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**Western Power**

26 May 2005

Economic Regulation Authority  
Level 6 Governor Stirling Tower  
197 St Georges Terrace  
PERTH WA 6000

**ATTENTION: MR RUSSELL DUMAS**

**BY E-MAIL & BY COURIER**

Dear Russell,

**FIRST SUBMISSION ON DRAFT DECISION**

Western Power Corporation ("WPC") appreciates the opportunity to comment on the Authority's Draft Decision of 11 May 2005 ("**Draft Decision**") on the Operator's Proposed Revisions to the Access Arrangement for the DBNGP ("**PRAA**"). This submission supplements WPC's First Submission of 14 March 2005 and Second Submission of 13 April 2005 on the PRAA. In general, the comments address matters in the order they are addressed in the Draft Decision.

**SERVICES POLICY**

**1. Reference Services**

**1.1** WPC welcomes and supports the Authority's decision:

- (a) rejecting the proposed Tf Reference Service;
- (b) approving a T1 Reference Service; and
- (c) requiring the inclusion of Part Haul and Back Haul Reference Services.

**2. Non-Reference Services**

- 2.1** The last sentence of paragraph 88 of the Draft Decision states that "*There is nothing in the Code that requires a Service Provider to negotiate to provide a Service other than the Services described in the Services Policy*".

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- 2.2 WPC agrees with this statement. In fact, WPC notes in this respect that the Gas Code does not "require" the Service Provider to negotiate at all – any "requirement" to negotiate is merely a practical outworking of the Arbitrator's ability to arbitrate an access dispute if negotiations fail.
- 2.3 However, WPC is concerned that either or both of:
- (a) this statement; and
  - (b) the words "prepared to negotiate" in clause 6.1(b)(iv) of the PRAA,
- might have the effect under section 6.18(a) of the Gas Code of limiting the Arbitrator's ability to arbitrate an access dispute in relation to a Service other than those Services in the Services Policy. WPC does not think this is the intent or effect of the Gas Code<sup>1</sup>.
- 2.4 WPC therefore requests that the Authority, if it continues to not be persuaded by WPC's submissions in paragraphs 428 & 429 of the First Submission to:
- (a) make a statement in its Final Decision which clearly confirms that the Arbitrator can (if the other Gas Code requirements are met) arbitrate Services which are not mentioned in the Services Policy; and
  - (b) more importantly, require the inclusion of a statement in the PRAA that the definition of Non-Reference Services does not limit the Arbitrator's powers in respect of any other Services.

## REFERENCE TARIFF AND REFERENCE TARIFF POLICY

### 3. General Tariff Matters

- 3.1 WPC notes that the Draft Decision makes no reference to either the DUET PDS or Schedule 9 of the Standard Shipper Contract ("SSC").
- 3.2 As noted in paragraph 57 of its First Submission and throughout its Second Submission, WPC believes that Schedule 9 and the DUET PDS provide a valuable comparison tool for assessing the tariff inputs proposed by the Operator in the PRAA.
- 3.3 WPC considers that Schedule 9 and the DUET PDS are particularly relevant to the Authority's consideration of matters including:
- (a) tariff path;
  - (b) forecast New Facilities Investment;

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<sup>1</sup> WPC submits that the Services that can be negotiated and (failing agreement) arbitrated are not limited to only those Services referred to in the Services Policy. In support of this view, WPC notes that:

- "Service" is defined very broadly in section 10.8 of the Gas Code with no limitation by reference to those Services specified in the Services Policy;
- sections 5 and 6 of the Gas Code both use the term Service without limiting its broad definition;
- in section 3 of the Gas Code, the Services Policy is treated as containing only a subset of the Services (as evidenced by the use of "one or more Services" rather than "all Services" in section 3.2(a) of the Gas Code); and
- section 2.50 of the Gas Code confirms that nothing (except for the Queuing Policy) in an Access Arrangement including the description of Services in a Services Policy limits:
  - (i) the Services a Service Provider can agree to provide;
  - (ii) the Services which can be the subject of a dispute under section 6;
  - (iii) the terms and conditions a Service Provider can agree; or
  - (iv) the terms and conditions which can be the subject of a dispute under section 6.

- (c) recurrent Non-Capital Costs (e.g. related-party costs, equity raising costs, etc.);
  - (d) non-recurrent Non-Capital Costs (e.g. fuel and system-use gas, liquidated damages insurance, etc.); and
  - (e) volume forecasts.
- 3.4 WPC understands that the Authority is currently awaiting further information from the Operator on forecast New Facilities Investment and Non-Capital Costs. WPC asks the Authority to take into account Schedule 9 and the DUET PDS when assessing any new information provided by the Operator, particularly:
- (a) by considering whether specific line items proposed by the Operator materially differ from equivalent line items in Schedule 9 or the DUET PDS; and
  - (b) where they do, by considering whether the Operator has justified this difference<sup>2</sup>.
- 3.5 WPC also respectfully requests the Authority to indicate in its Final Decision where Schedule 9 of the SSC or the DUET PDS have been considered.
- 4. Capital Costs of expansion**
- 4.1 Paragraph 156 of the Draft Decision states that the Operator has not provided public<sup>3</sup> information to justify the capital expenditure relating to expansions of pipeline capacity.
- 4.2 WPC asks that the Authority require the Operator to make available details of the unit quantities for looping and compression, and the corresponding increases in the capacity to provide References Services.
- 5. New Facilities Investment and Section 8.16 of Gas Code**
- 5.1 WPC does not agree with the conclusion in paragraph 173 of the Draft Decision that *"with an investment of the scale envisaged by [the Operator] in expansion of the pipeline, there is a substantial incentive for the Service Provider to seek efficiency in the nature of the works undertaken for the expansion of Capacity, and in the costs incurred in undertaking the works"*.
- 5.2 If this were the case, a great deal of regulatory oversight would be unnecessary.
- 5.3 WPC submits that the contrary is the case. For "forecast" expansion costs, there is no incentive for the Operator to forecast low. In fact, the Operator has an incentive to inflate or overestimate forecast expansion costs because if the relevant regulator accepts the forecast:
- (a) the resulting tariff will be higher during the Access Arrangement period;

<sup>2</sup> WPC recognises that there may be valid reasons why forecasts have changed in the intervening period, but submits that in the absence of the Operator demonstrating such reasons the Authority should be sceptical about unsubstantiated increases in forecast tariff inputs.

<sup>3</sup> WPC submits that it would be contrary to the intention and effect of the Gas Code for the whole of this information to be submitted on a confidential basis. Interested parties such as Western Power have a substantial interest in assessing these forecasts and making submissions regarding them.

- (b) the accepted forecast will set a benchmark for subsequent reviews of actual expenditure in the context of section 8.16(a) of the Gas Code; and
    - (c) if the Operator's actual expansion costs are lower than the inflated forecast costs, the Operator may argue that it should receive the benefit of any "efficiency" gain under an efficiency incentive mechanism.
  - 5.4 This is exacerbated by the fact that the Gas Code is unclear on how, or indeed whether, over-recovery due to overestimated forecast New Facilities Investment is to be recovered at the next Access Arrangement reset.
  - 5.5 Furthermore, paragraph 179 of the Draft Decision could be read as implying that any level of New Facilities Investment will comply with section 8.16 of the Gas Code on the basis that it is in the public interest to expand the pipeline. WPC does not agree. The public interest is clearly not served by an expansion conducted in an inefficient manner without achieving lowest sustainable cost in accordance with accepted good industry practice. Public interest also requires efficient gas transportation prices which replicate the outcomes of a competitive market.
  - 6. Non-Capital Costs – Recurrent Costs**
  - 6.1 Paragraphs 219 to 226 of the Draft Decision do not address some important issues. WPC refers to its submissions at paragraphs 70-72 and 76 of its First Submission and paragraphs 46-58 of its Second Submission.
  - 6.2 In its submissions, WPC asked the Authority to scrutinise all arrangements between the Operator and ANS to make sure they are on commercial terms and not being used to shift value out of the DBNGP or otherwise artificially inflate tariffs. In this regard, WPC notes that the table in paragraph 226 of the Draft Decision includes references to:
    - (a) a \$2,058,000 "ANS management fee"; and
    - (b) an additional \$11,620,000 of "inter-company expenses".
  - 6.3 WPC notes that the Authority has reserved its decision in relation to Non-Capital Costs subject to further information being provided by the Operator. WPC anticipates that it will have an opportunity to make submissions on any such information, and accordingly does not comment here on paragraph 238 of the Draft Decision which might be read as suggesting that the Authority has accepted that certain recurrent cost items comply with the requirements of the Gas Code.
  - 6.4 WPC refers the Authority to the submissions in WPC's First Submission and Second Submission in relation to the above issues, and asks that the Authority take these into account when considering any new information provided by the Operator on Non-Capital Costs.
- Equity raising costs*
- 6.5 Specifically, WPC notes that the Operator has not demonstrated how equity raising costs will actually be incurred other than by referring to levels of equity raising costs accepted in Access Arrangements for other pipelines.

**7. Non-Capital Costs – Non-Recurrent Costs**

- 7.1 The Draft Decision also does not address some important issues regarding forecast non-recurrent Non-Capital Costs. WPC refers to its submissions at paragraphs 73-76 of its First Submission and paragraphs 46-58 of its Second Submission.
- 7.2 WPC understands that the Authority is waiting for the Operator to provide details of forecasts for non-recurrent costs (paragraph 259 of the Draft Decision).
- 7.3 Specifically, in regard to fuel costs, WPC refers to its submissions at paragraphs 73 to 75 of its First Submission and paragraphs 49 to 51 of its Second Submission, and asks the Authority after it has received further information to consider, in particular:
- (a) whether the proposed increase in fuel costs is justified (in comparison to Schedule 9 of the SSC);
  - (b) whether fuel costs have been estimated on an arm's length basis, given that Alinta Sales (who is providing the fuel gas) is a related entity of the Operator, and given that the volumes in paragraph 227 of the Draft Decision appear to be incorrect<sup>4</sup>; and
  - (c) whether the Operator has properly estimated fuel gas usage consistently with the capacity expansion program and volume throughput forecasts.
- 7.4 WPC anticipates that it will have an opportunity to make submissions on further information provided by the Operator, and accordingly does not comment here on paragraph 260 of the Draft Decision which might be read as suggesting that the Authority has accepted that certain non-recurrent cost items comply with the requirements of the Gas Code.

*Liquidated damages insurance*

- 7.5 Specifically, WPC refers to its submission at paragraph 58 of its Second Submission regarding liquidated damages insurance and reiterates that liquidated damages insurance:
- (a) is a Capital Cost incurred (if incurred at all) directly as a consequence of an expansion rather than in delivery of services; and
  - (b) appears to be a requirement of prior contracts (which would make it a Non-Reference Service) rather than a cost incurred in the delivery of the Reference Service (section 8.36 of the Gas Code),

and therefore should be proposed as part of New Facilities Investment rather than as a Non-Capital Cost (and assessed accordingly by the Authority under section 8.16 of the Gas Code).

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<sup>4</sup> The figures for forecast fuel and system use gas in paragraph 227 imply system use gas being 11% of total gas transported (see paragraph 229) and less than \$1/GJ as a gas purchase cost.

## **8. Part Haul Costs**

- 8.1 Paragraph 307 of the Draft Decision notes that the Operator has allocated costs for fuel gas for the provision of Part Haul services on the basis that the DBNGP has been constructed and expanded to meet the needs of users of Full Haul services<sup>5</sup>.
- 8.2 Now that WPC is aware how the Part Haul costs were allocated, it can confirm it strongly disagrees with the Operator's assertion that marginal cost allocation is appropriate for Part Haul costs, and the reason the Operator gives for this treatment. WPC supports the Authority's approach to Part Haul tariffs in the Draft Decision.

## **9. Mainline South Expansions**

- 9.1 WPC refers to its submissions at paragraphs 35 and 36 of the Second Submission regarding the capital costs of expansion south of CS10 which should not be recovered from all shippers, but only from those shippers located downstream of CS10. WPC believes this may be material in view of the proposed expansion program south of CS10. WPC observes that the use of postage-stamp pricing for shippers south of CS9 (and not only for expansions) involves a cross-subsidy from users of the Kwinana-West lateral to users south of CS10.

## **10. Rebates of Non-Reference Services & Penalties**

- 10.1 In paragraphs 85 to 87 of its First Submission, and throughout its Second Submission, WPC notes its concern that the Operator has deleted the rebate mechanism in section 9 of the current Access Arrangement without providing any reasons why<sup>6</sup>.
- 10.2 Paragraphs 327 & 328 of the Draft Decision state (in effect) that due to current capacity constraints in the DBNGP, the Authority approves the deletion of the rebate mechanism on the basis that:
- (a) there should be an incentive for the Operator to offer services that facilitate efficient use of capacity (and a related public benefit)<sup>7</sup>; and
  - (b) the Operator is unlikely to be able to provide Non-Reference Services to an extent that the Operator could substantially over-recover costs<sup>8</sup>.
- 10.3 In response to the issues in paragraph 10.2(a) above, WPC submits that:
- (a) there will clearly be demand for Non-Reference Services (particularly the Spot Capacity Service ("Spot"))<sup>9</sup>;
  - (b) given that most users will seek Spot to top up their capacity requirements, in times of constraint the Spot price (which is determined by auction) is likely to

<sup>5</sup> WPC notes that the tariff model posted by the Authority does not appear to include these costs in the calculation of cost of service.

<sup>6</sup> This letter only discusses why an (appropriately drafted) rebate mechanism is necessary, and should not be taken as supporting the reinstatement of the rebate mechanism in section 9 of the current Access Arrangement. WPC notes that paragraph 377 of the Draft Decision incorrectly states that no submissions have indicated concern with the Operator's proposed section 7.14 of the PRAA. Section 7.14 effectively replaces the former rebate mechanism in section 9 with a much narrower obligation to rebate maintenance changes. As noted in paragraph 10.1 above, WPC has consistently raised concerns that the Operator's treatment of rebates in general (including the proposal to replace section 9 with section 7.14) is inappropriate.

<sup>7</sup> See paragraph 327 of the Draft Decision.

<sup>8</sup> See paragraph 327 of the Draft Decision.

<sup>9</sup> There is already an incentive for the Operator to offer Non-Reference Services during times of Capacity constraint as these Non-Reference Services (particularly Spot) become more important to Users in meeting their Capacity requirements.

be driven upwards, potentially resulting in windfall gains to the Operator, unless otherwise apportioned<sup>10</sup>; and

- (c) while WPC agrees with the Authority that there should be an incentive for the Operator to provide Non-Reference Services, it does not agree with the Authority's implicit conclusion that the only way to do this is to allocate 100% of the revenue from sales of those services to the Operator.

10.4 In response to the ground set out at paragraph 10.2(b) above, WPC points out that, even in the Operator's own estimations, revenue attributable to Non-Reference Services (particularly Spot) is likely to be material. According to part 10.2.7 of the DUET PDS the Operator has estimated around \$20m of Spot revenue in its acquisition model<sup>11</sup>. There has not been any public submission by the Operator which conflicts with this forecast. Further, WPC notes that none or a very small amount of the revenue from these Non-Reference Services will be necessary for the Operator to recover the costs of providing the Services, because the majority of these costs will have been recovered under the Reference Tariff.

10.5 In connection with this, WPC considers that because:

- (a) Spot revenues are likely to be material; and
- (b) Spot cannot be a Reference Service (because it is impossible to determine a Reference Tariff, as recognised by the Authority in paragraph 71 of the Draft Decision)<sup>12</sup>,

Spot should be a Rebutable Service<sup>13</sup>.

10.6 WPC's main concern is that the Operator has still not justified why there should be no rebate mechanism for revenue generated from:

- (a) Non-Reference Services; and
- (b) penalties.

10.7 A further concern is the costs associated with Non-Reference Services, and in particular Spot. Spot is capacity over and above contracted capacity that is available only some of the time. Based upon the DUET PDS, Spot throughput is 26TJ/day,

<sup>10</sup> WPC understands that the Authority does not think that Spot prices will be excessive, on the basis that users will be able to "bypass" the Spot market and agree to bilateral off-market trades. Observations of recent spot market clearing prices contradict this assertion. WPC believes that the Authority's proposed model is much less efficient than a single, fair spot market, and is not the intent of the Spot market referred to in clause 3.5 of the SSC, which envisages a single market to allocate uncontracted (rather than contracted but unused) capacity. The bilateral trading is used for firm contracted but unused capacity which cannot be used by the user on a short term basis, which is quite different from the Spot market.

<sup>11</sup> 10.2.7 of the DUET PDS suggests that an average of 26TJ/d of Spot Gas will be sold into the Spot Gas Market at an average price of \$2.09/GJ, which implies some \$20m per annum of spot market revenue is expected. See 3.1.4 of Appendix 3 of WPC's Second Submission.

<sup>12</sup> Specifically, based upon the reasoning set out by the Authority in paragraph 71 of the Draft Decision, the Spot service is such a significant service that it should have been considered as a Reference Service but for the uncertainty. WPC is of the view that the Spot service is at present sought by a significant part of the market and that this will continue to be the case even after expansion. WPC contends that the concept of Rebutable Services (see next footnote for definition) was included in the Gas Code specifically in order to address a situation where "uncertainty regarding expected future revenue" is a barrier to designating a service as a Reference Service.

<sup>13</sup> As noted in paragraph 300 of the Draft Decision, under section 10.8 of the Gas Code a Rebutable Service is a Service where:

- (a) there is a substantial uncertainty regarding expected future revenue from sales of the Service due to the nature of the Service and/or the market for that Service; and
- (b) the nature of the Service and the market for the Service is substantially different to any Reference Service and the market for that Reference Service.

compared to existing Reference Service Capacity of 550TJ/day. The Operator has not allocated any costs to Non-Reference Services. Accordingly the Operator is recovering the portion of costs attributable to the Non-Reference Services through the Reference Tariff. This will be inconsistent with section 8.38 of the Gas Code unless Spot revenue is rebated to Reference Service users.

- 10.8 Under the current Access Arrangement the Operator is obliged to rebate to Rebate Sharing Shippers:
- (a) 95% of penalty revenue; and
  - (b) 45% of revenue from some Non-Reference Services (namely Seasonal Service, Park and Loan Service, Secondary Market (i.e. Spot) and any other Service nominated by the Operator),

and WPC is concerned that the proposed change (which will effectively apportion 100% of revenue from Non-Reference Services and penalties to the Operator) will give rise to inappropriate incentives and inappropriately high windfall gains for the Operator.

- 10.9 Accordingly, WPC submits that:

- (a) provisions for the rebate of revenue are necessary if the PRAA is to meet the objective set out in section 8.40(b) of the Gas Code;
- (b) revenue from all Non-Reference Services (particularly Spot) should be rebatable (45% to users and 55% to the Operator); and
- (c) revenue from penalties should be 95% rebatable.

If the Authority does not agree with this submission, then a portion of those costs currently allocated to Reference Services should be re-allocated to Non-Reference Services.

- 10.10 A possible mechanism to mitigate the administrative burden to the Operator of having a rebate scheme (if the Authority's forecast of demand for these services does prove to be correct) is for the Access Arrangement to include a materiality threshold whereby the Operator only becomes obliged to rebate an appropriate portion of Non-Reference Service and penalty revenues to users if these revenues exceed a certain level.

## **11. Third Fixed Principle**

- 11.1 At paragraph 373 of the Draft Decision, the Authority adopts the view that the third fixed principle (set out in section 7.13(a)(iii) of the PRAA, which appears to be attempting to exclude the contracted "tariff hump" from calculations of the Reference Tariff) is consistent with the Gas Code.
- 11.2 WPC raised a number of concerns in paragraphs 95-104 of its First Submission in relation to the third fixed principle<sup>14</sup>.

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<sup>14</sup> I.e. that:

- (a) it is poorly drafted and unclear;
- (b) it does not take into account revenue earned by way of penalties and surcharges;
- (c) as drafted it is likely to produce unpredictable results (which could be materially adverse to a number of users including WPC);



- 11.3 To illustrate its concerns, WPC has annotated an extract of section 7.13(a)(iii) in the **Schedule** to this letter. The extract demonstrates that there are a number of significant issues that arise from the current drafting of this fixed principle which in WPC's view are such that the Authority should not approve the third fixed principle in its current form.<sup>15</sup>
- 11.4 WPC reiterates that it agrees in principle with the third fixed principle and will support it if suitably re-drafted.
- 12. Fixed period**
- 12.1 In paragraph 106 of its First Submission, WPC notes that the Operator has not provided any justification as to why the fixed principles apply for a Fixed Period which ends on 31 December 2031. The Draft Decision appears to be silent on this issue.
- 12.2 WPC asks the Authority to seek an explanation from the Operator as to why it considers a Fixed Period of this length to be necessary, and to make consequential changes if the Authority considers the Operator's justification unsatisfactory.
- 13. Capacity forecasts**
- 13.1 Paragraph 478 of the Draft Decision states that no parties have raised concerns with respect to the information forecasts of contracted capacity provided by the Operator.
- 13.2 WPC does not have enough information to determine whether or not it agrees with the Operator's capacity forecasts,<sup>16</sup> but it is concerned to ensure that the forecasts are appropriate and consistent with the Gas Code.
- 13.3 WPC submits that capacity forecasts are necessary for the Authority to be able:
- (a) to examine how Wesfarmers LPG, Alcoa and Tx capacity has been treated; and
  - (b) to ensure New Facilities Investment ties in with capacity increases and increased volume forecasts.

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- (d) as drafted it appears to make shippers who contracted in late 2004 based on the SSC, underwriters of the Operator's volume and recovery risks (which was never part of the 2004 contractual agreements and should not be a part of this Access Arrangement); and
  - (e) it appears to excessively fetter future Regulators (e.g. in relation to ring-fencing decisions under section 4 of the Gas Code).

<sup>15</sup> WPC notes that this is not intended to be an exhaustive analysis of the deficiencies of the third fixed principle.

<sup>16</sup> WPC has previously requested further information in relation to capacity forecasts:

- (a) on 14 February 2005 in a letter to the Authority, WPC requested that the Operator provide further information regarding capacity and throughput;
- (b) in paragraph 48 of its First Submission (see footnote), WPC noted that deficiencies in information had hindered its ability to prepare adequate submissions in relation to volume forecasts;
- (c) on 16 March 2005 in a letter to the Authority, WPC stated that there was insufficient information in respect of volume forecasts and requested that further information be provided by the Operator (page 3); and
- (d) in paragraphs 66 to 70 of its Second Submission, WPC stated that there was insufficient information to assess the accuracy and implications of the forecasts. WPC recommended that additional independent analysis of the forecasts should be undertaken, particularly of the forecasts of contracted capacity.

## **TERMS AND CONDITIONS**

### **14. T1 Terms and Conditions**

- 14.1 WPC welcomes and supports the Authority's Draft Decision that the Reference Service terms and conditions be substantially the same as the terms and conditions set out in the SSC for T1 (with some exceptions).
- 14.2 There is now a further practical step of converting the T1 terms and conditions in the SSC into terms and conditions which are suitable for inclusion in the Access Arrangement as Reference Service terms and conditions.
- 14.3 As currently drafted, the SSC includes provisions which, due to other aspects of the Draft Decision, are unsuitable for inclusion in the Access Arrangement as Reference Service terms and conditions, including (for example) the gas quality provisions and the tariff hump in clause 20.5 of the SSC.

## **QUEUING POLICY**

### **15. Access requests**

- 15.1 WPC acknowledges Amendment 22 in the Draft Decision. WPC considers the applications procedure to be very important and looks forward to reviewing the Information Package.

### **16. Queuing Policy**

- 16.1 WPC agrees with the changes proposed in paragraphs 457 to 460 of the Draft Decision relating to sub-section 5.4(f) of the PRAA.
- 16.2 However, WPC refers the Authority to the submissions at paragraph 410 of its First Submission regarding other sub-sections of section 5.4 of the PRAA.

## **EXTENSIONS/EXPANSIONS POLICY**

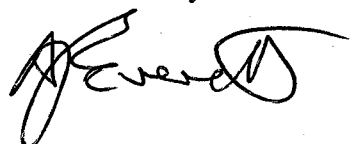
- 16.3 WPC refers to its submissions at paragraph 440 of the First Submission.

## **FURTHER INFORMATION**

- 16.4 WPC notes that the Operator has still not provided compliant Access Arrangement Information as required under section 2.6 of the Gas Code.
- 16.5 The Draft Decision refers in a number of places to the Operator making new information available to the Authority. WPC requests that any new information to be provided to WPC and other interested parties is made available in time to allow submissions to be made in good order before the Final Decision.

Should you have any questions, we would be happy to discuss these with you.

Yours sincerely



PP/ **BARRIE BRANDT**  
**MANAGER COMMERCIAL**  
**GENERATION**

### Schedule: Suggested Changes to Section 7.13 of the PRAA

#### 7.13 Reference Tariff Principles Not Subject to Review

- (a) The following are Fixed Principles in accordance with section 8.47 of the Code:
- (i) [omitted];
  - (ii) [omitted]; and
  - (iii) the revenue<sup>17</sup> earned by Operator during the period commencing on 1 July 2005 and ending on 31 December 2015 from the sale of any Services<sup>18</sup> which is in excess of the amount (in net present value terms) equal to the sum of:
    - (A) the revenue that would have been earned<sup>19</sup> had any of those Services which were Full Haul Services<sup>20</sup> been sold at the Reference Tariff<sup>21</sup>; and
    - (B) the revenue actually earned from the sale of those Services which were Services other than Full Haul Services<sup>22</sup>;must not:
    - (C) be taken into account directly or indirectly<sup>23</sup> for the purposes of setting a Reference Tariff or determining or applying the Reference Tariff Policy which applies on or after 1 January 2011; or
    - (D) otherwise be taken into account directly or indirectly by the Relevant Regulator in performing any of its functions under the Code.<sup>24</sup>
- (b) For the purposes of the Fixed Principles referred to in section 7.13 of this Access Arrangement, the Fixed Period is until 31 December 2031<sup>25</sup>.

<sup>17</sup>What is "revenue" meant to include? It could be interpreted broadly to include revenue from penalties or surcharges, etc.

<sup>18</sup>Does the use of the word "any" mean that the "tariff hump" contained in Schedule 9 extend to all services (i.e. not just Full Haul)? WPC considers that the "tariff hump" should only apply to the sale of Full Haul Firm Services.

<sup>19</sup>"would have been earned" implies a set throughput forecast, which does not allow for contingencies such as force majeure events, interruptions or insolvencies of shippers.

<sup>20</sup>What about interruptible Full Haul services like Spot? Should this read Full Haul Firm Services?

<sup>21</sup>What is the appropriate Reference Tariff? What about Services which do not have an equivalent reference service tariff (eg. the Tx service in WPC's Shipper Contract, which is sold at a premium).

<sup>22</sup>If the opening paragraph was limited to Full Haul Firm Services, then paragraph (B) is not necessary?

<sup>23</sup>Is the reference to "directly or indirectly" necessary? Surely the only issue is whether the "tariff hump" is taken into account or not?

<sup>24</sup>Paragraph (D) is too broad, and if implemented could fetter the discretion of future Regulators to take the tariff hump into account when performing any function, including for example ring-fencing arrangements under section 4 of the Gas Code, up to 2031.

<sup>25</sup>How does this reconcile with the end date of 31 December 2015 in section 7.13(a)(iii) of the PRAA?