



Our Ref: 200305213; 200305353 JW:BL

Employees of Epic Energy
C/- Mr Don Bower
Epic Energy (WA) Transmission Pty Ltd
Level 7, GHD House
239 Adelaide Terrace
PERTH WA 6000

Dear Employees of Epic Energy

I refer to your letter of 28 March and appreciate and note the concerns you have expressed about the situation of Epic Energy and the regulatory process for the Dampier to Bunbury Natural Gas Pipeline (DBNGP) Access Arrangement currently in progress.

As you are aware, the sale of the DBNGP and the establishment of the Independent Gas Pipelines Access Regulator (the Regulator) took place under the previous Government. However, this Government has made every effort to support the speedy completion of the regulatory process, while maintaining the independence of the Regulator, which is fundamental to good government process.

As clarified by the Supreme Court, the Regulator is to give weight in his decision-making to the factors in section 2.24(a) to (g) of the Code as fundamental elements in the assessment of the proposed Access Arrangement. These factors include, amongst others, Epic Energy's legitimate business interests and investment in the pipeline, as well as the public interest.

It is therefore for the Regulator, not the State, to balance the above factors.

Accordingly, it would be inappropriate for the Government to make a submission to the Regulator, to the effect that it is in the public interest to approve a particular tariff for the DBNGP, especially as the Supreme Court has found that no legally binding tariff agreement exists between Epic Energy and the State as part of the DBNGP sale process. As the State has maintained, the setting of tariffs for the DBNGP, within the framework of the Code, is a matter for the Regulator.

As noted in your letter, the State did make submissions to the Regulator. As the Gas Access Regime provides and the Supreme Court indicated, the Regulator is independent of direction or control by the Crown in the performance of his functions.

Accordingly, the purpose of these submissions was not to direct the Regulator's decision, but to highlight the salient issues that the Regulator needs to consider.

In the State's submission of 18 September 2001, the State indicated it "would be concerned were financial distress to arise by virtue solely of the final decision of the Regulator". However, "the onus must be upon Epic Energy to demonstrate to the Regulator that any regulatory decision alone could have such an effect, through the provision of detailed information and analysis". As such, the State, in its submission, encouraged Epic Energy and its financiers to provide the fullest possible information to the Regulator to allow his informed consideration of Epic Energy's legitimate business interests. I trust that Epic Energy did so.

In the same submission, the State also highlighted to the Regulator that it was concerned with claims being made that the draft decision's tariffs might undermine the future development of the pipeline and act as an impediment to further industrial and regional development. The State encouraged the Regulator to carefully address these matters.

In respect to the DBNGP sale process that the previous Government undertook, this Government has also facilitated the provision of information on the sale process requested by the Regulator, which I believe will assist in his deliberations. Likewise, the State has ensured that the Regulator has the necessary resources required to carry out his functions.

With reference to the timeliness of the Regulator's consideration of the DBNGP Access Arrangement, the Regulator has undertaken the regulatory process in accordance with the Gas Access Code. The regulatory process involves full consultation and in-depth consideration of the issues, which necessarily involve time. It is equally important that the parties involved can exercise their legitimate rights under law as they see fit, as Epic Energy did when it challenged the Regulator's decision. While some may consider this as delaying the process, it is important that the process and decisions are undertaken in accordance with the law.

Again, I appreciate you bringing to my attention your concerns regarding Epic Energy and the regulatory process.

Yours sincerely

A handwritten signature in black ink, appearing to read "Geoff Gallop", with a long horizontal flourish extending to the right.

DR GEOFF GALLOP MLA
PREMIER

- 1 MAY 2003