



A.C.N. 009 302 809

COMBUSTION AIR PTY. LTD.

Our Ref : EPIC DBNGP AA

Your Ref : Gas Safety

March 17, 2000

Mr Robert Pullella Office of Gas Access Regulation
Level 6 Governor Stirling Tower
197 St Georges Tce
PERTH WA 6000

Subject : Public Submission - EPIC DBNGP Access Arrangement - Gas Safety

Dear Mr Pullella,

In response to the Office of Gas Access Regulation (OffGAR) invitation for public comment on Access Arrangements (AA), please find below our submission on the Access Arrangement proposed by Epic Energy in respect of the Dampier to Bunbury Natural Gas Pipeline System.

We note the incorporation of the National Third Party Access Code for Natural Gas Pipeline Systems (the Code) in Schedule 1 of the Gas Pipelines Access (WA) Act 1998. We also note the prominence of South Australian law as the lead legislation for the adoption of the Code and the access arrangements determined in Victoria, under the Code. Access arrangements in these states being determined under the respective laws of each jurisdiction.

Epic Energy's proposed Access Contract Terms and Conditions, at Clause 21.1, warrants that it will continuously comply with all safety laws with respect to any of its obligations connected with or arising out of its access contract. The difficulty is that there is no law in Western Australia compelling Epic Energy to an obligation to curtail a gas supply in unsafe, potentially unsafe or non-complying circumstances. This difficulty does not arise in South Australia or Victoria as the legislation in these jurisdictions provides for curtailment of gas supplies:

Gas Act 1997 (SA) Sections 53 and 55

53. A gas entity may, without incurring any liability, cut off the supply of gas to any region, area, land or place if it is, in the entity's opinion, necessary to do so to avert danger to person or property.

55. (1) A person who owns or operates gas infrastructure or a gas installation must take reasonable steps to ensure that :

(a) the infrastructure or installation complies with, and is operated in accordance with, technical and safety requirements imposed under the regulations; and

(b) the infrastructure or installation is safe and safely operated.

Gas Safety Act 1997 (Vic) Section 34

34. Offence to supply or sell gas for unsafe gas installation

(1) A gas company must not knowingly supply or sell gas for use in a gas installation which is unsafe.

Whilst the Gas Standards Act 1972 (WA) [the Act] prohibits the commencement of gas supply until the installation meets the requirements; the current legislation relies on the transitional provisions of Schedule 1, Chapter 3 clause 10 of the Gas Distribution Regulations 1996 (WA) for the curtailment of gas supply where safety or compliance issues arise and is an obligation only enforceable upon AlintaGas. This point was made by the Office of Energy to the Joint Standing Committee on Delegated Legislation in September 1999, please note their examination (Report No 45) of the Gas Standards (Gasfitting and Consumer Gas Installations) Regulations 1999 (WA) and the Committee's recommendations for change relating to the obligations of gas suppliers, inspectors and gasfitters.

We note the safety provisions of the Gas Distribution Regulations 1996 (WA) have been incorporated in the proposed AlintaGas Access Arrangements, Clause 134 sub (i) and sub (j), as a condition which may invoke curtailment of gas supply. Whilst an argument suggests that any gas supplier, as a reasonable and prudent person, must curtail gas supply in these circumstances flowing from the gas suppliers obligation under s. 13(1) of the Gas Standards Act 1972 (WA), curtailment is not protected by law in Western Australia.

The Epic Energy proposed Access Arrangement is deficient in respect to the contract terms and conditions relating to safety laws and curtailment conditions according to the National Code and jurisdictional frameworks such as Victoria and South Australia. The National Competition Council (the Council) provides guidance in its issues paper of March 1999, titled "WA Access Regime for Gas Pipeline Services" in determining the application of the Western Australian Government to certify the WA Access Regime. Under issues arising from the Competition Principles Agreement [CPA Clause 6 (3)] **the Council (at section 5.2) reinforced the need for a State access regime to conform to the principle of safe use of the facility, by the person seeking access, be assured at an economically feasible cost and, if there is a safety requirement, appropriate regulatory arrangements exist.** Obligatory curtailment terms, similar to those enunciated in the AlintaGas Access Arrangement, should be required by the Office of Gas Access Regulation to ensure that such appropriate regulatory arrangements do exist. **Curtailment of gas supply for safety reasons must be immediate; should not be fettered by ambiguity or fear of litigation, and until protected by law, should be a condition of all Access Arrangements.** A gas supplier or pipeline licensee should not be prejudiced by access arrangements when, as a reasonable and prudent person, curtailment of gas supply is necessary for safety reasons.

Please find attached copies of letters from the Minister for Energy, the Hon Colin J Barnett, the Assistant Director of Energy Safety - Office of Energy, Mr Kevan McGill and the General Manager Distribution - AlintaGas, Mr Alan Marshall, dated March 7 and March 8, 2000. The primacy of Section 13 of the Gas Standards Act in matters concerning safety relates to gas undertakers (network operators and pipeline licensees) ensuring the safety of consumers' gas installations before commencing gas supply. The obligation (and protection afforded) to curtail gas supply in potentially unsafe, unsafe or non-complying circumstances may "flow" from the Act, may be Ministerial policy or guideline and may be an obligation on AlintaGas; yet unlike Victoria or South Australia, is not law in Western Australia.

The cost of maintaining gas safety is of interest and concern to industry and Government. Our company as a significant manufacturer of industrial gas appliances supports the existing system of mandatory inspections and in situ certification and approvals sponsored by gas supplier obligations under the Act. Gas safety and the cost of gas to market entrants, consumers and operators is threatened by any ambiguity as to the regulatory obligations of gas suppliers and pipeline licensees in regard to the commencement of supply or curtailment of supply.

Such safety obligations must also be referenced in the "Service" along with the relevant regulations, standards and codes; funded by the "Tariff" structures and specifically included in the contract "Terms and Conditions" of all access arrangements in Western Australia. The opportunity to comment on the Access Arrangements and gas safety is appreciated.

Yours faithfully,

PETER J. STEWART

Director **COMBUSTION AIR PTY LTD**

Attached

Letter from Minister for Energy dated March 7, 2000.

Letter from Assistant Director of Energy Safety, OOE, dated March 7, 2000

Letter from AlintaGas dated March 8, 2000.