or permit to be taken any other discriminatory action which would deprive the Company or any subsidiary or associated company of full enjoyment of the rights granted and intended to be granted under this agreement.”

“AlintaGas” means the Gas Corporation established under the *Gas Corporation Act 1994*.

“Asset Sale Agreement” means the asset sale agreement which provided for the sale and transfer of ownership of the pipeline assets to the Buyer.

“Completion” means the completion of the sale and transfer of the Pipeline Assets in accordance with the Asset Sale Agreement. Completion occurred on March 25, 1998.

“Dampier to Bunbury Natural Gas Pipeline (DBNGP) corridor” means the assigned DBNGP corridor and any additional land that the DBNGP Land Access Minister designates under section 33 of the Act to be in the DBNGP corridor.

“DBNGP Land Access Minister” means the corporation sole established by section 29(1) of the Act.

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“Entity” means Gas Corporation and Dampier to Bunbury Pipeline Employment Pty Ltd (ACN 080 679 732) severally, as the case requires.

“Excluded Assets” means

- Any right, title or interest and State corridor rights passing to the DBNGP Land Access Minister under section 31 of the Act.
- Any privilege or immunity enjoyed by AlintaGas as an agent of the Crown except in so far as it relates to anything done or omitted to be done by AlintaGas before the transfer time.
- Retained matters.
- In relation to intellectual property rights, any information which is now or hereafter comes into the public domain, other than due to a breach of the Asset Sale Agreement or information which is properly obtainable with reasonable diligence from sources other than an Entity.
- Operational receipts to, but excluding the day of the transfer, other than an apportionment payment required to be paid by AlintaGas to the Buyer pursuant to the Asset Sale Agreement.

“Excluded Liabilities” means:

- The Supreme Court action No (IV 122) by Alcoa of Australia Limited against SECWA.
- The Supreme Court action No. CIV 1223 of 1994 by Alcoa of Australia Limited (CAN 004 879 298) against SECWA (which by the transfer orders made pursuant to the *Energy Corporations (Transitional and Consequential Provisions) Act 1994* AlintaGas was substituted for The State Energy Commission of Western Australia) for damages suffered as a result of an interruption to its supply of gas in August 1988 incurred, existing or accrued in the period prior to the transfer time.
- Any liability which may arise out of or in relation to an incident on June 10, 1994 when AlintaGas interrupted gas supply to Australian Gold Reagents Ltd cyanide plant and Wesfarmers CSBP Ltd chlor-alkali plant at Kwinana incurred, existing or accrued in the period prior to the transfer time.
- Any liability which may arise out of or in relation to the Heads of Agreement made on November 28, 1997 between Epic Energy Pty Ltd (CAN 069 799 533) and AlintaGas, or arising out of or in relation to letters of offer dated February 23, April 11 and April 23, 1997 from AlintaGas to An Feng Kingstream Steel Limited (ACN 009 224 800) and a letter of acceptance from An Feng Kingstream Steel Limited to AlintaGas dated February 11, 1998.
- Any liability in respect of monies borrowed or raised by AlintaGas for the purpose of meeting any liability in constructing, commissioning, acquiring,

owning or having the use of, or operating and maintaining any of the assets the subject of this order incurred, existing or accrued in the period prior to the transfer time.

- Any liability in respect of payment required to be made by AlintaGas to the Treasurer under the *State Enterprises (Commonwealth Tax Equivalent) Act 1996* or under section 79 of the *Gas Corporation Act 1994* incurred, existing or accrued in the period prior to the transfer time.
- Any liability in respect of income tax, company tax, group tax, franking deficit tax, franking additional tax, undistributed profit tax, capital gains tax, pay as you earn remittances, prescribed payments, withholding tax, stamp duty (other than Stamp Duty under the Asset Sale Agreement), sales tax, customs duty, pay roll tax, fringe benefits tax, land tax, financial institutions duty, debits tax, superannuation guarantee levy, training guarantee levy, tax file number withholding tax, municipal rates, and other taxes, levies, imposts, duties, fees, or other charges, rates, withholdings or deductions of a similar nature (by whatever name called), including fines, penalties and interest thereon in respect of any period prior to the transfer time, which at any time have been or may be imposed, assessed, levied or charged on the entities by any Governmental Agency lawfully purporting to exercise jurisdiction in the foregoing matters incurred, existing or accrued in the period prior to the transfer time.
- Operational payments to but excluding the day of the transfer time other than an apportionment payment required to be paid by the Buyer to AlintaGas pursuant to the Asset Sale Agreement.

“Gigajoule” means one billion joules.

“GJ” means gigajoule

“Joules” means the basic unit used to calculate the energy content of gas.

“Loss” means the total amount which a Director becomes liable to pay on account of all claims made against him for Indemnified Acts in respect of which the indemnity contained in the Directors Deed of Indemnity applies, including, but not limited to, damages, judgments, settlement costs and defence costs, but does not include fines or penalties imposed in a criminal suit or action or any other fines or penalties or any punitive damages imposed by final adjudication.

“Megajoule” means one million joules.

“Pipeline Assets” means the Dampier to Bunbury Natural Gas Pipeline, together with the related assets, rights, liabilities and obligations offered for sale.

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"Retained Matters" means those books and records or intellectual property rights or any other matter or information to be retained by AlintaGas, as described in Schedule 20 of the Transfer Order.

"Right, title, or interest" includes native title and native title rights and interests, giving those expressions the same meanings as they have in the *Native Title Act 1993* of the Commonwealth.

"State Action" is defined in the Alcoa Agreement to mean (in summarised form):

- Any enactment by the Parliament of Western Australia of legislation without the consent of Alcoa which modifies the rights or increases the obligations of Alcoa under the Alcoa State Agreement and the Alcoa Agreement, or reduces the obligations of the State under the Alcoa State Agreement or reduces the obligations of the Seller (i.e. SECWA, then AlintaGas, now the Buyer) under the Alcoa Agreement.
- Any breach of the obligations assumed by the State under Clause 20 of the Alcoa State Agreement.
- Any other discriminatory action taken against Alcoa by the State or any agency, instrumentality or local or other authority (other than actions by an "authority" whose actions cannot reasonably be reviewed or modified by the State).

"State corridor rights" means an interest in land in the DBNGP corridor and the extent of the interest is such that, if State corridor rights are held in land, neither conferring rights under section 34 of the Act nor exercising any right conferred under that section would injuriously affect any right, title, or interest in the land.

"State Force Majeure" is a reference to what, in the Alcoa Agreement, is termed "Force Majeure attributable to Governmental Action of the State of Western Australia", which prevents or restricts Alcoa from utilising gas which would otherwise be transported under the Alcoa Agreement. This concept in essence turns on any law or conduct on the part of a Western Australian "Government Authority" (widely defined) concerning or affecting the subject matter of the Alcoa Agreement.

"T1 Capacity" means tranche 1 capacity as defined under the *Gas Transmission Regulations 1994 (WA)*.

"TJ" means one million megajoules.

"Wrongful Act" means any error, misstatement or misleading statement, act or omission or neglect or breach of duty committed, attempted or allegedly committed or attempted by a Director in the discharge of his duties as a Director of AlintaGas or any matter claimed against a Director by reason of him serving as such Director.

