



DAMPIER TO BUNBURY NATURAL GAS PIPELINE

PROPOSED ACCESS ARRANGEMENT UNDER THE NATIONAL ACCESS CODE

Submission 9: Gaining Access To The DBNGP 12 May 2000

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1. Introduction

- 1.1 On 20 April 2000, the Office of Gas Access Regulation (“OffGAR”) released a further four submissions in respect of the proposed Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline (the “DBNGP”) lodged, by Epic Energy, on 15 December 1999. In a notice accompanying the release, the Western Australian Independent Gas Access Regulator (the “Regulator”) advised that he would open a further period during which submissions might be made to him concerning the proposed Access Arrangement and, in particular, matters raised in the four submissions.
- 1.2 One of the four submissions released by OffGAR was a submission from Epic Energy (“Epic Submission 1”), which among other things, described in some detail the process of the sale through which it acquired the DBNGP from the State of Western Australia. The version of that submission released by OffGAR is a modified version of the submission lodged with the Access Arrangement on 15 December 1999, which has not been released by OffGAR. The modifications are the deletion of certain information covered by confidentiality obligations. The submission sets out Epic Energy’s arguments as to why the Regulator should consider, in his assessment of the proposed Access Arrangement, the way in which the DBNGP sale process was structured and executed. This has been added to by a third submission (“Epic Submission 3”) which was lodged with the Regulator on 17 March 2000 and has only recently been made public.
- 1.3 Two of the other submissions were from AlintaGas, the Government’s agent in the sale process, and the third was a joint submission from State Treasury and the Office of Energy. These three submissions tend to cover the majority of the points raised by other interested parties in submissions filed with the Regulator. Therefore by commenting on them Epic Energy believes it will be able to also cover most of the points raised in the other submissions. Where they have not been covered by Epic Submission 3, Epic Energy will endeavour to cover them in other submissions.
- 1.4 Epic Energy’s further comments are made in six separate submissions, each dealing with a particular set of issues. Those submissions are:
- 4 regulatory compact;
 - 5 capital base, depreciation and WACC;
 - 6 the reference service and other services;
 - 7 the reference tariff and incentive mechanism;
 - 8 the offer of a T1 Service; and
 - 9 gaining access to the DBNGP.
- 1.5 There have been a number of comments made on particular aspects of detail in the Access Arrangement in the Submissions filed by interested parties. The Epic Submissions deal with a number of general groups of these in this Submission 9 and also in Submission 6. This group hang broadly around the topic of gaining access to the DBNGP, although that is a loose grouping. This Submission covers the following topics:
- Delivery Point flexibility;
 - Long term relocation of capacity and relinquishment;
 - Access Requests in tender situation;
 - Queuing Policy – granting out of spare capacity and movements within the queue;
 - Core haulage obligation;
 - Expansion of capacity to meet Access Request;

- Volume forecasts;
- Grandfathered contracts' rights; and
- access to the GGT and Parmelia Pipelines.

2. Delivery Point Flexibility

2.1 Issues raised in submissions to Regulator

- 2.1.1 A number of submissions have raised the concern that interested parties believe the arrangements for shippers to move contracted capacity between Delivery Points is inflexible under the Access Arrangement compared to that provided under the current regime. For the purposes of this Submission the "Current Regime" is assumed to be that provided in the Access Manual. This raises an interesting issue in the case of AlintaGas as due to its non acceptance of the 1997 (No.2) amendments to the GTRs, there is real doubt that AlintaGas has access to any Delivery Point flexibility, without Epic Energy's agreement, or if it does what the terms of those rights are.
- 2.1.2 Generally the submissions just make bald statements that the provisions are inflexible. The only detailed analysis appears in AlintaGas Submission No.3. It is therefore assumed that that represents the concerns of the other interested parties.
- 2.1.3 At page 33 – 34 of the AlintaGas Submission No.3, AlintaGas states:

"Unlike the Delivery Point flexibility available within the T1 service, AlintaGas submits that Epic Energy's proposals for capacity relocation and overrun capacity are inflexible and complicated.

A user cannot have gas delivered to a Delivery Point at which it does not have contracted capacity except via the Secondary Market."

- 2.1.4 Further on in page 34 AlintaGas says:

"Even when a user does have contracted capacity at a number of Delivery Points, so that it can move the capacity around among its own Delivery Points, the proposed ability to relocate capacity appears to be inflexible and complicated.

Under Epic Energy's proposed Firm Service, a user can relocate unused capacity at one Delivery Point to another upstream Delivery Point. However, any such capacity is interruptible at Epic Energy's discretion.

A user can only relocate capacity to a downstream Delivery Point with Epic Energy's written permission. Again, such relocated capacity is interruptible at Epic Energy's discretion."

2.2 Relevant provisions in access regimes

- 2.2.1 The relevant provisions in the Access Arrangement are found in clause 3.3 of the Access Contract Terms and Conditions, which provides:

"(a) The Shipper may (subject to Clause 3.7) elect to relocate any part of its Delivery Point MDQ on a Spot Basis to a delivery point upstream of its contracted Delivery Point without the need to obtain the prior consent of Epic

Energy, but the Shipper must notify Epic Energy of that relocation as soon as possible after the Shipper becomes aware of the need to relocate, but in any event not later than 08:00 hours on the Day.

- (b) The Shipper's ability to relocate its Delivery Point MDQ to an upstream delivery point is subject to the rights of Other Shippers with contracted Delivery Point MDQ at that delivery point.*
- (c) The Shipper may not relocate any part of its Delivery Point MDQ to a delivery point downstream of the Shipper's contracted Delivery Point MDQ without the prior written agreement of Epic Energy, which agreement will not be unreasonably withheld other than on Operational Grounds, and the Shipper acknowledges that the equivalent downstream quantity may be less than the Delivery Point MDQ the Shipper seeks to relocate.*
- (d) Epic Energy may without liability to the Shipper, curtail deliveries of gas to the Shipper relocated under Clause 3.3(a), if Epic Energy is required to deliver gas to an Other Shipper at the delivery point and that Other Shipper has Delivery Point MDQ at the delivery point."*

2.2.2 The relevant provisions contained in the Access Manual are found in different places depending on whether it is short term or long term. In the case of short term it is dealt with through the nominations procedures found in clause 106(1) of the Schedule, which must be taken with, among others, clause 111(5) of the Schedule. Long term is dealt with in clause 31 of the Schedule. Those provisions provide:

"106(1) ShipperCo may nominate or renominate to deliver gas to the DBNGP owner at an inlet point, or receive gas from the DBNGP owner at an outlet point, at which ShipperCo does not have contracted capacity.

111(5) In allocating a daily nomination at an inlet point or in a capacity service (including spot capacity) at an outlet point, the DBNGP owner must, to the extent that —

- (a) it is operationally feasible; and*
- (b) it does not interfere with any other shipper's entitlements under an exempt contract or an access contract, to the extent that those entitlements are analogous to ShipperCo's entitlements under subclause (3)(a) and (b) or subclause (4)(a) and (b),*

endeavour as a reasonable and prudent person to ensure that the allocated daily nomination either is equal to ShipperCo's initial nomination at the inlet point or in the capacity service at the outlet point, or (if that is not possible) is less than that initial nomination by the minimum amount possible.

31(1) ShipperCo may by notice in writing to the DBNGP owner request a relocation of all or any part of its contracted capacity at an old inlet point to a new inlet point, or at an old outlet point to a new outlet point.

- (2) *No relocation of capacity under this clause may be made if the relocation —*
- (a) *would cause the sum (after the relocation) of all shippers' contracted capacities —*
 - (i) *at the new inlet point to exceed the new inlet point's total physical capacity; or*
 - (ii) *across all capacity services at the new outlet point to exceed the new outlet point's total physical capacity;*
 - (b) *would involve the relocated capacity changing from any of full-haul capacity, part-haul capacity or back-haul capacity to any other of full-haul capacity, part-haul capacity or back-haul capacity; or*
 - (c) *is not operationally feasible, either (without limiting the generality of the foregoing) because the relocation of capacity results in a lengthened front-haul or shortened back-haul or for any other reason,*
but the parties may agree under subclause (11) to a relocation of capacity which would otherwise be prohibited by this subclause.
- (3) *The DBNGP owner, after receiving a notice under subclause (1), must assess as a reasonable and prudent person whether the requested relocation is prohibited under subclause (2), and must as soon as practicable give notice in writing to ShipperCo advising either —*
- (a) *that the requested relocation is prohibited under subclause (2); or*
 - (b) *that the requested relocation is not prohibited under subclause (2).*
- (4) *Clause 31 of the manual applies (with appropriate modifications) to a notice under subclause (1) as if the notice were an application.*
- (5) *If the DBNGP owner gives notice under subclause (3) (b), the DBNGP owner and ShipperCo are to negotiate in good faith regarding —*
- (a) *the treatment of ShipperCo's contribution (if any) towards any amounts payable to the DBNGP owner (by any one or more of ShipperCo and any other person or persons) in respect of —*
 - (i) *any facilities (including the old inlet point or old outlet point) which ShipperCo will be wholly or partially ceasing to utilise by reason of its whole or partial cessation to utilise the old inlet point or the old outlet point (as the case may be); and*
 - (ii) *any facilities (including the new inlet point or new outlet point) which ShipperCo will be wholly or partially utilising by reason of its utilisation of the new inlet point or new outlet point (as the case may be);*

and

- (b) *if the requested relocation would result in a lengthened front-haul or shortened back-haul, how any costs referred to in subclause (9) are to be quantified and reimbursed.*

- (6) *If the parties reach agreement under subclause (5), the requested relocation and the terms and conditions so agreed are to be given effect to by an amendment of this contract under clause 71.*

- (7) *Subject to subclauses (8), (9) and (10) and unless the parties agree in writing to the contrary, any capacity relocated under this clause is to be on the same terms and conditions (including without limitation terms and conditions as to price) as the capacity at the old inlet point or the old outlet point (as the case may be).*

- (8) *Unless the parties agree in writing to the contrary, no charges payable under this contract are to be reduced as a result of a relocation of capacity under this clause, even if the relocation causes some or all gas to be transported over a shorter distance.*

- (9) *If a relocation of capacity under this clause results in a lengthened front-haul or shortened back-haul, ShipperCo must reimburse the DBNGP owner for any increase in the DBNGP owner's costs which result from the relocation.*

- (10) *The DBNGP owner may in its discretion as a reasonable and prudent person specify the range of pressures within which ShipperCo may deliver gas to the DBNGP owner at a new inlet point, and within which the DBNGP owner may deliver gas to ShipperCo at a new outlet point.*

- (11) *The DBNGP owner may agree with ShipperCo (on any terms and conditions the DBNGP owner thinks fit, including without limitation terms and conditions as to price) to implement a relocation of capacity which would otherwise be prohibited by subclause (2), in which case the requested relocation and the terms and conditions so agreed are to be given effect to by an amendment of this contract under clause 71."*

2.3 Epic Energy's observations

- 2.3.1 When looking at the two sets of provisions, and it is acknowledged that the Access Arrangement provisions are far simpler to understand, it is clear that the two regimes are not far apart. In fact the Access Manual regime is far more structured and procedural on the spot basis. Essentially agreement must be obtained from Epic Energy by nominating for the capacity and then Epic Energy allocating the capacity. The right to that capacity is no more guaranteed under the Access Manual than it is under the Access Arrangement. In each case the rights are subject to the preexisting contractual rights of other parties, as they should be.

- 2.3.2 Epic Energy still maintains that the Access Arrangement provisions for upstream relocation are more flexible. By putting in the ability to curtail if a shipper wishes to exercise its entitlements at a Delivery Point (see clause 3.3(d)) a shipper without capacity at that Delivery Point is given greater flexibility and ability to relocate capacity at such points where it does not have contracted capacity. The only reason the Access Arrangement contains a provision requiring Epic Energy's agreement if the capacity is to be taken downstream is because it cannot be guaranteed the capacity will be there in the pipeline to transport the

gas. This is particularly the case downstream of Kwinana Junction. The requirement in clause 3.3(c) in essence is no different from clause 111(5)(a) of the Schedule to the Access Manual.

- 2.3.3 In summary the suggestion that the Access Arrangement is less flexible than the Access Manual on spot relocation of capacity between Delivery Points is wrong and in fact the truth is probably the opposite.

3. Long term relocation of capacity and relinquishment

3.1 Issues raised in submissions to Regulator

- 3.1.1 This is similar to section 2 above. The arguments are dealt with in AlintaGas Submission No.3 at page 35.
- 3.1.2 In relation to long term relocation of capacity, AlintaGas makes the observation that the Access Arrangement makes no provision enabling a shipper to effect a long term change to allocation of its contracted capacity between Delivery Points.
- 3.1.3 AlintaGas also points out that the Access Arrangement does not include any mechanism enabling a shipper to relinquish capacity.

3.2 Relevant provisions in access regime

- 3.2.1 The relevant provisions for the Access Manual for long term relocation are contained in clause 31 of the Schedule to the Access Manual, which is set out in section 2.2.2 above.
- 3.2.2 Apart from the spot relocation provisions referred to in section 2.2.1 above, there are no corollary provisions in the Access Arrangement.
- 3.2.3 The relinquishment provisions are found in Part 4 of the Access Manual. Of particular relevance is the provision contained in clause 49, the relevant parts of which provide:

“(3) Subject to subclause (2), the DBNGP owner’s discretion in determining —

- (a) whether or not to give a relinquishment acceptance;*
- (b) in respect of how much of any relinquishable capacity to give a relinquishment acceptance;*
- (c) how any relinquished capacity is to be apportioned between the relinquishing shipper’s contracted capacities for each season; and*
- (d) the order in which it gives relinquishment acceptances to relinquishing shippers,*

is to be absolute and unfettered.

(4) Without limiting the generality of subclause (3) —

- (a) the DBNGP owner’s discretion is not to be limited by —*
 - (i) any circumstances of the relinquishing shipper;*

- (ii) *the current or projected level of utilization of capacity in the privatized DBNGP system;*
- (iii) *the number (if any) or magnitude of current or anticipated applications under Part 3; or*
- (iv) *the order in which relinquishment offers are received by the DBNGP owner;*

and

- (b) *subject to subclause (5), nothing in this Part obliges the DBNGP owner to give a relinquishment acceptance in preference to providing any developable capacity as defined by clause 1 of Schedule 1 to the Act.”*

3.2.4 There are no equivalent provisions in the Access Arrangement.

3.3 Epic Energy’s observations

3.3.1 In each case the agreement of Epic Energy is required. Under the Access Arrangement, Epic Energy continues to have the ability to agree anything with the shipper at any time and can agree to vary the Access Contract to reflect either of these matters. The fact that a prescriptive regime is not provided does not hinder this ability and in fact provides greater flexibility for the shipper and Epic Energy to adopt an appropriate solution. Epic Energy does not believe that shippers are in any way disadvantaged under the Access Arrangement in these areas.

4. Access Requests in a tender situation

4.1 Issues raised in submissions to Regulator

4.1.1 Treasury and Office of Energy in their submission at page 19 raise the question of how the Access Arrangement will deal with a prospective shipper seeking to secure capacity to cover its bid for a project, but without being locked in the event that it is not the successful bidder for the project.

4.2 Relevant provisions in access regimes

4.2.1 The Access Manual deals with conditional contracts at clause 43. It provides a detailed provision and very tight procedural requirements.

4.3 Epic Energy’s observations

4.3.1 Epic Energy believes a far more flexible approach should be adopted. That approach is consistent with the spirit of the Code. Many options, permutations and combinations are available. These could include the use of Capacity Expansion Options, the inclusion of a specific condition precedent in the Access Contract to suit the circumstances or an agreement with the project proponent for the Access Contract to be developed at that level and be transferred to the successful bidder for the project.

4.3.2 Nothing is in fact added by clause 43 of the Access Manual as under the Access Arrangement anything can be agreed (which is essentially all that clause 43 says). It is

important that the approach in paragraph 4.3.1 above remains as it provides the greater flexibility and no less certainty for a shipper than under the Access Manual.

5. Queuing Policy

5.1 Issues raised in submissions to Regulator

5.1.1 Treasury and Office of Energy in their submission at page 20 ask the question of what situations would arise where Epic Energy might wish to deal with an Access Request out of order as contemplated in clause 5.3(a) of the Access Arrangement.

5.2 Epic Energy's observations

5.2.1 This provision is borne out of previous experience of Epic Energy and AlintaGas as operators of the DBNGP.

5.2.2 This provision would not be expected to have any application in the Reference Queue. However, it may be needed in dealing with applications in the Non Reference Queue where Access Requests could vary dramatically in the matters needing to be assessed or negotiated. For example, there may be in the Queue an Access Request which is for the Reference Service with a small amendment which does not cause Epic Energy any concern. It could be sitting behind an Access Request requiring substantive amendments, which could take many months to negotiate or resolve. The first mentioned Access Request would ordinarily have to wait until the other application is processed, yet there may be no issues surrounding it.

5.2.3 The provision also enables Epic Energy to avoid mischievous applicants clogging up the system to the detriment of genuine applicants.

6. Core haulage obligation

6.1 Issues raised in submissions to Regulator

6.1.1 AlintaGas has raised a technical legal point at page 32 of AlintaGas Submission No.3, that the Access Arrangement contains no **express** obligation on Epic Energy to accept gas and to deliver gas.

6.2 Epic Energy's observations

6.2.1 Epic Energy believes there are adequate provisions contained in the Access Arrangement to cover that, but would have no objection to a recommendation from the Regulator for such a provision to be included.

7. Expansion of capacity to meet Access Request

7.1 Issues raised in submissions to Regulator

7.1.1 Western Power in its Submission No.5 at pages 11 to 12 raise a number of questions regarding the Extensions /Expansions Policy in the Access Arrangement.

- 7.1.2 The first point deals with Epic Energy's discretion whether to include an extension or expansion as part of the Covered Pipeline. Western Power suggests that the Access Arrangement should specify how that discretion is to be exercised. They also say that such a provision does not conform to the Code, although they do not say how that is.
- 7.1.3 Their next point goes to the interaction between Access Requests and Capacity Expansion Options. They point to fundamental differences between the two, in particular the tradeability of Capacity Expansion Options. They observe that a person sitting in the Queue with an Access Request for developable capacity could be overtaken by another person subsequently exercising an option under a Capacity Expansion Option.
- 7.1.4 Robe River Mining Co Pty Ltd at page 7 of its Submission, said that the Access Arrangement should obligate Epic Energy to accept an Access Request where there is Spare Capacity.

7.2 Epic Energy's observations

- 7.2.1 Epic Energy does not disagree with Western Power's observations as to the differences between Access Requests and Capacity Expansion Options.
- 7.2.2 It is important that Epic Energy maintains a discretion as to whether an extension or expansion is or is not covered by the Access Arrangement. The commercial viability of such could be impacted on by whether the extension or expansion is covered. That aside it is open to any person to apply at any time to have that extension/ expansion declared to be a Covered Pipeline in accordance with the provisions of the Code.
- 7.2.3 Epic Energy rejects the suggestion that the Extensions/Expansion Policy stated in the Access Arrangement does not comply with the Code. The relevant provision of the Code is at section 3.16. That provision merely requires Epic Energy to state the method to determine whether an extension or expansion should be treated as part of the Covered Pipeline. The Policy states that it is covered unless Epic Energy states otherwise. Epic Energy believes that policy is consistent with the Regulator's decision in relation to the Access Arrangement for the Parmelia Pipeline.¹
- 7.2.4 The clear purpose of issuing Capacity Expansion Options is to provide the holder with absolute certainty of acquiring the capacity when it requires, in accordance with the terms of the Option. It is not appropriate that the holder should go into the queue when the Option is exercised.
- 7.2.5 However, having said that, Epic Energy appreciates that it could be suggested that Capacity Expansion Options could be used by an unscrupulous service provider to enable queue jumping, ie. by issuing a Capacity Expansion Option to a person in time after an Access Request has been filed by another person, the service provider could enable the first person to obtain its capacity ahead of the second person. This is not the intent or purpose of Capacity Expansion Options. Epic Energy would be willing to work with the Regulator to develop some amendments to make it clear that that sort of queue jumping could not occur, at least not to the detriment of the second person.
- 7.2.6 If any clarity is required, Epic Energy would not object to the Regulator requiring the Access Arrangement to contain a provision obligating Epic Energy to accept a valid Access

¹ See Amendment 14 in Part A-7 of the Draft Decision of the Regulator dated 27 October 1999 in respect of the Access Arrangement for the Parmelia Pipeline.

Request for the Reference Service if there is Spare Capacity to meet the requirements of that Access Request.

8. Volume Forecasts

8.1 Issues raised in submissions to Regulator

- 8.1.1 AlintaGas², Treasury and Office of Energy³ and Western Power⁴ each suggest that the forecasts of contracted capacity and throughput stated in the Access Arrangement Information are conservative and need some explanation.
- 8.1.2 AlintaGas notes that the forecasts use show virtually no growth and that any increase in demand will therefore lead to a windfall gain to Epic Energy.
- 8.1.3 Treasury and Office of Energy state that the increases forecast in annual volume are “extremely conservative”. In particular they refer to no recognition of loads to the Mid West Iron and Steel Project, a point that is expanded upon on page 7 of that Submission.
- 8.1.4 Western Power refer to a perceived anomaly where they suggest that the forecast quantities for zones 9 and 10 are less than those for 1998 and that throughputs are forecast to exceed contracted capacity in zone 9 during the forecast period. They also refer to not being clear how the capacity and quantity data had been applied to derive Total Revenue.

8.2 Epic Energy’s observations

- 8.2.1 Epic Energy finds surprising the bald assertions that the forecast volumes are extremely conservative. No evidence is provided by any of them as to what the additional loads are expected to be that have not been included in the forecasts. Those forecasts have been derived after working with shippers such as AlintaGas, Western Power and the other contracted shippers to ascertain what their expectations are over the period. In each case that has been reflected in the forecasts.
- 8.2.2 In relation to the Mid West Iron and Steel Project capacity, that is something that remains the subject of confidential negotiations. Epic Energy is more than happy to answer any questions the Regulator may have about that capacity and is confident that the Regulator will accept the accuracy of the forecasts in that respect given the status of the Project.
- 8.2.3 Each of the submissions do not appreciate the fact that the volume forecasts have little bearing on the tariff. That is understood in the cases of AlintaGas and Western Power, as they would not have seen Epic Submission 1, Epic Submission 3 or any of this batch of Epic submissions. Given the concept of the regulatory compact, the tariff and tariff path is fixed regardless of factors such as forecast volume. However, in response to Western Power’s point the forecasts have been used for the purposes of Table 3.3 in the Access Arrangement Information to calculate the actual revenue received and hence calculate the depreciation to be applied to the deferred recovery account.
- 8.2.4 Western Power’s observations about the forecasts being less than 1998 and zone 9 forecast throughput being higher than forecast MDQ is correct. This is a reflection of

² AlintaGas Submission No.3, page 38

³ Treasury and Office of Energy Submission, page 18

⁴ Western Power Submission No.3, page 8

shippers advising Epic Energy that they foresee a downturn in demand for capacity on the DBNGP and a shifting of capacity from zone 10 to zone 9.

- 8.2.5 In relation to the conservative nature of the forecasts it is to be noted that CMS Gas Transmission of Australia forecast in the Access Arrangement for the Parmelia Pipeline an increase in throughput moving from around 30 TJ/d to 86 TJ/d through the Access Arrangement Period for that pipeline. Even with the Regulator's draft decision suggesting this should be more like 60 TJ/d⁵, that still demonstrates a significant leakage of capacity from the DBNGP.

9. Grandfathered contracts' rights

9.1 Issues raised in submissions to Regulator

- 9.1.1 There have been a number of comments made in submissions suggesting that existing contracts or "foundation" shippers should have special rights.

- 9.1.2 For example Worsley said:

*"The Queuing Policy does not appear to guarantee continuity of access for existing users. Projects that require gas for the long term require continuity of supply but, in the face of uncertainty in their own markets, only enter 'take or pay' contracts for the minimum term that balances the risk between the user and the pipeline owner. Existing users should be able to expect 'right of first refusal' over their contracted capacity but this does not appear to be acknowledged in the queuing policy. Note that this policy refers to 'existing and new' users collectively."*⁶

- 9.1.3 Western Power said:

"As a foundation shipper on the DBNGP, Western Power was assigned and now has reserved capacity and interruptible transport entitlements which in aggregate terms, lie between 143TJ/d (summer) and 116TJ/d (winter), covering part haul and full haul requirements to delivery points in the Pilbara, Gascoyne, Mid West and to the South West. In addition, Western Power has a share of the transport capacity reserved for the Worsley Cogeneration Plant.

... ..

*Western Power was a foundation shipper on the DBNGP. It has previously been led to believe that costs would decrease as reservation charges were discharged and delivery quantities increased. To the extent that costs do decrease, Western Power believes that it (with other foundation shippers on the DBNGP) has a right to expect an opportunity to participate in that decrease."*⁷

"It appears that shippers with GTR contracts will not have the same trading entitlements as Firm Service shippers in the Secondary Market.

Western Power questions how Epic Energy can provide access to spare capacity to shippers with GTR contracts, while operating a Secondary Market for eligible shippers.

⁵ Page B-85 of the Draft Decision of the Regulator dated 27 October 1999 in respect of the Access Arrangement for the Parmelia Pipeline.

⁶ Worsley's Submission, page 5

⁷ Western Power Submission No.3, page 1 – 2.

Western Power submits that Epic Energy should not be allowed to implement the proposed market trading regime, which effectively removes the rights of GTR shippers to have access to daily interruptible capacity, unless the GTR shippers are eligible to purchase and sell capacity in the Secondary Market, and the Secondary Market rules are less restrictive.”⁸

9.1.4 Western Mining Corporation said:

“Further, we believe that existing holders of transportation contracts should be given a once only opportunity to make any adjustments to their contracted quantities which they deem necessary to enable them to adjust to the new Terms and Conditions once finalised by OFFGAR.”⁹

9.1.5 Wesfarmers Limited said:

“a queuing policy that does not guarantee continuity of access for existing users”¹⁰

9.2 Epic Energy’s observations

9.2.1 Epic Energy rejects the suggestion that the grandfathered contracts have any special rights other than the requirements for Epic Energy to comply with section 20 of the *Dampier to Bunbury Pipeline Act 1997*. That in itself is unusual, but to suggest that existing users should have some special rights to capacity for as long as they want it or that they can pick and choose from the Access Arrangements those bits that they like is unacceptable and has no basis.

9.2.2 The existing contracts are what they are and no cogent argument has been put as to why they should have any of these special rights. It has not happened anywhere else and there is no basis for it happening here. Those parties entered into contracts with the then Service Provider, AlintaGas, on the basis and for the term that they accepted. By the same token Epic Energy acquired the DBNGP with those contracts and had to accept its lot in that respect.

9.2.3 If these shippers want certainty as to capacity in the future, they should contract for it. If they want some or all of the terms in the Access Arrangement they should approach Epic Energy and seek to negotiate those changes. Epic Energy has stated before and states again it will be receptive to shippers wanting to change their contract to Access Arrangement terms and conditions. If they wish to participate in the Secondary Market then they should approach Epic Energy to negotiate how that might be done. Otherwise there are no special privileges for these contracts.

10. Access to the GGT and Parmelia Pipelines

10.1 Issues raised in submissions to Regulator

10.1.1 At pages 6 – 8 of their submission North West Shelf Gas raised the question of enabling access of the DBNGP to the Goldfields Gas Transmission Pipeline (“GGT”) and the

⁸ Western Power’s Submission No.5, page 10.

⁹ Western Mining Corporation Submission, page 4.

¹⁰ Wesfarmers Limited Submission, page 4.

Parmelia Pipeline. In the case of the latter it was more directed to the structure of the tariff when combined with the Parmelia Pipeline tariff.

10.2 Epic Energy's observations

- 10.2.1 Epic Energy does not propose to say much at this stage on these points, but it does make the following observations.
- 10.2.2 In the case of the GGT, the question of whether a Delivery Point is provided is not a matter for the approval of the Access Arrangement. This is a question of whether there is a shipper who might want capacity at that point and then whether for Epic Energy it is commercially viable to do so. North West Shelf Gas are well aware of the economic consequences faced by Epic Energy in transporting such a distance due to the operation of a particular contract inherited as part of the DBNGP acquisition. That aside Epic Energy believes a more economic and flexible approach is by the creation of a new lateral through the Mid West linking the two pipelines.
- 10.2.3 In relation to the Parmelia Pipeline, Epic Energy simply makes the observation that another way of looking at the problem is that perhaps the tariffs on the Parmelia should be reduced to equate those for the similar part of the DBNGP.