DAMPIER TO BUNBURY NATURAL GAS PIPELINE

PROPOSED ACCESS ARRANGEMENT UNDER THE NATIONAL ACCESS CODE

RESPONSE TO DRAFT DECISION PUBLIC VERSION

Court Decision Submission CDS#6: Response to Third Party Submissions

30 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's 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:

(1) the Regulator has not disclosed all information that he has relied upon or intends to rely upon; and
(2) 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 further submissions after the information is released.

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

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

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

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 Issues raised in third party submissions since Draft Decision

2.1 The Regulator's Draft Decision issued on 21 June 2001 elicited a significant response from a wide cross section of stakeholders, including Epic Energy, shippers, producers, other investors in regulated infrastructure and the general public. Prior to the Court Decision, over 90 submissions in response to the Draft Decision had been publicly released by the Regulator.

2.2 In addition to the submissions Epic Energy has provided the Regulator since the Court Decision (as outlined in section 1 above), it also provided the Regulator with the following submissions and additional papers in relation to the Draft Decision:

- Draft Decision #1 – Financial Viability (DDS#1) – Confidential submission;
- Draft Decision Additional Information Paper #2 – Second Class Citizens (DDS#2);
- Draft Decision Additional Information Paper #3 – Capacity (DDS#3) – confidential submission;
- Draft Decision Additional Information Paper #4 – Incremental Tariffs (DDS#4) – confidential submission;
- Draft Decision Additional Information Paper #5 – Sales Process (DDS#5) – confidential submission.

2.3 The third party submissions lodged in response to the Draft Decision raised numerous issues which can be grouped into the following categories:

(1) The proposed initial Capital Base and Epic Energy's "regulatory compact" claim;
(2) The proposed rate of return;
(3) Epic Energy's proposed allocation of costs for tariff calculation;
(4) The proposed terms and conditions of service;
(5) The proposed extensions/expansions policy;
(6) Epic Energy's Services policy;
(7) The impact of the Draft Decision on Epic Energy's legitimate business interests;
(8) The impact of the Draft Decision on the expansion of the pipeline;
(9) The impact of the Draft Decision on future investment in infrastructure in Western Australia;
(10) Responses to specific amendments in the draft decision.

2.4 Epic Energy's papers lodged before the Court decision (Draft Decision Submissions ("DDS")) and those lodged following the Court Decision (Court Decision Submissions ("CDS")) deal (both directly and indirectly) with most of these categories of issues and the submissions made by third parties in relation to them. They can be cross referenced as follows:

No	Issue Category	Relevant Epic Energy Submission referring to Category
1.	The proposed Initial Capital Base & Epic Energy's "regulatory compact" claim	DDS#1, 2, 3, 4 & 5, CDS#1, 2, 3 & 4
2.	The proposed rate of return	DDS#1 & 4, CDS#2, 3 & 4
3.	Epic Energy's proposed allocation of costs for tariff calculation	CDS#5
4.	The proposed terms and conditions of service	DDS#5, CDS#2, 3 & 5
5.	The proposed extensions/expansions policy	CDS#5
6.	Epic Energy's Services policy	DDS#3 & 4, CDS#3 & 5
7.	The impact of the Draft Decision on Epic Energy's legitimate business interests	DDS#1, 3, 4 & 5, CDS#1, 2 & 3
8.	The impact of the Draft Decision on the expansion of the pipeline	DDS#1, 2, 4 & 5, CDS#1, 2, 3 & 5
9.	The impact of the Draft Decision on future investment in infrastructure in Western Australia	DDS#1 & 5, CDS#1, 2, & 3
10.	Responses to specific amendments in the Draft Decision	CDS#5

2.5 Notwithstanding the above, the Court's reasons in the Court Decision reinforced the importance of some of the issues that Epic Energy has sought to highlight in the above submissions. It is therefore appropriate that Epic Energy provide a further submission that deals with some of the above categories of issues and some of the specific issues within each category.

2.6 Section 3 of this submission deals with the impact of the draft decision on Epic Energy's financial viability. Section 4 deals with the flow on consequences of expansion of the pipeline and future investment in infrastructure in Western Australia.

3 Epic Energy's Legitimate Business Interests – Impact of Draft Decision on Epic Energy's financial viability

Information already provided to Regulator by Epic Energy

3.1 Some of Epic Energy's previous submissions since the Court Decision (see in particular CDS #1, 2 & 3 (confidential versions)) have sought to outline why, in taking into account the service provider's legitimate business interests and investment in the pipeline, the Regulator should have regard to the circumstances surrounding Epic Energy's purchase of the DBNGP, and therefore ensure that Epic Energy is afforded an opportunity to at least recover its investment. Obviously this would include ensuring that Epic Energy's financial viability is preserved.

3.2 It should be noted that Epic Energy has already provided the Regulator with extensive material relating to the impact of the Draft Decision on Epic Energy's legitimate business interests, in particular its financial viability. This material can be found in the following documents:

- Submission 1 dated 15 December 1999 – p.2 (public version dated 28 February 2000);
- Submission 1 dated 15 December 1999 – p.24-25 (public version dated 28 February 2000);
- Additional Paper 4: Regulatory Compact dated 8 September 2000 at paragraph 5.8 on page 15;
- Additional Paper 4: Regulatory Compact dated 8 September 2000 at paragraph 5.9 on page 15;
- Additional Paper 5: Code Compliance dated 25 October 2000 at paragraphs 4.5 and 4.6 on page 19;
- Additional Paper 7: Actual Revenue Differences dated 9 April 2001 at paragraph 2.10 on page 4;
- Additional Paper 10: Financial Viability dated 20 June 2001 – the entire paper;
- Confidential Submission DD1: Financial Viability dated 20 September 2001;
- Court Decision Submission #2: Reference Tariff & Reference Tariff Policy dated 11 December 2002;
- Court Decision Submission # 3: DBNGP Sales Process dated 11 December 2002, paragraphs 6.64 – 6.109.

3.3 While this part of the submission focuses on the impact of the Draft Decision on Epic Energy's financial viability, it should not detract from the importance of what the Regulator must do in order to have taken into account the considerations under section 2.24(a) of the Code – ie. in order for the Regulator to be able to say that he has taken into account Epic Energy's legitimate business interests and investment in the DBNGP, he must do more than deliver a decision which only just keeps Epic Energy financially viable. He must afford Epic Energy an opportunity to recover its investment and to earn an appropriate return on that investment.

Information already provided to Regulator by Third Parties

3.4 In addition to information provided by Epic Energy on this issue, other stakeholders have also commented on the issue. They include the following:

3.5 The Department of Mineral and Petroleum Resources, in its second submission to the Regulator following the Court decision, made the following comment:

"A low tariff, however, may impact on EPIC's future financial viability. Further Court cases notwithstanding, the inability of EPIC to service its borrowings on the pipeline could eventually lead to the sale of the pipeline to a new owner, admittedly at sale price that will reflect and support the new tariff regime. Our concern, however, under this scenario is that there is the possibility of delaying any commitment for increasing Dampier to Bunbury Natural Gas Pipeline capacity for perhaps 12 – 24 months. Such an hiatus in decision making on future gas availability in the South West would severely constrain the State's ability to attract new investment."[2]

3.6 The Commonwealth Bank, one of the Syndicate Banks that have financed the purchase of the DBNGP, made the following comment:

"We are most concerned that this further reduction in the tariff would reduce the revenues of Epic Energy to such an extent that it would be likely to: …

(a) …
(b) result in Epic Energy being unable to meet its obligations under the finance documents which would result in an event of default thereunder. …"

3.7 Similar comments were also made by a number of stakeholders in submissions in response to the Draft Decision. These are set out in Table A of **Attachment 1**.

3.8 It is evident from these submissions that there is genuine and widespread concern about the impact of the Draft Decision on Epic Energy's financial viability.

Financing Arrangements and Events of Default

3.9 The details of the arrangements entered into to finance the purchase price of the DBNGP were outlined in Epic Energy's confidential submission DD1: Financial Viability filed with the Regulator on 20 September 2001.

3.10 Further details together with copies of the financial facilities were provided in Epic Energy's submission CDS#3 dated 11 December 2002.

[2] Department of Mineral and Petroleum Resources submission dated 29 October 2002.

Draft Decision and an Event of Default

3.11 Epic Energy has stated on many occasions to date that the Draft Decision, if implemented, will have a significantly adverse impact on:

- its financing arrangements;
- its financial viability to continue operating the DBNGP;
- its ability to expand the pipeline over 10 years as outlined to the State when it purchased the pipeline; and
- future investment in infrastructure in Western Australia.

3.12 The first two impacts are immediate impacts while the other two are more short to medium term impacts, although just as important for the Regulator's deliberations.

3.13 **Confidential**

3.14 Each one of these scenarios has various potential flow on consequences for not only Epic Energy and its owners but also the existing shippers, prospective shippers who require additional capacity on the pipeline and future investors in infrastructure in the State. Each scenario and the flow on consequences are dealt with in turn below.

Scenario 1 – Actual Act of Insolvency

3.15 **Confidential**

3.16 **Confidential**.

3.17 **Confidential**.

3.18 **Confidential**.

3.19 The Contracts include:

- Contracts entered into between shippers and the Gas Corporation pursuant to the Gas Transmission Regulations;
- The Alcoa exempt Contract;
- Contracts entered into between Epic Energy and shippers pursuant to part 5 and Schedule 1 of the *Dampier to Bunbury Pipeline Act 1997* and the DBNGP Access Manual.

3.20 However, the impact on the Contracts and Operational Agreements will depend on the type of action that is taken. The way in which each action impacts on the Contracts and Operational Agreements is discussed separately below.

3.21 However, it is important for the Regulator to first be provided with a brief overview of the corporate structure established for the bank facility. As a result of the sale of the DBNGP by the State in 1998, Epic Energy (WA) Transmission Pty Ltd ('EEWAT') assumed the rights and obligations of the

Gas Corporation in relation to each of the Contracts, including the Alcoa exempt Contract.

3.22 Legal title to the DBNGP is held by Epic Energy (WA) Nominees Pty Ltd ('EEWAN') as trustee for the Epic Energy Western Australia Pipeline Trust ("EEWAPT").

3.23 **Confidential**

3.24 **Confidential**.

Appointment of Receiver

3.25 The function of a privately appointed receiver is to receive the income of the company for the benefit of the security holder. The receiver's primary duty is to the security holder not to the company. A receiver does have certain statutory duties to the company under the Corporations Act, including a duty to take reasonable care in exercising any power of sale under section 420A.

3.26 The appointment of a receiver by a security holder does not terminate pre-existing contracts with the corporation, unless this is specifically provided for in the contract. While none of the Contracts or the Operating Agreements have provisions to this effect, as a general rule, a receiver, as agent for the company, may repudiate a contract, leaving the other party to its remedy against the company in damages. In this sense, it has been said that a receiver is able to disregard pre-existing contracts with the company and is in a better position than the company.

3.27 While the legal authorities suggest that a receiver takes control of company property subject to "prior equities", and it is clear that this term includes proprietary interests (which therefore bind a receiver), if the company has agreed with a third party to do something using a particular asset, but the contractual rights falls short of creating a proprietary interest in the asset in favour of the third party, then the weight of authority suggests that the third party will not be able to stop a receiver from either repudiating the contract or selling the asset. In other words, the position appears to be that the courts will not prevent a receiver from realising the charged assets for the benefit of the security holder merely on the ground that to do so would involve a substantial breach of contract by the company. The ground for the courts' reluctance is that restraining the receiver in order to protect the third party's contractual rights would involve preferring the third party to the other unsecured creditors of the company and would even elevate its rights above those of the secured creditor. This would involve a radical displacement of the proprietary rights of the secured creditor.

3.28 The principles referred to above would seem to apply even if the repudiation of the contract would result in serious financial or other damage to the affected third party. In ordinary circumstances (ie, if the company were not in receivership) these serious circumstances might be enough to enable the third party to obtain an order for specific performance of the contract against the company on the ground that damages alone would not be an adequate remedy. However, in a receivership context the mere fact that damages might not be an adequate remedy does not appear to be enough to justify an order forcing a receiver to honour the contract.

3.29 **Confidential**

3.30 **Confidential**.

Appointment of Administrator

3.31 If the directors of any of the Epic Energy group of companies resolve that, in their opinion, an Epic Energy entity is insolvent or likely to become insolvent at some future time, the Epic Energy entity could be placed into voluntary administration.

3.32 **Confidential**.

3.33 **Confidential**.

Appointment of Liquidator

3.34 A liquidator has the power to disclaim a contract without the leave of the Court where that contract is unprofitable, in the sense of not being able to be fully performed during the course of the winding up period.

3.35 **Confidential**.

3.36 If a party whose contract was disclaimed were to apply to the Court to have the disclaimer set aside, the Court would have to take into account at least the following factors in exercising its discretion as to whether to set aside the disclaimer by the liquidator:

- Whether the affected party was able to demonstrate that the disclaimer would cause prejudice to them that is grossly out of proportion to the prejudice that setting aside the disclaimer would cause to the company's creditors;
- The primary role of the liquidator being to realise the company's assets and pay dividends to creditors at the earliest opportunity. The longer the term of the contract the less likely a Court is to exercise its discretion;
- Whether it is realistic to expect the liquidator to perform continuing obligations when the company lacks the resources to do so; and
- Whether the company being wound up is capable of performing the agreement.

3.37 **Confidential**.

3.38 **Confidential**.

3.39 **Confidential**.

3.40 The ramifications of Epic Energy being forced into external administration are likely also to have much wider ramifications for the development of the entire gas industry. Any financier of another pipeline that may be covered by the Code would find it more difficult to provide funds for any new project because of the additional risk resulting from the regulatory approval process for the new project. This is discussed in more detail in section 4 of this Submission.

Scenarios 2 & 3 – Broader Concept Act of Insolvency

3.41 **Confidential**

3.42 **Confidential**

3.43 These scenarios shall be referred to as the 'Broader Concept Act of Insolvency'.

3.44 **Confidential**.

3.45 **Confidential**.

3.46 Regardless of which of the above scenarios eventuate, there are also more immediate personal flow on consequences. The impact on employees of Epic Energy and the contractors who provide services to Epic Energy could also be significant in any of the above 3 scenarios. This has been brought out in some of the submissions made since the Draft Decision. An example is the following extract from the Australian Services Union's submission following the Draft Decision:

"…Any draft decision that impacts on Epic Energy's capacity to maintain their business operation in Western Australia would impact on the livelihood of ASU members. The ASU would submit that the review of the draft decision should therefore take into account the likely consequences of the implementation of the draft decision for Epic Energy employees.

Epic Energy has indicated publicly that the implementation of the draft decision would impact on the expansion of the DBNGP's capacity. Epic Energy has also stated that the draft decision would have a major economic impact on the company's financial position and viability in Western Australia. It is of concern to the ASU that any final decision that reduces the profitability of the DBNG pipeline ("the DBNG") to unreasonable and unsustainable levels will lead Epic Energy or any successor to operate and maintain the DBNG in an undesirable manner.

It is the view of the ASU members at Epic Energy that the DBNG is operating at maximum efficiency in terms of staffing levels and operational practices. Any decision that requires Epic Energy or any successor to make major cost reductions on the DBNG would lead to job losses, a deterioration in the asset, unreasonable levels of stress on the workforce and a decrease in occupational health and safety levels.

In conclusion in making the final decision the ASU would seek that OffGAR be cognisant of the impact that the decision would have on employees working on the DBNG Pipeline, whether they be working for Epic Energy or any successor, and on the long term economic growth of Western Australia."

4 Impact of Draft Decision on future investment in infrastructure in Western Australia

4.1 The impact of a regulatory decision resulting in any of the scenarios outlined in section 3 above could have far wider flow on consequences, as outlined in the submissions. These include an adverse impact on:

- Epic Energy's long term commitment to Western Australia;
- The impact on the expansion of the pipeline and the resulting impact on state and regional development;
- The impact on future investment in infrastructure in Western Australia.

4.2 These flow on consequences could also arise if Epic Energy is not now given the opportunity to at least recover its purchase price.

4.3 Extracts from the various submissions on these issues are outlined in Attachment 1, particularly in tables C, D and F.

4.4 In addition, these issues have been the subject of a number of reviews that have been conducted at the state, federal and CoAG level over the last 18 months. These reviews include the following:

- Productivity Review of the National Access Regime (ie Part IIIA of the TPA), the report for which was released in September 2002;
- CoAG Review of National Energy Markets, conducted by the Parer; Committee, the final report for which was released on 20 December 2002.
- Various Ministerial Council of Energy working groups.

4.5 The disincentives for investment created by access regulation were considered in detail by the Productivity Commission in the report of its inquiry into the National Access Regime.

4.6 Significantly, the Productivity Commission Report noted the importance of continued private sector investment in infrastructure for economic development, and commented that there were concerns that the current regime does not effectively foster growth. It noted that continued investment in essential infrastructure is contingent on investors being able to earn a return consistent with monies outlaid. Although the Productivity Commission supported the broad direction of Part IIIA of the *Trade Practices Act*, and associated industry specific access regimes, it made a number of recommendations for improvements to Australian access regulation. These recommendations were designed to give greater certainty and flexibility to infrastructure owners and investors.

4.7 The Commonwealth Government, in its response to the Productivity Commission Report, supported the majority of its recommendations.

4.8 The Productivity Commission discussed a number of aspects of regulated access which are likely to impede future investment:

- the significant costs to facility owners of complying with mandated access;
- delay in achieving "resolution" through regulatory processes, whether in the context of a periodic review of regulated access prices or an access dispute;
- the difficulty of creating regulatory arrangements which target only "monopoly rents";
- inefficiencies arising because the service provider is generally constrained in its ability to tailor access prices and conditions to market requirements; and
- regulator "micro-management" of businesses subject to cost-based regulation.

4.9 The Productivity Commission argued that access regulation should be confined to situations where *significant* monopoly power is likely to be present. In other words, where monopoly power is "peripheral", the costs of regulation may outweigh the benefits.

4.10 The Productivity Commission found that inappropriate regulation is detrimental to efficient investment in essential infrastructure facilities. However, the Commission observed that the National Access Regime was relatively new, and that Australia's experience with it was still limited. There was only limited evidence of the substantial costs which can be "unequivocally attributed" to regulation. Nevertheless, as Commission Chairman, Gary Banks, has stated, regulation poses a significant risk for investment:

"However, the major risk associated with the regulation of essential infrastructure is that setting prices too low could deter new investment in the facilities themselves. At a conceptual level it is clear that access and price regulation involve a significant intrusion into the property rights of facility owners and can distort their investment behaviour. While available evidence of adverse impacts on past investment is largely anecdotal and difficult to verify, the potential risks of adverse consequences from regulatory action appear to be looming larger."[3]

4.11 A total of 33 recommendations were made by the Productivity Commission. Its principal recommendations were:

- the inclusion of an "objects" provision at the commencement of Part IIIA of the *Trade Practices Act*, encouraging "economically efficient" investment, and minimal divergence from industry specific access regimes;

[3] Gary Banks, Chairman, Productivity Commission "*The 'baby and the bathwater': avoiding efficiency mishaps in regulating monopoly infrastructure*" – speech to IPART, 5 July 2002, pages 6-7.

- development of pricing principles, to which decision makers will be required to have regard, for the purpose of giving certainty to both investors and access seekers;
- the imposition of access regulation only where it would promote a *substantial* increase in competition;
- provision for a binding ruling that a proposed investment in essential infrastructure would meet (or not meet) the declaration criteria; and
- a requirement that the Australian Competition and Consumer Commission, in its regulation of access prices, include a return on investment commensurate with the regulatory and commercial risks involved.

Appropriate regulation

4.12 The Productivity Commission was concerned that inappropriate regulation could have a potentially "chilling" effect upon investment. Its Report noted a widespread view that mandated access added significantly to the risk faced by investors. An important element of this risk was the potential asymmetry of outcome resulting from regulatory error:

> *"Over-compensation may sometimes result in inefficiencies in the timing of new investment in essential infrastructure (with flow-ons to investment in related markets) and occasionally lead to inefficient investment to by-pass parts of a network. However, it will never preclude socially worthwhile investments from proceeding.*
> *On the other hand, if the truncation of balancing upside profits is expected to be substantial, major investments of considerable benefit to the community could be forgone, again with flow-on effects for investment in related markets."*[4]

4.13 The Productivity Commission Report went on to state that limiting the "upside" available to investors in regulated infrastructure was likely to be the worst possible outcome, and cautioned that:

> *. . . access regulators should be circumspect in their attempts to remove monopoly rents perceived to attach to successful infrastructure projects*.[5]

4.14 The Productivity Commission did not suggest that this provides carte blanche for abuse of monopoly power, and for the allowance of monopoly rents. Rather, it was concerned that regulators not limit themselves to a narrow construction of "return on the efficient cost" of delivering the service supplied by an essential facility.

[4] Productivity Commission, *Final Report into the National Access Regime*, page 83.
[5] Productivity Commission, *Final Report into the National Access Regime*, page 83.

4.15 The Commission concluded from its review that, on the issue of the effect of regulation on investment *economic theory does not provide ambiguous answers*,[6] and

". . . the impact of access regulation on investment in essential infrastructure needs to be assessed on a case-by-case basis.[7]"

4.16 The application of economic theory to the commercial realities of infrastructure investment did not necessarily provide a certain or unambiguous result.

4.17 Furthermore:

"There are conceptual arguments which suggest that access regulation could conceivably improve the efficiency of investment in essential infrastructure. However, these arguments rely on there being well informed regulators with access to regulatory instruments that permit clinical isolation of monopoly 'rents' accruing to successful projects through inefficient pricing or the denial of access. If this is not the case, then access regulation clearly has the potential to discourage investment. This implies that the assessments of the impact of any particular access regime must have regard to actual investment outcomes.[8]"

Negative impact on investment

4.18 The Productivity Commission's Report advances the view that regulatory error in truncating the infrastructure owner's expected return has a more significant impact on the economy than the retention of some element of monopoly rent. This view was put strongly to the Commission in the submissions it received:

"Most of the discussion in submissions presumed that any significant constraints on the prices charged by owners of essential infrastructure are likely to harm investment. Underpinning this presumption was a view that the efficiency costs of monopoly pricing will, to a significant extent, be of a static allocative nature, whereas under-compensation will lead to deferred or non-investment in essential infrastructure.[9]*"*

4.19 In responding to this view, the Productivity Commission, correctly noted that, because of the infancy of the regimes, evidentiary problems exist in Australia in demonstrating that access regulation has a negative impact on investment.[10]

4.20 Nevertheless, there was important evidence of the negative impact on investment from cases which were identified to the Commission during its review. In its Report, the Productivity Commission provided details of some

6 Productivity Commission, *Final Report into the National Access Regime*, page 82.
7 Productivity Commission, *Final Report into the National Access Regime*, page 75.
8 Productivity Commission, *Final Report into the National Access Regime*, page 67.
9 Productivity Commission, *Final Report into the National Access Regime*, page 70.
10 Productivity Commission, *Final Report into the National Access Regime*, page 76.

11 specific instances where access regulation had had a depressing effect on investment intentions.[11] These examples included a particular case put to the Commission by Epic Energy:

"Epic Energy said that the proposed Darwin to Moomba pipeline would be built to meet the requirements of foundation shippers so as to reduce the threat of regulated access. It also said that 'looping' arrangements for the Moomba to Adelaide pipeline and an enhancement to the Dampier to Bunbury pipeline had been constructed solely to meet the needs of incremental contract volume. Yet, as noted above, building pipelines with spare capacity may sometimes be the most efficient way of catering for future demand growth."

4.21 The Productivity Commission accepts that the *perception* of regulatory risk by an infrastructure investor has a detrimental effect on any incentive that the investor may have to incur substantial sunk costs for risky investments. This detrimental effect may lead to the inefficient provision of the infrastructure needed to promote economic development.

4.22 Establishing the right incentives for infrastructure investment should therefore be an important and relevant consideration for a regulator in the determination of access prices.

Return commensurate with risk

4.23 In its Report, the Productivity Commission argues against the removal of all perceived monopoly rents, concluding that this removal would lead to a weakening of incentives to invest and innovate:

"For investments which are particularly risky, or that have the expectation of only normal returns allowing for such risk, the potential for regulatory action to deter or even stop new investment is very real. Regulators may sometimes unwittingly appropriate what appear to be excess returns, but which are in fact the necessary upside of a risky investment.[12]"

4.24 The Productivity Commission argued that regulatory intervention should be measured, targeted and minimal, limited purely to the removal of "demonstrably large rents resulting from inefficient pricing or denial of access."[13] Clearly, this does not exclude the retention by service providers of some element of profits above amounts necessary to cover the costs of providing the essential service.

4.25 As the Chairman of the Commission has elsewhere stated:

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[11] Productivity Commission, *Final Report into the National Access Regime*, page 76 – 78.

[12] Gary Banks, Chairman, Productivity Commission "*The 'baby and the bathwater': avoiding efficiency mishaps in regulating monopoly infrastructure*" – speech to IPART, 5 July 2002, page 7.

[13] Productivity Commission, *Final Report into the National Access Regime*, page 94.

"No firm, including existing facility owners, will commit to major new capital outlays without the expectation of profits commensurate with the commercial risks involved.[14]"

4.26 This is telling, and indeed, is clearly an issue that should be of concern to regulators.

4.27 The Productivity Commission Report argues that further investment in infrastructure is critical to Australia's continued economic development. That investment is contingent upon regulators allowing appropriate returns. If regulation does not allow the potential to recover major infrastructure investments, or provide adequate returns to the investors, there will be no incentive to make those investments, and inferior or inefficient investment outcomes will be the result.

4.28 The Commission emphasised that regulators have an important role to provide signals that encourage and advance future investment. This will not be achieved in the event that a service provider is unable to earn a return commensurate with the regulatory and commercial risks involved in the investment.

4.29 *In summary therefore, the mere existence of access regulation may well have some deleterious impacts on investment in essential infrastructure*.[15]

4.30 In the report of its inquiry into the National Access Regime, the Productivity Commission argue strongly that Australian regulators should pay more attention to the potential impact of their access pricing decisions on infrastructure investment and economic development. This does not mean that inefficient investment – "gold-plating" – and excessive returns should be condoned, but that careful consideration should be given to the prospects for investment recovery and return on a case by case basis.

4.31 While neither Part IIIA of the *Trade Practices Act*, nor industry specific access regimes (such as the *National Third Party Access Code for Natural Gas Pipeline Systems*), mandate the primacy of investment facilitation in regulatory decisions, it is clearly open to regulators to exercise their discretion with this objective in mind. This, the Productivity Commission argues, they should do in the interests of promoting infrastructure investment and economic development.

4.32 The Productivity Commission has added its highly credible voice in support of contentions long made by infrastructure businesses and investors that regulation, by potentially limiting the recovery of investment, and by limiting the returns which might be earned, acts as a disincentive to investment.

[14] Gary Banks, Chairman, Productivity Commission "*The 'baby and the bathwater': avoiding efficiency mishaps in regulating monopoly infrastructure*" – speech to IPART, 5 July 2002, page 7.

[15] Productivity Commission, *Final Report into the National Access Regime*, page 70.

4.33 In these circumstances, it is entirely appropriate for the Regulator to provide Epic Energy with the opportunity to recover its investment in the DBNGP, and to earn a return commensurate with the commercial risks associated with its investment in the Pipeline. To do so is in the broader public interest. It will provide Epic Energy with the incentive to expand and continue to invest in the DBNGP. Without this investment, limited Pipeline capacity may well become an impediment to economic development in the State.

4.34 Furthermore, and beyond the immediate circumstances of Epic Energy, the Regulator's decision on the DBNGP will have far-reaching implications upon the attractiveness of Western Australia as an environment for infrastructure investment.

5 Conclusion

5.1 If the Draft Decision is implemented, then Epic Energy's continued operation would be in serious jeopardy. The potential and actual insolvency of Epic Energy would have significant consequences for all existing Contracts, for the continued operation of the DBNGP and for the State as a whole.

5.2 Even if Epic Energy were to remain solvent, its tentative financial position would significantly reduce its ability to obtain necessary capital. An inability to access capital will result in difficulties if not an impossibility for Epic Energy to expend money for stay in business capital projects. Further, it would be extremely unlikely that investors will be prepared to provide additional funds to Epic Energy, when doing so will expose them to significant risk.

Attachment 1

A - Financial Viability

Stakeholder	Date of Submission	Comment
City of Geraldton	08.08.01	…In submissions to you during the public consultation stage and also since your draft decision, Epic Energy has observed that the draft decision, if implemented, will; • mean that further expansion of the capacity of the pipeline will only occur if users are prepared to pay tariffs substantially higher than those proposed under the draft decision; and • cast a significant shadow over the financial viability of Epic Energy. • act as an impediment to further development in our Region. It is critical to the future development of regions such as this one that not only must there be a financially stable and viable pipeline owner and operator, but also that the pipeline owner is afforded an environment which makes it commercially and technically viable to expand the pipeline. We would also hope to see an environment encouraged by regulatory decisions which fosters competition. As mayor of a council in a region which stands to lose significantly from the stated consequences to which the draft decision may give rise, I urge you to reconsider your decision and issue a final decision which sends the correct signals to infrastructure investors and developers, so that the objectives of competition reform can be realised. …
Cockburn Wreckair	15.08.01	…A 25% reduction in forecasted revenue for any business would directly impact the company's projected growth, return on investment to its stakeholders, market competitiveness and the level of service currently being provided to its customers. Gas Transportation charges experienced a 22% cost reduction back in 1997. A further 25%

Stakeholder	Date of Submission	Comment
		reduction would only create greater strain on already cost efficient operations such as Epic Energy. Taking the decision to reduce transportation rates from $1/GJ to .75c/GJ to Perth and from $1.08/GJ to .85c/GJ south of Perth, will have the effect outlined above not only on Epic Energy, but on all suppliers involved within this field. …
El Paso	28.09.01	Refer to the quotation in section B of this table.
Commonwealth Bank	12.09.01	…As the Commonwealth Bank's participation in the Bank Syndicate occurred through the purchase of the Colonial group last year, we are not in a position to comment regarding the expectations of Epic Energy at the time of the purchase of the Pipeline. However, based on our review of the draft decision and discussions with Epic Energy, we wish to outline our principal concern that should the draft decision be implemented, then the financial consequences for Epic Energy are likely to be significant. From our comparison of the base case under the finance documents and the base case which the Regulator developed, it appears there will be a reduction in the tariff Epic Energy will receive of about 25%. We would point out that since Epic Energy acquired the Pipeline tariffs have already reduced by about 25%. We are most concerned that this further reduction in the tariff would reduce the revenues of Epic Energy to such an extent that it would be likely to: … (b) … (c) result in Epic Energy being unable to meet its obligations under the finance documents which would result in an event of default thereunder. …
Dominion Resources	10.09.01	…The draft decision gives rise to a number of consequences which are contrary to the public interest and for this reason alone, Dominion believes it is incumbent on the Regulator to give due weight to when handing down his final decision. They are as follows:

Stakeholder	Date of Submission	Comment
		• … • the draft decision will place Epic Energy in severe financial distress. If implemented, Epic Energy will be in breach of its covenants under its loan facility with its financiers. Not only will this ensure Epic Energy will not realise further expansions of the pipeline but it will also place in jeopardy the ability of Epic Energy to continue its maintenance and capital program to ensure the pipeline's reliable and efficient operations. • …
Intercreditor agent for DBNGP Banking Syndicate	17.12.02	… Should the draft decision be implemented, then the financial consequences for Epic Energy are likely to be significant. From our comparison of the base case under the finance documents and the base case which the Regulator developed, it appears there will be a reduction in the tariff Epic Energy will receive of about 25%. We would point out that since Epic Energy acquired the Pipeline the tariffs have already been reduced by about 25%. We are most concerned that this further reduction in the tariff would reduce the revenues of Epic Energy to such an extent that it would be likely to : (a) restrict Epic Energy's ability to fund further development of the Pipeline; and (b) result in Epic Energy being unable to meet its obligations to us under the finance documents which would result in an event of default thereunder. …
Mastercraft Engineering	09.08.01	In our opinion, the OffGAR draft decision on the DBNGP, will have commercial implication's, loss of investment, employment and revenue to Epic Energy and our State.
NEC Australia	31.08.01	…The consequences, which have particular concern to us, are as follows:

Stakeholder	Date of Submission	Comment
		• It is our understanding that the proposed tariffs may create severe financial distress to Epic Energy. We would be extremely concerned if they were to have the effect of reducing Epic Energy's ability to continue its maintenance and capital program…
Western Process Controls	03.08.01	…We are concerned when any political situation is likely to threaten our future viability. The cost of energy is obviously a highly politically charged issue and everybody wants to pay less. All businesses understand and support the concept of "Cost Saving" through greater efficiency, but choking the supplier whether big or small, will only create pullout, bankruptcy, eventual monopoly and higher prices. It disturbs us that the regulator is contemplating a dual tariff regime, which will not only stifle development of business as the pipeline spreads, but also deprive remote communities and towns of the benefit of Natural Gas. We do want Albany to have Natural Gas, and we do want to see increased development in remote areas based on an economical supply of gas. You will not achieve this unless your Transporter and its suppliers are allowed to make a fair and equitable profit. …

B- Impact of Draft Decision on Epic Energy's long term commitment of Epic Energy to WA

Stakeholder	Date of Submission	Comment
El Paso	28.09.01	…The draft decision gives rise to a number of consequences, which are inconsistent with these aims. It is imperative that the Regulator ensure that the final decision does not give rise to such consequences. The inconsistent consequences are as follows: • … • The draft decision will place Epic Energy in severe financial distress. If implemented, Epic Energy will be in breach of its covenants under its loan facility with its financiers. Not

Stakeholder	Date of Submission	Comment
		only will this ensure that Epic Energy will not realise further expansions of the pipeline but it will also place in jeopardy the ability of Epic Energy to continue its capital program to ensure the pipeline's ability to respond to the market and growth needs of Western Australia. • …
Atofina Australia	16.08.01	…Having availed ourselves of the details of the recent draft ruling and discussing this at various levels within our organisation, we believe that we have a duty to bring some of our concerns to the attention of your office. We understand the complexity of the role your office has to play but feel this decision is likely to have a direct impact on the long term commitment of Epic Energy to WA (and Australia). Any uncertainty created by this ruling also has wider ramifications on the community including many companies and suppliers like us. …
Shire of Chittering	01.08.01	… d. Regional Developments: The charge structure needs to be an enticement for extension of the project into regional areas through being realistic for the owners and viable for the customers in the long term. e. Future Demands: Energy and heating are going to be in high demand in the future and the pricing structure for transportation needs to recognise the value of natural gas as a source and an attraction for investment. The draft pricing structure rate does not appear to be commensurate with the investment cost for infrastructure and operations either as a return of investment or as an operating income stream. This submission is made in the belief that long-term equity and viability is a pre-requisite for resource delivery and customer utilisation for the benefit of regions and the state. …

Stakeholder	Date of Submission	Comment
Albany Chamber of Commerce and Industry	24.08.01	…A study and analysis of potential industrial development projects was recently undertaken by the Great Southern Development Commission. The study found that the extension of the pipeline to Albany could generate over $2.6 billion dollars in new revenue for the state over the next 20 years. This would result in great gains in employment in an area strongly affected by adverse agricultural conditions. Planned and current development projects in the Great Southern rely on a plentiful, reliable and competitive supply of energy. Fletchers International Meat Processing Plant, the expanding plantation forest industry, woodchip mill, canola plant and various agricultural value adding projects support the extension of the natural gas pipeline to the region. A decision to lower transportation charges will reduce Epic Energy's commercial viability and threaten the proposed extension of the pipeline. The Chamber, on behalf of over 430 members, begs you to carefully consider the impact of the proposed decision on regional economic growth, regional development and regional employment. …
Commonwealth Bank	21.09.01	…We are most concerned that this further reduction in the tariff would reduce the revenues of Epic Energy to such an extent that it would be likely to: (a) restrict Epic Energy's ability to fund further development of the Pipeline; and …
City of Geraldton	08.08.01	Refer to quote in section A of this table.
J Day	31.07.01	…Whilst recognizing that it is the responsibility of the Regulator to make the determination, the Opposition also recognizes that the final outcome should result in a situation which is both sustainable in the long term and allows for expansion of the pipeline in the future. I note in particular the stated intention of Epic Energy at the time of acquiring the pipeline to spend in excess of $800 million on future expansion.

Stakeholder	**Date of Submission**	**Comment**
		Taking into account the overall public interest, the Opposition would therefore be supportive of higher tariffs being established than those indicated in the draft decision, with the precise levels being determined by you as Regulator. …
HVAC	10.08.01	… In setting the tariffs at 75 cents per gigajoule to Perth and 85 cents per gigajoule to areas south of Perth, instead of the $1 and $1.08 respectively as proposed by Epic Energy, Epic Energy has stated that it will threaten the financial viability of the company. As a direct result, the employment of these and many hundreds of people employed by businesses providing services to Epic Energy would be threatened. Furthermore, at the rates proposed by your office, it is highly unlikely that the expansion of the capacity of the pipeline will be economically viable. Certainly, it would be very unlikely that Epic Energy would invest the proposed $870 million over the next 10 years as we understand was proposed in the access arrangement submitted by Epic Energy. The pipeline would therefore not be extended to Albany and Esperance and this in turn would have a significant impact on economic activity and employment, both in the metropolitan area and regional Western Australia. …
APIA	27.09.01	Refer to quote in section E of this table
Intercreditor Agent for DBNGP Banking Syndicate	17.12.02	… The approach by the Regulator also appears not to recognise Epic Energy's legitimate expectation that the tariff would facilitate future capital investment to increase the capacity of the Pipeline. In preparing the base case for the financing of the acquisition of the Pipeline, we understand Epic Energy relied upon a number of factors and expectations at that time as to the expansion of the Pipeline. A relevant factor in determining the appropriate level of bank finance was the level of revenue that could be generated through the incremental expansion of the Pipeline.

Stakeholder	Date of Submission	Comment
		Further, if required by the Regulator, Epic Energy is obliged to expand the capacity of the Pipeline. However, on the basis of the tariffs under the draft decision of the Regulator, it seems unlikely that (a) such expansion would be economically viable for Epic Energy or (b) the incremental cash flow from such expansion would permit the expansion to be financed. In conclusion, it is difficult to reconcile the draft decision of the Regulator with the three public policy objectives which we understand from Epic Energy underpinned the sale process for the Pipeline, namely : • A reduction in the transportation tariffs on the pipeline to around $1.00/GJ to Perth; • Ensuring that the State achieved the maximum sale price for the Pipeline to deliver economic benefits to the State; and • A commitment to expand the capacity of Pipeline. If, in addition, Epic Energy is shown to have determined the amount it paid for the Pipeline on the basis of representations made by or on behalf of the Western Australian Government, lenders may be concerned with investing in such projects in Western Australia in the future. In particular it seems unlikely that lenders would be prepared to finance an acquisition in similar circumstances.
NEC Australia	31.08.01	…The consequences, which have particular concern to us, are as follows: • …Epic Energy has stated that it will need to expand the capacity of the pipeline to accommodate new customers. However, it has also said that it will not carry out that expansion if all it can charge for the additional capacity are the tariffs proposed in the draft decision. Given that the development of companies like ours and the

Stakeholder	Date of Submission	Comment
		growth of the markets in which we operate are heavily reliant on the continued growth of the pipeline services market, we would be very concerned at a decision which fosters and environment which prevents this growth from being able to be realised. …
Romeo Consulting	09.08.01	… Epic would no longer be bound by any commitments to expand the capacity of the pipeline and any future projects, such as an extension of the DBNGP into Albany and Esperance, would be placed at serious risk. In conclusion, if implemented, the draft decision would have a negative impact on Epic's financial position and viability in Western Australia moving forward which would inevitably flow on to contractors such as us. …
Shire of Roeburne	17.08.01	…It is critical therefore to the future development of regions such as this one that not only must there be a financially stable and viable pipeline owner and operator, but also that the pipeline owner is afforded an environment which makes it commercially and technically viable to expand the pipeline. We would also hope to see an environment encouraged by regulatory decisions, which fosters competition. The introduction of competition reform legislation such as the National gas Code was seen as one of the key instruments for contributing to regional and economic development. This draft decision, if implemented, would not achieve this objective. I urge you to give appropriate weight to this consideration when making your final decision, as the consequences of not doing so will impact on more than just the pipeline owner.
Atofina Australia	16.08.01	…Reduced profitability will almost certainly stifle the ability of Epic Energy to maintain its development and growth in this vital area of infrastructure and all of Western Australia may lose out. The implications for this draft decision also spread to the rest of Australia, as these

Stakeholder	Date of Submission	Comment
		types of decisions tend to set wider regulatory precedents. …
APC Socotherm	06.08.01	… Having studied the regulators proposal and as a key potential stakeholder in the development interests of the state, we are gravely concerned that the draft decision will adversely effect the gas industry in W.A. which will in turn impact on the long term viability of our organization. From our understanding, the draft decision, if implemented, will almost certainly result in the following:- ➢ Epic will not consider any future plans for expansion of the DBNGP system despite the fact that it is already close to capacity. ➢ Epic may defer or cancel future projects such as the extension of the DBNGP into Albury and Esperance. Naturally, any deferment or cancellation of Epic's plans will impact on downstream contractors such as ourselves in addition to stifling regional development, employment and economic growth. ➢ Given that the decision will presumably have a major economic impact on Epic's financial position, the progress of the proposed Darwin to Moomba pipeline may be seriously compromised with dire consequences for our company's position over the next 5 years. ➢ … In summation, we would urge Offgar to consider the points raised above and to respect the transportation tariffs outlined in Schedule 39 of the DBNGP Asset Sale Agreement. The consequences for intrusive regulation are serious indeed and should be considered very carefully prior to formulating a final decision. …
Albany Port Authority	30.07.01	…Assuming the reduction in pricing arrangements does in fact preclude further expansion of the gas pipeline, the Albany Port Authority deeply regrets the Offgar draft decision reducing the transportation charges for the DBNGP. It would appear to have been taken with a singular lack of consideration of the

Stakeholder	Date of Submission	Comment
		consequences that will have a dramatic effect on the aspirations and requirements of REGIONAL WESTERN AUSTRALIA. Without competitive energy infrastructure in place it will prove impossible to carry out the professed wishes of Government to develop value added industry in the regions. Quite clearly the decision taken by Offgar would only benefit those with access to the current infrastructure and would not take into account any future industrial development outside the main Metropolitan vote catching areas. The Port Authority and the Great Southern Region have long term REGIONAL DEVELOPMENT Plans for the development of Port and Transport Infrastructure in preparation for the numerous industries that could be encouraged by Government if it had the will to do so. This decision certainly indicates that there must be a more coordinated and wider inter-departmental approach to decisions that effect Regional Development. The encouragement of investment in the regions is something the Government must achieve if it is to successfully diversify industry and reduce the reliance on basic agriculture. The current disastrous regional economic problems reflect the dangers of maintaining this "no change" attitude and highlights the necessity to develop value adding industries. We trust that the draft decision is very carefully reconsidered and input from Industry and representatives from the Regional areas that will be effected by this decision is obtained before any final conclusion made.
Arc Energy	14.08.01	ARC strongly supports the views expressed by EPIC Energy and others that the Draft Decision will provide disincentives for future pipeline infrastructure developments in WA. This will inevitably lead to a disproportionate sharing of benefits and costs associated with the proposed reduction of DBNGP tariffs across different users of the pipeline as well as WA gas producers and retailers.

Stakeholder	Date of Submission	Comment
		In conclusion, the Draft Decision may well provide short term benefits to some market segments, but it is the longer term effects of the decision upon smaller and medium producers which must also be considered. I strongly urge OffGAR to consider, as part of its final decision, the wide ranging negative impact of a substantially reduced DBNGP tariff as set out above. ARC's concerns are based on the primary objectives of achieving a fair and equitable competitive market environment in WA for <u>all</u> suppliers and consumers as well as providing incentives for sustainable exploration and infrastructure investment to ensure long term security of supply. It is our considered view that the Draft Decision has not adequately addressed these specific aspects, nor properly taken these objectives into consideration.
APIA	27.09.01	Under the current regulatory framework, the service provider could not say that it is economically feasible to expand at the tariffs proposed by the Regulator for a number of reasons: • The proposed rate of return permitted by the Regulator in relation to capital invested on the pipeline as it is currently configured does not make further capital enhancements economically feasible if all that can be earned on that capital is the proposed allowed rate; • Even if the service provider were prepared to fund an expansion, reference tariffs could only be increased for all users if the service provider can justify that the expansion can offer system wide benefits or it is required for safety or integrity reasons or to satisfy contracted capacity obligations. Based on recent decisions of regulators, including the final decision of the Moomba to Adelaide Pipeline System, the circumstances in which a regulator will acknowledge that an expansion offers system wide benefits appears to be very limited; and • …

Stakeholder	Date of Submission	Comment
Bunbury Chamber of Commerce	14.08.01	…We understand that there is very little excess capacity in the existing pipeline, and that the next significant new user would make expansion necessary. We also understand that expansion of the pipeline is a commercial decision that would be made by Epic Energy and that new tariffs would be determined by them on that basis. As a consequence, Epic Energy would appear likely to charge a tariff to new clients considerably higher than the existing \$1.08/Gj which applies today in the South West… In the long term we believe that even the existing users would be at a disadvantage when their ability to average higher charges for new supply with their existing supply would become less effective. … In relation to the proposed tariff in the Draft Decision, we ask that consideration be given to the potential for the recommended tariff to create a medium to long term barrier to industrial development. We would support Epic Energy's existing tariff levels. …
Chevron Australia	27.09.01	…Crucial to the provision of gas for industrial development is a viable and expanding gas pipeline network throughout the State. Government policy and regulatory actions, therefore, should be directed at encouraging investment in the growth of pipeline infrastructure. In general, there is likely to be a negative impact on new gas supply and market developments if the result of the imposition of an inappropriate tariff structure is to discourage new pipeline investment or threaten the viability of existing pipeline operations. … there are two broad policy issues that are of importance to the Gorgon project. …The first involves the considerable discussion about the emergence of a disadvantaged customer group ("second class citizens") if the draft decision is implemented. If this occurred, it would be a strong disincentive to industrial growth as new consumers would be expected to

Stakeholder	Date of Submission	Comment
		pay a gas price "premium" compared to their established competitors. Not only would this have an impact on potential customers, the consequential limiting of growth in gas sales would impact on the attractiveness of new gas developments such as Gorgon. …The second relates to the proposal in submissions to OffGAR to use of the National Access Code as a means of allowing pipeline owners to add the cost of expansion to the capital base, thereby avoiding the creation of a set of "second class citizens." … Chevron believes the Regulator should take a receptive position on expansion and extension of gas infrastructure and capacity, acknowledging it provides system wide benefits through increased reliability and security of supply and, importantly, increased competition from new gas supplies. …
City of Albany	08.08.01	…In submissions to you during the public consultation stage and also since your draft decision, Epic Energy has observed that the draft decision, if implemented, will; (a) mean that further expansion of the capacity of the pipeline will only occur if users are prepared to pay tariffs substantially higher than those proposed under the draft decision; and (b) … …It is critical to the future development of regions such as this one that not only must there be a financially stable and viable pipeline owner and operator, but also that the pipeline owner is afforded an environment which makes it commercially and technically viable to expand the pipeline. We would also hope to see an environment encouraged by regulatory decisions which fosters competition. … As mayor of a council in a region which stands to lose significantly from the stated consequences to which the draft decision may give rise, I urge

Stakeholder	Date of Submission	Comment
		you to reconsider your decision and issue a final decision which sends the correct signals to infrastructure investors and developers, so that the objectives of competition reform can be realised. …
M Criddle	07.08.01	…As a member of parliament serving the Agricultural Region Mr Criddle is constantly asked how regional development and infrastructure projects are to be enhanced in rural areas. The draft decision given by the regulator in the case of Epic Energy and the natural gas pipeline is an example where the enhancement of regional development is being negatively impacted upon. As your office would be aware it is extremely difficult to encourage business and the corporate sector to invest in rural and regional areas and the financial constraints and issues faced by companies and individuals are exacerbated by decisions such as this draft regulatory stance relating to the DBNGP. It is therefore recommended by Mr Criddle that a review of the Regulators' draft decision commence particularly taking into account the attitude of fostering Regional Development for the good of the people in the regional and rural sectors of our state. …
Goldfields Esperance Development Commission	10.08.01	…Epic argues that the draft decision "has significant implications for future investment in Western Australia there will also be significant negative consequences for the future regional development of the gas industry in Western Australia. These include: • At these proposed rates, it may not be commercially viable for Epic to expand the capacity of the pipeline. If new customers seek incremental capacity on the pipeline, they will be paying more for it than existing customers. This will create an unlevel playing field and a situation of "second class citizens" on our pipeline. • …

Stakeholder	Date of Submission	Comment
		It will also have major implications for regional economic growth, regional employment and regional development, particularly the Pilbara, Geraldton and in the state's south." GGT concludes "that the tariff reductions being currently proposed in the Draft Decision are not only unwarranted and inequitable, they have been arrived at on basis that is inappropriate to the specific history, circumstances and intended outcome. In fact it seems likely that the extent and nature of the tariff reductions proposed in the current Draft Decision are more likely to result in a stifled investment and sustained economic downturn in the resource sector than in any measurable social or economic benefits." …
GPR Electrical	Undated	…Furthermore, at the rates proposed by your office, it is highly unlikely that the expansion of the capacity of the pipeline will be economically viable. Certainly, it would be very unlikely that Epic Energy would invest the proposed $870 million over the next 10 years as we understand was proposed in the access arrangement submitted by Epic Energy. If the proposed low tariffs are introduced the only beneficiaries will be current gas users, such as Western Power - a Government agency that would realise transportation savings of more than 20 per cent. The losers would be Epic Energy and their employees, and the people of Geraldton and regional Western Australia. We therefore urge you to consider further the issue of tariffs with due attention being given to the likely impact on economic activity and employment, both in the Geraldton and regional Western Australia. …
Mid West Development Commission	08.08.01	…The Mid West Development Commission is concerned that implementation of the Regulator's Draft Decision, issued on 21 June 2001, will limit the incentives inherent in the State's natural gas energy asset for future economic development. In a parochial

Stakeholder	Date of Submission	Comment
		perspective, potential developments in the Mid West at Mt Gibson and at Oakajee could be jeopardized if high energy costs erode the relatively narrow profit margins of these projects. The Development Commission strongly supports the point of view expressed by Epic Energy because of the possible implications on future industrial and economic development. … The Regulator's draft decision creates an impediment to new industrial development because developers are likely to incur higher overall costs for energy in comparison to existing operators. In this regard, the wider public interest to encourage economic development, does not appear to have been duly considered. The Mid West Development Commission seeks your assistance to help resolve the current impasse in a whole-of-state context to ensure that the State's natural gas asset continues to be an incentive for economic growth.
One Steel	10.08.01	…For expansion of the DBNGP to take place, commercial rates of return need to be generated to attract the investment needed to fund the expansion. From what we can determine from discussions with Epic Energy and other interested parties, the current draft determination puts at risk both expansion and extensions of the DBNGP to Albany and Esperance. As a potential supplier of pipe for any expansion and extension projects, we are concerned that the draft determinations represent a significant discount on current rates which in themselves are lower than they were at the time the West Australian Government sold the pipelines. The proposed rates may not make future investment commercially viable for pipeline builders and managers, and as such, OneSteel may see current potential projects shelved or stopped altogether. This would impact our pipeline manufacturing and supply business. …
Shire of Chapman Valley	13.08.01	…We are concerned of your decision to not approve the proposed Access Arrangement in its current form. We are led to believe that this decision will prevent any further extension of the

Stakeholder	Date of Submission	Comment
		gas pipeline as it will not be an economical alternative for the pipeline owners. Epic Energy believes that future development of the pipeline is at risk and they note that the pipeline is currently fully contracted, and that expansion of the pipeline can only occur at rates which are commercially viable. They believe that this highly unlikely at proposed rates of 75c and 85c. Obviously any decisions that prevent or slow regional growth and which may have a detrimental effect on economic sustainability concern us greatly and your further consideration of the draft decision is urgently requested. …
Shire of Harvey	02.08.01	… Council and the region has continued to be frustrated by the lack of interest being shown by heavy industry in establishing at Kemerton, mainly because of the lack of appropriate infrastructure. The introduction of the Dampier to Bunbury Natural Gas Pipeline will provide a significant step forward to making Kemerton an attractive place for heavy industry to come to. This Council is concerned that your recent decision to regulate transportation charges on Epic Energy for natural gas will impact on the viability of the project and worse still, deter the provision of the product at Kemerton. We request that you consider the regulation of transportation charges most carefully and that our efforts here in the South West are not impacted upon by your decision reached.
Shire of Denmark	02.08.01	…I urge you to consider the future growth of the Great Southern region in any decisions made in respect to transportation charges. The charges set must allow for the provider to have adequate capacity for future expansion into the Great Southern. …
Shire of	18.12.02	…If the regulation on tariff charges is to remain

Stakeholder	Date of Submission	Comment
Northampton		this Council is concerned that by imposing a lower tariff the carrier will be impacted in such a way that it will restrict the development of new services to areas such as the Mid West as it will not be commercially viable. If new customers seek incremental capacity on the pipeline, they will be paying more for it than existing customers. This we believe is not a fair operation. …
Shire of Mullewa	04.09.01	…The Council has no interest in supporting the commercial benefits available to Epic Energy or any other gas producer/transporter. It is however concerned that any alteration in the tariff for the transmission of gas along the Dampier to Bunbury Natural Gas Pipeline could be seen as restrictive to industry development where there is reliance on natural gas as an energy source. …
Standard Aero	17.08.01	…Standard Aero currently supports a valued Customer in Epic Energy with specialist gas turbine engine maintenance services from our facilities located in Sydney, Australia as well as from our Canadian headquarters. Additionally, we have the potential to supply Epic, and other Customers in Western Australia, with natural gas turbine powered generation equipment. The influence of this draft decision on incremental expansion of pipeline capacity, on new pipeline capital projects, on gas fired power generation projects, and on the use of gas fuel as an environmentally friendlier alternative to heavier fossil fuels is genuinely concerning to Standard Aero. We respectfully request that you reconsider your draft decision in favor of economics that allow natural gas and the gas industry to remain an integral part of the continuing economic development in Western Australia. …
Thiess	14.02.02	…We have become aware of the above mentioned draft decision to reduce tariffs, and its impact on not only Epic's current operations and business but also the viability of future pipeline projects, in particular the expansion of the DBNGP including the extension into Albany and Esperence.

Stakeholder	**Date of Submission**	**Comment**
		At a time when Australian governments are seeking greater involvement from the private sector in the provision of public infrastructure, the draft decision raises significant regulatory and sovereign risk issues, particularly in WA. Should the draft decision be implemented, we would expect it to have a negative impact on the level of interest of Australian and offshore infrastructure investors and financiers in any future public infrastructure proposals. …
W Stretch	14.08.01	…Since you issued your decision, Epic Energy has indicated to me that it will not be able to carry out any expansions or extensions to the capacity of the DBNGP at the tariffs proposed by the Regulator because to do so would be unviable for Epic Energy. The delivery of gas to the South West and Great Southern regions has been identified in various studies as critical to the future development of these regions. Infrastructure, particularly competitively priced energy, is critical to the viability and development of downstream users of that energy – ie industry and residents. Choice between alternative energy sources is the best driver for competition between the suppliers of the various energy sources. If there is no choice between energy suppliers then there is no optimum environment for the development of industry and residents will be forced to eventually pay more for their energy due to the lack of competition. This will act as a deterrent to the development of the regions. …
Town of Port Hedland	13.08.01	The draft decision to significantly decrease the transportation charges for the DBNGP, while appearing to provide a public benefit, in fact has significant adverse implications for future investment in Western Australia. The draft decision will clearly, if implemented, compromise the commercial ability of the DBNGP owner and operator, Epic Energy, to expand the capacity of the pipeline. Further, there are serious negative implications for economic growth in the Pilbara as, although the Burrup to Port Hedland pipeline (also owned by

Stakeholder	Date of Submission	Comment
		Epic) is not part of this regulatory framework, the decision will undoubtedly place financial pressure on Epic to increase tariffs on gas transport which will further inhibit the development of downstream processing industries based on the area's iron ore and salt resources. …
Worley	10.08.01	… We believe the ongoing expansion of this major West Australian asset is critical to the future growth of industry in WA, which usually depends on a good clean supply of energy to operate. We are very concerned that the draft rates decision is going to severely limit industry growth, as the future tariffs for gas allowing for incremental capacity expansion will be too high for new ventures to succeed. We understand that the pipeline has always operated on a tariff that has made provision for future expansion and allows new customers to be connected at similar rates. We strongly object to any additional barriers that may limit the growth of the WA gas industry. … We therefore appeal you to consider the rates application with a view to the long term growth of the gas industry in WA and to encourage fair and reasonable competition for new industries that will depend on a gas supply for their operation.

D - Impact of Draft Decision on Further Development of the Gas Industry

Stakeholder	Date of Submission	Comment
NW Shelf Gas	24.08.01	…As the state's largest Gas Supplier and a strong interest in growing the WA Gas Industry we are deeply concerned by the implications of the Draft Decision. Furthermore Epic Energy has commented that the Draft Decision if accepted as is, will affect their financial viability and sustainability. Epic Energy has stated its intention to commence legal action against the Office of Gas Access Regulation. This is likely to be a long and protracted process, creating an environment with no certainty as to future gas transportation tariffs until the matter is resolved. NWSG is concerned that this will impact

Stakeholder	Date of Submission	Comment
		adversely on our shared objective of growing the WA gas industry. …
Standard Aero	17.08.01	Refer to the quotation in section C of this table.

E - Impact of Draft Decision on Financial Position of Epic Energy and Resulting Impact on Safety

Stakeholder	Date of Submission	Comment
Pacific Turbine	14.08.01	… We believe the proposed tariffs will prove to be untenable for Epic and will in fact cause serious financial distress for the company, as they have indicated. That distress will translate to a reduction in opportunities for companies such as ourselves and ultimately lead to a reduction in the reliability of equipment installed on the pipeline. We are concerned that our reputation will be indirectly tarnished by your draft decision. If Epic is forced to curtail certain maintenance activities, the reliability of that equipment will diminish and that could reflect on Pacific Turbine. Therefore, we risk not only losing future business from Epic Energy, but a tarnishing of our reputation as a quality turbine overhaul facility. This is definitely not desirable at a time when we are attracting an increasing amount of foreign investment to Perth. I'm sure you would agree that such a situation would be counter-productive for all involved. …
Atofina Australia	16.08.01	…While we are sure that consumers always welcome reductions in tariffs, they do so with the expectation that the quality of service and the safety of the public will not being compromised. Facing drastically reduced income (via reduced tariffs in this instance) will force any organisation to review the way it does business and reduce it's operating costs – so that shareholder value is maintained. In this scenario it is possible that Epic Energy will be forced to work in an environment were extensive cost reduction (and possibly a reduced workforce) could put safety at risk. …
APIA	27.09.01	…Epic Energy has publicly claimed that the draft

Stakeholder	Date of Submission	Comment
		decision will place the company in severe financial distress to the extent that it will be immediately in breach of its loan facility obligations once an access arrangement which is required to comply with the draft decision becomes effective. While APIA can not comment in detail on the financial impact that the draft decision, if implemented, will have on the financial viability of Epic Energy, it is public knowledge that a significant portion of the purchase price was financed. A reduction in the capital base by over 50% from the purchase price paid by Epic Energy will undoubtedly cause it financial distress. On the basis that these claims can be readily substantiated, not only will Epic Energy be unable to fulfil its undertakings to the State to expand the pipeline, it will be severely compromised in its ability to continue its capital and maintenance program as it is required to do under its pipeline licence. In this respect it would be appropriate for the Regulator to give careful consideration to, and seek independent advice as appropriate, on the effect of the Draft Decision on the continued safe operation of the pipeline and whether the Draft Decision is in conflict with the test established under the Code at Section 1.9(c). In addition to ensuring that the service provider can safely operate the pipeline (at least in accordance with its legal obligations) the Regulator is required to consider the service provider's ability to reliably operate the pipeline. This decision will ensure that Epic Energy will fail to achieve this objective in the eyes of both the service provider and some users of reference services. The reliable operation of a pipeline is equally as important to users of pipelines as it is to the service provider. For users of firm forward haul services, it is of paramount importance that integrity of supply can be guaranteed. Any unexpected interruptions in the supply of gas to a user's own operations will result in substantial losses being incurred by Users. How can such a result be in the public interest? This is a further

Stakeholder	Date of Submission	Comment
		test, established under the Code in Section 1.9(d), as to the merits of coverage of a pipeline by the Code which appears to be ignored as a result of the interpretation of the objectives of the Code adopted by the Regulator. …
Cramer & Neil	03.09.01	As a regional business we are concerned over the potential impact that your recent draft decision will have on our business, and indeed on other support businesses involved with Epic Energy and the safe and productive maintenance of the DBNGP. The commercial viability of the gas supply business for Epic has ramifications far beyond the shareholders of Epic, and I urge you to give full consideration to the entire value chain that stand to be affected by your decision. The immediate economic impact is only the tip of the iceberg if in the long term Western Australia sees a decline in exploration and production investment. As an independent regulator, you will obviously consider the environmental as well as economical benefits that have arisen from the ready access to natural gas for both the domestic and industrial markets. It would be a regressive step to impose unreasonable tariffs which ultimately force the supplier to operate in a financially stressfull trading position, and thus jeopardise the future success of this energy source. …
Drive Safe Australia	22.08.01	…Epic Energy has stated that the draft decision, if implemented, would place the company in severe financial distress. As a result, it could have the effect of reducing Epic Energy's ability to continue its maintenance and capital program. Surely a pipeline operator would itself agree to tariffs at a level that would compromise its statutory safety and maintenance obligations, not to mention levels that would place it in severe financial distress. Our company assists Epic Energy in the implementation of its Safety Program and it concerns us that any initiative that is not market driven and which artificially reduces revenue will place an immediate strain on the organisation in their ability to meet their safety obligations. …

Stakeholder	**Date of Submission**	**Comment**
GPA Engineering	22.08.01	We are concerned that the proposed tariffs will not provide a fair and reasonable return to Epic to allow continued efficient, safe and environmentally sound operations of this significant infrastructure asset. We are also concerned that the proposed tariff appears to provide little incentive to further the development and expansion of this infrastructure, which ultimately may limit the overall future development of industry within Western Australia and Australia as a whole. In our view Epic Energy have demonstrated a high level of competency and efficiency in the provision of its pipeline infrastructure within WA and Australia. We consider it has an exemplary record particularly in respect of environmental and safety management matters. These achievements do not come at zero cost nor do the criteria and objectives for these essential requirements remain static over the life of the pipeline. The public and government authorities are demanding the application of higher and higher standards for safety and environmental requirements and we are concerned that the significant effort required for achieving these standards may not have been fully factored into the draft decision on tariffs. …
PII Limited	23.08.01	…While consumers always welcome reductions in tariffs for the supply of such vital services such as gas transportation, it must not be at the expense of the safety of the community and the level of services available to the community. Based on comments that have been made since the release of your draft decision, these are likely consequences. Epic Energy has stated that the draft decision, if implemented, would have the effect of reducing Epic Energy's ability to continue its maintenance and capital program. Surely no pipeline operator would itself agree to tariffs at a level that would compromise its statutory safety and maintenance obligations. Our company assists Epic Energy in the implementation of its Safety Program and it

Stakeholder	Date of Submission	Comment
		concerns us that any initiative that is not market driven and which artificially reduces revenue will place an immediate strain on the organisation in their ability to meet their safety obligations. …
Safety & Risk Practice Pty Ltd	23.08.01	…We are concerned about the potential consequences that the draft decision, if implemented, is likely to have on not just Epic Energy but the wider business and local communities. …The attempt by your office to further extract additional value after sale for the benefit of the consumer may have the impact of compromising the quality of services that these organisations are set up to provide – one of the values that your office was set up to protect. …Our company assists Epic Energy in the implementation of its Safety Program and it concerns us that any initiative that is not market driven and which artificially reduces revenue will place an immediate strain on the organisation in their ability meet their safety obligations. Past experience indicates that this is the likely consequence when budgets are reduced and critical decisions on financial expenditure must be made. …we believe that the possible outcomes discussed above should have the highest consideration when the Office is determining the allowable tariffs. The decision, when made should not put an operator in a position that compromises its ability to safely operate and maintain a pipeline. …

F - Impact of Draft Decision on Future Investment in Infrastructure in WA and Australia in General

Stakeholder	Date of Submission	Comment
Dominion Resources	10.09.01	The draft decision gives rise to a number of consequences which are contrary to the public interest and for this reason alone, Dominion believes it is incumbent on the Regulator to give due weight to when handing down his final decision. They are as follows:

Stakeholder	Date of Submission	Comment
		• … • … • A regulatory outcome which distorts investment decisions will have serious, adverse, long term ramifications on future private sector investment in public infrastructure assets such as gas transmission pipelines. Given that one of the aims of the Code is to encourage the development of an integrated pipeline network and that gas transmission pipelines require significant injections of capital to proceed and remain viable, if investor confidence is lacking as a direct result of regulatory decisions, this key objective of the Code will not be achieved. The lack of investor confidence in the Californian energy industry due to the regulatory framework has been held to be one of the main reasons for the crisis existing in that market. Surely this consequence must be avoided at all costs. …
Solar Turbines	17.08.01	… In setting the tariffs at 75 cents per gigajoule to Perth and 85 cents per gigajoule to areas south of Perth, instead of the $1 and $1.08 respectively as proposed by Epic Energy, employment of many hundreds of people employed by businesses providing services to Epic Energy would be threatened. In addition, the rates proposed by your office will threaten the very issue it set out to protect - the interests of the public and the viable development and growth of this State. It would be very unlikely that Epic Energy would invest the proposed $800 million over the next 10 years as it intended when it purchased the pipeline. …We are also concerned that regulatory actions which reduce the rate of return on assets in Western Australia to a level inconsistent with competitive outcomes may lead investors to allow for 'sovereign risk' when making calculations about whether to invest in the State. The draft decision of the Office of Gas Access Regulation carries with it, in the opinion of Solar, the risk of sending signals to potential investors

Stakeholder	Date of Submission	Comment
		in the State that investments in infrastructure, particularly in the energy sector, will be exposed to a deterioration in the capital asset base and in the rate of return on the investment by reason of government, or government related, policies or statements (or changes in those policies or statements) and regulatory decisions. The introduction of a sovereign risk factor would diminish investment and reduce overall economic activity in the State, with particular effects on businesses like Solar Turbines Australia which supply and maintain capital equipment and services for the gas and electricity sectors and are significant employers in the State. …
APC Socotherm	06.08.01	…If the draft decision is accepted, it will send out negative messages to potential investors and financiers in both W.A. and nationally thereby thwarting future infrastructure investment and development. …
APIA	27.09.01	…In energy policy terms, the Draft Decision is detrimental to private-sector investor confidence in expansion of the DBNGP and, indeed, for other pipeline development opportunities in Western Australia. Issues surrounding the necessary balance between effective regulated outcomes and investor confidence have been the subject of very wide public debate over recent months, with many of the issues under consideration by the Productivity Commission in its current independent review of the National Access Regime. The Productivity Commission, in its Position Paper released in March 2001, sums up the situation very succinctly as follows: *"Access regulation itself is not without costs. Paramount among these is the potential for it to deter investment in essential infrastructure. Any such impacts are cause for concern. This is because the costs of failing to invest in essential infrastructure are likely to be larger than the costs of monopoly pricing of the services it provides. Hence, it is crucial that access regulation gives proper regard to incentives to*

Stakeholder	Date of Submission	Comment
		invest." …
Deutsche Asset Management	05.10.01	…we wish to record our in principle disagreement with the "cost of service" approach to price setting adopted by the Regulator. Although frequentently adopted by Australian regulators, we consider that this methodology is fundamentally flawed. In short, under this approach the initial capital base is routinely set at an assessed depreciated optimised replacement cost ("DORC") and a weighted average cost of capital ("WACC") appropriate to a mature asset is applied. Consequently, any purchaser of a regulated asset is unable to make a reasonable return on its investment unless it can acquire the asset for no more than its DORC value. One difficulty posed by this approach is that the original developer of the asset may not, in practice, be able to build the asset for a cost equal to DORC. More importantly, however, even if an asset can be built for DORC, the original developer will certainly not be able to recover a return on its investment commensurate with the risk of a greenfield project if the asset is sold for DORC. The developer of a new asset will often expect a return in excess of 20% pa on its actual investment to compensate for development, construction and market risks. Accordingly, it will necessarily seek a price for the completed asset well in excess of its construction cost (let alone its "optimised" construction cost). The buyer, as owner of a mature asset, may well accept a lower return but will also seek that return on its <u>actual</u> investment, not on the theoretical DORC value. Further to that point, apparently favourable comparisons between headline "returns" mandated by regulatory decisions and those available on similar assets in the listed market are fallacious on two counts: first, because of differences in liquidity between listed and unlisted investments and, secondly, because returns on listed shares are calculated on investors' actual funds invested, not on a theoretical "efficient" cost of the physical assets of the business. Until regulators adopt a realistic "whole of asset

Stakeholder	Date of Submission	Comment
		life" approach reflecting the investment and return requirements of different parties discussed above, infrastructure investment in this country will suffer and decline. Deutsche Asset Management has made only one investment in a significantly regulated asset (i.e. 50% or more of revenue from regulated sources) since the acquisition of the DBNGP in 1998. In that case, the relevant regulator had determined that sufficient competition existed and adopted a largely "hands off" approach. …
Gas Measurements and Auditing	24.09.01	…As a consultant to the Australian Pipeline Industry, Gas Measurement and Auditing Pty. Ltd. Wishes to express a specific concern regarding the draft decision on the DBNGP rates case. Although not qualified to comment on the financial or contractual matters associated with the decision, we do wish to highlight a potential casualty should Epic Energy see the final decision as being unfavourable to their ongoing operational requirements. Should Epic Energy see the need to curtail expenditure levels, and/or further review activities currently conducted to maintain their pipeline service level, then it is believed there is a real risk that current contributions to non-core activities, such as research and development (R & D), could suffer. …
M Trenorden	22.08.01	…The National Party seeks an assurance that the Regulator fully applied the principles of fostering competitive markets and promoting investment in the gas market. Specifically the National Party raises the following points and seeks an assurance from the Regulator that due consideration was given to each. • … • The commercial development of energy infrastructure in regional areas in order to promote investment both within the energy sector and by industries that require clean and efficient fuel sources. This was a key objective of removing the ACCC as Regulator and establishing OffGAR, and needs to be demonstrated in the Draft Decision. Therefore the Regulator should be

Stakeholder	Date of Submission	Comment
		able to prove the tariff was established on a sound commercial model. • The attractiveness of investment in Western Australia by both Australian and international business will be influenced by the ability of existing companies to operate profitably within the State. Once again the Regulator needs to be able to prove a sound commercial model is utilised in the decision making process. … The Regulator's decision therefore needs to be wider than just the consideration of the pipeline owner. Pricing issues should not overshadow potential development. The process for deriving pipeline tariffs needs to be on a sound demonstrable economic model. A pure price focus will limit the consideration of the Regulator to the short term, whereas the long term development of the sector is of paramount importance. …
US Consulate	09.08.01	…In the specific case of Epic Energy and your recent draft decision regarding the DBNGP, you should be aware that the 28 international finance houses currently supporting Epic are rapidly becoming completely frustrated regarding the cost of doing business in Western Australia. They are especially concerned about the reduction in expected Rates of Return, which would come from your decision should it become permanent. Should your Decision become final in its present format it will have direct adverse ramifications for Epic Energy's financial viability and sustainability and it will also adversely affect Australia's future ability to raise international funding for other infrastructure developments. At a meeting on Friday August 3, 2001 held in Washington, D.C., with several representatives of American companies doing business in Western Australia and Australia, the incoming United States Consul General for Western Australia, Mr. Oscar De Soto, was made aware of concerns regarding future investment in this country. Due to the decisions by Regulators across the country, Australia is becoming a country where investors must take political risk into account.

Stakeholder	Date of Submission	Comment
		The United States Government is concerned that it would become difficult to recommend Australia as a favorable destination for U.S. investment funds should this Decision be confirmed. …

G - Potential Impact on Staff and Service Providers and their Families

Stakeholder	Date of Submission	Comment
ECOS	24.08.01	… We understand that if adopted, the decision will result in a significant reduction in revenue, threatening the financial position and viability of Epic Energy. This will have a direct and negative impact on Ecos' own financial position. Furthermore, as a company that provides services to the wider resource and development in Western Australia, we are concerned that the decision may affect our activities in these areas too, as the new tariffs: • Present a barrier to competition in the electricity generation sector; • Will threaten new projects to extend the pipeline network, and • May negatively impact new gas developments…
Gas Measurement Solutions	16.08.01	… We are particularly concerned about the recent draft decision by your office to reduce the transportation proposed by Epic Energy on the DBNGP and what affect that will have on the development of regional Australia both in the near term and the longer term. Surely your terms of reference as an independent regulator are to consider all community aspects surrounding gas transportation access to one of the State's most valuable assets. Any forced financial stress on organisations associated with the DBNGP will not aid development of the State and will not be in the interests of the community as a whole. As I am sure you will understand, any Regulatory decision that seriously affects the viability of our company is of great concern to me especially when it may either force closure ot our business or force relocation to another State.

Stakeholder	**Date of Submission**	**Comment**
		Despite our commercial interest here we firmly believe we are not alone in our sentiments on this matter. We trust you will take into consideration the interests of the community as a whole and how your decision will affect small business in this State. …
HVAC	10.08.01	…If the proposed low tariffs are introduced the only beneficiaries will be current gas users, such as Western Power - a Government agency that would realise transportation savings of more than 20 per cent. The losers would be new customers, the raft of organisations working alongside Epic Energy and their employees, and the people of regional Western Australia. We therefore urge you to consider further the issue of tariffs with due attention being given to the likely impact on economic activity and employment, both in the metropolitan area and in regional Western Australia. Whilst HVAC clearly has a vested interest in making this submission, the impact of the proposed tariffs on economic activity and employment is undeniable and must be fully accounted for when the tariffs are finally set. …
Pacific Pipeline	14.08.01	We have been following with interest the various media releases relating to this matter and are becoming increasingly concerned about the impact the access agreement will have on Epic Energy and subsequently ourselves and other small businesses performing work for Epic Energy.
Solar Turbines	17.08.01	… If adjustments to the tariffs for the Dampier to Bunbury natural gas pipeline, as proposed by the Office of Gas Access Regulation are implemented, you need to be aware that not only will our operation in WA be affected, but more so the many hundreds of resident WA employees who provide the services to operate and enhance/develop the DBNGP. Our relationship with Epic Energy in the

Stakeholder	Date of Submission	Comment
		development, enhancement and operation of the DBNGP will no doubt be impacted by the recent publication of the Draft Decision. In setting the tariffs at 75 cents per gigajoule to Perth and 85 cents per gigajoule to areas south of Perth, instead of the $1 and $1.08 respectively as proposed by Epic Energy, employment of many hundreds of people employed by businesses providing services to Epic Energy would be threatened. …
Pacific Turbine	14.08.01	Refer to quote in section E of this table.
BCM Pipeline Supply	10.08.01	… We as a major pipeline specialist supplier to EPIC ENERGY and an "Service Alliance Agreement" partner would be adversely effected if the DBNGP Pipeline Project was postponed or cancelled due to its non commercial viability based on the above tariff rates. Consequently our plans and those of our overseas Principals to expand into WA with the opening of an office to serve the Gas Industry in WA and the Australasian region would be need to be "put on hold" pending a resolution to the above decision. Whilst we are a "small player " in the market we are a "specialist company" who rely solely on pipeline and plant expansions and we trust our view on the detrimental impact that this draft decision, if accepted, would have on our future and the future development of the gas industry in WA can be taken into consideration when finalising your regulatory decision. …
Centurion Transport	17.08.01	…As a supplier of transport and ancillary services to Epic's operations we are very concerned about the recent decision by your office to reduce the tariff proposed by Epic. The decision of your office will not only impact on Epic but also on companies like ours in this State. We believe that community's interests are best served in ensuring that all sections of the community are fairly treated. This includes not only the consumer but also the investors and those who provide services. It is our opinion that the imposition of tariffs that result in

Stakeholder	Date of Submission	Comment
		organisations being driven to operate in a financially stressed environment does not serve the interest of the community. …
EGIS	10.09.01	…We would like to register our concern regarding the recent draft decision on the DBNGP rates case. It is our view that if this decision is allowed to stand, it is doubtful that companies such as Epic Energy will have the confidence to invest further in WA. This will have significant knock-on effects to not only consultants such as Egis, but also to a whole range of contractors, fabricators, suppliers and service providers that participate in major pipeline projects. …
Cramer & Neil	03.09.01	Refer to the quote in section E of this table.
Romeo Consulting	09.08.01	Refer to the quotation in section C of this table.
John Quigley & Associates	10.01.02	…We have written this letter to bring to your attention that this decision will not only impact on Epic in their business to operate the DBNGP considering that you have reduced their ability to fund their operation in the tariff reduction from $1.00 per giga joule to 75 cents. You have also placed in jeopardy the ability for the small businesses like ours to continue to be able to service their operations. We have spent much time, energy and money in building our relationship with Epic over the years, and loss of business with Epic would set us back considerably.

Stakeholder	Date of Submission	Comment
Australian Services Union	21.08.01	…Any draft decision that impacts on Epic Energy's capacity to maintain their business operation in Western Australia would impact on the livelihood of ASU members. The ASU would submit that the review of the draft decision should therefore take into account the likely consequences of the implementation of the draft decision for Epic Energy employees. Epic Energy has indicated publicly that the implementation of the draft decision would impact on the expansion of the DBNG's capacity. Epic Energy has also stated that the draft decision would have a major economic impact on the company's financial position and viability in Western Australia. It is of concern to the ASU that any final decision that reduces the profitability of the DBNG pipeline ("the DBNG") to unreasonable and unsustainable levels will lead Epic Energy or any successor to operate and maintain the DBNG in an undesirable manner. It is the view of the ASU members at Epic Energy that the DBNG is operating at maximum efficiency in terms of staffing levels and operational practices. Any decision that requires Epic Energy or any successor to make major cost reductions on the DBNG would lead to job losses, a deterioration in the asset, unreasonable levels of stress on the workforce and a decrease in occupational health and safety levels. In conclusion in making the final decision the ASU would seek that OffGAR be cognisant of the impact that the decision would have on employees working on the DBNG Pipeline, whether they be working for Epic Energy or any successor, and on the long term economic growth of Western Australia.
Prinsep Cleaning Services		… We feel very strongly about the decisions being handed down by your office particularly the financial impact it will have on Epic's ability to operate and the domino effect it will have on small businesses like ours. …