Western Power

WESTERN POWER CORPORATION

Submission to Western Australian Independent Gas Pipelines Access Regulator regarding Epic Energy's proposed Access Arrangement for the DBNGP

Third Post-judgment Submission: zonal tariff structure, queuing policy, failure to nominate

27 February 2003

This submission is in three parts. Part One addresses the zonal tariff structure in Epic's Proposed Access Arrangement Information. Part Two addresses the queuing policy in Epic's Proposed Access Arrangement Information. Part Three addresses the consequences of the failure by a user to nominate for a gas day.

SUMMARY OF MAJOR POINTS

Zonal tariff structure

1. Western Power supports the Regulator's determination that Compressor Charges be determined on a pass through basis rather than on a zonal basis.

2. Western Power submits that section 8.1 requires that the boundary between Zone 9 and Zone 10 should be placed downstream of CS10, in keeping with the locations of the boundaries between other zones, rather than immediately prior to the Kwinana Junction so that it takes in the Kwinana and Rockingham laterals and forces Kwinana users of the DBNGP to pay for pipeline assets from CS10 to Bunbury.

Queuing policy

3. Western Power submits that Epic's proposed queuing policy should contain restrictions on Epic's power to reject an Access Request and principles by which Epic will be guided in determining whether it will reject an Access Request rather than permitting Epic to reject an Access Request without any reasonable grounds.

Failure to nominate

4. Western Power submits that it is not reasonable for Epic's proposed terms and conditions to contain no default provision for cases of failure to nominate. Epic should be required to include a default nomination provision, either using the "same day previous week" model or some other recognised or reasonable model.

PART ONE: ZONAL TARIFF STRUCTURE

5. Epic proposes a multi-part tariff structure for the DBNGP comprising 5 charges. [1]

Compression Capacity Charge and the Compressor Fuel Charge

6. Epic proposed that the Compression Capacity Charge and the Compressor Fuel Charge (**"Compressor Charges"**) are to be payable by a user for each compressor station located between that user's Delivery Point and Receipt Point. [2]

7. The Regulator noted in his Draft Decision that despite Epic's description of the Compressor Charges:

> *…in actual determination of the Reference Tariff and specification of the Reference Tariff Policy in the proposed Access Arrangement, Epic Energy has determined the Compression Capacity Charge and the Compressor Fuel*

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[1] Pages 9 and 10 of Epic's Amended Proposed Access Arrangement Information.
[2] Pages 9 and 10 of Epic's Amended Proposed Access Arrangement Information.

> *Charge on the basis of the pipeline zones rather than, as stated in the Access Arrangement Information, on the basis of the compressor stations between a User's Receipt Point and Delivery Point.*[3]

8. The Regulator identified that this would have the result that users with Delivery Points in Zone 10 but upstream of CS10 would pay Compressor Charges associated with CS10.

9. The Regulator's view is that the Compressor Charges are avoidable costs in the provision of services to a particular user. The Regulator stated that he would require that the Compressor Charges be determined on a pass through basis rather than on a zonal basis.[4]

10. Western Power fully supports the Regulator's view and the Regulator's determination on the Compressor Charges.

11. Western Power requests that the Regulator inform it if the Regulator is to reconsider his Draft Decision conclusion so that Western Power has an opportunity to make full submissions in support of Compressor Charges being charged on a pass through basis.

12. The following submissions are made on the basis of the Regulator's statement in the Draft Decision that the proposed zonal structure is important only in relation to the determination of the Pipeline Capacity Charge.[5]

Pipeline Capacity Charge

13. Epic proposed a Pipeline Capacity Charge to recover pipeline asset return, pipeline asset depreciation and pipeline maintenance costs.[6]

14. The proposed Pipeline Capacity Charge is payable **for each pipeline zone** between a user's Receipt Point and Delivery Point.

15. Western Power does not disagree with a zonal Pipeline Capacity Charge in principle. Western Power does not disagree with the Regulator's view that a zonal Pipeline Capacity Charge is broadly equitable. [7]

16. However Western Power is very concerned about Epic's proposed placement of the boundary between Zone 9 and Zone 10 immediately prior to the Kwinana Junction so that it takes in the Kwinana and Rockingham laterals. Western Power submits that this boundary should be placed downstream of CS10, in keeping with the locations of the boundaries between other zones.

17. Epic claims in its Proposed Access Arrangement Information it has divided the DBNGP into 10 pricing zones "to achieve cost reflective tariffs".[8]

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[3] Page 237 of Part B of the Draft Decision.
[4] Page 238 of Part B of the Draft Decision.
[5] Page 241 of Part B of the Draft Decision.
[6] Pages 9, 10 and 13 of Epic's Amended Proposed Access Arrangement Information.
[7] Page 240 of Part B of the Draft Decision.
[8] Page 7, Amended Proposed Access Arrangement Information.

18. However as a result of the anomalous placing of the boundary between Zone 9 and Zone 10, the vast bulk of gas transported on the DBNGP is delivered to Zone 10, suggesting that the zoning system is designed to maximize revenue rather than to achieve cost reflective tariffs.

19. This affects Western Power directly because of its interests requiring delivery to the Kwinana Power Station site, Mission Energy and Tiwest on the Kwinana West lateral.

20. Epic's proposed location of the boundary divides Delivery Points which are approximately the same distance from Dampier into different zones. For example, Russell Road which is 1408.2 pipeline kilometres from Dampier is in Zone 9, whereas Tiwest Cogen which is 1407.7 pipeline kilometres from Dampier is in Zone 10.

21. The proposed boundary also results in Zone 10 encompassing Delivery Points ranging from the Kwinana Junction to the end of main line south, approximately 140 pipeline kilometres apart.

22. Surely if the system was supposed to approximate a distance based system, the zone boundary would be drawn so as to group together Delivery Points that are located near each other.

23. Instead, the boundary has been drawn contrary to the natural geographical division between Delivery Points to ensure that the area where the majority of the load on the DBNGP is delivered falls into the most distant and most expensive zone, and incurs the highest Pipeline Capacity Charge.

24. This means that users in the Kwinana Junction will be paying a charge based on the recovery of asset and maintenance costs for the whole of the main line south, despite the fact that they make no use of it and receive no benefit from it.

25. It makes no commercial or economic sense for Kwinana users of the DBNGP to pay for pipeline assets from CS10 to Bunbury. Such an outcome cannot be consistent with section 8.1 or section 2.24.

26. The Regulator states that submissions are somewhat self-contradictory in supporting a distance based tariff for the pipeline section upstream of CS9 while opposing a similar tariff structure in the downstream section of the pipeline.[9]

27. Western Power reiterates that it does not oppose a distance based tariff structure downstream of CS9. It supports a distance based tariff structure downstream of CS9 and submits that that is why the Zone 10 boundary should commence south of CS10, in keeping with other zone boundaries, to ensure that the zones group Delivery Points that are a similar distance from Dampier.

28. Section 8.1 states that a Reference Tariff and Reference Tariff Policy should be designed with a view to achieving the objectives in section 8.1.

[9] Page 239 of Part B of the Draft Decision.

29. Western Power submits that the Regulator should reconsider Epic's proposed boundary between Zone 9 and Zone 10 in light of the interpretation of section 8.1 in the judgment, as set out below.

s 8.1(b) – replicating the outcome of a competitive market

30. The Court found that the precise focus of s 8.1(b) is a competitive market in the field of gas transportation, the objective being to replicate what would be the outcome *if there was* competition for the transportation of gas by the pipeline in question.[10]

31. If there was competition for the transportation of gas by the DBNGP, the tariffs charged would be cost reflective. Epic would not be in the position of a monopoly and would not be able to manipulate charges to obtain excess revenue from users with Delivery Points on the Kwinana lateral by charging them for the assets and maintenance of a section of pipeline they do not use.

s 8.1(d) – not distorting investment decisions in Pipeline transportation systems or in upstream and downstream industries

32. Permitting Epic to manipulate the location of the boundary between Zone 9 and Zone 10 to capture more revenue in the higher-priced Zone 10 will lead to a distortion of investment decisions in downstream industries by:

    (a) sending a pricing signal to persons with possible new gas loads that a location in Kwinana is essentially equivalent to a location in Bunbury in terms of transportation costs;

    (b) encouraging persons with possible new gas loads to locate their operations at sites north of Perth rather than in the appropriate Kwinana strip, in order to ensure they do not use a Delivery Point in Zone 10 and get burdened with the higher, non-cost reflective Pipeline Capacity Charge; and

    (c) encouraging inefficient bypass from an off-take upstream of the artificial boundary between Zone 9 and Zone 10 down to the Kwinana West lateral.

s 8.1(e) – efficiency in the level and structure of the Reference Tariff

33. By s 8.1(e), a Reference Tariff should be designed with a view to achieving the objective of efficiency in both the level and the structure of the Reference Tariff.

34. The Court found that "efficiency", as used in this section, was intended to reflect the theory of economic efficiency.[11] One well recognised dimension of economic efficiency is productive efficiency, which is achieved where individual firms produce the goods and services that they offer to consumers at *least cost*.[12]

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[10] Para 127 of the judgment.
[11] Para 120 of the judgment.
[12] Hilmer Report, para 91 judgment.

35. Economic efficiency is therefore achieved only if service is being offered at a cost-reflective price.

36. As stated, locating the boundary between Zone 9 and Zone 10 north of the Kwinana Junction means that users in the Kwinana junction will be paying a Pipeline Capacity Charge based on the recovery of asset and maintenance costs for the whole of the main line south, despite the fact that they make no use of it and receive no benefit from it.

37. This is not cost-reflective and is contrary to the principle of an economically efficient structure of the reference tariff.

PART TWO: QUEUING POLICY

38. The Court confirmed in the judgment that the Regulator may approve a proposed access arrangement only if it is satisfied that it contains the elements and satisfies the principles set out in sections 3.1 to 3.20.[13]

39. Section 3.12 of the Code provides that an Access Arrangement must include a queuing policy.

40. Under Epic's proposed queuing policy, Access Requests are to have priority determined by the order in which they are received by Epic. An Access Request may be rejected at any stage prior to its acceptance by Epic. If an Access Request is rejected, its priority is lost.[14]

41. Epic's proposed queuing policy does not contain any restrictions on Epic's power to reject Access Requests, or any principles by which Epic will be guided in determining whether it will reject an Access Request.

42. Western Power submits that because of this, Epic's proposed queuing policy fails to comply with sections 3.13(b) and 3.13(c) of the Code as set out below.

43. Epic's proposed queuing policy fails to accommodate the legitimate business interest of a prospective user as required by section 3.13(b).

44. This is because under the queuing policy, every Access Request lodged has uncertain status. A prospective user cannot proceed with any business connected with the Access Request without bearing very high risk, because at any time the access request can be rejected from the queue for no reason and lose its priority. A prospective user will have no way of gauging the likely timeframe of obtaining access to the DBNGP if any Access Request it lodges can be rejected, losing priority.

45. For similar reasons, Epic's proposed queuing policy fails to generate economically efficient outcomes as required by section 3.13(c).

[13] Para 58 of the judgment.
[14] Page 5.

46. This is because the uncertainty of the status of an Access Request will mean that for the entire period in which a prospective user has an Access Request in the queue, it will have to employ resources ensuring that alternative fuel transportation options are available, or that alternative fuels are available, because of the risk that its Access Request will be rejected on Epic's whim.

47. Western Power submits that the queuing policy should include at the minimum:

    (a) a provision that Epic may only reject an Access Request in circumstances where the Access Request is not in the form specified in the Access Guide or where a prospective user has failed to provide further information as requested by Epic[15];

    (b) a provision requiring Epic to notify the prospective user that its Access Request is not in the form specified in the Access Guide and detailing the nature of the non-conformance prior to the Access Request being rejected; and

    (c) a provision requiring Epic to give a prospective user a reasonable opportunity to amend its Access Request to remove the non-conformance prior to the Access Request being rejected.

PART THREE: FAILURE TO NOMINATE

48. Epic proposes that a user must provide a weekly nomination for each day in a week before the nominated week. The user may change their nomination for a particular day in that week by giving Epic notice of the change the day before the nominated day.[16]

49. Epic has not made any provision for circumstances where a user fails to provide nominations for a week or a part of a week. It appears that where a user has failed to provide nominations, no gas at all will be received from or delivered to a user on the DBNGP on the day or days for which no nomination was provided.[17]

50. A user might fail to provide nominations for a range of reasons, including because of a defect in the communications technology being used to provide nominations or because of an oversight by the person responsible for providing it.

51. In these circumstances, a user's requirements will not usually be zero.

52. Access Contract Terms and Conditions for other gas pipelines tend to contain a provision for a default nomination.

53. One common default nomination provision is that the nomination for the same day of the week in the previous week will apply.

[15] As contemplated in paragraph 5.2(c) on page 5 of Epic's proposed Access Arrangement.
[16] Page 14 of Epic's Proposed Access Contract Terms and Conditions.
[17] Page 14 of Epic's Proposed Access Contract Terms and Conditions.

54. Section 3.6 of the Code provides that terms and conditions of supply under an Access Arrangement must be reasonable in the Regulator's opinion.

55. If there is any risk of Epic's proposed terms and conditions resulting in a shipper being deemed to have a zero nomination (or if having no nomination produces the same result as a zero nomination), then shippers are at risk of incurring very substantial imbalance or overrun charges. This is unreasonable and uncommercial and offers Epic the prospect of windfall gains. It is clearly not consistent with an appropriate balancing of the section 2.24 factors.

56. Western Power submits that it is not reasonable for the terms and conditions to contain no default provision for cases of failure to nominate. Western Power requests the Regulator to require Epic to include a default nomination provision in its terms and conditions, either using the "same day previous week" model or some other recognised or reasonable model.