DAMPIER TO BUNBURY NATURAL GAS PIPELINE

POST FINAL DECISION SUBMISSION#1
PFDS#1: REVISED ACCESS ARRANGEMENT AND ACCESS ARRANGEMENT INFORMATION

PUBLIC VERSION

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1. Executive Summary

1.1 The Regulator released his final decision in relation to the proposed access arrangement for the Dampier to Bunbury Natural Gas Pipeline ("DBNGP") on 23 May 2003 ("Final Decision").

1.2 The Regulator's Final Decision was not to approve Epic Energy's proposed Access Arrangement. As a result, he requires Epic Energy to make 47 amendments to it before it will be approved.

1.3 This submission is one of a number of submissions Epic Energy submits in relation to the Final Decision. They include the following:

1.3.1 PFDS#1 – Revised Access Arrangement

1.3.2 [Deleted – Confidential and Commercial in Confidence]

1.4 It is important to note that these submissions are made in a context where the procedural stages required by the Code in relation to the assessment of Epic Energy's proposed access arrangement have not been strictly complied with in that Epic Energy was not afforded the benefit of a proper draft decision under s.2.13: see Re Michael; ex parte Epic Energy (WA) Nominees Pty Ltd (2002) 25 WAR 511. Instead, the procedural process adopted by the Regulator was compromised. In this regard, and as a matter fairness, there is an obligation on the Regulator to be flexible in considering, and affording weight to, submissions made by Epic Energy (and any other interested parties) in relation to the next stage of the decision making process. These submissions underpin and explain the reasoning behind the revised access arrangement and access arrangement information filed in response to the Regulator's Final Decision. These submissions may be supplemented by the provision of additional explanatory material and reasoning to the Regulator shortly after 8 August 2003. It is appropriate that these supplementary submissions be accepted and considered by the Regulator, as part of his consideration of these submissions, given the compromised nature of the assessment process imposed by the court.

1.5 Further, it must be noted that Epic Energy's submissions in relation to the Revised Access Arrangement can not be completed until it has had the opportunity of considering the information to which the Regulator has had regard for the purposes of his Final Decision, including the other bid materials in relation to the government's sale of the DBNGP, and other materials of the banks which financed Epic Energy's bid. Epic reiterates its request for this information and asks that it be provided as soon as possible so that the regulatory process can be progressed.

1.6 This submission contains the revised access arrangement and access arrangement information document and are the relevant documents lodged by Epic Energy with the Regulator in accordance with section 2.18 of the Code.

1.7 Epic Energy submits a revised Access Arrangement and Access Arrangement Information which:

(1) incorporate or substantially incorporate amendments specified by the Regulator; and

(2) in relation to the following elements of the Access Arrangement, otherwise addresses matters identified by the Regulator as being the reasons for the amendments specified in the Final Decision (in accordance with s.2.19(b) of the Code):

- Services Policy
- Reference Tariff and Reference Tariff Policy
- Queuing Policy
- Extensions/Expansions Policy
- Revisions Submission/Commencement Date

1.8 This submission deals with such incorporated amendments and these matters and reasons.

1.9 Epic Energy would be pleased to discuss the revised access arrangement with the Regulator as soon as is convenient.

2. Reference Tariff and Reference Tariff Policy

Epic Energy's Proposal

2.1 Epic Energy has proposed revisions to aspects of its reference tariff and reference tariff policy in sections 7, and 8 and Annexure A of its revised proposed Access Arrangement. Section 9 relating to Rebatable Revenue also includes some revisions, along with sections 2.2, 2.3, 2.4, 2.5, 2.6, 3.3, 3.4, 3.5, 3.6 and 3.7 of the Access Arrangement Information Document.

2.2 The revisions proposed by Epic Energy to the originally proposed reference tariff and reference tariff policy as set out in the Access Arrangement are summarised below:

- A calculation of the Total Revenue using the Net Present Value ('NPV') method which yields the same Reference Tariff as that determined under the Cost of Service ('COS') method utilised in Epic Energy's original proposed Access Arrangement. This has been incorporated into the Revised Access Arrangement at section 7.2.

- The application of the NPV method has been incorporated into the Revised Access Arrangement at section 7.9. The following parameters are used for the purposes of the NPV method:

Initial Capital Base	$2,100 million
WACC (pre-tax real)	7.78%
Non capital Costs	Substantially incorporates the values in the final decision
Capital Expenditure	Substantially incorporates the values in the final decision

- Sections 7.10, 7.11 and 7.12 of the Revised Access Arrangement have been inserted to describe how the depreciation, non capital costs and forecast capital expenditure are dealt with under the NPV method.

- Section 7.14 relating to the allocation of costs between Shippers has been amended to reflect the following changes to the cost allocation proposed by Epic Energy:

  - For the purpose of determining the Reference Tariff for Firm Service, the DBNGP has been divided into 12 Zones not 11 as previously filed, although the 12 zones simply reflect the fact that zones 1 and 10 have been each subdivided;

  - The Gas Receipt Charge is no longer a component of the Reference Tariff for Firm Service – the costs relating to this charge have been allocated to the Pipeline Capacity Charge;

- A new charge called the Regulator's Funding Charge has been included as a component of the Reference Tariff for the Firm Service – this was flagged to the Regulator prior to the Final Decision. The Regulator's Funding Charge is in addition to the charges set out in the tariff schedule in the Access Arrangement.

- Section 7.19 sets out the principles which Epic Energy proposes shall remain fixed in the Reference Tariff Policy of the Access Arrangement for specified periods under the NPV and COS methods.

- Section 7.20 relating to the rebate of Delivery Point Charges in relation to Delivery Points for which some or all of the capital costs were provided by a Shipper has been incorporated into the Revised Access Arrangement to comply with Final Decision Amendment 9.

- Section 7.21 relating to a levelised tariff path commitment has been included to deal with the situation where the conditions under section 12.1 for expansions and extensions of the DBNGP are satisfied and the Total Revenue is calculated on a COS method. This will be discussed further in the section of this submission dealing with the extensions and expansions policy.

- Sections 8.1, 8.2 and 8.3 relating to the Reference Tariff Structure and application of charges respectively have been amended to allow for:

  - The deletion of the Gas Receipt Charge;

  - The inclusion of the Regulator's Funding Charge.

- Section 8.3(d) which relates to the application of the Delivery Point Charge has been amended in order to comply with Final Decision Amendment 10 relating to shared Delivery Points.

- Sections 9.2 has been amended to reflect Final Decision Amendment 12 and section 9.5 has been inserted to substantially comply with Final Decision Amendment 31.

- The table titled 'Initial Reference Tariff: Delivery Point Charge' in annexure A of the Access Arrangement has been amended to comply with Final Decision Amendment 5.

2.3 The revisions proposed by Epic Energy to the originally proposed reference tariff and reference tariff policy as set out in the Access Arrangement Information are summarised below:

- Section 2.2 relating to Reference Tariff Structure has been amended to reflect the following changes to the cost allocation proposed by Epic Energy:

  - The division of the DBNGP into 12 Zones rather than 11 for pricing purposes in so far as the Reference Tariff relates to the Pipeline Capacity Charge;

  - The deletion of the Gas Receipt Charge;

- The inclusion of the Regulator's Funding Charge.

- Section 2.3 has been amended to solely reflect the COS method and to reflect the proposed extension of the Access Arrangement Period to 2009.

- Section 2.4 has been inserted to describe the forecast total costs of providing the Reference Service and other services to shippers with gas transportation contracts entered into before the commencement of the Access Arrangement under the NPV method.

- Section 2.5 relating to cost allocation has been amended to reflect the deletion of the Gas Receipt Charge and the inclusion of the Regulator's Funding Charge.

- Section 2.6 has been amended to reflect changes made to sections 2.3 and 2.4.

- Section 3.3 has been inserted to describe the asset value by pricing zone and category of asset under the NPV method.

- Section 3.4 has been amended to comply with Final Decision 3(e).

- Section 3.5 has been amended to reflect the alteration made to the economic lives of the following assets for depreciation in accordance with Final Decision Amendment 3(e):

  - Pipeline assets;

  - Compression assets;

  - Metering assets;

  - Other assets.

- Section 3.6 has been inserted to describe depreciation under the NPV method.

- Section 3.7 has been amended to reflect the incorporation of the NPV method.

Relevant Final Decision Amendments

2.4 The Regulator proposed the following amendments be made to the Reference Tariff and Reference Tariff Policy in the Final Decision:

- FDA # 3 – Total Revenue parameter values:

  The Reference Tariff for the Firm Service should be revised to reflect the following parameters:

  - An Initial Capital Base of $1,550 million as at 31 December 1999, including the value of capital costs associated with the Stage 3A enhancement of the DBNGP;

  - Forecast costs of New Facilities Investment as follows (31 December 1999

$million):

Year ending 31 December	2000	2001	2002	2003	2004	Total
Pipeline	0.43	0.28	0.16	0.36	0.16	1.38;
Compression	0.96	4.35	4.45	1.83	1.85	13.44;
Metering	0.00	0.05	0.05	0.05	0.05	0.20;
Other	5.06	5.04	5.72	4.72	0.52	21.06;
Total	6.45	9.62	10.28	6.86	2.48	35.69;

- A real pre-tax Rate of Return of 7.4 percent;
- Forecast Non Capital Costs as follows (31 December 1999 $million):

Year ending 31 December	2000	2001	2002	2003	2004	Total
Total Non Capital Costs	38.41	39.58	41.83	42.09	41.65	203.56

- A Depreciation Schedule that accords with the relevant principles of section 8 of the Code and that is consistent with depreciation of assets over lives of 70 years for pipelines, 30 years for compression assets, 50 years for metering assets and 30 years for other depreciable assets;
- A present value of Total Revenue (with a discount rate equal to real pre-tax Rate of Return of 7.4 percent) of $768.53 million in dollar values at 31 December 1999.

- FDA#4 – Access Request Fee:

  If Epic wishes to charge a fee for submission of an Access Request, the expected value of the revenue from these fees should be excluded from the forecast of Non-Capital Costs.

- FDA#5 – Eradu Road:

  The proposed Access Arrangement should be amended such that the Reference Tariff reflects a location of the Eradu Road Delivery Point in Zone 6 of the pipeline.

- FDA#6 – Compression Charges:

  The proposed Access Arrangement should be amended such that compression charges are determined and levied on Users on a strictly “pass through” basis such that Users only pay compression charges associated with compressor stations located on the pipeline between the gas Receipt Point(s) and gas Delivery Point(s) for each gas transmission contract.

- FDA#7 – Compressor Fuel Charges:

  The proposed Access Arrangement should be amended such that compressor fuel

charges do not comprise part of the Reference Tariff for the back haul of gas.

- FDA#8 – Total Gas Transmission Charges:

  While changes in cost allocations and tariffs may be made over time, the cost allocation and tariff structure proposed for the Firm Service for the Access Arrangement Period should be amended to ensure that for Users or Prospective Users with Delivery Points in any zone of the DBNGP, there is no immediate large increase in the total gas transmission charges under the Reference Tariff relative to the total charge that Users or Prospective Users would have paid under a contract for the T1 Service entered into under the *Gas Transmission Regulations 1994 or Dampier to Bunbury Pipeline Regulations 1998.*

- FDA#9 – Delivery Points Financed by Users:

  The proposed Access Arrangement should be amended to include a mechanism to ensure that Epic Energy does not retain revenues from Delivery Point Charges in circumstances where those revenues recover capital costs attributed to capital assets that were financed by Users.

- FDA#10 – Shared Delivery Points:

  The proposed Access Arrangement and/or Access Contract Terms and Conditions should be amended to describe how Delivery Point Charges will be determined for Users where those Users share Delivery Point facilities and where Users take delivery of gas from Notional Delivery Points.

- FDA#11 – Apportioning of Rebatable Revenue:

  Paragraph 9.2(b) of the proposed Access Arrangement should be revised so as to re-specify the apportioning of rebatable revenue consistent with providing for Epic Energy to recover reasonable incremental costs incurred in providing Rebatable Services and providing a reasonable incentive to supply these services, but without reference to the Deferred Depreciation Account.

- FDA#12 – Threshold Revenue:

  Clause 9.2 of the proposed Access Arrangement should be amended such that the Threshold Revenue is the amount by which actual revenue from the sale of the Firm Service, and other services in the nature of the Firm Service, falls short of that component of Total Revenue attributable to the provision of Firm Service, plus the cost of providing those services from which Rebatable Revenue was obtained.

- FDA#13 – Distance Based Charging:

  The Reference Tariff should be revised to make provision for distanced-based (i.e. zonal) charging for gas transmission in respect of gas received into the pipeline at points in pipeline zones other than Zone 1

Differences between Epic Energy's Proposal and Final Decision

2.5 The revisions to the proposed Access Arrangement and Access Arrangement Information have dealt with the relevant Final Decision Amendments as follows:

Revised AA	Relevant FDA	Complied	Otherwise Addresses	Substantially Complies
Section 7.2	3(f)		Yes	
Section 7.9	3(a), 3(f), 3(c),		Yes	
Section 7.10	3(e)	Yes		
Section 7.11	3(d)	Yes		
Section 7.12	3(b)	Yes		
Section 7.14	6			yes
	29		Yes	
Section 7.19	3(f), 47		Yes	
Section 7.20	9	Yes		
Section 8.1	6			yes
	29		Yes	
Section 8.3	10	Yes		
9.2	12			yes
9.5	31			yes
Annexure A	5	Yes		

Epic Energy's Response to Regulator's Reasoning for Amendments

2.6 In relation to the matters that the Regulator identified in the following paragraphs of the Final Decision as being the reasons for the Regulator's amendments, Epic Energy otherwise addresses these matters in this section of the submission.

120, 126, 133, 139, 141, 143, 153, 154, 155, 157, 158, 162, 164, 167, 168, 172, 181, 210, 214, 220-257, 267, 274 – 289, 423,

2.7 In addressing Reference Tariff issues, Epic Energy confirms that the originally proposed tariffs ($1/$1.08) are in conformity with the Code by reference to a Net Present Value calculation with respect to a lower ICB than originally proposed. The Net Present Value method ("NPV method") has 3 effects which are consistent with the objectives of the Code:

(a) It ensures that Epic Energy has a steady income stream spread evenly over the period of the Access Arrangement, which means that Epic Energy may remain financially viable throughout the Access Arrangement Period;

(b) It allows for capital expansion to be rolled in to the tariff on a levelised basis.

(c) It justifies the depreciation schedule adopted by Epic Energy for its Cost of Service Method ("COS method") which contains a depreciation schedule that is materially identical to the depreciation schedule contained in the NPV method.

2.8 The COS method is also justified by Epic Energy's expert economists, the Brattle Group, as set out in **Attachment 1** to this submission

Reason for requiring amendments to proposed Reference Tariffs and Reference Tariff Policy

2.9 The Regulator required amendments to Epic Energy's proposed Reference Tariffs and Reference Tariff Policy (para 724). The reasons for those amendments included the Regulator's factual conclusion that the purchase price paid by Epic Energy for the acquisition of the pipeline did not represent a reasonable price, or a reasonable market value, for the pipeline (para 254).

2.10 Those reasons are addressed, otherwise than by adopting the Regulator's required amendments by assuming (without conceding) the correctness of the factual conclusion that Epic Energy paid neither a reasonable market value nor a reasonable market price, but demonstrating that the consequence of making that assumption does not mean that the revisions proposed by the Regulator ought to be made. Consideration should have (but has not) been given to what a reasonable price, or a reasonable market value, for the pipeline was, at the time of its acquisition by Epic Energy.

2.11 Epic Energy seeks to "otherwise address", to the Regulator's satisfaction, the reasons for the Regulator requiring amendments to its proposed Access Arrangement by outlining the proper path indicated by the Code from the factual conclusion reached by the Regulator that Epic Energy did not pay a reasonable price or a reasonable market value for the pipeline. As noted above, materials relevant to a consideration of the market value or reasonable price, ie materials relevant to the bids received by the government on the sale of the pipeline, and Epic Energy's financiers' materials, are known to the Regulator but have not, thus far, been disclosed to Epic Energy. Such materials will be required to complete the submission.

2.12 At the same time, as part of the re-appraisal of Epic Energy's revised Reference Tariff in that light, it is appropriate to address other, related, matters concerning a reasonable purchase price, or market value, for the pipeline with respect to the Regulator's Final Decision.

2.13 In that regard it is necessary to correct specific errors and omissions in the Regulator's reasons, including:

(a) what constituted a proper approach, at the time of the pipeline sale in early 1998, to anticipated regulatory outcomes in relation to capital base and rate of return; and

(b) assumptions made about the debt / equity ratio relevant to calculating a Reference Tariff, the role of depreciation and the valuation of franking credits

(c) the capital expansion which Epic Energy intends to undertake, on the basis of the revised Reference Tariffs;

(d) the extent of the return on investment which, on current volume forecasts, the Reference Tariffs originally proposed by Epic Energy, and the proposed revised Reference Tariff would produce;

(e) the implications of insolvency of Epic Energy, including the effect on a foundation user of the pipeline whose contractual entitlements to tariffs reflect its earlier significant capital contribution to the pipeline;

2.14 Other errors and omissions are addressed further in this submission.

The proposed tariffs do not imply recovery of imprudent investment

2.15 Epic Energy purchased the DBNGP at a cost of $2.407 billion, which comprised approximately $1.800 billion in debt finance and $0.642 billion in equity finance, with the remainder of the amount consisting of acquisition and financing costs. This purchase price is the basis of Epic Energy's proposed initial Capital Base for the DBNGP - $2.570b. This includes, in addition to the purchase cost, the costs associated with expanding the pipeline (less depreciation) and other costs associated with the acquisition.

2.16 [Deleted – Confidential and Commercial in Confidence]

2.17 [Deleted – Confidential and Commercial in Confidence]

2.18 [Deleted – Confidential and Commercial in Confidence]

2.19 [Deleted – Confidential and Commercial in Confidence]

2.20 [Deleted – Confidential and Commercial in Confidence]

2.21 [Deleted – Confidential and Commercial in Confidence]

2.22 [Deleted – Confidential and Commercial in Confidence].

2.23 The Regulator has accepted that Epic Energy's existing volume predictions are appropriate. The Regulator has also said that substantial weight ought to be given to the statements made by the Government that a tariff of $1.00/GJ would apply as from 1 January 2000 and that the tariff would escalate. Adopting these parameters, the minimum value for the initial Capital Base which would allow Epic Energy to earn a return using the Regulator's WACC from the Final Decision would be approximately $2.1 billion.

2.24 Consequently, Epic Energy's owners have fully accepted responsibility for, and the economic and commercial burden of, any imprudent investment associated with optimistic predictions of volume growth or any commercial misjudgement which

affected the original purchase price. However, regulatory risk was not envisaged and nor should it be tolerated.

2.25 Therefore, the effect of the Regulator's decision to determine an initial Capital Base at approximately $1.5 billion is to restrict Epic Energy to a return on a level of investment less than an amount which would not have been mistaken, speculative or imprudent.

2.26 The Regulator's figure of $1.5 billion is approximately equivalent to the upper valuation of a DORC valuation of the DBNGP. For reasons stated in a latter part of this section and as previously set out in submission CDAP#5, the Regulator has erred in:

(a) focusing on establishing an initial Capital Base which is close to DORC; and

(b) adopting the particular methodology he adopted as the basis for the establishment of a DORC value on the basis that it reflected efficient forward looking costs.

2.27 But even if Epic Energy is wrong in its assertions immediately above, a purchase price above that level is not necessarily mistaken, speculative or imprudent, because the State intended that a tariff of $1.00 / GJ would apply. This tariff level required Epic Energy to pay an amount greater than a DORC valuation for the DBNGP, because the State included an amount for capitalised monopoly profits in the necessary tariff level of $1.00/GJ. Consequently, Epic Energy was required to pay a higher purchase price.

2.28 Nor can it be said, as it was by the Regulator (see para 168), that the impact on energy consuming industries of a value for the initial Capital Base that is in excess of DORC will give rise to gas costs that will tend to reduce the international competitiveness of major industries in the south west of WA. None of the submissions made by users of the DBNGP and end users of gas deal comprehensively with the issue of the impact of gas transmission tariffs on the international competitiveness of major industries in the region. Their arguments amount to little more than stating the obvious: any tariff higher than zero may reduce international competitiveness. No consideration is given to:

(a) the fact that tariffs have already reduced significantly since 1997 to 2000; and

(b) the relative costs of providing transmission services to the delivered cost of energy in Western Australia relative to energy costs elsewhere, and to the overall cost structures of businesses competing in international markets.

The cost of gas transmission is only one factor among many which may affect international competitiveness. In this context, DORC is of little direct relevance.

2.29 Accordingly, the effect of the Regulator's decision that the initial Capital Base for the DBNGP should be set at approximately $1.525 billion is to impose on Epic Energy a capital loss that exceeds the difference between the price paid and the minimum

reasonable price and reasonable market value for the pipeline. [Deleted – Confidential and Commercial in Confidence]

2.30 In order for Epic Energy to be deprived of a return which includes an amount for capitalised monopoly profits extracted by the State, it is necessary to demonstrate that the Code requires this result. As the Full Court observed, it does not.

The Regulator's failure to identify and give weight to reasonable purchase price and market value as a fundamental consideration

2.31 The Regulator erred in determining an initial Capital Base (at para 514) without giving (at paras 489 – 509) sufficient or any weight to capital recovery as a fundamental consideration upon the amount of at least $1.9 billion, as required by s 2.24(a) of the Code.

2.32 Upon a proper consideration of a reasonable purchase price and a reasonable market value for the pipeline, in the applicable circumstances and on the proper application of the Code, Epic Energy is entitled to earn a return on at least that capital sum. That conclusion is not only open to the Regulator, it is the only proper conclusion to reach.

2.33 This amount represents the minimum amount of a legitimate business interest and investment in the DBNGP. This is so, because recovery upon the amount of at least $1.9 billion reflects:

(a) at least the true market value of the DBNGP;

(b) at least a reasonable purchase price for the DBNGP;

(c) the amount of debt investment in the DBNGP (including financing costs);

(d) an amount paid to the State for capitalised monopoly profits;

(e) [Deleted – Confidential and Commercial in Confidence];

(f) [Deleted – Confidential and Commercial in Confidence];

(g) [Deleted – Confidential and Commercial in Confidence].

2.34 Furthermore, the capital sum that would result from applying the Regulator's method of establishing the initial capital base, were that method to be applied using the volumes of gas transported, capacity reservations and cost estimates made by Epic Energy at the time it acquired the DBNGP, would be at least $1.9 billion. The Regulator undertook (as described in paras 511, 512 and 513) the calculation of an initial capital base consistent with a full haul (benchmark) tariff of $1.00/GJ at 1 January 2000, assuming:

(a) the benchmark tariff is escalated at a rate of two-thirds of the rate of change in the Eight Capital City, All-Groups Consumer Price Index;

(b) notional revenue derived from the benchmark tariff on the basis of all users, including users under exempt contracts, paying the benchmark tariff, the tariff being inclusive of charges relating to user specific facilities; and

(c) volumes of gas transported, the capacity reservations and the load factors as forecast by Epic Energy for the Access Arrangement Period.

2.35 In order to undertake the calculation of the initial capital base, the Regulator assumed values for new facilities investment, rate of return and non-capital costs that conformed with the requirements of the Code, and adopted straight line depreciation with the assets lives set out in para. 343 of the Final Decision.

2.36 Taking, instead, the volumes of gas transported, the capacity reservations, and the load factors forecast at the time Epic Energy acquired the DBNGP, and using the new facilities investment and non-capital costs forecast at that time, but otherwise assuming the methods and values adopted by the Regulator, the initial capital base is in the order of $2.2 billion.

2.37 The Regulator erred (in paras 154 and 284) in considering that valuation of the ICB for the DBNGP at the Optimised Deprival Value, Imputed Value or Purchase Price would have the potential to distort future investment in pipelines. Such distortion would not occur because the DBNGP was sold at a time before the Code applied, with the expectation that the Code would commence to apply to the DBNGP. Furthermore, it was a sale that was conducted by the State which had expressly set out its objectives for the sale, the primary one being to maximise the sale proceeds. The ICB for new pipelines will be regulated by the Code provisions concerning actual costs of construction (s.8.13); future investment in existing pipelines will continue to be governed by any existing access arrangement, and hence the ICB already determined by the Regulator when the pipeline became a Covered Pipeline (s.10.3).

2.38 The Regulator further erred (in para 181) in considering that a value for the ICB of the DBNGP substantially in excess of a DORC value would necessarily lead to inefficient utilisation of gas resources by causing inefficient use of energy sources, due to inefficient fuel mixes being used for electricity generation and other energy requirements. The Regulator did not consider and determine:

(a) whether adoption of a DORC value, as opposed to a value in excess of DORC, would in fact cause shippers to pass on any reduced costs to gas users, particularly when the charges which some shippers may charge are also regulated;

(b) whether substantial gas users (with infrastructure developed to suit gas) would in fact choose to adopt a less efficient fuel mix and, if so, what value for ICB would cause that choice to be made;

(c) Whether there was any evidence that when prices were at $1.27/GJ, there were inefficiencies in energy resource allocation;

(d) The fact that Epic Energy's proposal to use the purchase price as the basis for deriving the initial Capital Base would not lead to tariffs that would be

determined were such a value to be used in a traditional cost of service method – ie tariffs in the order of $1.40;

(e) The fact that tariffs had already reduced significantly between 1997 and 2000. This issue is discussed fulsomely in Epic Energy's submission CDS2

2.39 Western Australia already ranks well and above any other state or territory in Australia in relation to the proportion that gas usage bears to the total fuel usage for that jurisdiction. This fact alone must support a claim that if anything, there is an energy resource allocation biased in favour of gas.

2.40 Moreover, as is demonstrated in the proposed Access Arrangement Information, Epic Energy's unit cost for transporting gas is amongst the lowest in Australia.

Other specific errors and omissions

Epic Energy's Owners' Reliance on Government's Statements as to Tariffs under the Code

2.41 At paragraphs [230] to [233], [251] and [495] of the Final Decision, the Regulator has made a number of findings relating to the reliance placed by the owners of Epic Energy on statements by the GPSSC and the government regarding a full-haul tariff of $1.00 / GJ. The Regulator has found that the owners of Epic Energy did not rely on the statements by the GPSSC and the government for the $1.00 tariff in the acquisition model, but instead relied on the outworkings of the regulatory sub-model.

2.42 These findings of the Regulator are incorrect.

2.43 [Deleted – Confidential and Commercial in Confidence]The regulatory model was simply used to support the escalating tariff path in the revenue model.

Proper approach to anticipated regulatory outcome

2.44 The Regulator wrongly assumed that a proper approach to determining a reference tariff and initial capital Base would disregard the effect of the proper application of s.2.24(a) of the Code; ie, the Regulator applied "an assumed narrow outcome of the statutory scheme", contrary to the decision of the Full Court at paras 205, 206.

2.45 The Regulator erred in considering (at paras 234, 248 and 255) that Epic ought to have had a reasonable expectation that the Code, properly applied, would cause the DBNGP's initial Capital Base to be determined on the basis of a DORC valuation. The Regulator ought to have considered that Epic had a reasonable expectation that a proper application of the Code would give weight to the following as fundamental considerations:

(a) the amount of its investment in the DBNGP, to the extent that this was not imprudent, highly speculative or mistaken;

(b) a return of monopoly profits, to the extent that the State obtained a capitalised payment for such profits.

(c) A fair and reasonable rate of return in all the circumstances

(d) No reasonable purchaser would have paid well in excess of DORC bid for the pipeline if they were using a DORC value

Rate of Return Assessment – Best estimates

2.46 The regulator erred (in paras 317 – 320) in concluding that the Code (in particular section 8.2(e)) requires that the Rate of Return reflect the best estimate of the true cost of capital from within a range that includes values which can not be disproved definitively.

2.47 Paragraph 320 interprets section 8.2(e) of the Code in a most idiosyncratic way by giving consideration only to its requirement for a best estimate.

2.48 Contrary to the view of the Regulator, section 8.2(e) does not require that the rate of return reflect the best estimate of the true cost of capital. The cost of capital is a complex concept, and its measurement requires the making of assumptions about aspects of the concept itself, and choice among alternative measurement techniques. The celebrated Capital Asset Pricing Model (CAPM), much relied upon by Australian regulators to determine the cost of equity component of the cost of capital, is one among a number of different asset pricing models from among which a choice must be made. In respect of the class of asset pricing models to which the CAPM belongs, Peter Bossaerts observes: "It is fair to conclude that the predictions of asset pricing theory have largely been rejected in empirical studies of historical data." (Bossaerts, The Paradox of Asset Pricing, Princeton, 2002.).

2.49 There is no unambiguous method for determining the "true cost of capital". At best, an estimate must be made by choosing among alternative theoretical frameworks purported to explain the cost of capital, and choosing among the alternative methods available to operationalise and measure the relevant theoretical constructs. Parts of that measurement process – for example, estimation of the asset beta to be used in applying the Capital Asset Pricing Model in the case of a business which does not have traded shares - are no more sophisticated than looking for supposedly similar companies with traded shares and arguing by analogy.

2.50 To infer that what is being sought under the Code is some formal estimation process of the type that might be carried out by a statistician is grossly misleading.

2.51 All the Code seeks is that which is feasible: the best estimate that can be arrived at on a reasonable basis. The Code does not require the best possible estimate. Nor does it require the use of the best possible estimation procedure (whatever that may be - the allusion to best estimators in footnote 104 overlooks the fact that, even in the realm of mathematical statistics, best estimators are only one among a number of different classes of estimators that a statistician might use).

2.52 Epic Energy agrees with the Regulator that an estimate of the cost of capital must lie in a potentially wide range of values, and that not all values in the range will be equally plausible. The Code does not, however, call on the Regulator to "do the impossible" – to select the best among these values in accordance with some abstract criterion of best. Given the deficiencies of the available theoretical

frameworks and measurement techniques, no meaning can be given "best" in this context. What the Code calls for is something much less precise: a best estimate from among those that might be arrived at on a reasonable basis.

2.53 Instead of seeking to apply section 8.2(e) in his subsequent assessment of the cost of capital, the Regulator uses his idiosyncratic interpretation of the section to impose his own view of the way in which the cost of capital is to be estimated. No attempt is made to examine reasonable bases of estimation, to identify criteria which would enable a best estimate to be chosen from among those established on a reasonable basis, and to apply those criteria.

Rate of Return – Point in time of assessment

2.54 The regulator erred (para 324) in concluding that the latest information should be used in estimating the rate of return. Advice from the Brattle Group concludes that the point in time at which the rate of return should be assessed is when the investment decision is made and the tariff is first applied for. Brattle concludes that in making the decision to incorporate information into the rate of return calculation after the date at which the access arrangement is filed violates the expectations principle of economics. This is discussed in further detail in Attachment 1 of this submission.

Debt/Equity assumption in WACC and the proper basis for depreciation

2.55 The Regulator has erred in his conclusions as to the appropriate gearing ratio that a service provider should adopt – ie 60:40 debt:equity. This issue has been dealt with fulsomely by Epic Energy's economic advisors, The Brattle Group in a further note to the original cost of capital report it prepared to support Epic Energy's original access arrangement. A copy of that additional note is contained in **Attachment 5**.

Franking Credits – Dividend Imputation

2.56 The Regulator has erred in his conclusions as to the appropriate value of the benefit to be gained by shareholders from franking credits. This issue has been dealt with fulsomely by Epic Energy's economic advisors, The Brattle Group in a further note to the original cost of capital report it prepared to support Epic Energy's original access arrangement. A copy of that additional note is contained in **Attachment 5**.

Relevance of Regulator's DORC value for 8.1(b)

2.57 The Regulator erred (in paras 133 and 139) in considering that his DORC valuation of the DBNGP (at paras 121 and 484), based on straight-line asset depreciation, would meet that part of the objective of section 8.1(b) of the Code which involves a forward-looking view of efficient costs. The Regulator ought to have concluded that a DORC valuation of the DBNGP which satisfied a forward-looking view of efficient costs should be based on economic asset depreciation. This is discussed in more detail by Epic Energy in CDAP#5 and CDAP#4 and subsequently in this submission.

Proposed Capital Expansion

2.58 The Regulator did not consider Epic Energy's proposed expansion of the pipeline and the associated capital expenditure. However, this matter is crucial to assessing a reasonable market value or reasonable purchase price for the pipeline, as the proposed expansions increase the volume of gas to be shipped and the total expected revenue generated from the pipeline.

2.59 Epic Energy previously committed to spending $874 million on expanding the pipeline, as required to meet demand, between 1998 and 2007 if a tariff of $1 / 1.08 per GJ was approved (with an annual increase of 67% of CPI). [Deleted – Confidential and Commercial in Confidence] Epic Energy has already actually spent approximately $145 million on expansions since purchasing the pipeline.

2.60 [Deleted – Confidential and Commercial in Confidence]

[Deleted – Confidential and Commercial in Confidence]

2.61 [Deleted – Confidential and Commercial in Confidence]

2.62 This has also been the subject of numerous submissions from parties, including customers, financiers and service providers to the industry.

Proposed revised Reference Tariffs

2.63 Epic Energy's original Access Arrangement proposed Reference Tariffs of $1.00 GJ in zone 9 and $1.08 GJ in zone 10, as at 1 January 2000, escalated by 67% CPI, using a cost of service approach with a deferred recovery account.

2.64 For the reasons given earlier in this submission, these tariff levels remain justifiable (even assuming that Epic Energy paid an amount which was not reasonable for the pipeline) as they allow Epic Energy to earn a return on an initial capital Base equivalent to a reasonable market value, of at least $1.9 billion, when proper consideration is given to capital expansion and the appropriate method of calculating WACC.

2.65 These tariff levels may also be justified by reference to a NPV methodology. The deferred recovery account in Epic Energy's cost of service approach deals with depreciation of the pipeline in the same manner as an NPV methodology.

2.66 At the very least, Epic Energy is entitled to a reference tariff of $1.00 / 1.03 per GJ. On an NPV approach, this tariff level provides a return which reflects the extra compressor station costs for users past CS10.

Fixed Principles

2.67 As mentioned above, regulatory risk was not envisaged by Epic Energy at the time of the investment in the DBNGP and nor should it be tolerated. To ensure that Epic Energy is afforded an opportunity to earn a return of and return on its investment, it has proposed a number of Fixed Principles to apply to its Reference Tariff and reference tariff policy. They are outlined in section 7 of the revised access arrangement.

2.68 Epic Energy's economic advisers, the Brattle Group, have advised that there are good economic reasons for the establishment of Fixed Principles that extend beyond the short term of a single tariff review period. A copy of the note prepared by the Brattle Group is contained in **Attachment 1.**

Other errors and omissions

2.69 The Final Decision also contains a number of specific other errors and omissions in the Regulator's reasons including the following:

(a) assumptions made about the nature of the service that the benchmark $1 tariff attached to – the facts show otherwise

(b) the lack of importance place by the Regulator on the state's objective of the sale which was to maximise the sale price and equally to ensure that the bidder was going to be financially viable based on the tariffs that were being proposed – this responds to the proposition the regulator put that the GPSSC was not concerned with the tariff post 2000 because they knew there was going to be a regulator

(c) the lack of reference to statements by Colin Barnett post the sale on tariffs

(d) the non conforming bid and its relevance

(e) the irrelevance of the safe and reliable operation of the pipeline to the regulator's considerations in his establishment of the Initial Capital Base (see para 146 & 147)

2.70 These issues have been dealt with at length by Epic Energy in prior submissions, both before and following the Court Decision. It is not apparent from the regulator's reasoning that he has considered them given his lack of reference to them in the Final Decision.

3. Services Policy

Epic Energy's Proposal

3.1 Epic Energy has proposed revisions to the services policy in section 6 of its revised proposed access arrangement. Section 2.1 of the Access Arrangement Information Document has also been revised

3.2 The revisions proposed by Epic Energy to the originally proposed services policy as set out in the Access Arrangement are summarised below:

- In section 6.1(b) Epic Energy has made changes to the non reference services it shall provide to Shippers in that the following non reference services will now be made available subject only to the limitations of operational and commercial feasibility:
  - Secondary Market Service;
  - Park and Loan Service;
  - Seasonal Service;
  - Peaking Service.
- In relation to the Firm Service, amendments have been made to section 6.2 to allow for prospective shipper's seeking access to spare capacity of the DBNGP (as configured at the time of the commencement of the Access Arrangement) to nominate a two year term when lodging an access request. Prospective shippers lodging an access request for developable capacity must nominate a twenty year term.

3.3 The revisions proposed by Epic Energy to the originally proposed services policy as set out in the Access Arrangement Information are summarised below:

- Section 2.2(b) relating to non reference services has been amended to reflect the fact that the above mentioned non reference services will be made available subject to commercial and operational feasibility. Further, the Metering Information Service, Pressure and Temperature Control Service, Odorisation Service and Co-mingling Service have been described in more detail.

Relevant Final Decision Amendments

3.4 The Regulator proposed the following amendments be made to the Services Policy in the Final Decision:

- FDA # 1 – non reference services:

Paragraph 6.1(b) of the proposed Access Arrangement should be amended to indicate that Epic Energy will, subject to operational availability, make available to Users the services currently listed in that paragraph as Non-Reference Services.

- FDA#2 – Firm Service:

In addition to the Firm Service proposed by Epic Energy, the proposed Access Arrangement should include a Reference Service with the characteristics of the Firm Service but allowing for:

- receipt of gas into the DBNGP at any location on the DBNGP ('2(a)');
- a minimum contract term of no greater than two years ('2(b)'); and
- the timely provision to Users of such metering information as is available to Epic Energy and which is necessary to enable Users to assess their potential liability for penalty charges and enable Users to take actions to avoid those charges ('2(c)').

I envisage that the Reference Tariff for this service will be the same as for the Firm Service.

Differences between Epic Energy's Proposal and Final Decision

3.5 The revisions to the proposed Access Arrangement have dealt with the relevant Final Decision Amendments as follows:

Revised AA	Relevant FDA	Complied	Otherwise Addresses	Substantially Complies
6.1(b)	1			yes
6.2	2(b)			yes

Epic Energy's Response to Reasoning

3.6 In relation to the following matters that the Regulator identified in the Final Decision as being the reasons for his amendments, Epic Energy otherwise addresses these matters in the following paragraphs of this section 3:

Paragraphs 63, 64, 65, 68, 69, 72, 73 and 74 - FDA#1

3.7 The Regulator has stated that the T1 service is likely to be sought by a significant part of the market and that the non reference services put forward by Epic Energy when aggregated with the Firm Service equate to the T1 service. Epic Energy disagrees with this reasoning and furthermore the Regulator's own analysis in paragraph 51 of the Final Decision based on submissions from other parties would also tend to indicate otherwise.

3.8 Epic Energy to date, has not received a request for any of the proposed reference services in clause 6.1(b)(iii). On that basis, Epic Energy does not understand why it has been compelled to provide such a service.

3.9 Further in relation to the non reference services set out in section 6.1(b)(i) Epic Energy reiterates its position as set out in DDS#3 and CDS#5 (at paragraph 5.1)

which it believes clearly outlines the basis for the inclusion by Epic Energy of these services in the Access Arrangement.

3.10 Epic Energy considers that it has substantially complied with Final Decision Amendment 1 to the extent possible in light of the constraints specific to the DBNGP in that it has inserted section 6.1(b) into the revised Access Arrangement imposing on Epic Energy (subject to commercial and operational feasibility) an obligation to make the secondary market service, park and loan service, seasonal service and peaking service available to prospective shippers.

Paragraphs 42 and 43 - FDA#2a

3.11 The Regulator has relied solely on gas exploration and development activities occurring in Western Australia that potentially may lead to a demand for receipt of gas into the DBNGP at locations outside of Zone 1 as his reasoning for requiring this amendment.

3.12 [Deleted – Confidential and Commercial in Confidence]

3.13 [Deleted – Confidential and Commercial in Confidence]

Paragraphs 44 - 46- FDA#2b

3.14 In light of the Regulator's reasoning in paragraph 45 that, in his view, a shorter minimum term for the Firm Service than five years does not oblige Epic Energy to expand the capacity, Epic Energy considers it has substantially complied with Final Decision Amendment 2b by amending clause 6.2 to state that prospective shippers seeking access to spare capacity of the DBNGP as it is currently configured, must nominate a minimum term of five years when lodging an Access Request for Firm Service.

3.15 Epic Energy reiterates its position as set out in CDS#5 (paragraph 5.6) and CDAP#9 (section 3) as justification for the need for a twenty year minimum term for access requests for developable capacity.

Paragraphs 47 - FDA#2c

3.16 Epic Energy has inserted a new clause 12.2(c) into its Access Contract Terms and Conditions and considers that it has substantially complied with this Final Decision Amendment and addressed the Regulator's reasons for such amendment.

4. Queuing Policy

Epic Energy's Proposal

4.1 Epic Energy has proposed revisions to the queuing policy and to the policy relating to applications for access in section 5 of its revised proposed access arrangement.

4.2 The revisions proposed by Epic Energy to the originally proposed reference tariff and reference tariff policy as set out in the Access Arrangement are summarised below:

- Section 5.1(d) has been inserted to comply with Final Decision Amendment 4.
- The queuing policy has been amended as follows:
  - To make it clear there shall be no separate queue for non reference services (section 5.3(b));
  - To set out the priority of access requests received by Epic Energy and when such access requests may be dealt with out of order (section 5.3(c), (d));
  - To set out when an access request may be rejected and the consequences of such rejection (sections 5.3 (f) and (g);
  - To set out when an access request may be withdrawn or amended, and the effect of any such withdrawal or amendment (sections 5.3(h) and (i);
  - To set out the effect on the queue of capacity expansion options (sections 5.3(j) and (k);
  - To set out the process to be followed to notify prospective shippers of the position of their access request in the queue and any material change of such shipper's application (sections 5.3(l) and (m).

Relevant Final Decision Amendments

4.3 The Regulator proposed the following amendments be made to the queuing policy in the Final Decision:

- FDA # 35

Clause 5.3 of the proposed Access Arrangement should be amended to describe the circumstances in which Epic Energy may change the priority order of Access Requests in the queue, or grant access to Prospective Users other than in order of the queue.

- FDA#36

Clause 5.3 of the proposed Access Arrangement should be amended to state the circumstances in which an Access Request may be rejected.

- FDA#37

Clause 5.3 of the proposed Access Arrangement should be amended to provide for the establishment and operation, in accordance with the provisions of clause 5.3 (as amended), of separate queues for Access Requests to the extent the different services described in the proposed Access Arrangement are independent in their use of pipeline capacity

- FDA#38

Clause 5.3 and/or clause 12.3 of the proposed Access Arrangement should be amended to state that a Capacity Expansion Option is only capable of being exercised to secure existing spare capacity of the pipeline where there is no Access Request in a queue that could otherwise be satisfied by that Spare Capacity

- FDA#39

Clause 5.3 of the proposed Access Arrangement should be amended to describe the effect on the position in the queue of withdrawing an Access Request and resubmitting it, or amending an Access Request.

- FDA#40

Clause 5.3 of the proposed Access Arrangement should be amended to provide for Prospective Users to be notified at the time an Access Request is made of the time when that Access Request may be met, including details of the position in the queue of that Access Request, but subject to Epic Energy complying with any confidentiality obligations to other Prospective Users.

Differences between Epic Energy's Proposal and Final Decision

4.4 The revisions to the proposed Access Arrangement have dealt with the relevant Final Decision Amendments as follows:

Revised AA	Relevant FDA	Complied	Otherwise Addresses	Substantially Complies
5.1(d)	4	Yes		
5.3(c)	35	Yes		
5.3(f), (g)	36	Yes		
5.3(a), (b)	37		Yes	
5.3(h), (i)	39	Yes		
5.3(j), (k)	38			Yes
5.3(l)	40	Yes		
5.3(m)	41	Yes		

Epic Energy's Response to Reasoning

4.5 In relation to the following matters that the Regulator identified in the Final Decision as being the reasons for his amendments, Epic Energy has either complied with the Final Decision Amendment or otherwise addressed these matters in the following paragraphs of this section 4:

FDA#4

4.6 Epic Energy has complied with this amendment by inserting a new clause 5.1(d) into the Revised Access Arrangement.

FDA#35

4.7 Epic Energy has complied with this amendment by inserting a new clause 5.3(c) into the Revised Proposed Access Arrangement.

FDA#36

4.8 Epic Energy has complied with this amendment by inserting a new clause 5.3(f) and (g) into the Revised Proposed Access Arrangement.

Reasoning for FDA#37

4.9 The Regulator has not provided any reasoning for requiring this amendment in his Final Decision. He does provide limited reasoning in the Draft Decision on page B79 which refers to the requirement under the Code for the queuing policy to describe priority between prospective shippers.

4.10 Epic Energy has by virtue of its amendments to the queuing policy, clearly set out the priority of access requests of prospective shippers and believes it has therefore dealt with the issue the Regulator relies on as his reasoning for this amendment.

4.11 In any event Epic Energy considers that there is unlikely to be any services independent in their use of pipeline capacity that would require a separate queue. By way of example, if spare capacity became available and there was a queue for a firm service and a separate queue for a seasonal service, and for a park and loan service, and for a peaking service and potentially for other non reference services, we query how Epic Energy would determine which queue would get priority to the available spare capacity.

4.12 Further Epic Energy considers that a singe queue as proposed is less complicated and easier to manage (outcomes relating to clarity for shippers, that would also satisfy the reasoning behind the Regulator's reasoning for many of the amendments relating to queuing policy).

Reasoning for FDA#38

4.13 The Regulator's reasoning for this amendment relates to a desire to provide clarity on the interaction between the queuing policy and capacity expansion options and to

the avoid the potential for holders of capacity expansion options to 'jump' the queue to the detriment of prospective shippers with such priority (page 80B Draft Decision, paragraph 674 Final Decision)

4.14 Whilst not picking up the precise wording used by the Regulator in his Final Decision Amendment, in drafting clauses 5.3(j) and (k), Epic Energy has substantially complied with this proposed amendment, has addressed the reasoning behind it and believes that this clause will not prejudice any Shipper with priority in the queue

FDA#39

4.15 Epic Energy has complied with this amendment by inserting a new clause 5.3(h) and (i) into the Revised Proposed Access Arrangement.

FDA#40

4.16 Epic Energy has complied with this amendment by inserting a new clause 5.3(l) into the Revised Proposed Access Arrangement.

FDA#41

4.17 Epic Energy has complied with this amendment by inserting a new clause 5.3(m) into the Revised Proposed Access Arrangement.

5. Trading Policy

Epic Energy's Proposal

5.1 Epic Energy has proposed revisions to its Access Contract Terms and Conditions and Access Arrangement relating to its Trading Policy.

5.2 The revision proposed by Epic Energy to the Access Arrangement is an amendment to the definition of 'Secondary Market Service'.

5.3 The revisions proposed by Epic Energy to the Access Contract Terms and Conditions are summarised below:

- Section 3.3 has been amended to substantially address Final Decision Amendment 32.
- Sections 3.6(b) and (c) have been amended to substantially comply with Final Decision Amendment 16.
- Section 3.4 has been amended as a result of the amendments made to section 3.3.
- Section 3.8 has been inserted to comply with Final Decision Amendment 15.
- Sections 3.9-3.18 have been inserted to set out the rights and obligations of Epic Energy and Shippers in respect of receiving and delivering gas. These rights and obligations are consistent with existing contracts and practice and are essential for the effective management of the DBNGP.

Relevant Final Decision Amendments

5.4 The Regulator proposed the following amendments be made to the Trading Policy in the Final Decision:

- FDA#15

The Access Contract Terms and Conditions should be amended to contain a provision that expressly states that Epic Energy is under an obligation to accept and deliver gas.

- FDA#16

Sub-clause 3.6 of the Access Contract Terms and Conditions should be amended to provide for agreement between the Shipper and any other Shipper as to the proportion of gas supplied to a shared Receipt Point and for proportional allocation by Epic Energy of gas supplied to that Receipt Point in the absence of any agreement or due notification, consistent with provisions relating to Delivery Points as set out in subclause 3.7 of the Access Contract Terms and Conditions.

- FDA #32

Sub-clause 3.3 of the Access Contract Terms and Conditions should be amended to enable Shippers to relocate capacity across Receipt Points and Delivery Points upstream and downstream of the relevant contracted Receipt or Delivery Point, and on a short term or long term basis, where technically and commercially feasible and with the prior written consent of Epic Energy, that may only be withheld or made conditional on reasonable technical or commercial grounds.

- FDA#33

Sub-clause 11.2 of the proposed Access Arrangement should be amended to provide for Users of services to change the Receipt Point or Delivery Point for a service from that specified in any contract for that service, subject to the User providing notice to the Service Provider and subject to the Service Provider being able to withhold consent to the change in Receipt Point or Delivery Point on reasonable commercial or technical grounds, in accordance with the requirements set out in section 3.10(c) of the Code.

- FDA#34

The Access Arrangement should be amended to include a description of the Secondary Market Service, sufficient to describe the rights of Users to trade capacity.

Differences between Epic Energy's Proposal and Final Decision

5.5 The revisions to the proposed Access Arrangement have dealt with the relevant Final Decision Amendments as follows:

Revised AA / Terms and Conditions (TnC)	Relevant FDA	Complied	Otherwise Addresses	Substantially Complies
3.3 TnC	32			yes
Definition of Secondary Market Service in AA	34		yes	
3.8 TnC	15	yes		
3.6(b) and (c) TnC	16	yes		

Epic Energy's Response to Reasoning

5.6 In relation to the following matters that the Regulator identified in the Final Decision as being the reasons for his amendments, Epic Energy has either complied with the amendment or otherwise addressed the matters in the following paragraphs of this section 5:

FDA#15

5.7 Epic Energy has complied with this amendment by inserting section 3.8 into the Access Contract Terms and Conditions.

FDA#16

5.8 Epic Energy has complied with this amendment by inserting sections 3.6(b) and (c) into the Access Contract Terms and Conditions.

Paragraphs 661 and 663 - FDA#32

5.9 The Regulator's reasons for this amendment were:

- that concern had been expressed that the ability to relocate capacity was relatively restricted and there was no potential to relocate on a long term basis; and
- there was a requirement under the Code for shippers to change receipt and delivery points subject to commercial and technical feasibility.

5.10 Epic Energy has substantially complied with and addressed the reasoning behind this amendment by amending section 3.3 of the revised Access Contract Terms and Conditions which relates to the relocation of capacity across Delivery Points on any basis (short or long term). In relation to the issue of relocation of capacity to different receipt points, Epic Energy submits that it cannot provide any further flexibility in relation to receipt point relocation beyond that set out in clause 3.5 of the revised Access Contract Terms and Conditions because provisions of the Alcoa Exempt Contract ensure that it will never be commercially feasible for Epic Energy to allow the relocation of a receipt point outside of zone 1.

FDA#33

5.11 There is no further reasoning provided by the Regulator for this amendment in addition to that provided for Final Decision Amendment 32 (which we assume would apply equally to Final Decision Amendment 33).

5.12 Epic Energy believes that it is unnecessary to add a specific clause to deal with this amendment given the amendments that have been made to section 3.3 of the revised Access Contract Terms and Conditions. It submits that a Shipper can change its receipt or delivery point under these revised sections 3.3 and 3.5 and reiterates its comments made above which apply equally here.

Paragraph 668 - FDA#34

5.13 The Regulator considers this amendment is necessary to provide clarity to Shippers in relation to the Secondary Market Service.

5.14 Epic Energy considers there was sufficient clarity in relation to the Secondary Service in the proposed Access Arrangement, however it has slightly amended the definition of Secondary Market Service to provide further clarity by stating that this service is

described further in the Access Arrangement Information. Epic Energy therefore considers the reasoning behind this amendment to have been otherwise addressed.

6. Extensions Expansions Policy

Epic Energy's Proposal

6.1 Epic Energy has proposed revisions to its extensions and expansions policy in section 12 of its revised proposed access arrangement.

6.2 The revisions proposed by Epic Energy to the originally proposed extensions and expansions policy as set out in the Access Arrangement are summarised below:

- A new section 12.1 has been inserted to provide for the enhancement or expansion of the capacity of the DBNGP at the levelised tariff set out in section 7.21 of the revised proposed access arrangement when the conditions set out in that section are met. These conditions include but are not limited to:
  - The access request being for firm service and for an access contract of at least 20 years;
  - The access request being for capacity on the DBNGP at a delivery point for at least a total MDQ of 10 TJ per day.

  Epic Energy has inserted this section as it represents the basis on which its intends to undertake expansions and is consistent with:
  - current expectations of Shippers [Deleted – Confidential and Commercial in Confidence];
  - the commitment to expand evidenced in schedule 39 (which together with the Final Bid and the expansions implied in the acquisition model (by virtue of the capital expenditure indicated) set out the expansion obligations of Epic Energy);
  - section 2.24 of the Code in that:
    - the legitimate business interests of Epic Energy are preserved;
    - there is no prejudice to contractual arrangements of Epic Energy or Shippers already using the DBNGP;
    - the legitimate interests of Shippers and prospective Shippers are protected and in this regard we reiterate our position set out in DDS2, DDS4;
    - the public interest is served – it is clearly in the public interest to for the pipeline to be expanded.
- Section 12.2 has been amended as a result of the amendments to section 12.1 and to reflect Final Decision Amendments 42 to 46.

Relevant Final Decision Amendments

6.3 The Regulator proposed the following amendments be made to the Extensions and Expansions Policy in the Final Decision:

- FDA #42

The Access Arrangement should be amended to describe the circumstances in which capital contributions will be sought under clause 12.7 of the proposed Access Arrangement.

- FDA#43

The proposed Access Arrangement should be amended to include a description of the circumstances in which surcharges are likely to be sought under clause 12.7 of the proposed Access Arrangement.

- FDA#44

Clause 12.7 of the proposed Access Arrangement should be amended to state that Epic Energy will only seek and will recognise (for the purpose of determining rebates) surcharges and capital contributions in accordance with the Code.

- FDA#45

Clause 12.7 of the proposed Access Arrangement, relating to the imposition of surcharges, should be amended to be subject to Epic Energy providing written notice to the Regulator of any intention to impose surcharges.

- FDA#46

The Extensions/Expansions Policy of the proposed Access Arrangement should be amended to make provision for Epic Energy to advise the Regulator of a decision by Epic Energy to not include an extension or expansion of the DBNGP as part of the Covered Pipeline.

Differences between Epic Energy's Proposal and Final Decision

6.4 The revisions to the proposed Access Arrangement have dealt with the relevant Final Decision Amendments as follows:

Revised AA	Relevant FDA	Complied	Otherwise Addresses	Substantially Complies
12.2(5)	42	yes		
12.2(5)	43	yes		
12.2(5)	44			yes
12.2(2)	45	yes		

Revised AA	Relevant FDA	Complied	Otherwise Addresses	Substantially Complies
12.2(3)	46	yes		

Epic Energy's Response to Reasoning

6.5 In relation to the following matters that the Regulator identified in the Final Decision as being the reasons for his amendments, Epic Energy has either complied with the amendment or otherwise addressed the matters in the following paragraphs of this section 6:

FDA#42

6.6 Epic Energy considers it has complied with this amendment by amending section 12.2(5) of the revised Access Arrangement.

FDA#43

6.7 Epic Energy has complied with this amendment by amending section 12.2(5) of the revised Access Arrangement.

Paragraph 692 - FDA#44

6.8 By amending clause 12.2(5) of the revised Access Arrangement, Epic Energy has substantially complied with this Final Decision Amendment and has addressed the Regulator's reasoning in relation to clarification that surcharges and capital contributions will occur in accordance with the Code. Epic Energy has not dealt with the issue of rebates in this clause as the policy in relation to rebatable revenue is clearly set out in section 9 of the revised Access Arrangement.

FDA#45

6.9 Epic Energy has complied with this amendment by amending section 12.2(2) of the revised Access Arrangement.

FDA#46

6.10 Epic Energy has complied with this amendment by amending section 12.2(3) of the revised Access Arrangement.

7. Revisions Submission and Commencement Dates

Epic Energy's Proposal

7.1 Epic Energy has proposed revisions to the revisions submissions and commencement date in sections 4 and 13 of its revised proposed access arrangement. A number of areas of the Access Arrangement Information Document also have been revised in light of this revision.

7.2 The revisions proposed by Epic Energy to the originally proposed revisions submission and commencement date set out in the Access Arrangement are summarised below:

- Section 4 has been amended;
- Section 13 has been amended to reflect the changes made to section 4 and the extension of the access arrangement period to April 2009.

7.3 The revisions proposed by Epic Energy to the Access Arrangement Information as a result of the amendment to the revisions submission date are summarised below:

- Amendment to forecast total costs of providing the reference service in section 2.3;
- Amendment to the 'regulatory asset accounting' table in section 3.5;
- Amendment to the table 'forecast capital expenditure' in section 3.8;
- Amendment of the whole of section 3.9 to reflect the capital expenditure assumptions for the period 2005 to 2009;
- Amendment to the table 'non capital costs incurred in providing services' in section 4.1;
- Amendment to the table 'total costs at corporate level and allocation to the DBNGP' in section 5.1;
- Amendment to the two tables 'annual capacity forecasts by pricing zone' and 'annual volume forecasts by pricing zone' in section 6.3;
- Amendment to section 7.

Relevant Final Decision Amendments

7.4 The Regulator proposed the following amendment be made to revisions submission and commencement date policy in the Final Decision:

- FDA # 47

The Access Arrangement should be amended to provide for a Revisions Submission

Date on or before 1 April 2004.

Epic Energy's Response to Reasoning

Reasoning for FDA#47

7.5 Epic Energy considers it appropriate to extend the revisions submission and commencement date for the following reasons:

- The original proposed Access Arrangement would be almost at an end based on the current dates;
- Given the cost involved in the regulatory approval process it is in the interest of users and Epic Energy to extend the revisions submission and commencement date to those set out in the revised Access Arrangement;
- Epic Energy has where possible dealt with all issues that the Regulator highlighted as needing to be resolved as part of the review of the next Access Arrangement being:
    - Key Performance Indicators – these are outlined in section 7 of the revised Access Arrangement Information;
    - Forecast Data – this is provided in the revised Access Arrangement Information at sections 3, 4 and 5.
    - Gas specification – the gas specification as set out in the DBNGP Access Manual is the gas specification defined in a number of existing contracts. These contracts have end dates of 2010 with further options to extend until 2015. For the gas specification to be changed during this period would be to deprive these existing Shippers of a contractual right that was in existence prior to the date the proposed Access Arrangement was submitted and is therefore contrary to section 2.25 of the Code. Therefore Epic Energy proposes to retain the gas specification for the proposed Access Arrangement to ensure that the contractual rights of existing shippers are not breached.

8. Access Contract Terms and Conditions

Epic Energy's Proposal

8.1 Epic Energy has proposed revisions to the terms and conditions policy in section 10 of its revised proposed access arrangement. Various sections of the Access Contract Terms and Conditions have also been revised.

8.2 The revisions proposed by Epic Energy to the terms and conditions policy as set out in the Access Arrangement are summarised below:

- Section 10.3 has been amended and 10.4 deleted to comply with Final Decision Amendment 14.

8.3 The revisions proposed by Epic Energy to the Access Contract Terms and Conditions are summarised below:

- Schedule 1 has been amended to partially comply with Final Decision Amendment 17.
- Section 6.4 has been amended to substantially comply with Final Decision Amendment 19.
- Section 11.4 has been inserted to comply with Final Decision Amendment 20.
- Section 7 has been amended to comply with Final Decision Amendment 22.
- Section 11.5 has been amended to address the reasons for Final Decision Amendment 23.
- Section 12.6 has been amended to comply with Final Decision Amendment 24.
- Section 14 has been amended to comply with Final Decision Amendment 25 and to clarify Epic Energy and the Shipper's rights and obligations in relation to curtailment and interruption.
- The definitions section of the terms and conditions have been amended as appropriate to reflect the amendments made to the Access Arrangement and the Access Contract Terms and Conditions.
- Section 16 has been significantly amended to reflect the inclusion of the Regulator's Funding Charge and the effect of New Taxes being imposed and to outline the effect of the GST.
- Section 17.1 has been amended to comply with Final Decision Amendment 30.

Relevant Final Decision Amendments

8.4 The Regulator proposed the following amendments be made to the Terms and Conditions in the Final Decision:

- FDA #14

Provisions under sub-clauses 10.3 and 10.4 of the proposed Access Arrangement for Epic Energy to vary certain terms and conditions without consent of the Regulator are not compliant with the Code. The proposed Access Arrangement should be amended to remove the ability of Epic Energy to change the Access Contract Terms and Conditions without revision of the Access Arrangement in accordance with part 2 of the Code.

- FDA#17

The proposed Access Arrangement should be amended to provide for maximum rates of the Out of Specification Gas Charge, Nomination Surcharge, Excess Imbalance Charge and Peaking Surcharge to be 350 percent of the relevant 100 percent load factor Reference Tariff.

- FDA#18

Paragraph 5.3(b) of the Access Contract Terms and Conditions should be amended such that the offending Shipper's liability is not unlimited, but rather Epic Energy and other Shippers should be obliged to take all reasonable steps possible to mitigate any losses occurring in the event of a Shipper taking gas in excess of their contracted capacity, i.e. an Overrun.

- FDA#19

Clause 6 of the Access Contract Terms and Conditions should be amended such that a User is not liable for an Excess Imbalance Charge in respect of any imbalance arising from an action of Epic Energy.

- FDA#20

The proposed Access Arrangement should be amended to provide for Users to trade imbalances and thereby reduce potential liabilities to the Excess Imbalance Charge.

- FDA#21

Sub-clause 1.1 of the Access Contract Terms and Conditions should be amended to define the Imbalance Limit as eight percent of the Shipper's MDQ.

- FDA#22

Clause 7 of the Access Contract Terms and Conditions should be amended to provide for a User's liability for the Peaking Surcharge to be assessed on the basis of that User's Maximum Hourly Quantity and hourly delivery of gas in aggregate across all of that User's Delivery Points in a pipeline zone for Delivery Points in Zones 1 to 9, and on each lateral pipeline in Zone 10.

- FDA#23

Sub-clause 11.5 of the Access Contract Terms and Conditions, relating to interconnection of multiple transmission systems with a distribution network, should be amended to provide that Shippers will be notified of any arrangements between Epic Energy, the other gas transmission system and the operator of that distribution network prior to the time the Shipper becomes subject to any contractual obligation that may be affected by those arrangements.

- FDA#24

Sub-clause 12.6 of the Access Contract Terms and Conditions, relating to correction of meter readings in instances of metering inaccuracy, should be amended to remove the limitation on the Correction Period (being that the Correction Period will not extend beyond one half of the time elapsed since the date of the Previous Verification), except in circumstances where the period of inaccuracy cannot be known or agreed upon between Epic Energy and the Shipper

- FDA#25

Clause 14 of the Access Contract Terms and Conditions should be amended to provide for Shippers to be given not less than 30 days prior notice of all planned maintenance activity to be carried out on or in relation to the DBNGP which may reasonably be considered likely to interrupt normal gas transmission.

- FDA#26

The proposed Access Arrangement documents should be amended to include a definition of the term "Receipt Charge" or, alternatively, the term "Gas Receipt Charge" be used instead if that term, as defined in the Access Contract Terms and Conditions, was intended to be used.

- FDA#27

The definition of "force majeure" in sub-clause 1.1 of the Access Contract Terms and Conditions should be amended such that "strikes or industrial disputes" is not excluded from the scope of events or circumstances of force majeure, at least to the extent that the strikes or industrial disputes are not within the control of the party claiming force majeure or which that party is not able to prevent or overcome.

- FDA#28

Paragraph 15(d) of the Access Contract Terms and Conditions should be amended to state that Epic Energy will waive charges that are based on capacity reservation (MDQ) where it claims the benefit of force majeure under clause 15, and to the extent that it fails to provide the service that is the subject of the Access Contract.

- FDA#29

Sub-clause 16.4 of the Access Contract Terms and Conditions, relating to adjustment of charges if there is a change in the regulatory environment should be deleted from the Access Contract Terms and Conditions or amended to clarify that any application will be submitted as a revision to the Access Arrangement in accordance with section 2.28 of the Code.

- FDA#30

Paragraph 17.1(c) of the Access Contract Terms and Conditions should be amended to clarify whether default arising from a failure to pay any amount that is due to Epic Energy arises seven days after the date of posting of a notice of demand or the date of its receipt by the Shipper

Differences between Epic Energy's Proposal and Final Decision

8.5 The revisions to the proposed Access Arrangement have dealt with the relevant Final Decision Amendments as follows:

Revised AA ('AA') or Revised Access Contract Terms and Conditions ('TnC')	Relevant FDA	Complied	Otherwise Addresses	Substantially Complies
10.3 and 10.4 (AA)	14	yes		
Schedule 1 TnC	17		yes	
6.4	19			yes
7	22	yes		
11.4 AA	20	yes		
11.5	23	yes		
12.6	24	yes		
14	25	yes		
	26		yes	
Definition of 'Force Majeure'	27	yes		

Revised AA ('AA') or Revised Access Contract Terms and Conditions ('TnC')	Relevant FDA	Complied	Otherwise Addresses	Substantially Complies
in section 1 TnC				
16.4 TnC	29		yes	
17.1 TnC	30	yes		

Regulator's Reasoning for Amendments

8.6 In relation to the following matters that the Regulator identified in the Final Decision as being the reasons for his amendments, Epic Energy has either complied with the amendment or otherwise addressed the matters in the following paragraphs of this section 8:

FDA#14

8.7 Epic Energy has complied with this Final Decision Amendment by the amendment of section 10.3 and the deletion of section 10.4 of the revised Access Arrangement.

Paragraphs 546- 551 - FDA#17

8.8 Epic Energy is prepared to amend the out of specification gas charge and the nominations surcharge to comply with this Final Decision Amendment and considers that in doing so it has addressed the Regulator's reasoning behind this amendment.

8.9 In relation to the remaining charges, Epic Energy reiterates its position as set out in CDS#5 at paragraph 6.18 and confirms that these charges were set at levels to limit Shipper behaviour that could prevent Epic Energy from delivering the reference service after delivering the reference service after allowance is made for rebates.

Reasoning for FDA#18

8.10 Epic Energy is not prepared to comply with this amendment. Epic Energy considers this amendment to be unnecessary in light of the common law obligation imposed upon parties to mitigate their losses at all times. This amendment does not add anything further to those common law obligations, however the amendment does in Epic Energy's opinion create uncertainties. For example it will be difficult to assess what would be considered 'reasonable steps' that are to be taken to mitigate the losses.

Reasoning for FDA#19

8.11 Epic Energy has substantially complied with this Final Decision Amendment by amending section 6.4 of the revised Access Contract Terms and Conditions.

FDA#20

8.12 Epic Energy has complied with this amendment by inserting section 11.4 into the revised Access Arrangement.

Reasoning for FDA#21

8.13 Epic Energy reiterates its position in relation to this amendment and does not accept that the Regulator can "cherry pick" between elements of the Firm Service and the T1 Service.

FDA#22

8.14 Epic Energy has complied with this amendment by amending section 7.1(b) of the revised Access Contract Terms and Conditions.

FDA#23

8.15 Epic Energy has complied with this Final Decision Amendment by amending section 11.5 of the revised Access Contract Terms and Conditions.

FDA#24

8.16 Epic Energy has complied with this Final Decision Amendment by the amendment to clause 12.6(a) of the revised Access Contract Terms and Conditions.

FDA#25

8.17 Epic Energy has complied with this Final Decision Amendment by the amendment to section 14 of the revised Access Contract Terms and Conditions and the insertion of the definition of 'Planned Maintenance'.

FDA#26

8.18 This amendment is redundant given the deletion of the Gas Receipt Charge in the revised Access Arrangement.

FDA#27

8.19 Epic Energy has complied with this Final Decision Amendment by the amendment to the definition of 'Force Majeure in the revised Access Contract Terms and Conditions.

FDA#28

8.20 Epic Energy does not accept the Regulator's reasoning behind this amendment and reiterates its position as set out in CDS#5 at paragraph 5.22.

Paragraphs 634-636 - FDA#29

8.21 The Regulator's reasoning to support his conclusion is unclear. Epic Energy reiterates its position in relation to the inclusion of 16.3-16.6 of its revised Access Contract Terms and Conditions as set out in CDS#5 at paragraph 5.26 and in FDRFI#11 section 6 as revised.

FDA#30

8.22 Epic Energy has complied with this Final Decision Amendment by the amendment to section 17.1(c) of the revised Access Contract Terms and Conditions.

9. Other aspects of the Final Decision requiring a response

DORC Valuation

9.1 The Regulator makes a number of comments in the Final Decision concerning the DORC valuation methodology and the value that he derived having regard to that methodology. While these are not directly related to any particular amendment in the final decision, because one of the Regulator's reasons for establishing the value of the initial Capital Base that he did in the final Decision was that he needed to establish a figure that was close to DORC for reasons of consistency with the efficiency objectives of section 8.1, it is important that these comments and reasons be responded to.

9.2 However, before doing so, Epic Energy reiterates its prior position that the submission it provided to the Regulator under the identifier CDAP#5 should be considered by him, if only to demonstrate the fundamental errors of the Regulator's DORC value and the DORC valuation methodology.

9.3 In paragraph 133, the Regulator is attempting to justify the use of DORC in asset valuation on the basis that a DORC value is consistent with the forward looking concept of efficiency. To the extent that a DORC value is derived from an ORC which has been determined by reference to current technology and best practice, and by reference to current market prices for the all of the inputs to construction of a replacement pipeline, a DORC value might be considered "consistent" with a forward-looking concept of efficiency.

9.4 However, in establishing a DORC value, consideration must be given, not only to ORC (which may represent a forward-looking efficient cost), but also to the depreciation adjustment made to ORC. The regulator fails to address the question of whether the depreciation adjustment is made in a way which results in the DORC also being a forward-looking efficient cost.

9.5 For a DORC value to represent a forward looking efficient cost, the depreciation adjustment – the decline in asset value over time – must be determined by reference to the market prices of second hand assets. This may not be possible in the case of assets – such as gas transmission pipelines – where there is no active second hand market. In these circumstances, an estimate must be made of decline in asset value over time. Agility Management and Professor King have shown how the task of making such an estimate might be approached (although they do not specifically address the question of whether the DORC value they obtain is a forward-looking efficient cost).

9.6 The Agility Management/King approach to the problem of estimating the decline in value of an asset over time is very different from the "accounting" approach adopted by the Regulator. For the purpose of determining DORC, the Regulator estimates the decline in asset value over time as a proportion of ORC. That proportion is the ratio of the expired life of the asset to its technical life. The Regulator gives no consideration to the question of whether this "accounting rule" produces an estimate of decline in asset value that accords with the decline in value that would be

obtained by reference to the market prices of second hand assets. In consequence, there is no basis for accepting that the concept of DORC used by the Regulator is consistent with a forward-looking concept of efficiency.

9.7 Furthermore, the assertion in paragraph 140 that a DORC valuation of assets, made in the way the Regulator makes such valuations, results in a forward-looking efficient cost is without foundation. Also, it is not obvious – and the Regulator provides no reasoning in support of his view – that a DORC valuation made in the way the Regulator makes such valuations replicates the tariff outcome of a competitive market. An ORC valuation may provide a benchmark for competitive market valuation. Agility Management and Professor King have shown how the ORC valuation may be recognised in the context of a contestable market. The general problem of establishing the relationship between asset cost (ORC) and change in asset value in a competitive market, when there is ongoing technological change, is complex (see D M Mandy (2002), "TELRIC pricing with vintage capital", Journal of Regulatory Economics, 22(3): 215 – 249). To assume, as the Regulator does, that an accounting estimate of asset value change is meaningful in this context is simplistic. Indeed, when technological change is expected (the principal reason for using optimised replacement cost as the basis of asset valuation), the rate of depreciation is higher, rather than lower as the Regulator suggests, because competition forces the owners of current generation assets to seek to recover the their investments over shorter time periods before those current generation assets become economically obsolete.

9.8 In relation to paragraph 155, neither DAC nor DORC - at least in the way these are determined by the Regulator – can be considered an efficient cost (either on a historical or a forward-looking view). If a "historical view" is taken, in which case efficiency is to be understood in terms of the incentives provided for future investment, DAC must refer to the cost incurred by the current owner in acquiring the asset, whether that be the cost of construction or of purchase. If the current owner purchased the asset, DAC must be determined by reference to the purchase price. To do otherwise – for example, to set DAC by reference to another party's construction cost when the asset has been acquired by purchase – may fail to provide the current owner with incentives for future investment. Moreover, it may signal to others contemplating acquiring poorly utilised assets, that they risk being unable to recover their investment, putting at risk the potential for efficiency improvement.

9.9 If a forward-looking view is taken, DORC may be an efficient cost. DORC will, however, be a forward-looking efficient cost only if it is constructed in a way which ensures that outcome. None of the submissions made to the Regulator gives any consideration to this issue. All appear to follow the approach of the Regulator in the establishment of DORC, and all therefore appear to be contemplating a DORC valuation which cannot be assumed to be a forward-looking efficient cost. In consequence, there is no basis for concluding that such a valuation provides the benchmark for determination of tariffs which neither lead to under-investment or over-investment in upstream gas production or in downstream gas using industries.

9.10 In relation to paragraph 157, a reference tariff determined from an initial capital base that is in excess of the efficient cost of capital assets may not be economically

efficient. However, nothing can be said about the efficiency of a reference tariff determined from an initial capital base derived from DAC or DORC. In particular, whether a reference tariff determined from an initial capital base derived from DORC is efficient will depend, at least in part, on the way in which the depreciation adjustment has been made. If it is made in the way the Regulator makes such adjustments, there is no basis for considering the resulting DORC to be a forward-looking efficient cost, and no basis for considering the resulting reference tariff to be efficient.

9.11 In relation to paragraph 167, The Regulator has adopted the same approach to establishing DORC valuations as other Australian regulatory agencies. Until recently, none of these other agencies has given any detailed consideration to the way in which a DORC valuation should be made, especially in the context of economically efficient outcomes. Agility Management has vigorously challenged the status quo, arguing that the approach regulators have taken to establishing DORC valuations is inconsistent with their (the regulator's) own stated concern to deliver outcomes which replicate those achieved in competitive markets.

Attachment 1

Brattle Group– Additional Note on Fixed Principles and the Deferred Recovery Account for the DBNGP

August 2003

See Attached

Attachment 2

[Deleted – Confidential and Commercial in Confidence]

Attachment 3

[Deleted – Confidential and Commercial in Confidence]

Attachment 4

[Deleted – Confidential and Commercial in Confidence]

Attachment 5

Brattle Group Further Note on the Cost of Capital

See Attached

Attachment 6

[Deleted – Confidential and Commercial in Confidence]

Attachment 7

[Deleted – Confidential and Commercial in Confidence]

Attachment 8

[Deleted – Confidential and Commercial in Confidence]