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Dear Mr Pullella

**EPIC ENERGY ACCESS ARRANGEMENT FOR THE DBNGP  
WESTERN POWER SUBMISSION NUMBER 4  
T1, T2 & T3 EQUIVALENT REFERENCE SERVICES**

Western Power submits for review by the Office of Gas Access Regulation (OffGAR), its case for including in the Access Arrangement, a Reference Service which strikes approximately the same balance between the Service Provider and shippers as the T1, T2 and T3 services under the *Gas Transmission Regulations 1994* ("GTR") and the *Dampier to Bunbury Pipeline Regulations 1998* and the *DBNGP Access Manual* (Collectively "DBPR").

**OVERVIEW**

Western Power welcomes Epic Energy's objectives of running the DBNGP more efficiently, and of developing a more effective structure for future haulage services. Since Epic Energy took control and commenced operations under the current Regulations, benefits have accrued to all shippers.

Western Power thus supports a move from the T1, T2 and T3 Reference Services included in the GTR and DBPR, to a Firm Service which is more in line with world practice in gas transportation. However, Western Power has significant concerns about the manner in which Epic Energy proposes to implement a Firm Service model for the DBNGP. The currently proposed Firm Service is considered to be unsuitable from a transition perspective and does not comply with the National Access Code.

As a general observation, Western Power notes that the form and detail of the proposed Firm Service which may be appropriate and fair for a transmission pipeline in North America, appears to be inappropriate and unfair when implemented in the very different pipeline environment and gas market circumstances of Western Australia.

In addition, Western Power and other major incumbent users of the DBNGP have entered into upstream and downstream contractual relationships, and made substantial capital investment, in reliance on the balance of risks and flexibility struck by the current access regime.

Furthermore, as a shipper under a GTR contract which may (the matter currently is unresolved) be amended under Section 20 of the *Dampier to Bunbury Pipeline Act 1997*, Western Power considers that it is entitled to request the Regulator to ensure that the approved Access Arrangement contains a price, which is clearly identifiable as the “statutory price” for the purposes of that section; namely a price for a service materially equivalent in operational and commercial effect to the GTR services.

Western Power in this Submission draws a number of comparisons between the proposed Firm Service and the mix of T1, T2, T3 and AT3 services available under the GTR and DBPR. It does not do so because it wishes to preserve the GTR and DBPR position unchanged. Rather, it does so to assist the Regulator to ensure that any approved Firm Service strikes a fair balance between Epic Energy and shippers in respect of operational risks and flexibility, and commercial risks and flexibility. This is not the case under the current proposal.

The proposed arrangements are considered by Western Power to be deficient in key areas when compared to the existing DBNGP service benchmark represented by the terms and conditions of the GTR contracts. The financial impacts of Epic Energy’s proposal could be damaging for shippers.

The proposed Reference Service, the Firm Service, has terms and conditions that are narrower in scope in comparison to the equivalent balance tariffs in the GTR contract provisions. Furthermore, the proposed Firm Service is priced equal to the current tariff north of Kwinana Junction, and higher south of Kwinana Junction than the full haul tariff that shippers are currently paying under the statutory pricing regime (i.e. \$1/GJ from 1 January 2000).

Western Power considers that it is legitimate to compare Epic Energy’s proposed tariffs with the GTR/DBPR tariffs, because those tariffs were set using a cost-of-service methodology and parameters which are broadly compatible with National Access Code tariff-setting requirements.

This Submission deals with the proposed Access Arrangement concerning the Reference Service in three specific aspects:

- Market requirements;
- Reference Service terms and conditions; and
- Non-Reference services.

## **PROPOSED REFERENCE SERVICE – MARKET REQUIREMENT**

The National Access Code (ss. 3.1 to 3.20) specifies the elements required to be included in an Access Arrangement. The basic requirement is the specification of one or more Reference Services and the corresponding Reference Tariffs. In its submission, Epic Energy only proposes one Reference Service and Tariff. In Section 2.1 of the Access

Arrangement Information, Epic Energy states that it expects that the Firm Service will be sought by a significant proportion of the market, and therefore meet the National Access Code requirements.

Western Power disputes this perception. From remarks made to Western Power by other shippers, and from its own perspective, Western Power cannot identify from the information provided, any significant part of the DBNGP gas transportation market which is likely to seek a service in the form, and on the terms and conditions, proposed by Epic Energy for its Firm Service.

***Accordingly, Western Power submits to the Regulator that the proposed Access Arrangement fails to comply with s. 3.3(a) of the National Access Code because it does not contain a Reference Service likely to be sought by a significant part of the market.***

The services being proposed reflect a substantial change in the manner in which capacity on the DBNGP is to be provided to future shippers. For instance, there is no interruptible service either as a Reference Service or a Non-Reference Service. It appears to be intended that full capacity of the pipeline for guaranteed year round delivery has been allocated to Firm Service and additional capacity that may become available at various times of the year is provided by way of Non-Reference Services.

However this is inconsistent with the fact that there is no significant capacity for Firm Service as almost all capacity has been allocated to (grandfathered) Prior Contracts, being Non-Reference Services. Furthermore, no utilisation of the Reference Service in Epic Energy's proposal is forecast during the Access Arrangement period.

***Western Power asks that the Regulator require Epic Energy to provide sufficient information about significant utilisation of Firm Service capacity to allow grandfathered contracts shippers to assess their positions and not be compromised by Epic Energy's proposal.***

The proposed Access Arrangement appears to be limited to the extent that it does not provide for the physical characteristics of the DBNGP, which was designed for and operates in a specific market. Epic Energy's proposal does not appear to consider current market requirements, or provide sufficient information on the future direction of market requirements. Western Power expands on these matters in Submission 5.

Western Power invites the Regulator to consider how the GTR was developed and evolved. The GTR were developed in 1994 by the Government's Energy Implementation Group, with substantial input from an industry working group. They were then subjected to an extensive and very thorough review, over more than two years from mid 1995 to late 1997, by the Gas Transmission Consultation Committee ("GTCC").

The GTCC comprised of representatives from both the Service Provider and a number of major users, and was chaired by the Coordinator of Energy. As a result of that review, the GTR were extensively amended on 20 November 1997. The GTR as amended were then transformed into the materially similar *Dampier to Bunbury Pipeline Regulations 1998* ("DBPR", which term in this submission includes the DBNGP Access Manual). The GTR as amended and the DBPR thus represent the outworking of an extensive industry review process in which all significant interested parties were represented, which review was undertaken with the benefit of having watched the GTR operate in practice for nearly three years.

***Western Power submits that the Regulator should appropriately have regard to the balance of risks and liabilities struck by past and existing Regulations, reflecting the DBNGP design characteristics, aligned with the Western Australian market requirements. It is proposed that the Regulator use this framework as a suitable benchmark against which to assess the terms and conditions of all proposed new Reference Services.***

The National Access Code should not be used to stifle innovation by Service Providers. Western Power does not suggest that Epic Energy should be compelled to remain solely with the approach to haulage contracts first implemented in the GTR and then refined in the DBPR. However, Western Power submits that Epic Energy equally should not be permitted to use the opportunity of innovation to materially change the established balance of risks and obligations which has been developed for the DBNGP, by shifting a significant additional burden of risks and charges to shippers.

For example, Epic Energy proposes removing access to interruptible capacity for grandfathered contracts. Western Power submits that Epic Energy should not be allowed to entirely disregard the contractual position of GTR/DBPR shippers who (with Alcoa) currently make up the entire DBNGP gas transportation market, and will for the foreseeable future comprise the great bulk of that market.

Unless declared as a Reference Service, all other services in the proposed Access Arrangement could lead to unequitable negotiations, particularly on key terms such as availability, price and other terms.

***Western Power submits to the Regulator that the current GTR/DBPR services constitute a bundle of services on balanced terms and conditions, that it wishes to use regularly and for incremental and replacement capacity.***

***Western Power also considers that other shippers may also reasonably seek to use such services, on the balanced terms embodied in those services, which provides a compelling case to request the Regulator that such services, and their terms and conditions, become Reference Services.***

## **PROPOSED REFERENCE SERVICE – TERMS AND CONDITIONS**

In Western Power's view, the scope of services offered under the Firm Service, falls far short of the type of services required by it, and that are available in the current GTR contracts.

Western Power identifies below significant differences between the proposed Firm Service terms and conditions and the GTR/DBPR terms and conditions, in order to demonstrate that the proposed Firm Service is not a viable substitute for the balance achieved under the GTR contracts.

Some of the major differences are listed as follows:

- **Nomination Ability**

The GTR/DBPR services allow shippers to renominate within a gas day, whereas the Firm Service excludes this flexibility.

- **Penalties Generally**

Western Power submits that the various “charges” set out in Schedule 1 to the Terms and Conditions (i.e. \$15/GJ) constitute unlawful penalties. A contractual clause purporting to impose a penalty is invalid. Western Power will expand on this point in Submission Number 5.

- **Relocation of Capacity**

Relocation of capacity under the Epic proposal, particularly relocation to a downstream delivery point, or to a delivery point in another zone, is more restrictive, and therefore, likely to be substantially more expensive for shippers using the proposed Firm Service arrangements.

- **Balancing**

The tolerance limits for imbalances are substantially more restrictive (2% for Firm Service vs. 8% for existing services), and will be applied daily in the proposed arrangement, whereas end of month reconciliation of shippers balances currently applies. There is no provision for trading imbalances.

- **Peaking**

The Firm Service seeks to impose peaking penalties on a daily and hourly basis; whereas peaking penalties have not been applied to GTR services.

It appears that unlike the position under the GTR contracts, shippers will not be able to aggregate peaking imbalances across multiple receipt and delivery points.

- **Overrun Capacity**

Under the GTR/ DBPR, the DBNGP operator may make interruptible capacity available for full haul, and there is a part-haul authorised /unauthorised service. There is also a provision for overrun capacity.

Under the proposed Access Arrangement, Epic Energy would impose overrun penalties for the Firm Service that are excessive when compared to the existing situation.

The preceding differences are presented in support of the submission, that the Regulator should require Epic Energy to offer a Firm Service (or one or more other Reference Services) which sets an operational and commercial balance materially equivalent to that set by the GTR/DBPR services. This comparison also is made in support of the submission that the Firm Service is not likely to be sought by a significant part of the market.

Western Power's Submission Number 5 will expand upon some of these matters, in the context of a general commentary on non-tariff issues relating to the proposed Firm Service.

***Western Power submits to the Regulator that the above-mentioned factors be included in determining an appropriate Reference Service for the DBNGP.***

***Specifically, Western Power submits that the Regulator should require Epic Energy to offer a Firm Service (or one or more other Reference Services) which sets an operational and commercial balance materially equivalent to that set by the GTR/DBPR.***

***Western Power also submits that the Regulator should find that the Firm Service as is now proposed, is not likely to be sought by a significant part of the market.***

## **PROPOSED NON-REFERENCE SERVICES**

The above shortcomings in the Firm Service could arguably be overcome through the provision of Non-Reference Services. Western Power notes again that it does not seek to only retain the GTR/DBPR model, but that it considers the GTR/DBPR model, having been developed with extensive industry involvement to comprise a good benchmark for the reasonableness and fairness of Epic Energy's proposed Firm Service terms and conditions.

However, as with the above issues for the Reference Services, Epic Energy's proposal for Non-Reference Services falls far short of what is required and is already available to all DBNGP shippers. The Regulator's attention is drawn to the following:

- **Secondary Market Service**

The GTR/DBPR services provide shippers with flexibility in acquiring additional capacity on a short term basis, by means of capacity trading between shippers, as an additional option to the interruptible capacity service.

The proposed Firm Service however, does not have either of these flexibilities, because only firm capacity can be procured on a day to day basis, through the proposed Secondary Market Service. It appears that shippers with GTR contracts will not have the same trading entitlements as Firm Service shippers in the Secondary Market.

***Western Power asks the Regulator to require Epic Energy to amend this proposal, in view of the potential detriment to grandfathered shippers.***

- **Park and Loan Service**

A shipper may after negotiation or arbitration, be able to secure a Non-Reference Park and Loan Service, in as yet undisclosed tariffs and terms, to achieve a level of balancing flexibility similar to that set for the DBNGP as a result of the GTCC's consultative industry review process.

However, Western Power submits that this would be an unsatisfactory result for most or all shippers.

***Western Power asks the Regulator to require Epic Energy to justify removing this element of the GTR/DBPR balance, and making it the subject of an extra-cost service.***

- **Seasonal Service**

The Firm Service is for a fixed annual MDQ and does not provide for different levels of MDQ, unlike the seasonal MDQ variations (summer/winter) that are allowed in the GTR/DBPR approach.

Epic Energy have proposed a Non-Reference Seasonal Service on presently undisclosed tariffs and terms, separate to the Firm Service, and a Secondary Market Service to cater for those requirements.

***Western Power asks the Regulator to require Epic Energy to incorporate a seasonal MDQ in their proposed Reference Service, equivalent to the GTR service currently used by a significant proportion of shippers.***

- **Interruptible Service Requirement**

In January 1995, Western Power was initially allocated a quantity of reserved capacity on the DBNGP, which amounted to less than half of the capacity needed to transport its daily gas supply requirements. To ship its total power station gas requirements, Western Power has been substantially reliant upon interruptible capacity, including spot capacity made available by the DBNGP operator at \$1.15/GJ, being the price for spot capacity since January 1995.

Western Power has increased the quantity of reserved capacity of both full haul and part-haul firm capacity since 1995, and contracted for an interruptible service to optimise cost and security of its transport requirements. These gas transportation arrangements are a significant part of Western Power's operating regime for power stations on the South West Integrated System.

***The Regulator is requested to require Epic Energy to provide an Interruptible Service, preferably as a Reference Service, but at the very least, as a Non-Reference Service with specified terms and tariffs.***

***A major concern with the proposed Access Arrangement is that only one Reference Service is offered. This does not have the flexibility and same degree of security as existing capacity services, under the current access regime and contractual arrangements. Western Power invites the Regulator to closely examine the proposed Non-Reference services in the context of the terms of service currently available to shippers, and to require Epic Energy to offer a number of those services as Reference Services.***

## FINANCIAL IMPACT

The financial impact of the Epic Energy proposal could significantly damage shippers on the DBNGP.

The existing transport contracts are based on a two-part tariff schedule, comprising a fixed reservation charge (73%) and a variable commodity charge (27%). The current GTR/DBPR tariffs are distance related from Dampier to CS9 (north of Pinjar), and a flat rate is charged for all delivery points further south.

The proposed Reference Tariff structure consists of five components comprising around 95% fixed charges, over eleven delivery zones. Effectively, the proposed zone 1 (Dampier to CS2) and zone 10 (south of Kwinana Junction) become new flat rate zones, with rates for the intervening zones related to the use of pipeline assets.

If the proposed Access Arrangement by Epic Energy is agreed to by the Regulator, gas transport charges could increase by at least 12% for reserved capacity, under either a Firm Service contract, or if applicable, through the “statutory price” mechanism for GTR contracts under Section 20 of the *Dampier to Bunbury Pipeline Act 1997*.

Furthermore, under the proposed Access Arrangement, Western Power would face the prospect of substantial overrun, peaking and balancing costs and having to negotiate an interruptible service, which is not offered as a Reference Service, or reserve additional Firm Service capacity. Similarly, Western Power may need to negotiate new contracts for park and loan services, seasonal service and peaking service and may need to purchase spare capacity through the proposed secondary trading market. All presumably at substantial additional costs.

The proposed penalties for daily imbalances, hourly and daily peaking, and overrun usage are punitive (\$15/GJ) and unjustifiable. The potential impact of Epic Energy’s proposed Reference Tariff, in comparison with the current tariff structure, is illustrated in the following table:

<b>Annual DBNGP Cost</b>	<b>Current Contract Tariff</b>	<b>Access Arrangement Tariff</b>	<b>Increase</b>
<b>1999</b>	\$41M	\$46M (Exclusive of Penalties)	\$5M

Based on 1999 gas deliveries, the proposed Access Arrangement would increase Western Power’s transport costs by \$5M for fixed and variable charges, both under the Firm Service and through the statutory pricing mechanism for GTR contracts. However, the proposed surcharges for balancing and peaking outside the new tolerance limits could add a further \$50M to annual transport costs, should a Firm Service be contracted.

The total increase under a Firm Service contract could be in excess of \$55M, more than double the current gas transportation costs. A tariff shock of this magnitude is difficult to reconcile with National Access Code pricing principles, will have significant ramifications for the State’s electricity users, and should at the very least be the subject of detailed justification by its proponent.



Western Power has indicated in previous submissions to the Regulator, that the proposed Epic Energy Access Arrangement would result in a disproportionate increase in Western Power's DBNGP charges for the Pilbara (up to 540%, rising from \$0.02/GJ to \$0.16/GJ) and for part-haul transport services to Carnarvon (up 36%), with corresponding transport increases for the MidWest offtake and Mungarra Power Station. Higher full haul charges for south of Kwinana Junction (e.g. Kwinana Power Station) would also flow from the Epic Energy proposal.

***It is requested that the Regulator take into account the potential financial impact on existing shippers of Epic Energy's proposed interpretation of the National Access Code.***

## **REQUIREMENT FOR REFERENCE SERVICES WHICH PROVIDE EQUIVALENT FLEXIBILITY AND BALANCE TO GTR/DBPR SERVICES**

The GTR/DBPR regimes:

- Make available to shippers a greater range of services than those proposed by Epic Energy under the Access Arrangement; and
- Set terms and conditions for those services which reflect a reasonable balance of operational and commercial risks and flexibility between the pipeline operator and shippers.

The lack of equivalent balanced Reference Services has the potential to financially damage shippers.

Western Power seeks a range and balance of services similar to those available under the GTR/DBPR for its gas delivery requirements. The proposed Firm Service, however, appears to be intended for shippers having a base load profile with little variation, rather than for a peaking electricity generator.

***Western Power requests the Regulator to require Epic Energy to amend its Access Arrangement by:***

- ***Including Reference Services with a similar scope and containing similarly balanced terms to those available in the GTR/DBPR, to meet the requirements of a significant proportion of the DBNGP transportation market.***
- ***Submitting Reference Tariffs for these Reference Services that are consistent with the current level of regulated prices for these services.***
- ***Offering a part-haul Reference Service and Reference Tariff which also provides a similar scope of services and an equivalent balance to the full haul Reference Service and Tariff described in the preceding two paragraphs, prorated for distance in the same way as the part-haul GTR/DBPR Service.***

**Western Power also requests that the Regulator requires an inclusion of a Reference Service and Reference Tariff, which is clearly capable of being identified as the "statutory price" for those GTR contracts which are amended by the making and accepting of an offer under Section 20 of the *Dampier to Bunbury Pipeline Act 1997*.**

## CONCLUSION

As the leading electricity generator in Western Australia, Western Power is significantly dependent on a cost competitive and reliable gas transportation service in the DBNGP. Accordingly, Western Power looks positively on the opportunity for Epic Energy to improve upon the GTR contract arrangements, which will bring benefits to shippers and Epic Energy. However, in Western Power's opinion, the proposed Access Arrangement by Epic Energy falls far short of expectations and fails to comply with key National Access Code requirements.

The proposed Access Arrangement by Epic Energy may be regarded by some as a mechanism which unbundles existing DBNGP transport contracts, and markets the individual service components as separate transport products. This could be characterised as an attempt to maximise revenue.

Western Power and the other foundation shippers entered contractual arrangements with the previous owner of the DBNGP on the basis that a certain range of contracted services would be provided over the term of these contracts. The foundation shippers have underwritten the \$1.2 billion investment in the DBNGP made by the previous owner through capacity reservation charges paid over the past five years.

Western Power is concerned that the equity (as considered under Section 8.10 (f) of the Code) that it has contributed since 1995 would be subsequently devalued as a consequence of another Access Arrangement. Particularly, if the Access Arrangement does not provide services that are equivalent to the existing service arrangements or which are likely to be sought by a significant part of the DBNGP gas transportation market.

In Western Power's view, the transition to an Access Arrangement should be as smooth as possible, for existing shippers, which would be greatly assisted by retaining the operational and commercial balance struck by the GTR/DBPR. At the very least, Western Power submits that Epic Energy should be required to justify any significant shift of risk or cost onto shippers, and any material reduction of operational flexibility for shippers, compared with the balanced position created in the GTR/DBPR after extensive industry consultation and review.

Western Power expects to see Epic Energy improve the economics of operating the DBNGP and welcomes Epic Energy's attempts to innovate in the provision of haulage services. Given the background of the GTR and DBPR, shippers wish to see an Access Arrangement covering the services currently available in definitive and more attractive terms than the current proposal.

The onus is on Epic Energy to convince the existing shippers to migrate to an Access Arrangement, through the benefits so offered, rather than through the continuing uncertainties surrounding the GTR contracts. The Access Arrangement must therefore, reflect what a significant part of the Western Australian gas market would want to accept.

Western Power believes that it is essential that the Regulator provide a statutory price path for shippers. Price path certainty will protect existing shippers in the absence of a satisfactory resolution with Epic Energy regarding the current matter concerning Section 20 of the DBPR.

Furthermore, determination of a suitable access regime for the DBNGP will enable the majority of shippers (existing and future) to have access to a statutory price.

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Yours sincerely

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