DAMPIER TO BUNBURY NATURAL GAS PIPELINE

PROPOSED ACCESS ARRANGEMENT UNDER THE NATIONAL ACCESS CODE

RESPONSE TO DRAFT DECISION PUBLIC VERSION

Court Decision Submission CDS#5: Response to Draft Decision Amendments

31 December 2002

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1. Introduction

1.1 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]

1.2 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.

1.3 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.

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

1.5 The Regulator closed the public consultation period, notwithstanding the fact that the declaratory orders remained to be finalised. They were finalised by the Court on 20 December 2002.

1.6 Notwithstanding the fact that the declaratory orders were substantially the same as those proposed by the Court in paragraph 223 of the Court decision (and upon which Epic Energy submissions to the Regulator to date have been based), Epic Energy participated in the public consultation process without having had access to all the information which the Regulator has relied on to date. Furthermore, there is additional information which Epic Energy believes should be taken into consideration by the Regulator, but which Epic Energy is unable to obtain principally because those who have it are bound by confidentiality obligations.

1.7 Therefore, because:

- the Regulator has not disclosed all information that he has relied upon or intends to rely upon; and
- 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");

Epic Energy reserves the right to file additional submissions after all further information is released.

[1] Re Dr Ken Michael AM; Ex parte Epic Energy (WA) Nominees Pty Ltd & Anor [2002] WASCA 231 31 December 2002

1.8 The new submissions associated with the present submissions are as follows:

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

1.9 As a final introductory matter, 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 the Regulator to arrange a mutually convenient time for this meeting.

2 Purpose of Submission

2.1 The Draft Decision released by the Regulator on 21 June 2001 proposed not to approve the Access Arrangement filed by Epic Energy on 15 December 1999. It sets out 79 amendments (or changes in the nature of amendments) ("DD amendments") which would have to be made to the Access Arrangement in order for the Regulator to approve it.

2.2 Some of the DD amendments (over and above the tariff related DD amendments) mark a fundamental departure from what Epic Energy had proposed. An example of this, as indicated to the Regulator in Epic Energy's Additional Paper DDS#3 filed on 5 October 2002, is in relation to the Services Policy and the services to be offered. The Regulator has directed that the Firm Service proposed by Epic Energy as a Reference Service be combined with the non reference Seasonal Service.

2.3 This Submission responds to most of those 79 amendments (or changes in the nature of amendments). The other amendments (relating to the Reference Tariff and Reference Tariff Policy) are dealt with in detail in Submissions CDS#2 and 3 (Confidential Versions) filed with the Regulator on 12 December 2002, although this Submission also deals with some of those amendments in some additional detail.

2.4 Before Epic Energy responds to the amendments, there are two preliminary matters that need to be addressed because they qualify the manner in which Epic Energy can respond. These two matters are:

- The task of the Regulator in assessing an access arrangement under the Code; and
- Epic Energy's proposed Access Arrangement as an integrated set of proposals for third party access.

These two matters are dealt with in the following two sections of this Submission.

2.5 Sections 5 and 6 of this Submission contain Epic Energy's responses to the Draft Decision amendments, subject to the qualifications of Sections 3 and 4.

3 Regulator's Task in Assessing the Access Arrangement

3.1 The first preliminary matter (which is interrelated with the second) relates to the task of the Regulator in assessing an access arrangement. As the Court concluded (as outlined in Epic Energy's confidential Submission CDS#2 filed on 12 December 2002), the Regulator must approach the assessment of a proposed access arrangement as a single overall assessment process. The effect of this is as follows:

- the Regulator must assess the reasonableness of Epic Energy's proposed Access Arrangement;
- it is not for the Regulator to adopt a "clean slate" approach and proceed to establish a value of each element of an access arrangement (such as the value of the initial Capital Base);
- furthermore, the task of the Regulator is not a "building block approach" of assessing each element of an access arrangement in isolation to the others. Rather it is an iterative process that requires inductive rather than deductive reasoning. So, for example, the establishment of the initial Capital Base can only be settled having regard to all of the other elements of the access arrangements and the factors in section 2.24 of the Code;
- Consistent with the above, the access arrangement must therefore be assessed as a "total package" – it is not simply a matter of "cherry picking" the most advantageous (from a user's or, for that matter, from a service provider's perspective) components of it. Each element must be assessed in light of the others; and
- there will always be a range of values for every element in an access arrangement. As indicated by the Court in the Court Decision, there is no "yes or no" answer in establishing the various elements of the access arrangement.

3.2 Given the above, Epic Energy is placed in a dilemma when responding to amendments (or changes in the nature of amendments) contained in the Regulator's Draft Decision, particularly given that the Draft Decision is affected by fundamental errors of law in relation to the construction of the Code and the Regulator's application of the Code to the proposed Access Arrangement.

3.3 This dilemma is exacerbated by the practical reality that the next formal decision of the Regulator in the access arrangement approval process will be the Final Decision. The Regulator is not required to move from the position he takes in that decision before an access arrangement is approved. However, Epic Energy and other stakeholders will have no ability to understand the manner in which the Regulator approaches his task until after the Final Decision is released. Nor will they be able to put forward submissions that argue against his conclusions in the Final Decision in the knowledge that those submissions will be taken into account by the Regulator. This is so because the Regulator has given no guarantee that he will either:

- issue an interim decision before releasing the Final Decision; or
- open up a public consultation period following its release and take into account any submissions made during that period.

3.4 Accordingly, for Epic Energy to "cover its bases", it would be required to crystal ball gaze and predict the changes that the Regulator might include in his final decision. This is hardly a satisfactory outcome for Epic Energy.

3.5 Notwithstanding, Epic Energy believes that it must provide its comments in response to the amendments, subject to the above caveats.

3.6 Epic Energy's comments are provided subject to the following qualifications:

- First, the Court concluded that the Regulator's Draft Decision reflected a misconstruction of the Code and a "significant misapprehension" of his statutory function.[2] While this comment was made specifically in relation to the establishment of the initial Capital Base, given that the Regulator misconstrued and misapplied the Code, the reasoning adopted by the Regulator in requiring all of the amendments in the Draft Decision must also be called into question.
- Second, given the Regulator's role in the assessment process (as outlined above) and the fact that he has not provided reasoning to support why certain of Epic Energy's proposals require amendment, the Regulator's requirement for amendment does not detract from the validity of Epic Energy's proposed Access Arrangement.
- Third, it should be noted that an additional difficulty faced by Epic Energy in responding to the Draft Decision and deciding whether to lodge a revised access arrangement is caused by the fact that there are instances where the Regulator has not determined a matter.
- Fourth, if the Regulator is not to accept the proposed Access Arrangement, then Epic Energy reserves the right to submit a revised access arrangement which deals more equitably with the capacity constraints to which the Draft Decision would give rise.
- Finally, Epic Energy's failure to comment in relation to a proposed amendment should not be seen as an acceptance or otherwise of that amendment. As outlined above, Epic Energy can not properly respond until it has viewed the Regulator's final decision to see how the Regulator has assessed the "total package".

[2] Reasons paras 204-207.

4 Epic Energy's Proposal

4.1 Epic Energy's proposed Access Arrangement was filed on the basis that it reflects the circumstances surrounding its purchase of the pipeline, including the terms and conditions of the DBNGP Asset Sale Agreement. The proposed Access Arrangement as filed sought to closely replicate Schedule 39 of the DBNGP Asset Sale Agreement, a copy of which is contained as an attachment to Epic Energy's Submission CDS#3 filed on 12 December 2002. Schedule 39 provides the basis of an integrated set of proposals whereby Epic Energy would provide third party access to capacity in the DBNGP.

4.2 Schedule 39 proposed a fundamental change in the way in which the pipeline would be operated. It stated that as from 1 January 2000 (being the date, at the time of the pipeline sale, from which independent regulation and an access arrangement were expected to have effect), the tranche method for the determination of pipeline capacity (mandated by the access regimes of the Gas Transmission Regulations 1994 and, subsequently, by the Dampier to Bunbury Pipeline Regulations 1998) would be replaced. Epic Energy's intention was to replace the tranche method with a method whereby capacity was determined on an average day basis. With capacity determined in this way, Epic Energy would offer two classes of forward haul transportation service:

- a forward haul firm transportation service; and
- a forward haul interruptible transportation service.

4.3 As has been previously explained to the Regulator, Epic Energy has, in its proposed Access Arrangement, set the level of capacity for the forward haul firm transportation service – the Firm Service Reference Service of the proposed Access Arrangement – at 605 TJ/d. This capacity available for Firm Service is the average capacity of the pipeline system to transport gas downstream of Compressor Station 9 under January average conditions.[3]

4.4 Use of the average day concept results in a higher capacity for Firm Service than is available under the tranche method. Under the tranche method, the combined T1 and T2 capacity of the pipeline is only about 550 TJ/d. The higher capacity under the average day concept is available because Epic Energy is prepared to accept a greater risk that it may be unable to deliver the Firm Service, and to manage that risk through a proactive maintenance program.

4.5 Epic Energy proposed replacement of the tranche method with an average day concept of capacity in order to achieve the following express objectives of the State in selling the DBNGP:

- first, to enhance the operating efficiency and utilisation of the pipeline; and

[3] Average Day Capacity is explained or referred to in DBNGP Access Arrangement Information 15 December 1999, Section 6; Revised Access Arrangement Information 28 July 2000, Section 6; Response 7 "Derivation of Average Day Capacity" 3 October 2000, Response 11 "Probability of Supply of Firm Service" 22 February 2001, and Additional Paper DD#3 dated 5 October 2001.

- second, to ensure that gas transmission capacity will be readily available to support economic development in the State.[4]

Furthermore, the average day concept of capacity was commonly used in North America. Its adoption, and the concomitant restructuring of maintenance programs, were seen as one means of demonstrating that Epic Energy was experienced in enhancing pipeline capacity. This was one of the key criteria against which bids were assessed by the Gas Pipeline Sale Steering Committee during the sale process.

4.6 The tariff and tariff path of Schedule 39, which were subsequently advanced as the Reference Tariff and price path of the proposed Access Arrangement, were developed on the basis of the average day concept of capacity.

4.7 At the time of submitting its bid for the pipeline, Epic Energy believed there was an appropriate risk and reward balance associated with the package set out in Schedule 39. In particular, given the tariff and tariff path of Schedule 39, Epic Energy was prepared to move away from the low capacity, low risk outcome of the tranche method, to provide a higher level of capacity available for Firm Service under the average day concept, albeit at greater risk to its business.

4.8 In the Draft Decision the Regulator rejected the proposition that the proposed Access Arrangement should reflect Schedule 39. That is, he rejected Epic Energy's view that the circumstances, expectations and understandings that surrounded the sale of the DBNGP were of critical importance, and he therefore rejected the tariff and tariff path that followed from those circumstances, expectations and understandings (although the escalation of the tariff path – i.e. 67% of the increase in the Consumer Price Index – was accepted). As put by the Regulator, he was unable to "verify" the existence of the "regulatory compact".[5]

4.9 If, now, the Regulator were to implement the Draft Decision, or anything less than what was provided for in Schedule 39, he will change the balance of risk and reward that Epic Energy was prepared to accept. As Epic Energy has indicated in previous submissions to the Regulator, in these circumstances the proposed Access Arrangement must be looked at in a completely different light.[6] If it were not for the commitments made by Epic Energy at the time of pipeline sale (through the signing of the Asset Sale Agreement), commitments Epic Energy expected would subsequently be recognised by the State of Western Australia, Epic Energy would not have adopted the average day

[4] GPSSC Report to Parliament on the Sale of the DBNGP, provided to the Minister for Energy on 20 May 1998.

[5] *"Epic Energy submitted that the manner in which the sale was conducted gave rise to the understanding of a regulatory compact between it and the Government on the price that may be charged for transmission of gas on the pipeline. While a number of references to transmission tariffs for the DBNGP were made at the time of the sale of the pipeline and subsequently, the Regulator has not been able to verify a regulatory compact". – OffGAR Notice "DRAFT DECISION – DAMPIER TO BUNBURY NATURAL GAS PIPELINE: 21 June 2001.*

[6] DBNGP Access Arrangement Information 15 December 1999, Section 10; Response 7 "Derivation of Average Day Capacity" 3 October 2000 para 3.2, Response 11 "Probability of Supply of Firm Service" 22 February 2001 para 3.10.

concept of capacity, and corresponding access terms and conditions, in its proposed Access Arrangement.

4.10 Rather than moving to access terms and conditions based on average day capacity it may be more appropriate, if the Regulator now implements the Draft Decision, or anything less than what was provided for in Schedule 39, for Epic Energy to revert back to the tranche method of capacity determination, and to the associated terms and conditions of service which have been in place since 1995 under the of third party access regime introduced and prescribed by the State Government.

4.11 Epic Energy is not, at this time, prepared to respond to the Draft Decision as if the tranche method of capacity determination and the associated terms and conditions of service are to be implemented for the following reasons:

- Epic Energy considers that the proposed Access Arrangement is consistent with the provisions of the Code and therefore should be approved; and
- the task of the Regulator is one of assessing the access arrangement as a total package and given that the Draft Decision is affected by errors of law, Epic Energy must await the next decision of the Regulator to determine its response.

5 Response to Draft Decision Non Tariff Amendments

In this section of the Submission, Epic Energy sets out its response to each of the non tariff amendments in the Draft Decision. These responses are subject to the qualifications and reservations discussed in the two previous sections of the Submission.

5.1 Amendment: 1

5.1.1 Amendment

The proposed Access Arrangement and/or Access Contract Terms and Conditions should be amended to combine seasonal capacity attributable to temperature variations with firm capacity, and to allow Users of the Firm Service to contract for the provision of this combined capacity (as part of the Firm Service) thus allowing for different reserved capacity or MDQ in different months of the year.

5.1.2 Epic Response

Epic Energy fully responded to its ability to provide such a Service, and therefore to comply with this amendment in Submission DDS3 (Confidential Version), filed with the Regulator on 5 October 2001.

In summary that submission states that implementation of the Draft Decision would have the effect of forcing Epic Energy to substantially reduce the capacity of the pipeline to properly reflect the risk profile Epic Energy is prepared to accept in implementing an access arrangement that incorporates all of the Draft Decision amendments.

As noted in section 4 of this Submission, a key difference between the Access Arrangement proposed by Epic Energy and the transitional and prior access regimes is a marked increase in the capacity available for Firm Service on a daily basis. The increase in capacity is achieved primarily by changing from the tranche method of capacity determination to the average day concept of capacity.

In moving to average day capacity, Epic Energy is prepared to accept a riskier profile for the availability of compressors. As noted in Submission DDS#3, the Regulator has acknowledged in the Draft Decision that the "the Service Provider appears to be assuming a greater risk (in providing a Firm Service) than would be the case under the T1 Service."[7]

Epic Energy proposed managing this greater risk through a proactive maintenance program supported, in part, by the revenue stream of the proposed Reference Tariff and tariff path.

The higher level of capacity available on an average day basis can be provided only because the maximum capacity, month by month, over the year shows a distinct seasonal pattern. Capacity is higher in winter months (June, July, August), and lower

[7] Draft Decision, page B31.

in summer months (January, February, March) when compression plant has a lower thermal efficiency. It is this seasonal variation in capacity, which permits the capacity available for Firm Service to be defined in terms of the January average. With careful programming, compression plant maintenance can be scheduled in months other than summer months, when capacity is physically limited, and in months other than winter months, when greater capacity is available, but the demand for transmission service is usually higher.

Were the Draft Decision to be implemented, Epic Energy would not be able to maintain the DBNGP without breaching its contracts for firm service when the available capacity was close to being fully contracted. Requiring that the capacity available for Firm Service be determined by combining the seasonal component of capacity with the base firm capacity (defined in terms of the January average) limits Epic Energy's opportunity to schedule maintenance in those periods when either excess capacity is available, or the demand for the available capacity is relatively low.

It is precisely for this reason that Epic Energy indicated, in its proposed Access Arrangement, that it would provide seasonal service only as a non reference service. There may be particular circumstances in which Epic Energy and a shipper can reach agreement on use of a part of the seasonal component of capacity, permitting the shipper some seasonal flexibility while still allowing Epic Energy to carry out required maintenance. Those circumstances may include constraining the shipper's use of seasonal capacity allowing Epic Energy to carry out maintenance work at particular times, or requiring a higher price for seasonal service, allowing Epic Energy to accelerate maintenance work by employing additional staff, or by holding numbers of critical components above the numbers that would normally be held in inventory.

It is unlikely, however, that seasonal service could be offered to more than a few shippers. Were it to be offered to and taken up by all shippers – as could be the case if it were combined with the base firm capacity to define the capacity available for Firm Service – Epic Energy would be unable to maintain the DBNGP so as to provide the requisite capacity for Firm Service.

The only way in which the seasonal component of capacity could be offered in combination with the base firm capacity, as the capacity available for Firm Service, would be by lowering the base firm capacity below the January average level. This lowering of the base firm capacity, and combining the lower base with a seasonal component, would, in effect, lead to a capacity outcome similar to the T1 capacity of the tranche method.

To the extent that the principal requirement of shippers and prospective shipper is a Firm Service, combining a seasonal component of capacity with the base firm capacity of Epic Energy's proposed Access Arrangement, and lowering the capacity available for providing that Firm Service, would be inconsistent with the economically efficient operation of the DBNGP. Furthermore, by limiting Epic Energy's ability to carry out required maintenance, it would be inconsistent with ensuring the safe and reliable operation of the pipeline.

Even if the Draft Decision were such that it would not force Epic Energy to reproduce a capacity outcome similar to that of the tranche method, Epic Energy considers that Amendment 1 is unreasonable for the following reasons:

- Submissions publicly disclosed by the Regulator have not demonstrated that the inclusion of a seasonal component as part of the Firm Service satisfies the test for what must be a Reference Service. The comment that there may be some demand from some users for other services such as a Seasonal Service is not reflective of the test in the Code that it must be a service which is "likely to be sought by a significant part of the market".
- Equally as important, the Regulator has not demonstrated that Epic Energy's proposed Firm Service fails to meet the test for a Reference Service.
- Requiring that Epic Energy include a seasonal component in the capacity available for Firm Service, without also requiring a reduction in the base firm capacity, amounts to requiring that Epic Energy provide a T1 Service without any adjustment to risk weighting in the terms and conditions of service and, other things being equal, without any increase in tariff to compensate for the significant additional risk.
- The Regulator concludes that "the demand for the Seasonal Service should be readily predictable and there is no reason why such demand should not be taken into account in determining the reference tariff."[8] There has been no evidence disclosed by the Regulator to support the conclusion that the demand for this service is readily predictable.
- The Regulator seeks to justify the inclusion of the Seasonal Service as part of the Firm Service on the basis that a Seasonal Service was historically sought by at least two Users. In doing so, the Regulator appears to not have had regard to the comments made in Epic Energy's Response to Information Request 10 provided to the Regulator on 31 January 2001. No account is taken of the historical context in which seasonal capacity was made available and in fact taken up by Users. First, the tranche method of determining capacity gave rise to different summer and winter capacities. In its efforts to secure efficient capacity utilisation of the Pipeline, given limited T1 capacity, the Energy Implementation Group ("EIG") allocated that capacity in a way that it considered broadly matched the seasonal demands of AlintaGas and Western Power (Western Power was also allocated interruptible T2 and T3 capacity to further meet its requirements). The EIG recognised, that unlike AlintaGas, Western Power had some ability to alternate between fuels, and made what it considered to be the most appropriate allocation of limited pipeline capacity. It is therefore wrong to conclude that these two Users necessarily had a requirement for a Seasonal Service.

As a final matter, there are also some aspects of the Regulator's deliberations in relation to this amendment that need to be clarified or corrected:

- Page B20, second paragraph of point 1 – the use of the phrase "compared with the existing more balanced position" in the last sentence of this paragraph infers that there was some agreement with Epic Energy in relation to the transitional access regime. As has been stated on several prior occasions, Epic Energy did not agree to the provisions and services contained in the transitional access regime. These services were prescribed by the Government outside of the DBNGP sale process. The successful bidder for the pipeline was obliged to comply with them and had no ability to negotiate their terms. In fact, Epic

[8] Draft Decision, page B37.

Energy foreshadowed in Schedule 39 that upon the expiry of the transitional regime, there would be a change in the Services – this latter point is acknowledged by the Regulator in his Draft Decision.[9]

- Page B32, first dot point – While Users must contract separately for increases in contracted capacity on a seasonal basis, the tariff is the same as the proposed reference tariff for Firm Service and is rebateable.
- Page B37, second paragraph – the Regulator concludes that the inclusion of the Seasonal Service into the Firm Service will "provide Epic Energy with an opportunity to develop the services it offers in relation to the DBNGP." However, the Regulator has not demonstrated how this will occur.

5.2 Amendment: 2

5.2.1 Amendment

Clause 6 of the proposed Access Arrangement should be amended to make provision as part of the Firm Service for receipt of gas into the DBNGP at any location on the DBNGP.

5.2.2 Epic Response

There are four reasons as to why Amendment 2 is unreasonable and as such Epic Energy can not agree with it:

- First, there is little prospect, within the Access Arrangement period, of the DBNGP receiving gas from a location outside of Zone 1. This was acknowledged by the Regulator himself in the Draft Decision. It is supported by Epic Energy's own current 20 year forecasts, and by the demand forecasts that formed the basis of Epic Energy's purchase of the pipeline (which were more optimistic than the current forecasts).
- Second, even if gas were to be commercialised and delivered for receipt into the pipeline from sources outside of Zone 1, it is likely to be of a different specification to gas currently allowed into the pipeline. The current gas quality specification for the DBNGP is a specification that Epic Energy was required to adopt as a result of contractual arrangements entered into before Epic Energy acquired the pipeline. These contractual restraints on gas quality make the prospect of gas being brought on pipeline from sources outside Zone 1 more remote.
- Third, if gas were to be delivered into the pipeline at receipt points outside Zone 1, Epic Energy would not have the opportunity to recover its Total Revenue through its tariffs, including the Reference Tariff. The Reference Tariff, irrespective of whether it is the Reference Tariff of the proposed Access Arrangement, or the Reference Tariff of the Draft Decision, has been calculated assuming a forecast of the volume of gas received into the pipeline in Zone 1. If, now, shippers are permitted to deliver gas into the pipeline at receipt points outside Zone 1 (and, more specifically, outside Zone 1a), and subsequently avail

[9] Draft Decision, page B20.

themselves of the opportunity, Epic Energy's revenue will fall. [deleted – confidential]

- Fourth, the only substantive reason the Regulator gives for this amendment is that use of the Mondarra gas storage facility could permit more efficient and effective use of gas from the North West Shelf, particularly associated gas for which production rates are variable.[10] Use of the Mondarra storage facility does not, however, depend on an ability to reinject gas back into the DBNGP for subsequent transportation to consumers in Perth and the South West. Gas recovered from storage could also be transported to the Perth and the South West through the Parmelia Pipeline. Epic Energy understands that proposals to use the Mondarra storage facility were developed in 1996, prior to the Parmelia Pipeline being acquired by its current owners. In 1997, consideration was given to amendment of the then current DBNGP access regime (the regime of the Gas Transmission Regulations 1994), to allow transportation of gas from Mondarra to Perth and the South West at a part haul tariff. Proposals for those amendments were never finalised. Apart, possibly, from some early trials by Western Power Corporation (which did not involve re-injection back into the DBNGP), the Mondarra storage facility has not, to Epic Energy's knowledge, been used for the purpose given by the Regulator as a reason for amendment of the proposed DBNGP Access Arrangement. No shipper or prospective shipper has sought, from Epic Energy, a service of reinjecting gas into the DBNGP from Mondarra. These are strong indications that gas storage at Mondarra is not economically viable. There would appear to be no justification for Amendment 2 in terms of more efficient and effective use of gas from the North West Shelf.

5.3 Amendment: 3

5.3.1 Amendment

Clause 6.3 of the proposed Access Arrangement, relating to back haul of gas under the Firm Service, should be deleted.

5.3.2 Epic Response

The flow of gas in the DBNGP cannot be physically reversed without significant changes to existing facilities. There are non-return valves at various locations preventing the back-flow of gas, and the compression is set up to pump gas in one direction only. To insist that the flow of gas should be reversed under the present configuration of the pipeline appears, to Epic Energy, to be technically infeasible. It would also threaten the safety of the operation.

In proposing Amendment 3, the Regulator appears not to have taken into account the operational and technical requirements necessary for the safe and reliable operation of the pipeline. To require the amendment would, Epic Energy believes, be in flagrant breach of section 2.24(c) of the Code.

[10] Draft Decision, page B38.

Amendment 3 does not appear, to Epic Energy, to have a basis in fact, or to be supported by appropriate technical advice. If, however, Epic Energy is incorrect in this view, the Regulator should, as a matter of urgency, make available to Epic Energy for review the technical advice supporting the requirement for this amendment.

Amendment 3 amounts, in essence, to a requirement that Epic Energy expand the capacity of the pipeline by replacing valves and modifying compression plant. There is nothing in the Code which enables either a regulator, or an arbitrator, to force a service provider to carry out such an expansion. Section 6.22(e) makes it clear that an arbitrator can not require the service provider to fund part or all of an expansion of its pipeline. Even were this amendment considered by Epic Energy to be reasonable in the circumstances (and it does not), the Regulator has not made any allowance in his tariff calculations for the costs of the necessary valve and compressor modifications.

As a final matter, there are some aspects of the Regulator's deliberations in relation to this amendment that need to be clarified or corrected:

- the reference to clause 6.2 in the first paragraph under the heading "Regulator's Response to Submissions" on page B39 of the Draft Decision should be to clause 6.3; and
- the second paragraph under that same heading incorrectly paraphrases the effect of clause 6.3 of the Access Arrangement. The paragraph implies that Epic Energy has an unrestricted right to restrict upstream deliveries, and one set of circumstances in which that that right might be exercised is where there is insufficient gas to service downstream Delivery Points as a result of failure by users of the downstream Delivery Points to deliver sufficient gas into the pipeline. In fact, clause 6.3 does not give Epic Energy an unrestricted right. It permits Epic Energy to restrict Upstream Deliveries in its absolute discretion without liability to the Shipper **only** when there is insufficient gas to service downstream Delivery Points as a result of failure by users of the downstream Delivery Points to deliver sufficient gas into the pipeline.

5.4 Amendment: 4

5.4.1 Amendment

The Access Arrangement Information should be amended to include a detailed description of the type contained in clause 5 of the Access Guide for each of the Non-Reference Services proposed in paragraphs 6.1(b)(i)(A) to (H) of the proposed Access Arrangement.

5.4.2 Epic Response

As discussed in section 4 of this Submission, the Draft Decision significantly changes the risk-reward balance sought by Epic Energy in its proposed Access Arrangement. In these circumstances, Epic Energy must reserve its position on whether it will

continue to include any Non Reference Services in the access arrangement documentation.

Removal of these services from the access arrangement documentation does not, however, preclude shippers from freely negotiating Non Reference Services as required. This point is acknowledged by the Regulator in his deliberations on whether to include certain Non Reference Services as part of the Firm Service.

Even if one or more of these services are to remain in the access arrangement documentation as Non Reference Services, Epic Energy notes that the Regulator has failed to show where the Code requires:

- the inclusion of all Non Reference Services; and
- the level of detail with respect to which they are described.

The requirement to provide a certain level of detail in relation to the description of each Non Reference Service ignores the fact that these are services which will vary in their precise nature and terms according to the particular needs of the shippers seeking them. The manner in which they were described in the access arrangement information was intentional. It was an attempt by Epic Energy to develop the market for such services, rather than to define them with such precision that they become "de facto" reference services.

Epic Energy's experience is that the first three Non Reference Services are services that have been required of pipeline operators with a frequency (although not to the extent that they should be classified as a Reference Service) and in a form that enables a generic explanation as to their nature to be provided, albeit in limited detail.

This is not the case with the remaining Non Reference Services for which the service required by a particular shipper will depend quite specifically on that shipper's circumstances.

None of the services for which the Regulator now seeks a more detailed description has been provided by Epic Energy to date. Epic Energy will simply delete all references to them in a revised Access Arrangement which it will be required to lodge with the Regulator.

5.5 Amendment: 5

5.5.1 Amendment

The proposed Access Arrangement and/or Access Contract Terms and Conditions should be amended to include, as part of the Firm Service, the timely provision to Users of metering information necessary to assess potential liabilities for penalty charges and enable Users to take actions to avoid those charges.

5.5.2 Epic Response

Amendment 5 is directed toward provision of metering information to enable shippers to assess potential liability for penalty charges arising as a result of their exceeding the balancing and peaking tolerances of the Access Contract Terms and Conditions.

Epic Energy points out that, although financial penalties are not imposed, there are daily and hourly peaking obligations, and obligations to remain within balancing limits, in all existing DBNGP access contracts. The Regulator is, therefore, entitled to assume that these obligations are being observed by shippers with the level of information currently made available to them.

To impose a further requirement for information provision would require investment in new facilities. Neither the Regulator, nor the Arbitrator, can compel Epic Energy to make that investment. If particular shippers believe further investment in metering facilities and information systems is required, they may negotiate their provision by Epic Energy as part of a metering information non reference service.

5.6 Amendment: 6

5.6.1 Amendment

The proposed Access Arrangement should be amended to provide for a minimum contract term of no greater than one year for the Firm Service.

5.6.2 Epic Response

The Regulator has given no indication of the Code provision supporting this amendment. Furthermore, he acknowledges that there is no provision that prohibits the duration proposed by Epic Energy.

The only justification that the Regulator relies upon to support this amendment is that Epic Energy's proposal of a minimum 5 year term is substantially in excess of common practice in the gas transmission and distribution industry. The Regulator quotes a number of systems where a similar minimum term has been included in an access arrangement.

Epic Energy makes the following comments in response:

- None of the examples cited by the Regulator are terms that have been unilaterally proposed by the service provider. They have all been imposed upon service providers by regulatory decisions. To therefore state that this is common industry practice is not correct.
- Where there is no regulatory intervention, contracts for services provided by long-lived assets that cannot be redeployed to other uses are typically long term contracts. They have the important economic function of protecting the owners of those assets from *ex post* exploitative behaviour by users of the services provided by those assets.[11]

[11] On this issue see, for example, O E Williamson, *The Economic Institutions of Capitalism*, New York: Free Press, 1985.

- No contracts entered into by Epic Energy to date have been for a duration of one year. The range of durations found in contracts entered into under the Gas Transmission Regulations was from 5 to 15 years, with a modal duration of about 10 years. The range of durations for the smaller number of Access Manual contracts was 9 to 15 years. One must therefore question the need to impose a minimum duration of one year.
- The Regulator's own reasoning concludes that a shipper under an Access Contract will not be disadvantaged by its term being the 5 years proposed by Epic Energy, even if that 5 year period extends beyond the Access Arrangement Period.
- A shipper will not be affected by a contract of a minimum duration equivalent to the Access Arrangement period given that the tariffs are certain for that period.
- Given that the capacity of the DBNGP is fully contracted, for any new capacity to be built at Epic Energy's cost, there will need to be certainty that the Service Provider will have the opportunity to recover its investment. This will require contracts of longer duration than one year. Epic Energy addressed this issue in Additional Paper 8, submitted to OffGAR in March 2001, specifically at paragraph 3.12.

- The issue of investment recovery was also addressed, albeit indirectly, by the scheme of Schedule 39, which was carried into the proposed Access Arrangement. To ensure that pipeline capacity would be available to support the subsequent economic development of the State, Epic Energy undertook to provide further expansions (up to an investment of some $875 million) without seeking a change in the tariff implied by its proposed initial tariff and tariff path. Shippers and prospective shippers would thereby be provided with relative certainty that the capacity they might require would be available, while Epic Energy would be provided with a degree of certainty that it would be able to recover a substantial part of investment in long-lived assets which could not be redeployed to alternative uses. If the Draft Decision, including Amendment 6, were to be implemented, it is difficult to see how there might be any reasonable prospect of Epic Energy recovering further investment in the DBNGP. The pipeline will always serve a relatively small number of shippers transporting large volumes of gas. Unlike a distribution system, there is no large base of actual and potential customers which results in a turnover of capacity with little change in total contracted capacity at the margin. When one customer departs, another is soon found to replace it. Epic Energy sought to avoid this difficulty, and to facilitate pipeline expansion as required by the State, through Schedule 39 and its commitment to expand. Implementation of the Draft Decision, will preclude this from happening by severely limiting the circumstances in which Epic Energy can commit to providing additional capacity.

Given the above, Epic Energy considers that the Regulator has failed to both demonstrate that Epic Energy's proposal is unreasonable, and that Amendment 6 is justified.

This discussion is also relevant for the purposes of Amendment 39 discussed below.

5.7 Amendment: 7

5.7.1 Amendment

Clauses 10.3 and 10.4 of the proposed Access Arrangement should be amended to remove the ability of Epic Energy to change the Access Contract Terms and Conditions without revision of the Access Arrangement in accordance with section 2 of the Code.

5.7.2 Epic Response

In effect, the Regulator is proposing an additional "trigger" with Amendment 7. The impact of the amendment is to force the Service Provider to reduce the scope for flexibility in its Access Terms and Conditions to the detriment of shippers and prospective shippers.

Epic Energy considers that its proposal set in place a formula which enables minor amendments to be made to the Access Arrangement, so long as those amendments do not in aggregate detract from the value of the Reference Service to shippers. This approach is entirely consistent with the balancing of the factors in section 2.24 of the Code. Shipper and prospective shippers avoid the uncertainty that can be created by a protracted and costly regulatory approval process, as has been demonstrated with the current process for the DBNGP – a process which has been ongoing now for over 3 years at considerable direct and indirect cost.

To remove this flexibility, removes Epic Energy's ability to respond to shippers' needs and will force shippers into negotiating contracts for Non Reference Services which differ in only minor ways from the Reference Service (i.e. in ways which do not in aggregate detract from the value of the Reference Service). This has two flow-on consequences. The first is to detract from a shipper's ability to negotiate access in a timely manner, raising the spectre of arbitration. The second is that it hinders Epic Energy's ability to be proactive in developing the reference service in response to signals it is receiving from shippers and prospective shippers.

If this amendment were to be implemented in the approved access arrangement, Epic Energy would be forced to submit for approval, and the Regulator would be obliged to assess (in accordance with sections 2.28 and 2.29 of the Code), an entire access arrangement whenever amendments being sought were of a minor nature. Given the time taken and the costs incurred in the current regulatory approval process, and in all of the others in which Epic Energy has been involved to date, Epic Energy would be very reluctant to embark on such a course of action. The regulatory risks and costs involved in the process would be unacceptable.

One questions how Amendment 7 could be regarded as being in the public interest, particularly given that:

- there is nothing in the Code which prevents an internal change mechanism being included in an access arrangement[12]; and

[12] Section 2.49 of the Code only applies once an access arrangement has become effective 31 December 2002

- the proposed change mechanism limits the matters that can be changed unilaterally by Epic Energy.

Epic Energy is therefore of the view that Amendment 7 is not consistent with the Code's minimum requirements for an access arrangement.

5.8 Amendment: 8

5.8.1 Amendment

The proposed Access Arrangement and/or Access Contract Terms and Conditions should be amended to include a provision that expressly states that Epic Energy is under an obligation to accept gas and to deliver gas, subject to the limitations of the terms and conditions that apply to any Access Contract entered into with the Shipper, including the occurrence of any force majeure event.

5.8.2 Epic Response

If Amendment 8 is to remain in the Regulator's subsequent decisions, Epic Energy will address the amendment in a revised Access Arrangement which it will be required to lodge with the Regulator.

5.9 Amendment: 9

5.9.1 Amendment

The Access Contract Terms and Conditions should be amended to include a gas quality specification to apply from 1 July 2005, where that gas quality specification is no more restrictive than the broadest specification currently set out in Schedule 1 of the *Dampier to Bunbury Pipeline Regulations 1998*.

5.9.2 Epic Response

Epic Energy questions whether the Regulator can impose an amendment that has no relevance during the Access Arrangement Period.

Leaving that aside, there are three issues to which the Regulator has not given appropriate weight in requiring Epic Energy to move to the broadest possible gas specification:

- [deleted – confidential];
- acting prudently, Epic Energy will have to assume that all shippers move to the extreme of the specification, reducing the capacity available for firm service; and
- Epic Energy may be forced to be in breach of some of its existing transmission contracts where these retain narrower specifications. These include [deleted – confidential]. Epic Energy understands a move to the broadest possible

specification will adversely impact on existing contracts entered into by AlintaGas with its customers.

These arguments notwithstanding, Epic Energy questions whether an amendment of this nature, with such potentially broad ramifications, is within the proper role of the Regulator. As stated in the submission by Treasury/Office of Energy prior to the release of the Draft Decision, it is the role of the Coordinator of Energy to secure a change in the operating specification for the pipeline. That obligation remains to this date. Given:

- the significant impact that this issue has on not only the Service Provider and Users of the pipeline but also producers and other end users who are not shippers, including domestic customers on the distribution systems;
- the broader policy issues that this issue relates to; and
- the fact that it is the Office of Energy that has the appropriate technical knowledge to deal with this issue;

it is only appropriate that the matter be resolved by the Coordinator for Energy and for any decision to be implemented by the Regulator.

Nevertheless, Epic Energy is keen to move to the broadest gas specification. This should make available larger volumes of gas for transportation in the future. The matter is, however, complex. It cannot be resolved within the scope of decision making concerning Epic Energy's proposed Access Arrangement and should, as noted above, be resolved by the Coordinator for Energy. Furthermore, in achieving that resolution, consideration must be given to the fact that changing the specification to increase the permitted levels of inert gases, and to reduce or remove the LPG requirement, will reduce pipeline capacity. Were the broadest gas specification to be introduced today, Epic Energy would not have sufficient capacity to meet its current contractual obligations.

As a final matter, there is one aspect of the Regulator's deliberations in relation to this amendment that needs to be clarified or corrected:

- Page B48 – last sentence of 1st paragraph after references to extracts from submissions – it is not correct that the Regulator will assume regulatory control over the gas quality specification. This will be regulated in accordance with the provisions of the *Gas Standards Act*.

5.10 Amendment: 10

5.10.1 Amendment

Sub-clause 2.3 of the Access Contract Terms and Conditions should be amended to provide that the terms and conditions acceptable to Epic Energy on which it may accept out of specification gas must be reasonable.

5.10.2 Epic Response

The Regulator has not demonstrated that Epic Energy's proposed sub-clause is unreasonable.

The gas quality specification is a critical aspect of a pipeline access regime. Gas quality affects pipeline capacity, and affects the efficiency of pipeline operation. If off-specification gas is received into the pipeline, the service provider may find itself in breach of its contracts, and will have great difficulty in rectifying the problem. (If shippers refuse to accept the delivery of off-specification gas, little can be done but to vent that gas in a hazardous, costly and time consuming process.)

The quality specification is like other behavioural constraints in an access regime. Compliance is mandatory for safe and reliable pipeline operation. There may, however, be circumstances where a shipper wants to deliver off-specification gas into the pipeline, and where the pipeline operator has some ability to accommodate that gas. These are matters for close and detailed negotiation between the parties in the context of the prospective shipper seeking a non reference service.

This is entirely consistent with the principles of access regimes that have been certified in accordance with Part IIIA of the Trade Practices Act 1974 and which are therefore deemed to be consistent with the principles in clause 6 of the Competition Principles Agreement. As is the case with the Code, negotiation between the parties should always be the first step in the process for gaining access. In the event of a dispute arising, a shipper is guaranteed a right to access via the process of arbitration, because the arbitrator's decision is binding on both parties. It should be noted that clause 6 of the Competition Principles Agreement principles does not require a regime to have a regulator appointed to set terms and conditions of access in order for the regime to be effective under Part IIIA of the TPA.

The imposition of a "reasonableness" requirement is, in these circumstances, therefore inappropriate for three reasons:

- it does not provide any greater certainty to shippers;
- Epic Energy should have discretion over accepting out of specification gas into the pipeline; to limit its discretion could compromise safe and reliable operation and would result in an access arrangement including such a provision which could not be approved by the Regulator in accordance with section 2.24(c) of the Code; and
- it fails to properly recognise the pre-existing contractual requirements imposed upon Epic Energy in relation to gas specification.

5.11 Amendment: 11

5.11.1 Amendment

Clause 4 of the Access Contract Terms and Conditions should be amended to provide for re-nominations during a gas Day.

5.11.2 Epic Response

The argument of the Draft Decision supporting Amendment 11 is confused.[13] In accordance with that argument, renomination is required to avoid the attraction of penalties, and to permit late nominations in excess of MDQ.

First, under the Access Contract Terms and Conditions there is no penalty for differences between nominations and deliveries. Shippers are, however, required to nominate in good faith (Clause 4.4(a)). Should Epic Energy, as a reasonable and prudent pipeline operator form the view that a shipper has not nominated in good faith, Epic Energy may issue a Variance Notice requiring the shipper to nominate in good faith (Clause 4.4(b)). If, at the expiry of 21 days from receipt of the notice the shipper's deliveries continue to vary from nominations by more than 10%, then a Nominations Surcharge may be payable. The ability to renominate during a gas Day will not enable a shipper to avoid the Nominations Surcharge because that surcharge is only payable in the event of persistent breach of the shipper's obligation to nominate in good faith over an extended period.

Second, renomination will not facilitate late nomination in excess of MDQ. An ability to renominate in excess of MDQ requires that pipeline capacity be available to permit the additional gas to be transported. Before a renomination could be made in excess of MDQ, the shipper would have to ensure that the necessary capacity were available. Simply allowing renomination does not facilitate late nomination in excess of MDQ (nor does it assist an increase in nomination up to MDQ because the Access Arrangement proposed by Epic Energy gives full recognition to a shipper's entitlement to its contracted capacity, allowing the shipper to take delivery of gas up to its MDQ regardless of nomination). For renomination in excess of MDQ to have effect, the shipper must have the ability to access additional capacity. No consideration is given to this issue in Amendment 11 or in the supporting argument. Epic Energy's proposal is for that capacity to be sourced in an active Secondary Market. Once the capacity is available to the shipper, there is no need for renomination: the shipper is entitled to increase its nomination up to its MDQ.

As a final matter, it is appropriate to reiterate one of the reasons why the proposed Access Arrangement includes requirements for nominations, and for those nominations to be fairly accurate. Nominations are used by Epic Energy to establish the operating regime of the pipeline (including linepack, compressors which must be run, compressors which can be taken out of service for maintenance, and compressor fuel requirements) each day. If the nominations are not sufficiently accurate, then Epic Energy will have difficulty in operating the pipeline efficiently, in particular because nominations have a direct correlation with linepack and compressor fuel requirements. To demonstrate this most effectively, Epic Energy invites the Regulator and his staff to again visit Epic Energy's control centre.

5.12 Amendment: 12

5.12.1 Amendment

Paragraph 5.3(b) of the Access Contract Terms and Conditions should be amended such that the offending Shipper's liability is not be unlimited, but rather Epic Energy

[13] Page B51.

and other Shippers should be obliged to take all reasonable steps possible to mitigate any losses occurring in the event of a Shipper taking gas in excess of their contracted capacity, i.e. an Overrun.

5.12.2 Epic Response

If Amendment 12 is to remain in the Regulator's subsequent decisions, Epic Energy will address the amendment in a revised Access Arrangement which it will be required to lodge with the Regulator.

5.13 Amendment: 13

5.13.1 Amendment

Sub-clause 11.5 of the Access Contract Terms and Conditions should be amended to clearly describe the meaning of and scope of "arrangements between Epic Energy, that other gas distribution system and the operator of that network".

5.13.2 Epic Response

The arrangements in question have been developed within the Interim Market Rules for full retail contestability in the Western Australian gas market. The principal participants in the gas market, including Epic Energy, signed an Agreement to Implement the Interim Market Rules during the period 18-21 December 2001.

Epic Energy would expect that a prospective shipper would examine the Interim Market Rules in the process of fully informing itself of the arrangements it is proposing to enter into for gas transportation. Amendment 13 is therefore redundant. However to clarify the situation, Epic Energy would propose to insert a provision that refers shippers to the Interim Market Rules in this respect.

As a final matter, there is one aspect of the Regulator's deliberations in relation to this amendment that needs to be clarified or corrected:

- Page B53, the first non quotation paragraph under the heading "Notional Delivery Points" – the reference to the extract from clause 11.5 of the Access Contract Terms and Conditions is incorrect – it should read "arrangements between Epic Energy, that other gas ***transmission*** system and the operator of that distribution network". If the amendment has been formulated, as is apparent from the text of the Draft Decision, on the basis of a misunderstanding of the submission then the amendment should be struck out.

5.14 Amendment: 14

5.14.1 Amendment

Sub-clause 11.5 of the Access Contract Terms and Conditions, relating to interconnection of multiple transmission systems with a distribution network, should

be amended to provide that Shippers will be notified of any arrangements between Epic Energy, the other gas transmission system and the operator of that distribution network prior to the time the Shipper becomes subject to any contractual obligation that may be affected by those arrangements.

5.14.2 Epic Response

Amendment 14 is now redundant. These arrangements are within the Interim Market Rules for full retail contestability in the Western Australian gas market.

5.15 Amendment: 15

5.15.1 Amendment

Sub-clause 12.6 of the Access Contract Terms and Conditions, relating to correction of meter readings in instances of metering inaccuracy, should be amended to remove the limitation on the Correction Period (being that the Correction Period will not extend beyond one half of the time elapsed since the date of the Previous Verification), except in circumstances where the period of inaccuracy cannot be known or agreed upon between Epic Energy and the Shipper.

5.15.2 Epic Response

The Regulator appears to justify Amendment 15 on the basis that it has the effect of limiting Epic Energy's liability. However, clause 12.6 actually works either way to limit the liability of both parties depending on the inaccuracy. If the inaccuracy is in favour of one of the parties, the clause works to limit the liability of the other.

Epic Energy notes the same scheme (the correction period not extending beyond one half of the time elapsed since the date of the previous verification when the time at which a meter becomes inaccurate is not known) in:

- regulation 227 of the Gas Transmission Regulations 1994; and
- clause 167 of the Access Manual.

Shippers have accepted the scheme now being proposed by Epic Energy in clause 12.6 of the Access Contract terms and Conditions since 1995.

In requiring Amendment 15, the Regulator has not made a proper assessment and balancing of the interests of the Service Provider, and of shippers and prospective shippers. The amendment does not improve the position between the Service Provider and a shipper or prospective shipper, and would actually act to increase the quantum of liability for the liable party. Epic Energy should not be required to make this amendment to the proposed Access Arrangement.

5.16 Amendment: 16

5.16.1 Amendment

Paragraph 13.4(a) of the Access Contract Terms and Conditions should be amended to limit the liability of the Shipper to situations where loss or damage occurs and is directly caused by the Shipper's actions.

5.16.2 Epic Response

The Regulator appears to have misinterpreted the intent behind this clause. The justification that he provides as the basis for the amendment as set out in the second last paragraph of page B56 of the Draft Decision is that the "scope of the clause is unreasonably broad, such that liability may relate to the whole of the DBNGP. A shipper could potentially be liable in circumstances where the Shipper supplies gas for transportation in one section of the pipeline while damage occurs in another. Alternatively, the shipper may be liable where gas it supplied is held in storage while damage occurs to the pipeline itself." He then concludes that this provision can not be considered reasonable under section 3.6 of the Code.

This clause is aimed at dealing with the issue of causation. If the shipper caused the damage, it should be liable for it. That is in effect what the last sentence of clause 13.4(a) provides for.

Even if this interpretation is not accepted by the Regulator, the shipper should be liable for any damage it causes, directly or indirectly, except to the extent caused by the negligence of Epic Energy or it is an event of Force Majeure. There seems no reason why a shipper's liability should be limited to only direct losses in other circumstances.

In consequence, it is unclear how the Regulator can conclude that clause 13.4(a) is unreasonable.

5.17 Amendment: 17

5.17.1 Amendment

Paragraph 13.4(b) of the Access Contract Terms and Conditions should be amended so as to remove liability of the User to parties other than Epic Energy by deleting the reference to "any person contracting with Epic Energy".

5.17.2 Epic Response

As stated above in relation to Amendment 16, clause 13 of the Access Arrangement deals with the issue of causation: if the Shipper causes the damage, it should be liable for it, irrespective of whether the damage is caused to Epic Energy, to some other Shipper, or to another third party who has a contract with Epic Energy.

The Regulator seeks to justify this amendment on two bases:

- first, it may be difficult, if not impossible to enforce such a clause, under the general law principle of privity of contract; and

- second, it is inconsistent with clause 33 of the Access Arrangement Terms and Conditions.

The first justification ignores the provisions of the Property Law Act which seek to overcome the general law principle. The second justification is also wrong – clause 33 is aimed at clarifying any uncertainty as to a person's rights where the person is simply "referred to in the contract". It does not give rise to the purported conflict with clause 13.4(b). Clause 13.4(b) affords a third party certain rights and, when read in conjunction with the provisions of the Property Law Act, there is no conflict with clause 33.

Accordingly, Epic Energy should not have to bear any liability or expenses arising from or in connection with any claim, demand, action or proceeding made or brought by **any** person in relation to any injury, death, loss or damage referred to in clause 13.4(a).

5.18 Amendment: 18

5.18.1 Amendment

Sub-clause 13.4 of the Access Contract Terms and Conditions should be amended such that the liability of each party to an Access Contract is limited to the plant, equipment, pipelines and facilities owned by each and to the sections of the DBNGP between the relevant Receipt and Delivery Points, in accordance with paragraph 28(a) of the Access Contract Terms and Conditions.

5.18.2 Epic Response

There is no inconsistency between clauses 13.4 and 28, as claimed by the Regulator, for the purposes of determining liability. Clause 28 simply determines ownership. Clause 13.4 deals with causation. If a shipper causes damage to any equipment on the system (whether it is owned by Epic Energy or not or even whether it is used to transport the shipper's gas or not), then the shipper must be responsible. Similarly if Epic Energy causes damage to the shipper's property, to the extent that it is not caused by the shipper's negligence or as a result of an event of Force Majeure, Epic Energy should be responsible for that damage.

There is no logical nexus between the extent of damage which may be caused to the system (a loss suffered by Epic Energy to the extent it owns the damaged plant) as a direct or indirect result of the Shipper's conduct (on the one hand) and the value of physical plant owned by the Shipper (on the other hand).

In addition, given the interconnected nature of the pipeline system itself and the properties of gaseous substances, there is no real merit in limiting potential damage to specific physical locations.

Epic Energy notes that a similar scheme of liability, without reference to specific plant and equipment, and to the location of that plant and equipment, was provided in:

- regulation 121 of the Gas Transmission Regulations 1994; and

- clause 60 of the Access Manual.

Amendment 18 does not improve the position between the Service Provider and a shipper or prospective shipper over and above that provided for in the proposed Access Arrangement, and Epic Energy should not be required to make the amendment to the proposed Access Arrangement.

5.19 Amendment: 19

5.19.1 Amendment

Clause 14 of the Access Contract Terms and Conditions should be amended to provide for Shippers to be given not less than 30 days prior notice of all planned maintenance activity to be carried out on or in relation to the DBNGP which may reasonably be considered likely to interrupt normal gas transmission.

5.19.2 Epic Response

This is a further example of the selective adoption of provisions of the Access Manual (under the transitional access regime of the Dampier to Bunbury Pipeline Regulations) by the Regulator.

As outlined in section 4 of this Submission, Epic Energy has consistently submitted to the Regulator that Epic Energy made a conscious decision to depart from the terms and conditions of the Access Manual when it purchased the pipeline. This was because the terms and conditions of access were part of a total package involving tariffs, capacity enhancement and terms and conditions that Epic Energy bid for the pipeline on. This is reflected in Schedule 39 of the Asset Sale Agreement which was to give effect to a reweighting of the balance of risk between the service provider and shippers.

As such, Epic Energy can not agree to this amendment at this stage.

However, if the Regulator were to insist on such an amendment, it needs to be amended to reflect that 30 days notice to shippers for planned maintenance should only be required to be given in circumstances where it will interrupt “firm service” capacity.

5.20 Amendment: 20

5.20.1 Amendment

The proposed Access Arrangement documents should be amended to include a definition of the term “Receipt Charge” or, alternatively, the term “Gas Receipt Charge” may be used instead if that term, as defined in the Access Contract Terms and Conditions, was intended to be used.

5.20.2 Epic Response

If Amendment 20 is to remain in the Regulator's subsequent decisions, Epic Energy will address the amendment in a revised Access Arrangement which it will be required to lodge with the Regulator.

5.21 Amendment: 21

5.21.1 Amendment

The definition of "force majeure" in sub-clause 1.1 of the Access Contract Terms and Conditions should be amended to specify particular events that will constitute force majeure, including industrial action.

5.21.2 Epic Response

The Regulator considers that Epic Energy's proposed definition of Force Majeure is very broad. However, the term is usually defined broadly in commercial contracts. On that basis, to force Epic Energy to specify every event of Force Majeure is unreasonable. Epic Energy's approach of specifying those events that do not amount to an event of Force Majeure is more appropriate.

While regulatory precedent should not be used as the ultimate test of the reasonableness of an amendment, it is noted that the access arrangement for the Moomba to Adelaide Pipeline System ("MAPS"), which was drafted by the ACCC, includes a provision which defines events of Force Majeure by exception.

The Regulator also states that it is common practice for industrial action to be an event of force majeure. It can be demonstrated that it is equally common practice within the pipeline industry for industrial action not to be an event of force majeure. See for example the access arrangements for the South West Queensland Pipeline and the MAPS, both of which were established by the Relevant Regulator, the ACCC.

Given normal commercial practice, and common practice in the pipeline industry, the Regulator can not argue that the definition of force majeure in Epic Energy's proposed Access Arrangement is unreasonable or unacceptably broad.

5.22 Amendment: 22

5.22.1 Amendment

Paragraph 15(d) of the Access Contract Terms and Conditions should be amended to state that Epic Energy will waive charges that are based on capacity reservation (MDQ) where it claims the benefit of force majeure under clause 15, to the extent that it fails to provide the Service that is the subject of the Access Contract.

5.22.2 Epic Response

If Amendment 22 is to be included, it should not apply if the shipper or another shipper, has caused Epic Energy to call an event of Force Majeure. As recognised by the Regulator himself, an event of Force Majeure is by its very definition, an event which is outside the party's control. Epic Energy is not in the best position to minimise the risk in such instances.

5.23 Amendment: 23

5.23.1 Amendment

Sub-clause 21.4 of the Access Contract Terms and Conditions should be amended to read "If Epic Energy is not satisfied that the Shipper is in a position to meet or continue to meet its obligations under an Access Contract, Epic Energy may require and the Shipper shall provide such security as may objectively be considered reasonably necessary to secure those obligations".

5.23.2 Epic Response

The Regulator has failed to indicate the circumstances where he claims Epic Energy could "abuse and use clause 21.4 to preclude continuing access to a service by a Shipper." Hence he has failed to show why Epic Energy's current provision is unreasonable. Abusing and using a provision like clause 21.4 to preclude continuing access to a service by a shipper is fundamentally at odds with the financial objectives of a service provider, like Epic Energy, which does not have upstream or downstream affiliates. Such a service provider has the objective of maximising throughput in its pipeline for the purpose of maximising its revenue.

Even if the Regulator were to disregard the above argument, the use of the word "objectively" is pejorative and redundant. Furthermore, it does not add anything to the test, and only raises the likelihood of disputes arising between the Service Provider and prospective shippers. A service provider must be able to satisfy itself that a shipper is prudentially sound. Given that a significant part of the service provider's business would be adversely affected were a shipper to experience financial difficulties, it is only appropriate that the service provider be provided with discretion in relation to the balancing of risk this instance.

As a final matter, Epic Energy has not experienced an issue with other regulators in relation to similar provisions for access arrangements that have been implemented for Epic Energy's other pipelines.

5.24 Amendment: 24

5.24.1 Amendment

The definition of "independent expert" in sub-clause 1.1 of the Access Contract Terms and Conditions should be amended to refer to sub-clause 18.2 of the Access Contract Terms and Conditions and not sub-clause 16.2, which appears to have been referenced unintentionally.

5.24.2 Epic Response

If Amendment 24 is to remain in the Regulator's subsequent decisions, Epic Energy will address the amendment in a revised Access Arrangement which it will be required to lodge with the Regulator.

5.25 Amendment: 25

5.25.1 Amendment

Sub-clause 3.6 of the Access Contract Terms and Conditions should be amended to provide for agreement between the Shipper and any Other Shipper as to the proportion of gas supplied and for proportional allocation by Epic Energy of gas supplied to a Delivery Point in the absence of any agreement or due notification, consistent with sub-clause 3.7.

5.25.2 Epic Response

If Amendment 25 is to remain in the Regulator's subsequent decisions, Epic Energy will address the amendment in a revised Access Arrangement which it will be required to lodge with the Regulator.

5.26 Amendment: 26

5.26.1 Amendment

Sub-clause 16.4 of the Access Contract Terms and Conditions is required to be amended to make it clear that any adjustment of Charges will be submitted for review in accordance with the provisions of the Code relating to review of an Access Arrangement.

5.26.2 Epic Response

First, this amendment is inconsistent with the Regulator's trigger amendment in relation to an increase in taxes and charges (see Amendment 48).

In addition, this clause was inserted to deal with the very predicament that Epic Energy is now confronted with in relation to the payment of service and standing charges. At the time that this access arrangement was proposed, the Gas Pipelines Access (Funding) Regulations had not been implemented. While Epic Energy was aware that there may be a user pays system of regulation put in place, its precise form and substance were unknown. Furthermore, the precise costs that service providers were likely to be required to pay were unknown. In consequence, Epic Energy could not reasonably include any amount for such costs as part of its non capital costs.

It would also be unreasonable for Epic Energy to be required to include such costs as part of its non capital costs, particularly given the rate at which the service and

standing charges have increased since the establishment of the Office of Gas Access Regulation. This is outlined in more detail in the table contained in **Attachment** 1 of this submission.

The matter is further complicated with the proposed establishment of the multi industry regulator, the Economic Regulation Authority ("ERA"). One of the reasons given for the creation of the ERA has been its ability to generate economies of scale in the regulatory process. There is little evidence to suggest that this might be the case. The Independent Gas Pipelines Access Regulator and the Rail Access Regulator have been sharing certain services for some time but this has not led to any apparent reduction in the Gas Access Regulator's costs. The issue is further complicated by the fact that the Government refuses to release the proposed funding regulations for the ERA.

Accordingly, it would be demonstrably unfair for the service provider to be required to resubmit the entire access arrangement for review just because it is required to pay an additional statutory charge which it could not estimate for inclusion in its tariff calculations at the commencement of the access arrangement.

To further compound the inequity of this situation, the Regulator has now sought to remove the ability of the service provider to pass on such costs (entirely appropriate because users are the beneficiaries of regulation) by way of requiring this amendment and Amendment 70.

Given the uncertainty surrounding the funding of the proposed Economic Regulation Authority, it is only appropriate that this clause remain, to ensure that service providers are guaranteed the opportunity of ensuring that the beneficiaries of such regulation – i.e. the shippers – bear the associated costs. Accordingly, Epic Energy submits that the Regulator has failed to demonstrate how the proposed clause is unreasonable.

5.27 Amendment: 27

5.27.1 Amendment

Paragraph 17.1(c) of the Access Contract Terms and Conditions should be amended to clarify whether default arising from a failure to pay any amount that is due to Epic Energy arises seven days after the date of posting of a notice of demand or the date of its receipt by the Shipper.

5.27.2 Epic Response

If Amendment 27 is to remain in the Regulator's subsequent decisions, Epic Energy will address the amendment in a revised Access Arrangement which it will be required to lodge with the Regulator by stating that default arises seven days after receipt of a notice of demand by the Shipper.

5.28 Amendment: 28

5.28.1 Amendment

Paragraphs 5(a) and (d) of schedule 3 of the Access Contract Terms and Conditions should be amended to refer to sub-clauses 12.5 and 12.6 of the Access Contract Terms and Conditions as appropriate and not sub-clauses 11.5 and 11.6, which appear to have been referenced unintentionally.

5.28.2 Epic Response

If Amendment 28 is to remain in the Regulator's subsequent decisions, Epic Energy will address the amendment in a revised Access Arrangement which it will be required to lodge with the Regulator.

5.29 Amendment: 29

5.29.1 Amendment

Sub-clause 3.3 of the Access Contract Terms and Conditions should be amended to enable Shippers to relocate capacity across Receipt Points and Delivery Points upstream and downstream of the relevant contracted Receipt or Delivery Point and over a short term or long term basis where technically and commercially feasible and with the prior written consent of Epic Energy, that may only be withheld or made conditional on reasonable technical or commercial grounds.

5.29.2 Epic Response

The Regulator's proposal requires adherence to a strictly prescriptive approach and therefore reduces the parties' flexibility. As demonstrated in Epic Energy's Submission 9 filed on 12 May 2000 (see section 2), its proposed provision was far more flexible than the transitional regime under the Access Manual. The Regulator's approach reverts back to the transitional regime in terms of inflexibility.

The Regulator has not established that Epic Energy's proposal is unreasonable.

5.30 Amendment: 30

5.30.1 Amendment

Sub-clause 11.2 of the proposed Access Arrangement should be amended to provide for Users of Services to change the Receipt Point or Delivery Point for a Service from that specified in any contract for that Service, subject to the User providing notice to the Service Provider and subject to the Service Provider being able to withhold consent to the change in Receipt Point or Delivery Point on reasonable commercial or technical grounds, in accordance with the requirements set out in paragraph 3.10(c) of the Code.

5.30.2 Epic Response

See comments above in relation to Amendment 29.

5.31 Amendment: 31

5.31.1 Amendment

Clause 11.3 of the proposed Access Arrangement should be amended to clearly specify whether the Secondary Market Service is a service providing actual pipeline capacity, or is a brokerage service for facilitating the exchange of capacity between Shippers or between Epic Energy and Shippers, or both. In the event the Secondary Market Service is, or includes, a brokerage service, paragraph 11.3(e) of the proposed Access Arrangement should be amended to indicate to which type of service (pipeline capacity or a brokerage service), and the means by which, the "market price" applies.

5.31.2 Epic Response

Subject to the issue raised in the following paragraph, if Amendment 31 is to remain in the Regulator's subsequent decisions, Epic Energy will address the amendment in a revised Access Arrangement which it will be required to lodge with the Regulator.

Implementation of certain of the DD amendments in the final decision, would require that Epic Energy operate the pipeline in a manner such that there is only limited spare capacity available for a Secondary Market. In these circumstances, Epic Energy would need to review its decision to provide the Secondary Market Service, which is not essential to the proposed Access Arrangement. Epic Energy may remove entirely provision of the Secondary Market Service from the Access Arrangement once the Regulator has issued a final decision.

5.32 Amendment: 32

5.32.1 Amendment

Clause 5.3 of the proposed Access Arrangement should be amended to provide for Prospective Users to be notified at the time an Access Request is made of the time when that Access Request may be met, including details of the position in the queue of that Access Request, but subject to Epic Energy complying with any confidentiality obligations to other Prospective Users.

5.32.2 Epic Response

Epic Energy could only accept this provision if notification can be provided on a non-binding basis. Following is a form of clause which illustrates what may be acceptable to deal with the issue:

5.3(f) Upon receipt of an Access Request, without limitation to Epic Energy's assessment of that Access Request in accordance with Clause 5.2 and subject to Clause 5.3 and any relevant obligations of confidentiality imposed

upon it, Epic Energy must give a good faith estimate of the timeframe within which that Access Request may be met, including the position that such Access Request, if it were to be accepted as at the time the estimate is given, would have in the Queue. Epic Energy will, after the date the Access Request is received, advise the Prospective Shipper if events occur that materially impact the good faith estimate so given. However, Epic Energy will not in any way be liable to the Prospective Shipper if any such estimate is not achieved.

If Amendment 32 is to remain in the Regulator's subsequent decisions, Epic Energy will address the Amendment in a revised Access Arrangement which it will be required to lodge with the Regulator. A corresponding change will be made to the proposed Access Guide.

5.33 Amendment: 33

5.33.1 Amendment

Clause 5.3 of the proposed Access Arrangement should be amended to provide for a Prospective User to be notified of any material change (in the context of the relevant Prospective User's application) in the expected timing of when the Prospective User's Access Request in the queue will be satisfied.

5.33.2 Epic Response

See Epic Energy's comments in relation to Amendment 32.

5.34 Amendment: 34

5.34.1 Amendment

Clause 5.3 of the proposed Access Arrangement should be amended to define in detail what is meant by "ultimately disadvantaged", and to provide for all affected Prospective Users with Access Requests in the queue to be notified if any Access Requests are to be dealt with out of order.

5.34.2 Epic Response

Epic Energy believes it is inappropriate to define when someone will be "ultimately disadvantaged" under clause 5.3. Whether a party is ultimately disadvantaged will generally depend on the particular circumstances of that party. To be specific on what constitutes "ultimately disadvantaged" at this time would reduce the requisite flexibility that is required of a queue that deals with a variety of Services. In essence, it would require the development of a framework similar to that contained in the Income Tax Assessment Act. That is, it would require a level of detail which is unwarranted. Such a level of detail would be contrary to the spirit of the Code and unreasonable for an access arrangement.

Epic Energy points out that the sole purpose of the provision in clause 5.3(a) allowing Epic Energy to deal with access requests out of order is to assist shippers in gaining timely access to capacity. For this purpose, the requirement that Epic Energy acts in such a way that others in the queue are not "ultimately disadvantaged" is sufficient.

Epic Energy notes that, given that the queue is a "first come, first served" queue (subject to any Capacity Expansion Options), a Prospective Shipper will be "ultimately disadvantaged" if it loses the opportunity of securing capacity on the DBNGP at the expense of a Prospective Shipper lower down in the queue.

In relation to the obligation to notify Prospective Users if a request is dealt with out of order, this appears reasonable, subject to limitations regarding confidentiality.

5.35 Amendment: 35

5.35.1 Amendment

Clause 5.3 of the proposed Access Arrangement should be amended to state the circumstances in which an Access Request may be rejected.

5.35.2 Epic Response

The Access Guide sets out with sufficient clarity the circumstances in which an Access Request may be rejected (see Access Guide, section 3). To include them in the access arrangement amounts to unnecessary duplication. However, to avoid concerns, clause 5.3 could be amended to refer to clause 5.2 for the purposes of rejection.

If Amendment 35 is to remain in the Regulator's subsequent decisions, Epic Energy will address the Amendment in a revised Access Arrangement which it will be required to lodge with the Regulator.

5.36 Amendment: 36

5.36.1 Amendment

Clause 5.3 of the proposed Access Arrangement is required to be amended to provide for the establishment and operation, in accordance with the provisions of clause 5.3 (as amended), of separate queues for Access Requests to the extent the different services described in the proposed Access Arrangement are independent in their use of pipeline capacity.

5.36.2 Epic Response

If Amendment 36 is to remain in the Regulator's subsequent decisions, Epic Energy will address the amendment in a revised Access Arrangement which it will be required to lodge with the Regulator.

5.37 Amendment: 37

5.37.1 Amendment

Clause 12.3 of the proposed Access Arrangement should be amended to state that a Capacity Expansion Option is only capable of being exercised to secure capacity which becomes available as a result of an expansion or extension of the DBNGP to which the Capacity Expansion Option expressly relates.

5.37.2 Epic Response

Capacity Expansion Options are an innovation introduced by Epic Energy to ensure that shippers and prospective shippers are able to gain access to the pipeline capacity needed to transport gas for long lead time projects, should these projects proceed.

Although Capacity Expansion Options were not considered at the time of the pipeline sale (and were, therefore, not dealt with in Schedule 39 of the DBNGP Asset Sale Agreement), their inclusion in the proposed Access Arrangement was motivated by the same concerns as the move from the tranche method of capacity determination to average day capacity: to provide additional pipeline capacity to support the economic development of the State. If, now, the Regulator were not to approve the proposed Access Arrangement, in effect not recognising the Schedule 39 arrangements, and indicating that the State no longer had a concern to ensure the availability of pipeline capacity for development, Epic Energy would withdraw the entire scheme of Capacity Expansion Options as not being essential to an access arrangement required under the Code.

Epic Energy sees Capacity Expansion Options as being an integral part of a total package of measures to provide access to additional pipeline capacity. If that package is not accepted, it is not a matter of the Regulator simply “cherry picking” from the elements of the package. The entire package must be restructured consistent with Epic Energy’s legitimate business interests.

If Amendment 37 were to remain in the Regulator’s subsequent decisions, Epic Energy would still be reluctant to incur the costs of establishing and administering the proposed options scheme, even if the Regulator were to substantially accept the proposed Access Arrangement, giving recognition to the Schedule 39 arrangements. Amendment 37 would have the effect of limiting the value of Capacity Expansion Options to shippers and prospective shippers.

Epic Energy has the impression that the Regulator sees the Capacity Expansion Options as being like the “options to extend” available under the access regimes of the Gas Transmission Regulations and the Dampier to Bunbury Pipeline Regulations. They are, however, very similar to standard financial options, and would be subject to the terms and conditions typical of an options contract. The position might be clarified if explicit reference were made, in clause 12 of the access arrangement, to the description of Capacity Expansion Options already provided in paragraph 8.3 of the Access Guide.

As noted above, Epic Energy's proposals for Capacity Expansion Options are an innovation. They have not previously been used by Australian pipeline service providers (although they have been used by some gas transmission pipeline operators in North America). In these circumstances, and if the Regulator intends to substantially accept the proposed Access Arrangement, giving recognition to the Schedule 39 arrangements, Epic Energy strongly recommends that discussions be held with OffGAR on the proposals for Capacity Expansion Options before the Regulator proceeds to a subsequent decision.

5.38 Amendment: 38

5.38.1 Amendment

Clause 5.3 of the proposed Access Arrangement should be amended to describe priority as between Capacity Expansion Options.

5.38.2 Epic Response

See Epic Energy's comments in relation to Amendment 37.

5.39 Amendment: 39

5.39.1 Amendment

Clause 12 of the proposed Access Arrangement should be amended to provide for a Service Agreement for a Reference Service to be capable of including an option to extend the term of the Service Agreement for the capacity contracted for under that agreement, without being subject to reallocation on the basis of the Queuing Policy.

5.39.2 Epic Response

Epic Energy is strongly opposed to Amendment 39. The amendment re-introduces the "option to renew" provisions of the access regimes of the Gas Transmission Regulations and the Dampier to Bunbury Pipeline Regulations. These provisions have operated to make capacity planning and the management of queues more difficult, and hence more costly. Furthermore, they offer an advantage to existing shippers which appears to have hampered the granting of access to new shippers. In this, they appear to be anti-competitive, and are therefore inconsistent with the Regulator's approval of an access arrangement under section 2.24 of the Code.

Furthermore, the Regulator's justification of this amendment would appear to be at odds with his reasoning behind Amendment 6 which requires contracts for a minimum duration of one year. Given the type of shippers Epic Energy deals with, their planning requirements are such that they will be aware of their capacity requirements much further than one year in advance. As such, both an option to renew and a minimum one year term would seem inappropriate.

The Regulator has neither shown that Epic Energy not including an option to renew provision in the proposed Access Arrangement is unreasonable, nor has he provided any reasoning supporting Amendment 39 which has a basis in the Code.

In these circumstances, Epic Energy should not be required to make the amendment.

5.40 Amendment 40

5.40.1 Amendment

Clause 5.3 of the proposed Access Arrangement should be amended to describe the effect on the position in the queue of withdrawing an Access Request and re-submitting it, or amending an Access Request.

5.40.2 Epic Response

The effects of withdrawal and resubmission of an Access Request, and of amending an Access Request, are explained in sections 2.5 and 2.6 of the Access Guide. To include them in the Access Arrangement would amount to unnecessary duplication.

If Amendment 39 is to remain in subsequent decisions by the Regulator, Epic Energy will make, in the equivalent of clause 5.3 in a revised Access Arrangement which it will be required to lodge with the Regulator, a reference to sections 2.5 and 2.6 of the Access Guide.

5.41 Amendment: 41

5.41.1 Amendment

Clause 12 of the proposed Access Arrangement should be amended to clearly explain whether the purchase price of a Capacity Expansion Option represents a capital contribution by the relevant User to the cost of the extension or expansion pertaining to the option, or whether the purchase price of a Capacity Expansion Option represents no more than a price for the facility given by the option itself.

5.41.2 Epic Response

Reference is made to Epic Energy's comments in relation to Amendment 37.

Should Capacity Expansion Options remain as a means of providing access to pipeline capacity to support future economic development, Epic Energy will indicate in a revised Access Arrangement which it will be required to lodge with the Regulator that the purchase price of a Capacity Expansion Option represents no more than a price for the facility given by the option itself.

5.42 Amendment: 42

5.42.1 Amendment

The Access Arrangement should be amended to describe the circumstances in which capital contributions will be sought under clause 12.7 of the proposed Access Arrangement.

5.42.2 Epic Response

Should this amendment remain in future decisions of the Regulator, Epic Energy will amend clause 12.7 to explicitly recognise the Surcharge provisions of the Code.

5.43 Amendment: 43

5.43.1 Amendment

Clause 12.7 of the proposed Access Arrangement, relating to the imposition of surcharges, should be amended to be subject to Epic Energy providing written notice to the Regulator of an intent to impose surcharges.

5.43.2 Epic Response

Should this amendment remain in future decisions of the Regulator, Epic Energy will amend clause 12.7 to explicitly recognise the Surcharge provisions of the Code.

5.44 Amendment: 44

5.44.1 Amendment

The proposed Access Arrangement should be amended to include a description of the circumstances in which surcharges are likely to be sought under clause 12.7 of the proposed Access Arrangement.

5.44.2 Epic Response

Should this amendment remain in future decisions of the Regulator, Epic Energy will amend clause 12.7 to explicitly recognise the Surcharge provisions of the Code.

5.45 Amendment: 45

5.45.1 Amendment

Clause 12.4 of the proposed Access Arrangement should be amended to state that Epic Energy will provide written notice to the Regulator of any decision not to include in the Covered Pipeline any expansion or extension which results from the exercise of a Capacity Expansion Option.

5.45.2 Epic Response

Reference is made to Epic Energy's comments in relation to Amendment 37.

Should Capacity Expansion Options remain as a means of providing access to pipeline capacity to support future economic development, Epic Energy will indicate in a revised Access Arrangement which it will be required to lodge with the Regulator that it will provide written notice to the Regulator of any decision not to include in the Covered Pipeline any expansion or extension which results from the exercise of an option.

5.46 Amendment: 46

5.46.1 Amendment

Clause 12.7 of the proposed Access Arrangement should be amended to state that Epic Energy will only seek and will recognise (for the purpose of determining rebates) surcharges and capital contributions in accordance with the Code.

5.46.2 Epic Response

Should this amendment remain in future decisions of the Regulator, Epic Energy will amend clause 12.7 to explicitly recognise the Surcharge provisions of the Code.

However, it may simply be more appropriate for a general overriding provision to be inserted in the Access Arrangement to the effect that Epic Energy will comply with the Code.

As a final matter, there are some aspects of the Regulator's deliberations in relation to this amendment that need to be clarified or corrected:

Page B85 – paragraph commencing "clause 12.8 of the proposed……" – This clause has been inserted on the basis that the Regulator would accept the access arrangement filed by Epic Energy. If that is not the case, particularly in relation to the tariff and tariff path, any future expansions may be on an incremental basis. If the Regulator were to implement the Draft Decision – and were, therefore, not to recognise the implications of Schedule 39 of the DBNGP Asset Sale Agreement for the proposed Access Arrangement, Epic Energy can give no guarantee that all expansions will be included in the Covered Pipeline, and that the new capacity and the required new facilities investment will be "rolled in" to reduce tariffs to existing shippers.

5.47 Amendment: 47

5.47.1 Amendment

Clause 13 of the proposed Access Arrangement should be amended to provide for a Revisions Submission Date of at least nine months prior to the Revisions Commencement Date.

5.47.2 Epic Response

Epic Energy does not understand why it should be forced to submit a revised access arrangement earlier than is envisaged under the Code simply because of a possible delay to the assessment process over which Epic Energy has no control. The Regulator is the only one who can extend the 6 month approval process under the Code.

While regulatory precedent should not be used as the ultimate test of the reasonableness of an amendment, it is noted that the access arrangements for the MAPS and the South West Queensland Pipeline, both of which were drafted by the ACCC, set the revisions submission date and the revisions commencement date at six months apart.

While this current approval process has taken significantly longer than 6 months (even without the court action), this has not been Epic Energy's doing. The Regulator has himself acknowledged the timeliness and quantum of information provided by Epic Energy to date.

5.48 Amendment: 48

5.48.1 Amendment

The proposed Access Arrangement should be amended to specify that Epic Energy will submit revisions of the Access Arrangement to the Regulator:

- within three months of the day on which a change in regulation that arises from a change in law takes effect, or the day on which it becomes sufficiently certain that the change will take effect, whichever is earlier, that has the effect of reducing the costs that Epic Energy is required to pay, or is likely to be required to pay, in the subsequent calendar year of the Access Arrangement Period in relation to its supply of one or more services by an amount of 5 percent or more of the Total Revenue for that calendar year; and

- within three months of a change in taxation that arises from a change in law takes effect, or the day on which it becomes sufficiently certain that the change will take effect, whichever is earlier, that has the effect of reducing the costs that Epic Energy is required to pay, or is likely to be required to pay, in the subsequent calendar year of the Access Arrangement Period in relation to its supply of one or more services by an amount of 5 percent or more of the Total Revenue for that calendar year.

5.48.2 Epic Response

Epic Energy notes that a similar amendment has been required by the Regulator in the Draft Decision for the Goldfields Gas Pipeline ("GGP").

Like GGT, Epic Energy believes that the proposed amendment is unreasonable and unnecessary, and is inconsistent with the provisions and intention of the Code. Epic Energy adopts the reasoning of GGT in its Public Submission No 1 on the Draft Decision for the Goldfields Gas Pipeline.

Epic Energy considers that this type of amendment is inconsistent with the intent of trigger event provisions under the Code. They were primarily aimed at ensuring the forecasts set by the Service Provider and over which the Service Provider has some degree of control, did not diverge substantially from reality without giving the Regulator the opportunity to correct that divergence.

Furthermore, the imposition of a tariff redetermination during a five year Access Arrangement Period has the effect of rendering ineffective the Incentive Mechanism adopted by Epic Energy in the Access Arrangement, and is also inconsistent with the price path form of regulation adopted by Epic Energy and accepted in the Draft Decision. The Code permits the Service Provider to determine the manner in which Reference Tariffs are to vary during the Access Arrangement Period and, in particular, Section 8.3 of the Code provides (emphasis added by Epic Energy):

> "Subject to … the Relevant Regulator being satisfied that it is consistent with the objectives contained in section 8.1, the manner in which a Reference Tariff may vary within an Access Arrangement Period through implementation of the Reference Tariff Policy *is within the discretion of the Service Provider*."

Section 8.3 then goes on to specifically distinguish between a *price path form of regulation*, under which Reference Tariffs are determined in advance and are *not adjusted* to account for subsequent events, with a *cost of service form of regulation* under which Reference Tariffs are continuously adjusted in light of actual outcomes.

The combined effect of the proposed trigger events may be that the Service Provider's discretion in choosing the form of regulation is over-ridden and the proposed price path form of regulation is converted into a de facto cost of service approach.

As is the case with the proposed GGP access arrangement, the trigger event mechanism will adversely impact on the incentive mechanism underlying the proposed Access Arrangement - being the ability of the Service Provider to retain returns according to Section 8.44 of the Code.

It is apparent that if the changes in taxes or regulation occur, then a full Access Arrangement review and tariff redetermination will result with the new value of Reference Tariff being determined with regard to the reduced taxes. This in turn would lead to a loss of revenue which would otherwise have been retained as part of the Incentive Mechanism underpinning the proposed Access Arrangement.

A further issue, as highlighted by GGT in its submission on its proposed access

arrangement following the draft decision is that it will often not be possible for the impact of changes in taxation or regulation to be quantified with any reliability (and certainly not within 5% accuracy) for some considerable period of time after the introduction of the relevant change.

A final issue is that the likelihood of such a trigger event occurring would appear to be minimal particularly in relation to changes in regulation, as to date, the costs of regulation have dramatically increased since the independent regulator was established and there is no indication that those costs are to decrease.

5.49 Amendment: 49

5.49.1 Amendment

Sub-clause 5.2(b) of the proposed Access Arrangement, relating to provision for Epic Energy to obtain further information from a Prospective User in relation to an Access Request, should be amended to state that "the further detail and information" may only be requested by Epic Energy where it may be objectively considered reasonably necessary for the purpose of assessing the corresponding Access Request and any request for information is in accordance with the Information Package.

5.49.2 Epic Response

The use of the word "objectively" is pejorative and redundant. Furthermore, it does not add anything to the test in sub-clause 5.2(b), and only raises the likelihood of disputes arising between the Service Provider and prospective shippers. A service provider must be able to satisfy itself that a shipper can meet its obligations under a service agreement. Given that a significant part of the service provider's business would be adversely affected were a shipper to act inappropriately or experience financial difficulties, it is only appropriate that the service provider be provided with discretion in relation to the balancing of risk in this instance.

5.50 Amendment: 50

5.50.1 Amendment

The proposed Access Arrangement should be amended to set out a mechanism substantially similar to clause 43 of the Access Manual for the making of Access Requests that are conditional upon fulfilment of conditions precedent specified in the request.

5.50.2 Epic Response

Amendment 50 is a further instance of what Epic Energy referred to in section 3.1 of this Submission as "cherry picking". In this instance, the Regulator has sought amendment, not within the framework of the total package put forward by Epic Energy, but by cherry picking from the access regime of the Dampier to Bunbury Pipeline Regulations.

In advancing Amendment 50, the Regulator requires that the mechanism of conditional access requests from the Access Manual be inserted into the proposed Access Arrangement without giving any consideration to the "total package" into which the insertion is to be made, and the way in which conditional access might already be accommodated within that package.

On page B92 of the Draft Decision, the Regulator notes that Epic Energy dealt with the issue of conditional access requests in its response to a submission from the Treasury and the Office of Energy, and notes that that response indicated:

- conditional access requests would not add to the rights of prospective users under the proposed Access Arrangements because anything can be agreed; and
- an absence of explicit provision for conditional access requests, necessitating that any such access request must be negotiated with Epic Energy, has an advantage of flexibility in being able to address specific circumstances in which such an access request is required.[14].

However, no consideration is given to the fact that the proposed Access Arrangement permits conditional access through its proposed Capacity Expansion Options, through the inclusion of a specific condition precedent in an Access Contract to suit the circumstances; and through an agreement with a project proponent for an Access Contract to be developed "at project level" with a view to it later being transferred to the proponent's designated shipper.

Furthermore, no consideration is given to the fact that the mechanism of conditional access that the Regulator now requires be inserted into the proposed Access Arrangement was initially developed as regulation 86A of the Gas Transmission Regulations to overcome the inflexibility inherent in those regulations. Under those Regulations it was not possible to include a specific condition precedent in an Access Contract to suit the circumstances; or to agree with a project proponent for an Access Contract to be developed "at project level" with a view to it later being transferred to the proponent's designated shipper.

The mechanism of conditional access requests now found in clause 43 of the Access Manual was difficult to apply, making capacity planning and the management of the queue of applications for capacity more difficult and more costly. It should not now be re-instated, and does not need to be re-instated because alternatives already exist within the proposed Access Arrangement.

Notwithstanding the above, Epic Energy contends that the Regulator does not have the power to make this amendment. Epic Energy notes that in making an amendment to the terms and conditions of service, the Regulator must be able to justify such an amendment based on section 3.6 of the Code. This section states:

> "An Access Arrangement must include the terms and conditions on which the Service Provider will supply each Reference Service. The terms and conditions included must, in the Relevant Regulator's opinion, be reasonable".

[14] Epic Energy Submission 9.

Section 3.6 does not expressly allow the Regulator to dictate the terms and conditions which a service provider must include in its access arrangement. Furthermore, even if it allows those terms and conditions to be established indirectly, the Regulator may only include a new term or condition:

- if that term or condition is a term or condition "on which the Service Provider will supply each Reference Service"; and
- if the new term is necessary to remedy the unreasonableness of one or more of the terms or conditions already included in the access arrangement.

Under the first sentence of section 3.6, therefore, Epic Energy does not have to include a term or condition in its access arrangement if it does not want to offer that term or condition as a term or condition on which it will supply the Reference Service.

The conditional access mechanism of Clause 43 of the Access Manual does not constitute a set of terms and conditions on which the Epic Energy will supply the Reference Service.

Of course, if a term or condition is not included in the access arrangement, a user or prospective user can always negotiate its inclusion in an access contract.

Furthermore, in the Draft Decision the Regulator has not demonstrated that the existing terms and conditions of the proposed Access Arrangement are unreasonable, and that this would be remedied by including the term required by Amendment 50.

While regulatory precedent should not be the ultimate gauge of the appropriateness or otherwise of a particular amendment, one struggles to see how unreasonableness could be argued when access arrangements have been approved by other regulators, under the same or similar Codes, without their having required Amendment 50.

The Regulator therefore has no express basis under section 3.6 for requiring Amendment 50.

5.51 Amendment: 54

5.51.1 Amendment

The proposed Access Arrangement and/or Access Contract Terms and Conditions should be amended to make provision after 2005 for Users of the Firm Service to provide fuel gas in lieu of payment of the Compressor Fuel Charge.

5.51.2 Epic Response

Requiring Epic Energy to now make provision for shippers to provide fuel gas in lieu of payment of the Compressor Fuel Charge is not in the interests of users and prospective users of the pipeline.

Epic Energy requires substantial quantities of gas for compressor fuel and linepack management, making it a significant purchaser in the Western Australian gas market. To commit now to allow shippers to provide their own fuel gas will limit Epic Energy's ability to negotiate satisfactory terms and conditions, including price, for a new gas purchase contract which will provide not only a sufficient quantity of gas, but also the flexibility in gas supply needed for pipeline operation.

Shippers transporting large volumes of gas may benefit from their being able to purchase gas at lower prices than Epic Energy can secure for new gas supply after 2005 (although Epic Energy is doubtful whether they have the flexibility in their purchase contracts required for both their own operations and for pipeline operation).

However, other – smaller – shippers will not be as well placed as Epic Energy to negotiate both a satisfactory gas price and the required flexibility of supply. These shippers are likely to be disadvantaged by an amendment to the access arrangement, made at this time, to allow shippers to provide their own gas.

Epic Energy is not averse to shippers providing their own gas for pipeline operation and, indeed, proposed arrangements of this type for its Moomba to Adelaide Pipeline System. (However, the regulator, the Australian Competition and Consumer Commission, required Epic Energy to provide the gas.)

Epic Energy is, however, strongly of the view that, in the case of the DBNGP, the matter must be deferred to subsequent review of the access arrangement if its future negotiating position with gas suppliers is not to be compromised. Only after negotiations for a new gas purchase contract have commenced will it be possible to address the difficult question of whether shippers in general will benefit from their being allowed to provide their own fuel gas, or whether the benefits will flow to a few leaving others to pay higher prices either through their own gas purchase contracts, or though a contract for a diminished quantity of gas negotiated by Epic Energy.

Aside from the issue of whether the Regulator can actually impose an amendment which does not take effect until after the Access Arrangement Period, this amendment is impractical and fails to demonstrate that the Regulator has properly taken into account the service provider's legitimate business interests. This is so in the following respects:

- If Amendment 6 is implemented, Epic Energy will be required to enter into 1 year minimum contracts. When coupled with this Amendment 54, this will make it extremely difficult for Epic Energy to estimate the quantity of fuel gas required for any given year. Any gas that Epic Energy is required to purchase could be at a significant cost especially if it is only required to purchase small quantities.
- Epic Energy can not now be compelled to allow all shippers to provide their own fuel gas because of the long standing contractual arrangements to which Epic Energy – and existing shippers who might otherwise avail themselves of the opportunity to provide fuel gas – are currently committed. [deleted – confidential]

5.52 Amendment: 56

5.52.1 Amendment

The Access Arrangement Information should be amended to include the following Key Performance Indicators for the Access Arrangement Period.

Pipeline maintenance cost ($ per km of pipeline).
Compression maintenance cost ($ per MW installed).
Compression unit reliability (ratio of out of service hours to total hours).
Compressor unit utilisation (ratio of run hours to total hours).
Pipeline utilisation (ratio of average throughput to maximum capacity).
Capacity reservation utilisation (ratio of average throughput to capacity reservation).
Compressor fuel usage (ratio of compressor fuel to throughput).
Maintenance cost ratio (ratio of operation and maintenance cost to total operating expenditure excluding fuel).
Overhead cost ratio (ratio of overheads to total operating costs excluding fuel).
Delivery cost (ratio of total operating costs excluding fuel to total quantity delivered).
Gas unaccounted for (volume of gas unaccounted for as a percentage of total delivery).
Delivery disruption (disrupted quantity as a percentage of total MDQ).

5.52.2 Epic Response

Epic Energy reiterates its views (as contained in the revised access arrangement information document filed on 28 July 2000) on the relevance of KPIs for shippers and prospective shippers.

Nonetheless, Epic Energy is in the process of finalising its detailed response to this amendment which it will provide as soon as is possible.

5.53 Amendment: 70

5.53.1 Amendment

The Access Contract Terms and Conditions should be amended to remove sub-clause 16.3 relating to the recovery of imposts and goods and services tax liabilities through charges levied on Users in addition to the Reference Tariff.

5.53.2 Epic Response

There are a number of issues relating to Amendment 70 that Epic Energy considers are unfair and fail to reflect a proper application of the Code.

First, if it is the case that the Regulator is seeking to ensure that Epic Energy does not double recover GST (given that the Reference Tariff is to be GST inclusive), the GST provisions in 16.3 are redundant. However, they may still apply to non-reference services, and perhaps to other charges. Epic Energy proposes to implement a post-GST clause that assumes the Access Contract states a GST inclusive reference tariff.

Second, this amendment would have the effect of preventing Epic Energy from passing on such imposts as the OffGAR Service and Standing Charges. Given the circumstances relating to the implementation of this impost (as detailed above in

relation to Amendment 26), this would be an unfair outcome.

Third, without wishing to rely heavily on regulatory precedent to justify why an amendment should not be imposed, it is noted that the Regulator's own decision on the Parmelia Pipeline allowed for the automatic pass through of changes in government imposts. This has also been accepted by Australian regulators in other jurisdictions.

Were the mechanism of sub-clause 16.3 not allowed, Epic Energy would be required to lodge a revised access arrangement to recover these costs when they became apparent. This would add an unnecessary cost to Epic Energy both financially and in relation to management time being distracted in a possibly protracted process.

In these circumstances, Epic Energy proposes to replace existing Clause 16.3 in the Access Contract Terms and Conditions with the following new Clauses 16.3 and 16.3A:

16.3 New Taxes

If at any time during the term of this Access Contract:

(a) any Tax which was not in force as at the date of this Access Contract is validly imposed;

(b) any Tax which which came into force after 1 January 2000 is validly imposed;

(c) the rate at which a Tax is levied is validly varied from the rate prevailing as at the date of this Access Contract; or

(d) the basis on which a Tax is levied or calculated is validly varied from the basis on which it is levied or calculated as at the date of this Access Contract,

then, to the extent that the new or varied Tax increases any costs incurred by Epic Energy under this Access Contract or otherwise affects the amounts payable under this Access Contract, the Shipper must pay to Epic Energy an amount equal to the increase in costs attributable to the new or varied Tax, which amount shall be added to amounts otherwise due under this Access Contract.

(d) For the purposes of this clause 16.3:

"Tax" means a tax, levy, charge, impost, fee, deduction, withholding or duty of any nature (other than income tax and capital gains tax), including without limitation, any gas industry tax, petroleum resource rent tax, carbon tax, greenhouse gas tax, or environmental tax, duty, excise, levy, fee, rate or charge. This includes, without limitation, any interest, fine, penalty, charge, fee or other amount imposed in addition to those amounts.

16.3A Goods and Services Tax (GST)

(a) The amounts payable or the value of other consideration provided in respect of supplies made in relation to this Access Contract (except the Reference Tariff) are exclusive of GST (if any). If a GST is levied or imposed on any supply made (or deemed to have been made) under or in accordance with this Access Contract, the amounts payable or the value of the consideration provided for that supply (or deemed supply) ("Payment") shall be increased by such amount as is necessary to ensure that the amount of the Payment net of GST is the same as it would have been prior to the imposition of GST.

(b) Where any amount is payable as a reimbursement, indemnification or similar payment calculated by reference to a loss, cost, expense or other amount incurred, then that amount must be reduced by any input tax credit available to that party and, if a taxable supply, must be increased by the GST payable in relation to the supply and a tax invoice will be provided by the party being reimbursed or indemnified.

(c) All GST payable shall be payable at the time any payment to which it relates is payable. Where any GST payable is not referable to an actual payment then it shall be payable within 10 days of a tax invoice being issued by the party making the supply.

(d) Where in relation to this Access Contract a party makes a taxable supply, that party shall provide a tax invoice in respect of that supply before the GST payable in respect of that supply becomes due.

(e) For the purposes of this clause 16.3A:

GST means goods and services tax or similar value added tax levied or imposed in the Commonwealth of Australia pursuant to the GST law;

GST law has the meaning given to such term in A New Tax System (Goods and Services Tax) Act 1999 of Australia or a successor act; and

Terms defined in A New Tax System (Goods and Services Tax) Act 1999 of Australia have the same meaning when used in this clause 16.3A.

5.54 Amendment: 71

5.54.1 Amendment

The proposed Access Arrangement should be amended to provide for annual escalation of Reference Tariff charges on the basis of 67 percent of the annual rate of change in the Eight Capital City, All-Groups Consumer Price Index as published by the Australian Bureau of Statistics and not the All-Groups Perth measure as

proposed by Epic Energy. In escalating the Reference Tariff for 2001, the CPI for 2000 should be reduced by 2.75 percent of the CPI to account for the inflationary impact of the goods and services tax.

5.54.2 Epic Response

The Regulator appears to have not considered Epic Energy's response to Information Request 2 relating to the GST impact. This seeks to justify a GST "Spike" adjustment factor lower than that proposed by the Regulator in this amendment.

5.55 Amendment: 72

5.55.1 Amendment

Clause 5.1 and the definitions of the proposed Access Arrangement should be amended such that the Prescribed Fee to accompany an Access Request is of an amount no greater than $1,000.

5.55.2 Epic Response

The Regulator has made no effort to substantiate his assertion that $1000 is an appropriate level for a Prescribed Fee and similarly has made no effort to substantiate that Epic Energy's proposal of $5000 was not appropriate.

It is noted that a similar fee proposed by Epic Energy has been accepted by the ACCC in its assessment of Epic Energy's access arrangements for the Moomba to Adelaide Pipeline System and for the South West Queensland Pipeline.

5.56 Amendment: 73

5.56.1 Amendment

The proposed Access Arrangement should be amended to describe the nature of contractual arrangements under which a User might utilise the Secondary Market Service or other spot services and how the Prescribed Fee will apply to a request to enter into such arrangements.

5.56.2 Epic Response

The contractual arrangements under which a shipper might utilise the Secondary Market Service are described in clause 11.3 of the proposed Access Arrangement, in the Secondary Market Rules, and in the Secondary Market Terms and Conditions. Clause 11.3 of the proposed Access Arrangement makes specific reference to the Secondary Market Rules.

As the Secondary Market Rules indicate, to be a participant in the Secondary Market, a party must be either a shipper under the proposed Access Arrangement

(specifically, a holder of Eligible Capacity), a shipper with a transmission contract entered into under a prior access regime, or an Approved Third Party. No Prescribed Fee is payable in respect of participation in the Secondary Market, although such a fee is payable by a prospective shipper under the proposed Access Arrangement upon lodging an Access Request (see Clause 5.1 of the proposed Access Arrangement). Furthermore, no Prescribed Fee is payable in respect of an application to become an Approved Third Party (which is to be made on the Approved Third Party Request form, the current version of which is included as Annexure 2 of the Access Guide).

In Epic Energy's view, the matters to be dealt with in accordance with Amendment 73 are already dealt with in the proposed Access Arrangement and related documents. Amendment 73 is therefore redundant.

5.57 Amendment: 75

5.57.1 Amendment

Clause 6 of the Access Contract Terms and Conditions should be amended such that a User is not liable for an Excess Imbalance Charge in respect of any imbalance arising from an action of Epic Energy.

5.57.2 Epic Response

Epic Energy is unclear as to the reasons for Amendment 75. It may be intended as dealing with the situation in which shippers are unable to deliver gas in at receipt points because the pipeline is operating at its maximum allowable operating pressure. This situation can arise through actions of the pipeline operator, but those actions may be caused by shippers failing to take nominated volumes of gas at delivery points. In these circumstances, the issue of causation can be difficult to resolve.

Given that Epic Energy is unclear as to the reasons for Amendment 75, and that the situation it might be intended to address is complex, Epic Energy requests that it be afforded the opportunity to meet with the Regulator to discuss the required amendment.

5.58 Amendment: 76

5.58.1 Amendment

Sub-clause 1.1 of the Access Contract Terms and Conditions should be amended to define the imbalance limit as eight percent of the Shipper's MDQ.

5.58.2 Epic Response

The reasoning supporting Amendment 76 is deficient.

Certainly, the Regulator is correct in proceeding from the premise that the setting of imbalance limits is largely a matter of balancing the interests between the Service Provider and Users. However, the balance that is to be achieved is not a general balancing of interests of the type set out on page B285 of the Draft Decision. It is a very specific balance: A balance must be struck between imbalance tolerance and pipeline capacity. A higher imbalance tolerance reduces the capacity that can be made available for the provision of firm service to shippers. If the imbalance tolerance is lower, a higher capacity can be made available for Firm Service.

The proposed imbalance tolerance of 2 percent is consistent with the higher capacity Epic Energy proposes to make available by moving to an average day concept of capacity. An imbalance tolerance of 8 percent is consistent with the tranche method of capacity determination.

The reasoning of the Draft Decision gives no consideration to the capacity impact of increasing the imbalance tolerance from 2 percent to 8 percent.

It provides a clear example of the dangers of "cherry picking" in assessing the terms and conditions of an access arrangement. As Epic Energy has noted in section 3 of this Submission, an access arrangement must be assessed as a "total package".

The imbalance tolerance of 2 percent is an integral part of Epic Energy's implementation, through the proposed Access Arrangement, of its undertakings in Schedule 39 of the DBNGP Asset Sale Agreement. If Amendment 76 were to be retained in a subsequent decision by the Regulator, Epic Energy would be forced to reconsider its commitment to provide additional pipeline capacity to support economic development by moving to the average day concept of capacity. In all likelihood, it would revert back to the tranche method of capacity determination, and to the associated terms and conditions of service (which adopt an imbalance tolerance of 8 percent). By allowing some shippers to operate inefficiently, the Regulator would then penalise all shippers through the imposition of the higher transmission charges required to recover the costs of earlier pipeline enhancement.

5.59 Amendment: 77

5.59.1 Amendment

The proposed Access Arrangement should be amended to provide for Users to trade imbalances and thereby reduce potential liabilities to the Excess Imbalance Charge.

5.59.2 Epic Response

Epic Energy did not intend to omit imbalance correction through the trading of imbalances from its proposed Access Arrangement.

If Amendment 77 is to remain in the Regulator's subsequent decisions, Epic Energy will address the amendment in a revised Access Arrangement which it will be required to lodge with the Regulator.

5.60 Amendment: 78

5.60.1 Amendment

Clause 7 of the Access Contract Terms and Conditions should be amended to provide for a User's liability for the Peaking Surcharge to be assessed on the basis of that User's Maximum Hourly Quantity and hourly delivery of gas in aggregate across all of that User's Delivery Points in a pipeline zone.

5.60.2 Epic Response

Epic Energy has, in principle, no objection to Amendment 58. Assessing a shipper's Maximum Hourly Quantity in aggregate across all of the shipper's delivery points in a pipeline zone is thought to be feasible for Zones 1 - 9. It may not, however, be feasible for Zone 10.

Epic Energy will carry out additional studies with a view to establishing the feasibility of aggregation downstream of Kwinana Junction, and will arrange to discuss its findings with the Regulator as soon as is possible.

6 Response to Draft Decision Amendments – Tariff Issues

Subject to the qualifications and reservations set out in section 3 and 4 of this Submission, Epic Energy's responses to the tariff related amendments in the Draft Decision are set out in this section of the Submission.

This section does not respond at length to the tariff-related amendments which have already been considered in detail in, or are impacted by, Submissions CDS# 2 and CDS#3.

6.1 Amendment: 51

6.1.1 Amendment

Clause 7.15 of the proposed Access Arrangement should be deleted to remove provision for the Initial Capital Base to comprise a fixed principle within the meaning of section 8.48 of the Code.

6.1.2 Epic Response

Epic Energy understands the reasoning of the Draft Decision supporting Amendment 51.

The fixing of the initial Capital Base was, however, one of a number of elements of the proposed Access Arrangement which were intended to give effect to the undertakings of Schedule 39 of the DBNGP Asset Sale Agreement and, in particular, to the undertaking to hold tariffs to those implied by the initial tariff and the proposed tariff path (tariffs to increase by 67 percent of the annual increase in the Consumer Price Index) over a period of about 20 years.

Epic Energy is, at this time, unable to respond to Amendment 51 until the Regulator gives further consideration to the issue of the Reference Tariff in accordance with guidance now provided by the Full Court of the Supreme Court of Western Australia on the setting of the initial Capital Base, and to the role of Epic Energy's regulatory accounting model. If the Regulator were to accept the proposed Access Arrangement, including the initial Capital Base and the regulatory accounting model, a mechanism would still need to be found to ensure that the tariff and tariff path were "locked in" for a period of about 20 years. Epic Energy will provide a mechanism for this purpose as soon as is possible.

6.2 Amendment: 52

6.2.1 Amendment

The proposed Access Arrangement and Access Arrangement Information should be amended to reflect an Initial Capital Base of $1,233.66 million as at 31 December 1999.

6.2.2 Epic Response

See Epic Energy Submissions CDS# 2 and 3 for a detailed response to this amendment.

However, one aspect of the Regulator's deliberations in relation to Amendment 52 must be commented on so that the amendment can be put into proper context and clarified.

- Section 5.3.4.8 – second sentence of fourth paragraph – the statement that the prior regimes for setting tariffs included methodologies used to derive tariffs that were similar to the methodology established by section 8 of the Code confuses the intent of 8.10(g) of the Code. Section 8.10(g) does not deal with the expectations that existed under the prior regimes as to how tariffs were to be determined under those regimes (including but not limited to the manner in which the initial Capital Base for the asset was to be established under).

  Rather, as the court considered at paragraph 169 of the Court Decision, the section reflects the relevance of not only the historical returns and tariffs and depreciation but equally as well, the reasonable expectations of the service provider before the commencement of the Code, in relation to the establishment of the initial Capital Base under the Code.

6.3 Amendment: 53

6.3.1 Amendment

The proposed Access Arrangement and Access Arrangement Information should be amended to reflect Capital Expenditure as follows (31 December 1999 $million).

To 31 Dec	**2000**	**2001**	**2002**	**2003**	**2004**	**Total**
Pipeline	0.43	0.23	0.11	0.31	0.11	1.18
Compression	0.96	4.35	4.45	1.83	1.85	13.44
Metering	0.00	0.05	0.05	0.05	0.05	0.20
Other	5.06	5.04	5.72	4.72	0.52	21.06
Total	6.45	9.67	10.33	6.91	2.53	35.89

6.3.2 Epic Response

In making this amendment, the Regulator has identified 3 categories of issues in relation to the various capital projects to which the proposed capital expenditure relates:

- First, he has not accepted certain amounts of expenditure relating to some or all of certain projects as being able to be classified as capital expenditure on the basis that it does not pass the test of section 8.16 of the Code.
- Second, there are instances where particular projects proposed by Epic Energy are ones which conceptually, should be classified as capital projects (and therefore their costs should be included as part of the total forecast capital

expenditure), but for which the Regulator requires additional justification of the nature of the project or the proposed costings for the project before he will allow the costs to be included as part of the forecast capital expenditure.

- Third, there are projects proposed by Epic Energy with costs which the Regulator believes should not be included in the forecast capital expenditure but rather should be included as part of the service provider's non capital costs.

It should be noted that Epic Energy was never asked by the Regulator prior to the Draft Decision to provide information to assist the classification of its costs. It is surprised at such an approach, particularly given the time taken to release the Draft Decision. Nevertheless, Epic Energy is in the process of collating the following information to the Regulator to support its proposed forecast capital expenditure:

- in relation to projects or particular amounts for projects which fall within the first and second categories of issues above – further justification that they are costs or projects which meet the requirements of 8.21 and 8.16 of the Code; and
- in relation to projects or particular amounts for certain projects which fall within the third category of issue – justification as to why they should be categorised as capital costs as opposed to non capital costs.

This will be provided by way of a separate paper to the Regulator as soon as possible.

As a final matter on Amendment 53, given the lapse of time between when the data was collated to the present stage of the regulatory process, much of the costs have already been incurred. Epic Energy would be unduly prejudiced if, because of regulatory delay, it would be prevented from including any such costs in the Capital Base or allowing them to be included in the Total Revenue calculations.

6.4 Amendment: 56

6.4.1 Amendment

The proposed Access Arrangement and Access Arrangement Information should be amended to reflect Non-Capital Costs as follows (31 December 1999 $million).

To 31 Dec	2000	2001	2002	2003	2004	Total
	38.41	39.63	41.88	42.14	41.70	203.76

6.4.2 Epic Response

Epic Energy's response to this amendment is necessarily tied to its response to Amendment 53. Accordingly, it will be provided concurrently with the response to Amendment 53.

In the meantime however, it is noted that the Regulator concludes that the proposed non capital costs proposed by Epic Energy are acceptable (subject to the addition for those proposed capital costs which should be non capital costs). However, the Regulator qualifies this conclusion by stating that they are acceptable as at the time

of the Draft Decision and that if further technical advice is obtained which demonstrates otherwise, that his conclusion may change.

While Epic Energy seriously doubts whether any such advice will be forthcoming, given the fact that the next decision by the Regulator is the final decision, Epic Energy considers that the Regulator is obliged, in the interests of procedural fairness to provide Epic Energy with a copy of any such advice (together with any advice he relied upon for the purposes of his deliberations in relation to this amendment), and to allow Epic Energy a reasonable opportunity to respond to the advice before he makes his next decision.

To the extent that any such advice already exists, a copy of that advice should now be provided to Epic Energy as a matter of urgency.

6.5 Amendment: 57

6.5.1 Amendment

The Access Arrangement and Access Arrangement Information should be amended to reflect a pre-tax real rate of return of 7.85 percent.

6.5.2 Epic Response

Rate of return is discussed in detail in CDS#2 filed on 12 December 2002.

6.6 Amendment: 58

6.6.1 Amendment

The proposed Access Arrangement and Access Arrangement Information should be amended to reflect a Depreciation Schedule determined by either annuity or straight-line depreciation methodologies as follows (31 December 1999 $million).

To 31 Dec	**2000**	**2001**	**2002**	**2003**	**2004**
Annuity Depreciation	6.92	7.48	8.10	8.77	9.45
Straight-Line Depreciation	30.00	30.36	30.92	31.51	31.90

6.6.2 Epic Response

Amendment 58 follows from the Regulator's rejection of Epic Energy's proposed initial Capital Base and method of regulatory asset accounting.

Epic Energy is unable to respond to this amendment until the Regulator gives further consideration to the issue of the initial Capital Base in accordance with guidance now provided by the Full Court of the Supreme Court of Western Australia, and to the role of Epic Energy's regulatory accounting model.

6.7 Amendment: 59

6.7.1 Amendment

The proposed Access Arrangement and Access Arrangement Information should be amended to reflect a Total Revenue as follows for a straight-line depreciation methodology (31 December 1999 $million).

To 31 Dec	**2000**	**2001**	**2002**	**2003**	**2004**
Total Revenue (straight-line)	165.26	164.99	166.18	165.40	163.42

6.7.2 Epic Response

Amendment 59 follows as a consequence of a number of other amendments sought by the Regulator. To the extent that Epic Energy has responded to these other amendments requiring that they be further considered by the Regulator, and to the extent the Regulator must reconsider some in accordance with the guidance now provided by the Full Court of the Supreme Court of Western Australia, Epic Energy must reject this amendment.

6.8 Amendment: 60

6.8.1 Amendment

The proposed Access Arrangement should be amended such that the Reference Tariff reflects a location of the Eradu Road Delivery Point in Zone 6 of the pipeline.

6.8.2 Epic Response

If Amendment 60 is to remain in the Regulator's subsequent decisions, Epic Energy will address the amendment in a revised access arrangement that which it will be required to lodge with the Regulator.

6.9 Amendment: 61

6.9.1 Amendment

The proposed Access Arrangement should be amended such that compression charges are determined and levied on Users on a strictly "pass through" basis such that Users only pay compression charges associated with compressor stations located between the gas Receipt Point(s) and gas Delivery Point(s) for each gas transmission contract.

6.9.2 Epic Response

Amendment 61 appears to have been motivated by the fact that the costs of Compressor Stations 1 and 2 (unlike to costs of all other Compressor Stations on the pipeline) are not recovered from shippers on a pass through basis.

For the purpose of construction of the Reference Tariff of the proposed Access Arrangement, Zone 1 is treated as a gas gathering zone, and all of the costs of providing, operating and maintaining the facilities in this Zone (including the costs of Compressor Stations 1 and 2) are to be recovered from all shippers.

In construction of the tariff of Schedule 39 of the DBNGP Asset Sale Agreement, Zone 1 was treated as a gas gathering zone. In treating Zone 1 as a gas gathering zone for the purpose of construction of the Reference Tariff of the proposed Access Arrangement, Epic Energy was consistently applying its policy of implementing, through the proposed Access Arrangement, the undertakings of Schedule 39.

6.10 Amendment: 62

6.10.1 Amendment

The proposed Access Arrangement should be amended such that compressor fuel charges do not comprise part of the Reference Tariff for the back haul of gas.

6.10.2 Epic Response

If Amendment 62 is to remain in the Regulator's subsequent decisions, Epic Energy will address the amendment in a revised access arrangement that it will be required to lodge with the Regulator.

6.11 Amendment: 63

6.11.1 Amendment

The cost allocation and tariff structure should be amended to ensure that for Users or Prospective Users with Delivery Points in any zone of the DBNGP, there is no increase in the total gas transmission charges under the Reference Tariff relative to the total charge that Users or Prospective Users would have paid under a contract for the T1 Service entered into under the *Gas Transmission Regulations 1994* or *Dampier to Bunbury Pipeline Regulations 1998.*

6.11.2 Epic Response

Amendment 63 has no basis in the Code and distorts the tariff following from a reasonable allocation of costs (in fact, the Regulator' cost allocation in other aspects of the Draft Decision are accepted).

In advancing Amendment 63 – putting an upper limit on the Pilbara tariffs in the interests of shippers and prospective shippers, but not placing a floor under those

tariffs in the interests of the Service Provider – the Regulator has not sought to achieve the balance of interests that is required by section 2.24 of the Code.

Furthermore, the amendment continues the distortion that was effected by the distance-based tariffs of the Gas Transmission Regulations. (Having tariffs strictly distanced based, as was the case under the Gas Transmission Regulations, resulted in very low tariffs and under recovery of costs in the Pilbara).

If the Regulator were to persist with Amendment 63, Epic Energy would respond by reworking its tariff calculations so that any of the currently allocated cost not recovered (because the tariff in a zone must be reduced to the tariff of the Gas Transmission Regulations 1994 or the Dampier to Bunbury Pipeline Regulations 1998) is reallocated to all zones downstream on the basis of throughput MDQ. The tariffs required by the Regulator for zones downstream of the Pilbara are sufficiently below the tariffs of the Gas Transmission Regulations 1994 and the Dampier to Bunbury Pipeline Regulations 1998 to ensure that the reallocated cost will be readily accommodated. The reallocation would certainly be accommodated without the tariffs for Zones 9 and 10 exceeding the tariffs of the Gas Transmission Regulations 1994 and the Dampier to Bunbury Pipeline Regulations 1998.

Notwithstanding these concerns, Epic Energy considers Amendment 63 to no longer be of relevance. [deleted – confidential]

Amendment 63 can no longer be justified on any grounds.

In addition to the above, there are also specific aspects of the Regulator's deliberations in relation to this amendment which need to be commented on so that they can be put in their proper context or clarified.

- Page B244, second paragraph – the Regulator demonstrates a misunderstanding of Epic Energy's tariff proposal with this comments. As has been stated again in submission CDS#4, Epic Energy's proposed Reference Tariff Policy prevented the ability for Epic Energy to increase the reference tariff. This was achieved by way of the deferred recovery account component of the tariff model, which essentially operates as a check on recovering more than Epic Energy's investment in the DBNGP.

6.12 Amendment: 64

6.12.1 Amendment

The proposed Access Arrangement should be amended to include a mechanism to ensure that revenues from the Delivery Point Charge are not retained by Epic Energy where those revenues recover capital costs attributed to capital assets that were financed by Users.

6.12.2 Epic Response

This issue was discussed by the Network Access Working Group. As stated by Epic Energy in that forum, for the purposes of the issues dealt with by the working group,

the only relevant facilities where shipper specific facilities agreements have been entered into are those listed in the paper prepared by AlintaGas and tabled at the FRCNA Meeting #3 on 31 October 2001. They are:

Physical Gate Point	Notional Delivery Point
Della Road	NGP – Nth Metro
Ellenbrook	NGP – Ellenbrook
Oakley Road	NGP – Pinjarra

The agreements were entered into between the Gas Corporation's Trading (now AlintaGas Sales) and Transmission groups immediately prior to the sale of the pipeline to Epic Energy. Epic Energy had no involvement in the negotiation of their terms. Epic Energy simply assumed the rights and obligations of the Gas Corporation's transmission division under each contract.

The agreements were entered into to reflect certain lump sum capital contributions made by (now) AlintaGas Sales to the Transmission arm of the Gas Corporation ("Transmission") to cover the costs of installation of the above facilities. AlintaGas Sales agreed to pay Transmission a charge to enable Transmission to recover its operating and maintenance expenses relating to these facilities. In addition, the agreement provides that in the event of Transmission granting capacity at the delivery points to a third party shipper before the agreement ends, it (ie Transmission) will pay to AlintaGas Sales a lump sum rebate of part of the lump sum capital contribution, equal to the amount that would be paid by the third party shipper if that third party shipper were to pay, in full, its portion of the residual value of the original investment in the delivery point at the time of the grant of capacity to the third party shipper.

As stated at the forum, Epic Energy does not believe that it is relevant to the regulatory approval process that the mechanism for reimbursement by Epic Energy to AlintaGas of the costs the shipper provided for a specific facility be vetted. That is a contractual matter between AlintaGas and Epic Energy and is outside the Code jurisdiction.

Epic Energy risks being liable for damages if it breaches its contractual obligations in relation to the reimbursement of a Shipper.

The sole issue for prospective shippers, and therefore for the Regulator, is to understand that the relevant charge for an asset funded by a user (eg for a gate station) is appropriately set. As the reference tariff structure for the DBNGP reference tariff is a multi part tariff structure which includes a delivery point charge, then the appropriate costs can be readily apportioned to the delivery points. The fact that the charges for each delivery point are specified in Annexure A to the Access Arrangement makes the charges even more transparent. The Regulator then has an obligation to set prices for those various components of the reference tariff in accordance with the principles set out in the Code.

6.13 Amendment: 65

6.13.1 Amendment

The proposed Access Arrangement and/or Access Contract Terms and Conditions should be amended to describe how the Delivery Point Charge will be determined for Users where those Users share Delivery Point facilities and where Users take delivery of gas from Notional (sic) Delivery Points.

6.13.2 Epic Response

The Delivery Point Charge is shared between Shippers on the basis of the total volume of gas delivered at the Delivery Point (see section 8.3(e) of the Access Arrangement).

A number of points need to be brought out from this:

- Clearly there is no ability for Epic Energy to recover more than the cost of the asset (and the allowed return).
- It is quite clear from section 8.3(e) of the Access Arrangement as to the mechanism for determining the Delivery Point Charge for each Shipper.
- Combined with this is the allocation procedure in section 3.7 of the Access Contract Terms and Conditions. It clearly establishes the volumes to be used in the application of section 8.3(e) of the Access Arrangement.

Accordingly, Epic Energy considers Amendment 65 to be redundant.

6.14 Amendment: 66

6.14.1 Amendment

Paragraph 9.2(b) of the proposed Access Arrangement should be amended to provide for distribution of Distributable Revenue in proportions of 15 percent to be retained by Epic Energy and 85 percent to be distributed to Rebate Sharing Shippers.

6.14.2 Epic Response

Amendment 66 follows from the Regulator's rejection of Epic Energy's proposed initial Capital Base, and Epic Energy's reference tariff proposal whereby the reference tariff would not exceed the level established by the tariff and tariff path of the DBNGP Asset Sale Agreement. An integral part of those proposals was the regulatory accounting model, with its deferred recovery account, which would enable the monitoring of capital recovery to ensure that Epic Energy never recovered more than its investment in the pipeline.

Epic Energy is unable to respond to this amendment until the Regulator gives further consideration to the issue of the initial Capital Base in accordance with guidance now provided by the Full Court of the Supreme Court of Western Australia, and to the role of Epic Energy's regulatory accounting model.

6.15 Amendment: 67

6.15.1 Amendment

Clause 9.2 of the proposed Access Arrangement should be amended such that the Threshold Revenue is the amount by which actual revenue from the sale of the Firm Service, and other services in the nature of the Firm Service, falls short of that component of Total Revenue attributable to the provision of Firm Service, plus the cost of providing those services from which Rebatable Revenue was obtained.

6.15.2 Epic Response

If Amendment 67 is to remain in the Regulator's subsequent decisions, Epic Energy will address the amendment in a revised access arrangement that which it will be required to lodge with the Regulator.

6.16 Amendment: 68

6.16.1 Amendment

The Reference Tariff should be revised to reflect the required revisions to the Initial Capital Base, Capital Expenditure, Non-Capital Costs, Rate of Return and the Depreciation Schedule as described in this Draft Decision.

6.16.2 Epic Response

Epic Energy is unable to respond to this amendment until the Regulator gives further consideration to the issue of the initial Capital Base in accordance with guidance now provided by the Full Court of the Supreme Court of Western Australia.

6.17 Amendment: 69

6.17.1 Amendment

The Reference Tariff should be revised to make provision for distanced based (i.e. zonal) charging for gas transmission in respect of gas received into the pipeline at points in pipeline zones other than Zone 1.

6.17.2 Epic Response

Amendment 69 follows as a consequence of Amendment 2. As Epic Energy has previously indicated in this Submission, Amendment 2 cannot be justified at the present time. Accordingly, Epic Energy regards Amendment 69 as being redundant.

6.18 Amendment: 74

6.18.1 Amendment

The proposed Access Arrangement should be amended to provide for maximum rates of the Out of Specification Gas Charge, Nomination Surcharge, Excess Imbalance Charge and Peaking Surcharge to be 350 percent of the relevant 100 percent load factor Reference Tariff.

6.18.2 Epic Response

At the proposed Reference Tariff in the Draft Decision, coupled with 95% rebate, (including rebate to a defaulting shipper), this amendment offers no protection to the Service Provider. These charges and surcharges should be at the levels proposed by Epic Energy to effectively limit shipper behaviour which could prevent the Service Provider from delivering the reference service after allowance is made for rebates. The Regulator has given no consideration to balancing interests as required by section 2.24 of the Code.

6.19 Amendment: 79

6.19.1 Amendment

The proposed Access Arrangement and Access Contract Terms and Conditions should be amended to provide for revenue from the Out of Specification Gas Charge, Nomination Surcharge, Overrun Charge, Excess Imbalance Charge, Peaking Surcharge and Unavailability Charge to be rebateable as if the activities or events to which the charges relate were Rebatable Services within the meaning of the Code. The mechanism for rebate of revenue should provide for rebate of a minimum of 95 percent of revenue from these charges to Users of the Firm Service, without any provision for a threshold revenue to be achieved prior to any rebate being paid.

6.19.2 Epic Response

If Amendment 79 is to remain in the Regulator's subsequent decisions, Epic Energy will address the amendment in a revised access arrangement that which it will be required to lodge with the Regulator.

Epic Energy would, however, go somewhat further than Amendment 79 indicates. It would seek, as it has previously indicated to the Regulator, to structure the rebate mechanism for these penalty revenues in such a way that the rebatable revenue was not distributed back to offending shippers.[15]

[15] Epic Energy Submission 7, "Reference Tariff and Incentive Mechanism", 12 May 2000, page 6.

Attachment 1

Table of Regulator's Service and Standing Charges

See attached.

Service Charge

Invoice Date	Invoice No.	Service Charge	Budget Total	Budgeted DD	Budgeted FD	Budgeted FA	Budgeted Advertising	Legal Action	Amount Paid by EE
17-Apr-00	8	$ 600.00	N/A	N/A	N/A		N/A		$ 600.00
15-May-00	11	$ 5,120.00	N/A	N/A	N/A		N/A		$ 5,120.00
22-Jun-00	19	$ 7,076.85	N/A	N/A	N/A		N/A		$ 7,076.85
27-Jul-00	31	$ 3,480.20	N/A	N/A	N/A				$ 3,480.20
20-Sep-00	38	$ 2,509.45	**$ 185,000.00**	$ 116,920.00	$ 65,000.00		$ 9,356.00		$ 2,509.45
25-Oct-00	43	$ 6,318.35	**$ 185,000.00**	$ 116,920.00	$ 65,000.00		$ 9,356.00		$ 6,318.35
18-Dec-00	52	$ 18,923.77	**$ 240,000.00**	$ 157,944.00	$ 50,000.00		$ 9,557.00		$ 18,923.77
02-Feb-01	58	$ 6,896.78	**$ 240,000.00**	$ 157,944.78	$ 50,000.00		$ 9,768.91		$ 6,896.78
28-Mar-01	67	$ 27,188.50	**N/A**	N/A	N/A		N/A		$ 27,188.50
09-May-01	79	$ 70,951.28	**$ 240,000.00**	$ 194,444.78	$ 50,000.00		$ 10,018.91		$ 70,951.28
15-Jun-01	81	$ 33,040.53	**$ 240,000.00**	$ 226,053.13	$ 45,000.00		$ 10,224.71		$ 33,040.53
31-Jul-01	85	$ 35,960.57	**$ 390,000.00**	$ 246,414.53	$ 53,000.00		$ 10,369.35		$ 35,960.57
18-Oct-01	94	$ 127,060.73	**$ 390,000.00**						$ 29,392.17
11-Jan-02	103	$ 51,816.19	**$ 390,000.00**	$ 218,638.34	$ 816,059.49	$ 20,000.00	$ 27,260.68		$ 3,346.19
08-Feb-02	112	$ 154,637.43	**$ 390,000.00**	$ 218,638.34	$ 146,402.56	$ 20,000.00	$ 27,200.69	$ 669,523.63	$ 22,420.32
01-Mar-02	115	$ 384,027.16	**$ 390,000.00**	$ 218,638.34	$ 150,038.92	$ 20,000.00	$ 30,238.68	$ 612,706.35	$ 8,291.80
01-Mar-02	117	$ 28,817.08	**$ 390,000.00**	$ 218,638.34	$ 150,038.92	$ 20,000.00	$ 30,238.68	$ 612,706.36	$ 28,512.38
28-Jun-02	128	$ 22,554.25	**$ 390,000.00**	$ 218,638.34	$ 150,038.92	$ 20,000.00	$ 30,238.68	$ 612,706.36	$ 17,554.25
25-Jul-02	134	$ 10,458.41	**$ 535,000.00**	$ 218,638.34	$ 150,526.92	$ 20,000.00	$ 30,613.38	$ 612,706.36	$ 10,394.39
10-Oct-02	137	$ 6,503.25	**$ 1,320,000.00**	$ 218,638.34	$ 166,110.16	$ 20,000.00	$ 30,613.38	$ 800,000.00	$ 6,503.25
TOTAL		**$ 1,003,940.78**							**$ 344,481.03**
Plus		GST	**$ 89,782.20**						
Less		Govt Contribn	**$ 7,724.24**						
			$ 1,417,506.44						

Standing Charge

Invoice Date	Invoice No.	Relevant Qtr (ending)	Amount
17-Apr-00	2	Mar-00	$ 88,074.50
24-Aug-00	34	Jun-00	$ 106,778.54
09-Nov-00	48	Sep-00	$ 121,403.67
07-Feb-01	62	Dec-00	$ 119,729.79
09-May-01	71	Mar-01	$ 121,270.66
08-Aug-01	90	Jun-01	$ 137,600.27
23-Oct-01	99	Sep-01	$ 140,934.04
21-Jan-02	108	Dec-01	$ 135,153.02
30-Apr-02	121	Mar-02	$ 149,186.98
25-Jul-02	130	Jun-02	$ 154,401.43
22-Nov-02	140	Sep-02	$143,847.42

TOTAL **$ 1,418,380.32** (Paid by EE)
NB Epic pays 49% of the Standing Charge total - above figures represent that 49% share