



DominionSM

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Dr Ken Michael
Western Australian Independent
Gas Access Regulator
Level 6
197 St Georges Terrace
PERTH WA 6000

Attention: Mr R Pullella

Dear Sir

**DRAFT DECISION ON DAMPIER TO BUNBURY NATURAL GAS PIPELINE
ACCESS ARRANGEMENT**

Dominion Resources, as a one third owner of Epic Energy, is deeply concerned that the draft decision released by the Western Australian Independent Gas Access Regulator ("Regulator") in relation to the access arrangement for the Dampier to Bunbury Natural Gas Pipeline ("DBNGP") will, if implemented, have significantly adverse ramifications for any investment in future or existing developments in Western Australia and for that matter, the rest of Australia.

The concern arises from a number of issues relating to the draft decision:

- Dominion considers that the Regulator has failed to consider, or at the very least given appropriate weight to the circumstances surrounding the privatisation of the DBNGP by the State in 1997 and 1998 when assessing the tariffs for the pipeline.
- The draft decision will give rise to a number of consequences which will operate to distort future investment in pipelines and are anti-competitive.

1. Sale Process

Dominion does not believe that the Regulator has given proper weight to the commitments given and understandings reached as part of the privatisation of the DBNGP when setting the tariffs in the draft decision.

As has been stated in previous submissions by Epic Energy to the Regulator, bidders for the DBNGP were advised by the State entity controlling the sale process to assume that transportation tariffs on the DBNGP would be \$1.00/GJ to Perth as from 1 January 2000. This certainty in tariffs was in consideration for the State ensuring that the sale would achieve the following public policy objectives:

- Maximising the purchase price for the sale of the pipeline.
- A commitment to the further expansion of the capacity of the pipeline so as to maximise the opportunity for the development of the state.

While it was accepted that an access arrangement would have to be lodged under the Code, it was also considered reasonable to assume that these tariffs were consistent with an application of the Code, especially given the nature of regulatory decisions that had been made by regulators at the time of the sale of the pipeline.

The reasonableness of this assumption must be given further weight given that it was not only an assumption of the shareholders of Epic Energy, but also of the syndicate of financiers who agreed to finance the purchase.

The fact that the State has already received the proceeds of the sale of the pipeline and those proceeds have been applied by the State to both reduce public debt and to provide for further public infrastructure and given the commitments given in return for the payment of the purchase price, there is an overwhelming public interest to ensure that the commitment in relation to the tariff is fulfilled.

4. Consequences of Draft Decision

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:

- Dominion and the other shareholders of Epic Energy, invested in the DBNGP on the reasonable expectation that in return for the price paid for the asset and the commitment given to expand the pipeline, there would be certainty in the tariffs for the pipeline beyond 1 January 2000. Should this legitimate expectation not be accepted by the Regulator or not given the appropriate weight, it will further strengthen the perception that political risk must be a factor which investors in regulated assets in Australia must take into account when deciding whether to invest.

Given that projects such as pipelines require significant amounts of capital and therefore significant amounts of debt, any additional risks posed to investment will make it more difficult to source that debt. One question is how this is consistent with the aim of the Code to promote an integrated pipeline network in Australia.

- 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 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 maintenance and capital program to ensure the pipeline's reliable and efficient operation.
- 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.

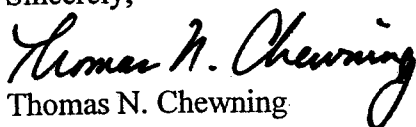
The above consequences are evidence that the Regulator has not balanced the vested interests of all parties, including the asset owner nor taken into proper account the true public interest.

Furthermore, it should be noted that the Western Australian government agreed to the introduction of the Code on the condition that an independent regulator separate to that created for the balance of the Australian states was required to oversee its application. It was considered by the State that only a state based regulator could properly take into account the unique stage of development of the gas industry in Western Australia and the specific interests that apply in this state when applying the Code.

However, as a result of the Regulator's heavy handed application of the Code, his desire to maintain a degree of consistency with decisions being handed down by other Regulators in the eastern states and the failure to properly appreciate the discretion that is afforded to him under the Code, the state specific issues in Western Australia have been ignored. This will act as a further disincentive to invest in future infrastructure in Western Australia.

Dominion therefore requires the Regulator to ensure that the final decision properly recognises the legitimate expectations of those who invested in the DBNGP and that it does not have the consequences referred to above.

Sincerely,


Thomas N. Chewning