Mr Peter Rixson
Economic Regulation Authority
Level 6 Governor Stirling Tower
197 St Georges Terrace
Perth WA 6000

May 14 2004

Dear Mr Rixson,

Re: Economic Regulation Authority Invitation For Public Submissions Proposed Revisions To Access Arrangement For The Mid-West And South-West Gas Distribution Systems.

Western Power as a retailer and shipper of gas submit the following comments for your consideration. We will be happy to meet with you to further discuss any of the comments made.

Revised Access Arrangement Terms and Conditions

Alinta in their proposed Revised Access Arrangement (RAA) package, has gone to great length to argue what it perceives to be the role of a regulator, citing amongst other things the importance of "workable competition". Western Power contends that in the course of arriving at "workable competition" there is also a requirement to evaluate the reasonableness of their proposed terms and conditions. To achieve this we must fully understand the risks embedded within those term and conditions. It is apparent and not unexpected, that the RAA has attempted to pass embedded risk on to parties further along the value chain. In some instances, it appears that the RAA is attempting to avoid retaining those risks that are commonly associated with the operation of a gas network business.

Alinta's proposed RAA, although containing many terms and conditions, has in many instances failed to demonstrate in detail how the RAA will impact upon Alinta's standard haulage contract. For example, the RAA's Part C clause 3 says that the Haulage Contract may specify other terms and conditions.

3. The Haulage Contract may specify other terms and conditions upon which AGN makes the Reference Service available to the User in addition to those set out in this Part C and the specific terms and conditions applicable to individual Reference Services as described in Part C, Schedules 1 - 4 (as applicable).

It is most important that customers and retailers are aware of the exact contents of the standard haulage contract, given that this document finally determines service levels and terms and conditions for customers and retailers. It is equally important to ensure consistency of interpretation between the RAA and the standard haulage contract, ensuring that nothing is left to chance or whim.

It might be argued that a standard haulage contract is a minimum commercial agreement that may be freely negotiated and improved upon to meet the needs of the parties. Although this statement may be true, it is Western Power's deep concern that once the RAA has been approved, Alinta will not, or at least strongly resist entering into to meaningful negotiations that result in reasonable changes to terms or conditions.

In Western Power's opinion, the RAA contains many objectionable conditions. For example, Alinta appears to seek indemnity for its own actions, such as avoiding any compensation for damage it might cause during the installation of gas meters or User Specific Delivery Facilities. With respect to "opening up the ground", we question the RAA's use of loosely binding words like "restore it to approximately". These sorts of responsibilities to repair or reinstate clearly belong to Alinta, and as such the RAA should not be ambiguous or attempt to remove Alinta from being held to account. Further, any repair or reinstatement should be permanent in nature and where repair or reinstatement works have failed over time, Alinta should continue to be held to account.

Many more examples of potential inequity, and uncertainty exist within the RAA and for that reason, the terms and conditions as they are transposed from the RAA to Alinta's standard haulage contract, must be thoroughly examined and the resulting inequities and uncertainties disposed.

Entitlement To firm Capacity On Interconnected Pipeline.

Western Power believes this activity is more to do with transmission pipelines, an area outside the jurisdiction of Alinta and as such we question why these sets of conditions are contained in the RAA.

With respect to Alinta requesting detailed evidence of pipeline capacity, Users are not necessarily empowered to compel Shippers to divulge what may be "confidential information."

Alinta's raising of this issue by including it in the RAA, prompts us to provide the following comments. We believe this requirement will contribute to reinforcing a "barrier to entry" for retailers, and hamper competition by acting as a limitation upon customers attempting to exercise their right to choose their gas retailer. This arises because the proposed RAA require retailers to have firm capacity arrangements as a prerequisite to gaining access to the network. Under current conditions, existing customers are forced to utilise pipeline capacity reserved by their present retailer. However, should a customer wish to exercise their right to choose a new retailer this capacity proves not to be portable, instead remaining with the current retailer. This particular situation, which is the opposite of that applying to electricity networks, favours the incumbent gas retailer, who has the bulk of capacity either utilised or perhaps even warehoused for future use. It has become apparent that this situation will hinder the development of an efficient gas market, as it promotes the behaviour of pipeline capacity warehousing, rather than the dynamic use of a limited infrastructure asset. Western Power seeks regulatory relief in order to overcome this barrier.

Reference Tariffs

Schedule 1. Reference Tariff A1 Cl, (4).

It is not clear what the financial impact of pro-rating the user specific charge across a lesser period, which is less than one year will be.

"(4) The User specific charge may be pro-rated across a lesser period than a Year for invoicing purposes."

Schedule's 2, 3, 4. Reference Tariff's A2, B1, B2.

Western Power is of the opinion that these conditions are too vague. Particularly when attempting to understand what constitutes gas flow through a customer meter. It appears the application of this condition has the potential to discriminate between interval metered and basic metered customers, even though they conduct a similar line of business. We suggest that if this condition remains intact, then if Alinta has specific information about a customer's days of operation history, then it must be provided to retailers at the outset, together with other user specific data. Users and customers should not be penalised via an end of year reconciliation, particularly where information is provided in good faith. In contrast, we would like to know what recompense exists for a customer that has been deemed incorrectly over a period of time as being a 5-day operation, when they actually operate as a 7-day customer?

"(4) Both of the usage charge and the User specific charge may be pro-rated across a lesser period than a Year for invoicing purposes, and if so in relation to the usage charge, usage may be averaged across that lesser period for the purposes of applying the thresholds in clause (3)(b) of this Schedule 2.

(5) A User must at the commencement of a Haulage Contract elect whether the pro-rating under clause (4) of this Schedule 2 of the usage charge is to be based on 5, 6 or 7 days of Gas flow per week, and the Haulage Contract may specify the basis of the pro-rating and any necessary end-of-Year reconciliations."

With respect to a customer moving between tariffs, it is not clear to us the process for movement upward or downward as a customer's consumption increases or decreases. Ostensibly though, it appears that when consumption reduces to the extent that another tariff may be more suitable, the high fixed costs relating to the original tariff remain. This would obviously harm a customer whose business was already suffering financial difficulties or be a disincentive to those customers choosing to employ more efficient plant. Further, customers and retailers should not remain responsible for ongoing delivery point costs when a customer ceases to take, or reduces their gas consumption, by for example, the moving of premises, closure of the business or choosing another retailer. At the very least there should be an allowance for a range of circumstances, that should they occur, then customers and retailers are released from any obligation to pay any ongoing delivery point costs.

We are of the opinion that the introduction of an Overrun Service and Overrun Charge to be inappropriate. It appears that this issue is primarily an asset and capacity issue, which rather than be managed by introduction of a penalty, should be managed by the

application of an appropriate curtailment policy. In any event, when customers exceed their Contracted Peak Rate they usually do so whilst remaining within the capacity of their current metering equipment, for which the customer pays the full value. The customer also pays a standing charge and a demand charge, which we understand covers the cost of Alinta's fixed assets. For these reasons we are of the opinion that the adoption of an Overrun Service and Charges appears equivalent to "double dipping." To avoid doubt, the concept of overrun requires further investigation to assess both appropriateness and financial implications.

We trust that our comments are found to be useful, and look forward to assisting the ERA further should the opportunity arise.

As a final comment we appreciate the need for expediency and acknowledge time is an important factor for the ERA. However, because it is intended that this Revised Access Arrangement is to be in place until 2010, all market participants and the ERA should continue to be provided adequate opportunity to thoroughly examine all aspects of the proposed Arrangement, including its associated standard haulage contract.

Yours sincerely

Mark Nielsen
Gas Market Development Manager