

Dr Ken Michael
Gas Access Regulator
Office of Gas Access Regulation
6th Floor
197 St Georges Terrace
PERTH WA 6000

Dear Dr Michael

Please find attached a submission relating to your Draft Decision on the proposed Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline (DBNGP).

This submission represents my views on events surrounding the sale of the DBNGP and your subsequent decision on the Access Arrangement lodged by Epic Energy on 15 December 1999.

Yours sincerely

COLIN J BARNETT MLA
LEADER OF THE OPPOSITION

19 September 2001

Public Submission

Dampier to Bunbury Natural Gas Pipeline Proposed Access Arrangement

It is my considered opinion that the draft determination by the Office of Gas Access Regulation (OffGAR) in relation to the Dampier to Bunbury Natural Gas Pipeline (DBNGP), as owned and operated by Epic Energy, is so low as to be unsustainable.

A regulated price should be such as to provide a fair and competitive position to both pipeline operator and pipeline customer. It should also take into account the need to generate sufficient income to allow for a timely and progressive increase in pipeline capacity in order to meet projected demand. Failure to do so will result in insufficient capacity and a reduced competitive position for potential new gas users. It will also detract from the overall economic development of Western Australia.

Epic Energy has expressed concerns about the draft determination. The company has complained publicly in terms of "sovereign risk" and has claimed that some form of "regulatory compact" existed between the state and Epic Energy as a result of the DBNGP sale in 1998.

With respect to sovereign risk, there appears to be a misunderstanding of the term. Sovereign risk would only result if there was a policy change by government which was separate from or not included in the sale process. That has not been the case.

Epic Energy should acknowledge that the risk confronting the company is simply a regulatory risk. Epic Energy formed a view about the regulated transport tariff and made their bid to acquire the pipeline accordingly. If this view was incorrect, then that was simply a business error. Submissions made to the Regulator by state owned enterprises subject to their own boards (AlintaGas, Western Power Corporation) were independent of Government.

With respect to the so-called "regulatory compact", no such explicit or implied arrangement has ever existed. It was quite clear prior to and during the sale process that bids would be set against a pre-determined schedule of declining transport tariffs to 2001 and thereafter the transport tariff would be set by an independent regulator in accordance with the National Access Code.

This is verified in my Second Reading speech on the Dampier to Bunbury Pipeline Bill on 11 November 1997. I clearly stated, as recorded in Hansard:

"The access regulations made under this Bill will be transitional until 1 January 2000 and will provide for setting maximum prices for the various transmission services such as full haul, part haul and back haul. From 1 January 1998 the maximum price for full haul at 100 per cent load factor will be less than \$1.24 per gigajoule and will decline to about \$1 per GJ on 1 January 2000. After that date an independent gas pipeline access regulator will set reference tariffs. The owner and shippers will be able to negotiate prices below these maximum prices".

(Hansard – page 7526 – 1998)

In a statement to Parliament on 10 March 1998 following the sale, I similarly stated:

"Under the transition access regime, pipeline tariffs will fall by approximately 20 per cent to \$1 per gigajoule by the year 2000 and from the year 2000 the National Access Code will apply to tariffs on this pipeline". (Hansard – page 138 – 1998).

These transitional tariffs were duly gazetted and implemented and an independent regulator established to oversee the completed National Access Code. All of these arrangements were clearly represented in the sales documentation which was openly available to all bidders and scrutinised over several weeks by those bidders.

For a transaction of \$2,407 million, it is not credible for any bidder to argue that it did not understand this fundamental detail of the sale.

In selling the DBNGP, the Government had several key objectives. Firstly, to maximise the return on the asset for the owners, the people of Western Australia; secondly, to allow for future expansion of the pipeline in order to meet growth in demand and, finally, to ensure a tariff pricing regime that encouraged competition. To achieve this, the Government established a sale process that had clear guidelines and was carefully conducted.

It is also important to note that the Auditor General reported on the sale process in a special report dated May 1998.

This report was required under Section 53 of the Dampier to Bunbury Pipeline Act 1997 which directed the Auditor General to examine and report on "certain matters" relating to "any obligations, duties or liabilities imposed on, or any indemnities or guarantees given by the State", within 60 days of settlement of the Asset Sale Agreement.

The overall findings of the Auditor General were:

- Overall, the sale was a significant commercial transaction with appropriate checks and balances in place to protect the Government and Western Australian taxpayers.

- The obligations, duties and liabilities imposed on the State were regular and consistent with such an asset sale transaction.
- No guarantees were issued, and whilst seven indemnities were granted this was an understandable course of action in the circumstances.
- The warranties given by AlintaGas are not unusual in an asset sale of this kind, with circumstances covered by the warranties not having arisen in the past.

This report made it quite clear that “no guarantees were issued” and that the sale process was conducted formally and to the highest standard. There is certainly no semblance of any form of “regulatory compact”.

Having said that, I might observe that most within the industry, including myself, had an expectation that the regulated tariff would be reasonably close to the \$1 per gigajoule figure for gas transmission to the Perth metropolitan areas. It was a figure that was generally considered to be “in the ball park”.

Some observers may have suggested it should be lower. I expected the regulated tariff to be in the broad range of \$0.90 to say \$1.05. But again, that was only my judgement as an industry observer.

In conclusion, I sympathise with the position Epic Energy now finds itself in. The regulated tariff is so far below industry expectations as to be a source of uncertainty to all – both pipeline operator and pipeline customer. It is a tariff outside market expectations and one which will not allow for a smooth process of expansion in pipeline capacity. It will, at the same time, limit the scope for a competitive pipeline to be established, with the result that future gas consuming projects may be jeopardised or at least put at a competitive disadvantage when compared to existing projects.

I submit the draft decision should be reviewed with account being taken of the future economic consequences and with a view to a final determination which is broadly in keeping with industry expectations.

Yours sincerely

COLIN J BARNETT
LEADER OF THE OPPOSITION

19 September 2001