# DAMPIER TO BUNBURY NATURAL GAS PIPELINE
# PROPOSED REVISED ACCESS ARRANGEMENT

## SUBMISSION #49

## RESPONSE TO GAS QUALITY REPORT

## PUBLIC VERSION

## SEPTEMBER 2005

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# 1. INTRODUCTION

1.1. This is one of a series of submissions being made by Operator in response to the Draft Decision on Proposed Revisions to the Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline ("Draft Decision") released by the Economic Regulation Authority ("Regulator") on 11 May 2005. The Draft Decision pertained to proposed revisions to the Access Arrangement ("Proposed Revised Access Arrangement") for the Dampier to Bunbury Natural Gas Pipeline ("DBNGP") submitted by Operator on 21 January 2005.

1.2. In the Draft Decision an amendment is required to the Proposed Revised Access Arrangement that the gas quality specification be amended to a broader specification than was proposed by Operator (see Amendment #15).

1.3. In response to submissions made by Operator following the Draft Decision, the Regulator commissioned a report prepared by the firm PB Associates ("Report"). The Regulator has not disclosed the terms of reference pursuant to which the report was prepared.

1.4. The Report purports to be an analysis of technical issues raised by Operator in its prior submissions to the Regulator. On that stated basis, it draws the following conclusions:

(a) If all gas received into the pipeline was changed from the average composition of gas that the Report assumed was, at the time of the Report, being received to a composition that would comply with the minimum of each parameter in the broadest specification (proposed under Amendment 15 of the Draft Decision), the energy delivered by the pipeline to Kwinana would potentially reduce by 6-7%.

(b) This however, does not represent a capacity reduction because of existing obligations in the gas specification.

(c) A capacity reduction occurs if the existing specification in the Standard Shipper Contract (sic) is changed to the broadest specification (proposed under Amendment 15 of the Draft Decision) but that at Kwinana, this reduction would be less than 1%.

(d) This reduction is not considered a material capacity reduction.

(e) While current producers have the capacity to deliver gas with inert levels at the maximum permitted concentration, they do not currently do this. Moreover, projections by the main existing producers suggest that the expected higher heating value ("HHV") of the gas and the associated Wobbe Index will remain higher than the permitted minima.

(f) The broadening of the gas specification is unlikely to cause the existing producers to change significantly from their current "normal" quality to the minimum permitted quality.

(g) The overall technical (capacity) impact on the DBP is negligible.

1.5. The Regulator wrote to Operator on 22 August 2005 ***[deleted – confidential & commercial in confidence]*** stating that:

(a) the Report "concludes that [Operator's] approach [to the calculation of the impact on capacity in the DBNGP if Amendment 15 is included in the Access Arrangement] is flawed"; and

(b) it "intends to rely upon the [Report] in making its Final Decision".

1.6. On that basis, the Regulator requested that Operator respond to the Report and its findings by 2 September 2005. This Submission is therefore in response to this request.

1.7. Operator submits that:

(a) The issue of the gas quality specification for a pipeline can not be confined to a technical assessment. There are important economic, commercial and social considerations involved in the setting of a gas quality specification for a pipeline.

(b) In the case of the DBNGP (at least), there is the additional consideration of the interface between the regulatory arrangements (ie the Access Arrangement) and the commercially negotiated pre-existing contracts that must be taken into account in any assessment of the gas quality specification to be included in an Access Arrangement. Any outworking of the Access Arrangement which either deprives the parties to commercially negotiated contracts of rights or in any way seeks to alter the balance of risks between the parties can not, as a matter of law, be sustained.

(c) Any conclusions from a report that are made without consideration of all of the above issues is of limited value and must be treated accordingly. This is particularly so in the case of the Report.

(d) Moreover, the Report contains statements and conclusions that are:

(i) wrong; and

(ii) inappropriate because of its failure to consider the factors in paragraphs (a) and (b) above; and

(iii) made without foundation.

(e) Because of the above issues, for the Regulator to rely on these statements and conclusions in the Report in its reasoning for the final decision will call into question the validity of the Regulator's decision. The aspects of the Report that Operator submits are wrong, inappropriate or without foundation are outlined in section 2 of this Submission.

1.8. Consistent with the submission in paragraph 1.7, Operator considers that this Submission must be a complete response to the issue of the gas specification that should apply for any reference service that is to be included in the Revised Access Arrangement for the DBNGP, rather than just a response to the content of the Report.

1.9. Accordingly, this Submission is structured as follows:

(a) Section 2 responds to particular issues raised in the Report and identifies technical issues which were not addressed in the Report, all of which call into question the Report's integrity.

(b) Section 3 provides further background technical information relating to gas specification that is not addressed in the Report, as this is important for the purposes of the submissions made in sections 4 and **Error! Reference source not found.** of this Submission. In particular, this section:

(i) explains some of the key elements of the gas quality specification and their interrelationship;

(ii) explains the key factors that affect the quality of gas to be delivered into the DBNGP;

(iii) ***[deleted – confidential & commercial in confidence]***; and

(iv) ***[deleted – confidential & commercial in confidence]***.

(c) ***[deleted – confidential & commercial in confidence]***.

(d) ***[deleted – confidential & commercial in confidence]***.

# 2. RESPONSE TO SPECIFIC COMMENTS IN REPORT

2.1. A number of specific comments from the Report require a response, and therefore call the Report's accuracy and relevance further into question. As a result, Operator submits they are incapable of being relied on by the Regulator in its reasoning to support any further decision it might make in respect of the gas quality specification to apply in the revised Access Arrangement.

2.2. This section outlines each of the relevant aspects of the Report and Operator's substantiating submissions.

2.3. As an initial general comment, Operator reiterates its submissions in section 1 that the issue of gas quality specification for a pipeline has technical, commercial, social and economic considerations which are interrelated. In addition, there is the consideration of the interface between the regulatory decision and the commercially negotiated contracts which the regulator must take into account. Any conclusions from a report that are made without consideration of all of the above issues are of limited value and must be treated accordingly.

2.4. Notwithstanding the above comment, and turning to responses to specific statements in the Report:

**Response to section 2.2 of Report**

2.5. Section 2.2 of the Report outlines the purpose of a gas specification for a pipeline. While the introduction to this section acknowledges there may exist reasons for a pipeline to have a restrictive specification, it promotes the adoption of a broad specification and impliedly recommends the specification promoted by AS4564. However, in doing so, the Report fails to have regard to the particular history and circumstances that apply to the DBNGP. These circumstances include:

(a) The basis on which the pipeline was developed; and

(b) The customers on the pipeline and their particular requirements for gas of a certain quality; and

(c) ***[deleted – confidential & commercial in confidence]***.

2.6. In addition, the last paragraph of this section of the Report states that it is usual for a pipeline developer to define a specification that is sufficiently broad to provide access to the broadest range of possible gases.

2.7. This paragraph ignores the following:

(a) The fact that the pipeline was developed over 20 years ago;

(b) It was developed by the State of Western Australia, which is no longer the owner of the DBNGP;

(c) The gas quality specification applying to the DBNGP has been narrower than the existing operating specification that now applies to the DBNGP; and

(d) Access to the broadest range of possible gases is not prevented by the specification proposed by Operator in its proposed revised Access Arrangement.

(e) ***[deleted – confidential & commercial in confidence]***.

**Response to section 2.3 of Report**

2.8. The last paragraph of this section of the Report states that "[b]ecause the composition of a gas resource is fixed by nature (ie predominantly determined by the reservoir characteristics), it is most unusual for the composition of the natural gas components in each resource to change significantly throughout its production life, unless the world market for some of its components changes."

2.9. This statement demonstrates that the Report has taken an extremely simplistic view of the gas specification issue applicable to the DBNGP, essentially assuming that:

(a) gas entering the pipeline is sourced only from a limited number of existing fields;

(b) the quality of input from existing fields is essentially fixed for the life of the fields and that change will only take place at the margin as a result of new field development; and

(c) the producers of the gas have limited ability to change significantly the gas quality specification in the DBNGP.

2.10. ***[deleted – confidential & commercial in confidence]***.

2.11. Furthermore, Gas in the DBNGP is sourced from many different fields – Griffin, Apache, NWSG and more likely to come from the Carnarvon Basin [Gorgon, Macedon etc]

**Response to section 2.4 of Report**

2.12. In this section, the Report states that:

"It is reasonable to expect that once the requirement to incorporate minimum quantity of liquefiable components is removed, the producers will adjust their processing plant to recover the liquid at source and market the valuable product separately. That this has not happened is presumably a combination of limits on the processing plant and commercial negotiations between customers and shippers (and presumably [Operator]) to maintain reasonable concentrations of these components in the gas to limit the impact of such a change on the pipeline capacity."[1]

2.13. ***[deleted – confidential & commercial in confidence]***:

(a) ***[deleted – confidential & commercial in confidence]***;

(b) ***[deleted – confidential & commercial in confidence]***; and

(c) ***[deleted – confidential & commercial in confidence]***.

2.14. ***[deleted – confidential & commercial in confidence]***.

[1] Report Dampier to Bunbury Natural Gas Pipeline Evaluation of the Impact of a Broader Gas Specification – Confidential version released to DBNGP (WA) Transmission Pty Ltd, dated 22 August 2005, page 6.

**Response to section 2.6 of Report**

2.15. The pipeline is designed to transport energy not volume – even though equipment behavior and performance of plant etc relate to volume, the pipeline is serviced based on energy – in fact nearly all pipelines in Australia transport energy as a service.

2.16. Gas is measured and billed as energy even though the primary measurement equipment measures volume.

2.17. The existing control systems do monitor the blended gas into the pipeline and the control systems at compressor stations in terms of fuel management. The existing control systems are currently doing what they are designed to do.

2.18. ***[deleted – confidential & commercial in confidence]***

2.19. Lean gas transportation requires more hardware for the same energy sold in all aspects of pipeline operation, in that:

(a) more fuel is required;

(b) more volume is transported – this means the volumetric capacity of the line is reached as energy capacity drops – Operator will need to review the capacity of meters, compressor re wheeling, nozzles etc

(c) less energy capacity results.

**Response to section 2.7.1 of Report**

2.20. The Report states that it is reasonable that wherever possible, the specifications for transmission pipelines should be brought into alignment, and in particular in to line with AS4564. Unlike other transmission pipelines in Australia, the DBNGP is primarily an industrial gas pipeline, with only a small proportion of capacity being devoted to the domestic gas market

2.21. There is no foundation (technical or otherwise) for this statement.

2.22. Operator repeats its submissions made on the issue in Submission 28 to the effect that on a proper application of the Code, the need for specification alignment is not a valid consideration.

**Response to section 2.7.2 of Report – System Use Gas Impact**

2.23. There are numerous statements in this section of the Report that require a response.

2.24. Firstly, the statement is made at the start of this section that when the pipeline utilisation is less than its “capacity”, a change from a rich gas specification to one with a lean gas specification will still allow the energy delivery obligations to be established.

2.25. This statement is overly simplistic and as such is misleading and wrong in many respects. It is misleading because:

(a) it uses the term “capacity” in quotations so as to make it unclear what is meant; and

(b) the capacity of the DBNGP, while currently fully contracted for firm capacity, it has an average utilisation of something less than 100%. ***[deleted – confidential & commercial in confidence]***

2.26. It is wrong because it suggests that no matter what the change in the "richness" (or "leanness") of the gas, if a pipeline is not fully utilized, Operator will be able to meet its obligations. Taking this to the extreme, if the maximum inert level is increased to 20%, and a pipeline is, like the DBNGP, fully contracted for firm capacity but not fully utilized, the Report would conclude that the energy delivery obligations could be met. This is an absurdity.

2.27. The statement is followed immediately by another statement of the counterfactual - that energy obligations will not be able to be met where the pipeline is fully contracted and there is a move from a rich gas specification to a lean gas specification. While it is factually correct, the fact that it follows on immediately from the earlier statement commented on above gives the impression that if there is one TJ/day of uncontracted capacity (no matter how interruptible), then delivery obligations will be able to be met. This too is a wrong assumption.

2.28. The second statement requiring a response is that Operator would resist any change to the gas specification that could require it to supply increased compression and consequently, to pay for increased fuel (because it is obliged to provide fuel gas). In the context of a regulated pipeline and the Access Arrangement, this is incorrect – the Code allows for the Operator to recover non capital costs. Surely, such increases in fuel gas costs that might arise from the additional fuel required to operate compressors harder because of the reduction in the gas quality would be costs that meet the test for inclusion in the Total Revenue calculation.

2.29. ***[deleted – confidential & commercial in confidence]***.

2.30. ***[deleted – confidential & commercial in confidence]***.

2.31. ***[deleted – confidential & commercial in confidence]***

**Response to section 2.7.3 of Report**

2.32. The statement is made that "advice from the main gas producers is that for the foreseeable future, while gas from Apache may be delivered at the maximum $CO_2$ concentration, gas from NWSG will be delivered with a $CO_2$ concentration less than maximum".

2.33. ***[deleted – confidential & commercial in confidence]***.

2.34. ***[deleted – confidential & commercial in confidence]***.

**Response to Pipeline Capacity Modelling Scenarios**

2.35. ***[deleted – confidential & commercial in confidence]***

2.36. Furthermore, it is noted that the Report agrees with Operators assessment on the pipeline's maximum capacity. Although, as stated in this Submission, this is not a relevant consideration. The assessment should be based on the impact on contractible capacity of either existing services or likely services ***[deleted – confidential & commercial in confidence]***.

# 3. PRELIMINARY TECHNICAL ISSUES RELATING TO GAS QUALITY IN THE DBNGP

3.1. The Report makes the following statements relevant to technical aspects of gas specification for the DBNGP:

"Because the composition of a gas resource is fixed by nature (predominantly determined by the reservoir characteristics) it is most unusual for the composition of the natural gas components in each reservoir to change significantly throughout its production life unless the world market for some of its components changes."[2]

"It is reasonable to expect that once the requirement to incorporate minimum quantity of liquefiable components is removed, the producers will adjust their processing plant to recover the liquid at source and market the valuable product separately. That this has not happened is presumably a combination of limits on the processing plant and commercial negotiations between customers and shippers (and presumably [Operator]) to maintain reasonable concentrations of these components in the gas to limit the impact of such a change on the pipeline capacity."[3]

"Advice from the main gas producers is that for the foreseeable future, while gas from Apache may be delivered at the maximum $CO_2$ concentration, gas from NWSG will be delivered with a $CO_2$ concentration less than maximum".

3.2. These statements demonstrate that the Report has taken an extremely simplistic view of the gas specification issue applicable to the DBNGP, essentially assuming that:

(a) gas entering the pipeline is sourced only from a few existing fields;

(b) the quality of input from existing fields is essentially fixed for the life of the fields and that change will only take place at the margin as a result of new field development; and

(c) the producers of the gas have limited ability to change significantly the gas quality specification in the DBNGP.

3.3. Operator submits that:

(a) the issue of the long term quality of various fields is only one of a number of factors that will determine the quality of the gas being transported in the DBNGP;

(b) experience over the last 12 months has demonstrated that:

(i) ***[deleted – confidential & commercial in confidence]***

(ii) ***[deleted – confidential & commercial in confidence]***;

(c) ***[deleted – confidential & commercial in confidence]***;

(d) ***[deleted – confidential & commercial in confidence]***; and

[2] Ibid, page 6

[3] ibid, page 6

(e) ***[deleted – confidential & commercial in confidence]***.

3.4. Accordingly, this section of the Submission:

(a) explains some of the key elements of the gas quality specification and their interrelationship;

(b) ***[deleted – confidential & commercial in confidence]***;

(c) explains the key factors that affect the quality of gas to be delivered into the DBNGP;

(d) ***[deleted – confidential & commercial in confidence]***; and

(e) ***[deleted – confidential & commercial in confidence]***.

**Key elements of the gas quality specification**

3.5. It is important to outline Operator's understanding of the key elements of the gas quality specification and their interrelationship.

3.6. Operator has had regard to the explanations contained in the WA Government's paper entitled "Review of the Gas Quality Specification for the DBNGP" published in November 1995.

3.7. Higher Heating Value (HHV) – this is the measure of the energy content of the gas. It is measured in megajoules per cubic metre and is an important parameter because gas is sold on an energy basis. HHV is set with both a maximum and minimum value because of safety reasons. The fact that gas is used in equipment, this equipment is usually designed to operate safely and efficiently within a certain gas quality range. Variations in HHV outside the range will impact on the efficient operation of the equipment and can result in accelerated wear. If this occurs continually, then the equipment will need to be modified (normally it will be to the fuel control system) otherwise it will lead to safety issues. If modifications occur, the equipment output will normally be derated and perform less efficiently.

3.8. Wobbe Index – this index is a measure of the energy contained in the gas flowing at a set pressure through an orifice of a fixed size. It is also a measure of combustion quality. Like the HHV, it is specified over a maximum and minimum range. These are normally set as a consequence of the minimum and maximum HHV levels. Gases outside the Wobbe Index limits have serious implications for the safe and efficient operation of equipment and appliances. Changes to the Wobbe Index also affect pipeline capacity, flow and system linepack. It also impacts on compressor fuel usage. The extent of the range of the Wobbe Index is also important as the wider the range, the greater the prospect of fluctuations in volatility. This affects those customers reliant on gas engines in their operations, because control systems need adjusting when changes take place.

3.9. Total Inerts – the main inert gases are $CO_2$ and $N_2$. The existence of these elements in the gas composition replaces combustible gas and therefore reduces the energy content of the gas. In the case of $CO_2$, it causes corrosion to the pipeline if there is free water present. It also reacts with other inputs in feedstock applications, where gas is used as feedstock by shippers. The level of total inerts can therefore reduce the efficiency of the pipeline, gas user equipment and feedstock user processes (including the LPG extraction plant). The loss in efficiency attributable to the presence of inerts in the pipeline can be

compensated for by adjusting the Wobbe Index. Alternatively, the Wobbe Index can be maintained by adding LPGs, but this will still create problems for the end shippers using gas in feedstock processes.

**Key factors that affect the quality of gas to be delivered into the DBNGP**

3.10. There are a number of factors that affect the quality of gas to be delivered into the DBNGP but what is important to realise is that most of these factors are at the sole control of producers. Notwithstanding field quality characteristics, the producers supplying gas for delivery into the DBNGP do have significant capability to change the gas quality over the short and long term. The key factors therefore affecting quality of the gas to be supplied into the DBNGP are:

(a) ***[deleted – confidential & commercial in confidence]***.

(b) Gas supplied for receipt into the DBNGP presently comes from many different fields all with significantly different gas specifications with varying volumes of gas delivered from particular fields. If the volumes from each field change to any degree, then the average quality of gas in the DBNGP will be correspondingly affected.

(c) ***[deleted – confidential & commercial in confidence]***.

(d) ***[deleted – confidential & commercial in confidence]***.

(e) ***[deleted – confidential & commercial in confidence]***.

3.11. ***[deleted – confidential & commercial in confidence]***.

***[deleted – confidential & commercial in confidence]***

3.12. ***[deleted – confidential & commercial in confidence]***.

3.13. ***[deleted – confidential & commercial in confidence]***.

3.14. ***[deleted – confidential & commercial in confidence]***:

(a) ***[deleted – confidential & commercial in confidence]***;

(b) ***[deleted – confidential & commercial in confidence]***;

(c) ***[deleted – confidential & commercial in confidence]***;

(d) ***[deleted – confidential & commercial in confidence]***;

(e) ***[deleted – confidential & commercial in confidence]***; and

(f) ***[deleted – confidential & commercial in confidence]***

3.15. ***[deleted – confidential & commercial in confidence]***.

3.16. ***[deleted – confidential & commercial in confidence]***:

3.17. ***[deleted – confidential & commercial in confidence]***.

3.18. ***[deleted – confidential & commercial in confidence]***:

3.19. ***[deleted – confidential & commercial in confidence]***.

3.20. ***[deleted – confidential & commercial in confidence]***.

3.21. ***[deleted – confidential & commercial in confidence]***

# 4. AMENDMENT #15 IS CONTRARY TO SECTION 2.47 OF THE CODE

4.1. Operator's submissions in Submission 28 claimed that if Amendment 15 is implemented, it will be contrary to section 2.47 of the Code. This section of this Submission expands on these prior submissions in order to convince the Regulator that it can not proceed to incorporate this amendment in the revised Access Arrangement. It:

(a) provides the interpretation and application of 2.47 that Operator has obtained from external legal advice;

(b) ***[deleted – confidential & commercial in confidence]***.

(c) ***[deleted – confidential & commercial in confidence]***.

(d) ***[deleted – confidential & commercial in confidence]***.

(e) ***[deleted – confidential & commercial in confidence]***.

4.2. ***[deleted – confidential & commercial in confidence]***

**Interpretation and Application of Section 2.47 of Code**

4.3. Operator has obtained external legal advice in respect of section 2.47 of the Code and, in particular, as to whether the Draft Decision concerning gas quality conforms to the requirements of section 2.47. That advice concludes:

(a) Section 2.47 confers no discretion on the Regulator to disregard, or depart from, its terms to any extent at all, in any circumstances. The provision has effect as a definite and binding constraint on the Regulator's powers. It is expressed in mandatory terms, ie, the Regulator "must not approve …."

(b) Section 2.47 applies to all existing contractual rights, regardless of the circumstances in which they were created.

(c) Section 2.47 applies to all existing contractual rights, regardless of their nature or supposed commercial value or practical utility. Thus, the section is not concerned with evaluating the commercial or other impact, on a contracting party, of the deprivation of one or more contractual rights. It simply precludes any such deprivation at all.

(d) Section 2.47 applies to the contractual rights of any persons.

(e) Section 2.47 is not concerned with or, at least, is not confined to, deprivations which are caused directly by the legal effect of a Regulator's decision, but includes deprivations which would result from the practical consequences of an approved revision to an Access Arrangement. So much is clear from the ordinary meaning of "deprive", which includes "to divest of something possessed or enjoyed; dispossess; strip; …. to keep (a person, etc) from possessing or enjoying something withheld …": (The Macquarie Dictionary). It is also clear from the nature of a Regulator's decision with respect to proposed revisions to the Access Arrangement. Such a decision does not itself directly affect legal rights. It results in approval of a revised Access Arrangement which is then "applied" in resolving

disputes over pipeline access (section 6.15). Thus, section 2.47 is concerned with the consequential effect of a proposed revision, if "applied" in practice.

(f) Where contractual rights relate to a continuing activity and/or have a quantitative dimension, an interference with their enjoyment which results in the curtailment of the activity and/or a reduction in the quantitative element is, to that extent, a deprivation of the contractual rights. Section 2.47 operates in the context of a statutory regime which regulates an activity, ie transporting gas, which involves continuing activities relating to portions of pipeline capacity, as measured by quantities of gas transported per day. Section 2.47 would be a hollow and ineffectual protection provision if it permitted a decision of the Regulator to inflict the loss of all but the slightest residual extent of agreed transportation services. A construction to that effect would be manifestly absurd. Thus, a proposed revision which, if applied, would preclude delivery and receipt of a portion of a contracted volume of services, constitutes a deprivation of contractual rights to deliver and receive that portion.

(g) Section 2.47 requires consideration to be given to what would occur if a proposed revision was approved and applied. This involves an examination of, and judgment about, future events, in circumstances where contracts have not yet been made on the basis of the proposed revised Access Arrangement terms. Given the future or predictive aspect of the provision, it will not be construed as being confined to effects which can be shown to be absolutely inevitable, ie which will definitely occur. Rather, it includes consequences which would occur as a matter of probability. This interpretation is consistent with many other provisions of the Code which require various kinds of estimates to be made concerning future occurrences: eg, sections 3.2, 8.2, 8.20.

4.4. As noted above, under the Standard Shipper Contracts, Operator has a right to receive, transport and deliver gas which conforms to the contractual gas quality specification and to be paid for that service. Equally, the shipper has the right to deliver gas into and receive gas from the pipeline which conforms to the contractual gas quality specification. These are fundamental rights under the Standard Shipper Contracts that go to the nature of the service being provided.

4.5. Accordingly, if there is a probability that these (or any other) rights are in any way interfered with as a result of the approval of the revised Access Arrangement by the Regulator, section 2.47 of the Code will not be complied with.

4.6. ***[deleted – confidential & commercial in confidence]***.

4.7. ***[deleted – confidential & commercial in confidence]***.

4.8. to 4.53 ***[deleted – confidential & commercial in confidence]***

**Section 2.24 considerations**

4.54 It is noted that the regulator has purported to take into account the section 2.24 factors in the Draft Decision, in the context of the gas quality specification issue. Operator considers that, in light of the matters raised above in this section 4, the Regulator has failed to give fundamental weight, under section 2.24(b), to the interests of Operator in preserving contractual rights and not being exposed to remedies, including termination, for breach of contract concerning gas quality. Similarly, the Regulator has failed to give fundamental weight to the corresponding interests of existing shippers.

4.55 The factor specified in section 2.24(b), as with the other factors specified in section 2.24, is one which the Regulator is obliged to have regard to and to give weight to as a fundamental element in assessing revisions to a proposed Access Arrangement. Other factors specified in section 2.24 include the Service Provider's legitimate business interests, the public interest and the interests of Users and Prospective Users.

4.56 The requirement to accord fundamental weight to a factor means that the factor must contribute demonstrably to the ultimate decision that is reached. It cannot simply be considered and then accorded no significance in the actual decision or result. Furthermore, unlike the case of reference tariff issues, there is, in the consideration of gas quality, no aspect of section 8 of the Code which limits the application of the factors in section 2.24 to the matter in issue.

4.57 The range of factors specified in section 2.24 has the potential to raise conflicting considerations. However, it does not follow that the Regulator is entitled to accord no weight at all, to any of the specified factors in a given case.

4.58 The assessment required by section 2.24 can only be properly undertaken if the content of the specified factors, as they apply in relation to gas quality, is first determined.

4.59 ***[deleted – confidential & commercial in confidence]***

4.60 The Regulator has identified competing public interests in the Draft Decision. However, as Operator has previously submitted, those interests are intrinsically of a general nature, not supportable by empirical evidence and rest largely on assertion. Their content in the present context is uncertain. To the extent that there is any reasonably perceived force in them, that can be given proper effect by recognising them as longer term objectives, to be implemented consistently with the preservation of existing contractual rights.

4.61 Such general public interest considerations cannot displace the force of specific, existing contractual rights and obligations, on a proper application of section 2.24. To do so would be to misconstrue and misapply section 2.24 and act unreasonably.

4.62 The Regulator's dealing with the section 2.24 factors in the context of gas quality in paragraphs 428-431 of the Draft Decision was, by and large, superficial - what the regulator did was to mention certain factors and then state an unreasoned conclusion in paragraphs 426-429.

4.63 Fundamental weight, under section 2.24(b), should have been given to the interests of Operator in preserving contractual rights and in not being exposed to remedies, including termination, for breach of contract concerning gas quality specification. Similarly, fundamental weight should have been given to the corresponding interests of existing users. The Regulator has erred in the application of section 2.24 by failing to properly evaluate the factors and by failing to recognise that in the present context, section 2.24 provides no warrant for a decision which destroys or impairs existing contractual rights and obligations.

# 5 *[DELETED – CONFIDENTIAL & COMMERCIAL IN CONFIDENCE]*

5.1 ***[deleted – confidential & commercial in confidence]***.

***[deleted – confidential & commercial in confidence]***