

OFFICE OF GAS ACCESS REGULATION

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NOTICE

PROPOSED ACCESS ARRANGEMENT FOR THE GOLDFIELDS GAS PIPELINE

6 November 2002

The purpose of this notice is to inform interested parties of the procedure I intend to adopt in light of the decision by the Full Court of the Supreme Court of Western Australia in the proceedings brought by Epic Energy (WA) Nominees Pty Ltd and another in respect of my Draft Decision on the proposed Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline ("**Court Decision**"). The reference of the Court Decision is [2002] WASCA 231.

Section 21 of the Appendix to Schedule 1 of the *Gas Pipelines Access (Western Australia) Act 1998* (WA) ("**GPAA**") allows me to amend my Draft Decision on the proposed Access Arrangement for the Goldfields Gas Pipeline ("**GGP**") issued on 10 April 2001 ("**Draft Decision**").

In light of the Court Decision, I intend to amend my Draft Decision. In amending the Draft Decision, I also intend to address certain jurisdictional issues associated with the interaction between section 97(4) of the GPAA and sub-clause 21(3) of the agreement ratified by the *Goldfields Gas Pipeline Agreement Act 1994* (WA) ("**State Agreement**").

The following matters will be the subject of the amendments to the Draft Decision:

- The impact of the Court Decision on the Draft Decision for the GGP.
- The effect of sub-clause 21(3) of the State Agreement on the application of the *National Third Party Access Code for Natural Gas Pipeline Systems* ("**Code**") in so far as it relates to the GGP.
- Any amendments required as a result of further information provided to me in response to the matters set out below.

The process I intend to apply in progressing the assessment of the proposed Access Arrangement for the GGP will involve three stages as follows:

Stage 1

- The first stage will involve applying the Code without consideration of whether sub-clause 21(3) of the State Agreement affects the applicability of the Code. However, to the extent that other matters arising under the State Agreement are relevant to my assessment under the Code, these matters will be considered at this stage of the process.
- In addition to the submissions already made on the Draft Decision (which I will take into account in amending the Draft Decision) I intend inviting interested parties to prepare and provide written submissions, which have regard to the reasons in the Court Decision and the effects on matters identified in my Draft Decision as being the reasons for requiring amendments to the proposed Access Arrangement.



- I will send a separate request to the former and current owners of the GGP requesting them to provide certain information necessary for me to determine tariff matters and certain information as to the commercial rate of return upon which the original owners of the GGP made the business decision to invest in the GGP.
- If necessary, I intend exercising my powers under the GPAA to obtain further information in light of the reasons in the Court Decision and the matters outlined above.
- Part 1 of the amended Draft Decision will be issued and the current owners of the GGP will be invited to demonstrate, by way of a written submission, whether the application of the Code, as set out in Part 1 of the amended Draft Decision, materially adversely affects their legitimate business interests within the meaning of sub-clause 21(3) of the State Agreement.

Stage 2

- Once the time for the current owners of the GGP to make a submission on the applicability of sub-clause 21(3) of the State Agreement has expired, I will prepare and issue a Part 2 of the amended Draft Decision. Part 2 of the amended Draft Decision would set out my assessment of the extent to which the Code applies, in light of the submission by the current owners of the GGP on the applicability of sub-clause 21(3) of the State Agreement, to Part 1 of the amended Draft Decision.
- I will then invite submissions on Parts 1 and 2 of the amended Draft Decision from interested parties within a time that I will specify pursuant to section 2.14(b) of the Code.

Stage 3

- Following consideration of submissions on Parts 1 and 2 of the amended Draft Decision, I will then proceed to prepare my Final Decision.

Submissions

Accordingly, I now invite all interested parties to make written submissions, which have regard to the reasons in the Court Decision and the effects on matters identified in my Draft Decision as being the reasons for requiring amendments to the proposed Access Arrangement.

The closing date for these submissions is 4pm Tuesday 10 December 2002.

Submissions should be provided both electronically and in hard copy form and addressed to:

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Submissions received, unless confidential, will be made publicly available on the *OffGAR* web site.

All confidential information provided will be dealt with according to my usual practice, details of which are available on the *OffGAR* web site.

If parties would like to speak to their written submissions at a conference with me, they should indicate this at the time they lodge their submissions and I will arrange for such a conference to take place.

As in the past, my office will be available to assist me in responding to any questions and will be happy to clarify any procedural matters relating to the amendments of the Draft Decision.

Please direct any inquiries to Mr Peter Kolf on +61 8 9213 1900.

KEN MICHAEL
ACTING GAS ACCESS REGULATOR