
SUBMISSIONS IN RESPONSE TO THE DRAFT DECISION: PART B

Terms used in this submission that are defined in the Access Arrangement or the Template Haulage Contract (Reference Documents) have the meaning given to them in the Reference Documents unless the contrary is expressed. A reference in this response to the term the “national gas objective” has the meaning that term has in the National Gas Access Law and includes a reference to the Efficient Services Concept (as defined below in the commentary in relation to Required Amendment 2)

<p>Required Amendment 1</p> <p>The proposed access arrangement should be amended to include descriptions of the following ancillary services as Pipeline Services (collectively ancillary services):</p> <ul style="list-style-type: none"> a) deregistration service for Services A1, A2, B1, B2 and B3; b) apply meter lock service for Services B2 and B3; c) remove meter lock service for Services B2 and B3; d) disconnection service for Services B2 and B3; and e) reconnection service for Services B2 and B3. <p>The proposed access arrangement should be amended to specify the ancillary services as Reference Services.</p>	<p>WA Gas Networks Pty Ltd (WAGN) has elected to adopt the suggestion of the ERA referred to in Required Amendment 1.</p>	<p>The Access Arrangement and Template Haulage Contract have been amended as described in the amended Access Arrangement and the amended Template Haulage Contract to include the Pipeline Services referred to in Amendment 1 of the Draft Decision on WA Gas Networks Revisions Proposal for the Access Arrangement for the Mid-West and South-West Gas Distribution Systems dated 17 August 2010 (Draft Decision) as Reference Services.</p>
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<p>Required Amendment 2</p> <p>Clause 5.2 of the proposed access arrangement should be deleted and replaced with the following clause 5.2:</p> <p>5.2 Application information</p> <p>An application for access to a pipeline service must be in writing and must:</p> <p>a) state the time or times when the pipeline service will be required and the capacity that is to be utilised; and</p> <p>b) identify the entry point where the user proposes to introduce natural gas to the pipeline and the exit point where the user proposes to take natural gas from the pipeline; and</p> <p>c) state the relevant technical details (including the proposed gas specification) for the connection to the pipeline, and for ensuring safety and reliability of the supply of natural gas to, or from, the pipeline.</p>	<p>The National Gas Access Law and National Gas Rules create a framework for regulating the form of the Access Arrangement and are not intended to be a prescriptive. National Gas Rule 100 only requires that the Access Arrangement must be “consistent” with the national gas objective, the National Gas Rules and the Procedures defined in National Gas Rule 135E thus indicating that there will be a number of different forms that might be appropriate provided all can be said to be consistent (Framework Concept).</p> <p>By requiring National Gas Rule 112 to be inserted into the Access Arrangement materially in the form set out in the National Gas Rules the ERA has failed to have regard to the Framework Concept and in particular the national gas objective which requires “efficient operation and use of, natural gas services” in the context of “safety, reliability and security of supply of natural gas”. (Efficient Services Concept).</p> <p>It is neither efficient nor safe and will give rise to issues of reliability of supply to leave the determination of the “relevant technical details” (National Gas Rule 112(2)(c)) to the Prospective User. The reference to “relevant technical details” can only be the relevant technical details specified by WAGN as WAGN is the person licensed to construct, operate and maintain the gas distribution under Licence GDL8, Version 5, 06 August 2010 (Licence).</p> <p>The relevant technical details will vary depending on the particular application. As such, while some types of information will be required for all applications there will be some information that is particular to the</p>	<p>Clause 5.2 has been amended as described in the amended Access Arrangement to better identify the information that a Prospective User must provide in order to commence an Application Process for the reasons set out in the commentary.</p>
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	<p>circumstances. As such it is consistent with the national gas objective that WAGN have a power to request information from a Prospective User.</p> <p>If the Prospective User does not satisfy National Gas Rule 112(c) (and that is likely if WAGN does not have a power to request information from a Prospective User) then there is no request for the purposes of National Gas Rule 112 and obligation on WAGN to respond or to inform the Prospective User how the application might be amended such that it does comply (thus leading to inefficiency in the application process and increasing the likely hood of an access dispute arising).</p> <p>The Prospective User does not construct, operate or maintain the pipeline. As such (in absence of engaging expertise which will increase the cost of gas to End Users thus being contrary to the national gas objective) a Prospective User will not be able to determine precisely what technical information is required and so will not be able to comply with National Gas Rule 112.</p> <p>Given the analysis (above) the ERA's Required Amendment 2 is inconsistent with the national gas objective.</p> <p>The current wording of paragraph 5.2 (a) and (b) of the Access Arrangement is appropriate in that it is consistent with the national gas objective to include WAGN's minimum prudential and insurance requirements and the proposed System Pressure Protection Plan as part of the request for access (i.e. it is not efficient to make an offer to provide Reference</p>	
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	<p>Services which terms will include detailed provisions in relation to security, insurance and system pressure protection if it is apparent in the request that the Prospective User will not be able to comply with some of the material terms of the offer).</p> <p>Notwithstanding the analysis above WAGN has considered the assessment of the ERA at paragraphs 172 to 175 of the Draft Decision and accepts that the Application Procedure would benefit from some amendment to better articulate the type of information that a Prospective User must provided (please refer to clause 5.2 in the amended Access Arrangement).</p> <p>WAGN has elected to adopt a materially similar approach to the Application Procedure as that approved by the Australian Energy Regulator (AER) in the Access Arrangement for the Jemena Gas Networks NSW gas distribution network approved by the AER on 28 June 2010 (Jemena Decision) (Please refer to Schedule 5 – Request for Service). The approach is materially consistent in that it identifies certain required technical information that must be in an Application (please refer to Annexure F of the Access Arrangement) and contemplates that the Prospective Users must meet some further requirements that will be identified by WAGN (i.e. the reference in the Jemena Decision to the Prospective User satisfying “Service Provider’s prudential requirements”)</p>	
Required Amendment 3	Paragraph 5.3(a) of the Access Arrangement has	Paragraph 5.3(a) of the Access Arrangement has been

<p>Clauses 5.3(a) and 5.3(c) to (h) of the proposed access arrangement should be deleted.</p>	<p>been amended to reflect the amendments to paragraph 5.2. WAGN is of the view that the amendments made address the ERA concerns at paragraphs 182 and 183 of the Draft Decision.</p> <p>The ERA's comments in regards to paragraphs 5.3(c) to (h) of the Access Arrangement at paragraph 185 of the Draft Decision are without regard to the Framework Concept and are inconsistent with the national gas objective in that the amendment suggested by the ERA will introduce ambiguity into the Access Arrangement leading to inefficiencies and increase the likelihood of an access dispute</p> <p>As drafted paragraphs 5.3(c) to (h) regulate how a Prospective User can accept an Investigation Proposal and Access Offer and how long the respective offers are open for.</p> <p>The removal of paragraphs 5.3(c) to (h) increases uncertainty and the chances of an access dispute arising. In particular, and in absence of a definitive period before an Access Offer lapses, the effect of the amendment by the ERA is that it reserves capacity on the WAGN GDS until the Prospective User informs WAGN that it declines the capacity described in the Access Offer. As such it is a barrier to entry for other Prospective Users.</p> <p>As drafted the provisions of paragraphs 5.3(c) to (h) of the Access Arrangement provide certainty with regard to the offer and acceptance process contemplated by National Gas Rule 112 and so is consistent with the national gas objective.</p>	<p>amended to reflect the amendments to paragraph 5.2 for the reasons set out in the commentary. Paragraphs 5.3(c) to (h) of the Access Arrangement have been retained without amendment for the reasons set out in the commentary.</p>
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	<p>In addition, the ERA has failed to take into account National Gas Rule 112 (5). Paragraph 5.3(g) of the Access Arrangement is materially consistent with that National Gas Rule.</p>	
<p>Required Amendment 4</p> <p>Clause 5.5 of the access arrangement should be deleted.</p>	<p>At paragraph 203 of the Draft Decision the ERA contemplates that paragraph 5.5 of the Access Arrangement cannot be assessed as it applies to Pipeline Services generally and not just Reference Services.</p> <p>The ERA appears to be confusing the terms and conditions that WAGN will provide the Pipeline Services on (in which case it is only the Reference Services that is relevant -National Gas Rule 48(1)) and the matters that WAGN will have regard to prior to providing a Pipeline Service. National Gas Rule 112 regulates requests for access and applies to Pipeline Services as a whole (i.e. not just Pipeline Services that are Reference Services). As such there is no basis under the National Gas Access Law or National Gas Rules for the commentary of the ERA in relation to Required Amendment 4.</p> <p>Notwithstanding the analysis (above) the intent of paragraph 5.5 of the Access Arrangement is to set out the process that WAGN undertakes to determine if it should provide the Pipeline Services requested as contemplated by National Gas Rule 112(3)(a). Such a process necessitates pre-conditions and restrictions that may result in a refusal to offer the Pipeline Services requested (see National Gas Rule</p>	<p>Paragraph 5.5 of the Access Arrangement has been retained in the amended Access Arrangement with the addition of the words "Subject to the National Gas Access Law and National Gas Rules" to clause 5.5(a) for the reasons set out in the commentary.</p>

	<p>112(3)(a)(i) which contemplates that the request for access may be refused) or an offer which may be subject to conditions (National Gas Rule 112(3)(a)(ii)).</p> <p>With reference to paragraph 206 of the Draft Decision the reference to sections 187 and 188 of the National Gas Access Law is relevant in that they are indicative of when access will not be granted in the context of an access dispute and an arbitration so are also relevant to WAGN's decision to grant access (i.e. a prudent covered pipeline service provider would not grant access if the events or circumstances referred to in those sections were to occur if access was granted). As such paragraph 5.5 of the Access Arrangement is consistent with the Framework Concept and the national gas objective.</p> <p>With reference to paragraph 207 of the Draft Decision the ERA has not identified the parts of paragraph 5.5 of the Access Arrangement that relate specifically to a queuing policy. WAGN has reviewed paragraph 5.5 of the Access Arrangement and confirms it considers there are no provisions that relate solely to a queuing policy (noting that a queuing policy has not been included in the Access Arrangement). As such there does not appear to be any basis for the commentary of the ERA at paragraph 207 of the Draft Decision.</p> <p>WAGN confirms that expressing the process under 112(3)(a) as a precondition is an approach that has been approved by the AER (please refer to paragraph 5.2 of the Access Arrangement for the Wagga Wagga gas distribution network approved by the AER on 23 April 2010).</p>	
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	<p>WAGN also confirms that the use of the words “pre-conditions to and restrictions on” in the context of determining an application from a Prospective User is used at clause 46 of Part A of the Current Access Arrangement.</p> <p>WAGN considers that the concept of the process that WAGN has to undertake to determine if it should provide a Pipeline Service under the National Gas Rules is materially consistent with the evaluation process under the National Third Party Access Code for Natural Gas Pipeline Systems (Code).</p> <p>Notwithstanding the above WAGN has considered the concerns of the ERA referred to in the Draft Decision in regards to the application process and has made amendments to the clause inserting the word reasonable where appropriate.</p>	
<p>Required Amendment 5</p> <p>Clause 5.7 of the access arrangement should be deleted.</p> <p>The access arrangement should be amended to include provisions consistent with clauses 28 to 34 of the current access arrangement.</p>	<p>WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 5.</p>	<p>Clause 5.7 of the Access Arrangement has been amended as described in the amended Access Arrangement. The amendment is materially consistent with the ERA's Required Amendment 5 in that it has reintroduced the different options for a Prospective User to satisfy the requirement of a System Pressure Protection Plan</p> <p>Consequential amendments have been made to the Template Haulage Contract at clause 5.10 to include the indemnity referred to as “Option 3” at clause 29 of Part A of the Current Access Arrangement (WAGN has also made reference to the relevant provisions of clause 7.2 and 7.4 of the Template Haulage Contract to reflect the circumstances</p>

		that might arise in the event that Option 3 is selected).
<p>Required Amendment 6</p> <p>The Authority requires clause 9.1(b) of the access arrangement to read:</p> <p>(b) For the calculation of the Opening Capital Base for the WAGN GDS for the Next Access Arrangement Period, each of:</p> <p>(i) the Opening Capital Base for the Current Access Arrangement Period (adjusted for any difference between estimated and actual capital Expenditure included in that Opening Capital Base);</p> <p>(ii) Conforming Capital Expenditure made, or to be made, during the Current Access Arrangement Period;</p> <p>(iii) any amounts added to the Capital Base under rule 82, rule 84 and rule 86 of the National Gas Rules;</p> <p>(iv) depreciation over the Current Access Arrangement Period (calculated in accordance with paragraph 9.1(a));</p> <p>(v) redundant assets identified during the course of the Current Access Arrangement Period; and</p> <p>(vi) the value of Pipeline Assets disposed of during the Current Access Arrangement Period;</p> <p>is to be escalated, at the rate of inflation as measured by the CPI All Groups, Eight Capital Cities, and expressed in the prices prevailing on a date nominated by WAGN (provided that date is a date on or prior to the end of the Current Access Arrangement Period).</p>	<p>WAGN relies on the commentary and analysis at Section 2.2 of Part A</p>	<p>The amendments referred to at Required Amendment 6 have not been adopted for the reasons set out in the commentary.</p>

<p>Required Amendment 7</p> <p>The Authority requires clauses 3.1(iv)(A) and (B) and 3.1(v) of Annexure B of the access arrangement to be deleted.</p>	<p>WAGN relies on the commentary and analysis at Section 3.3 of Part A</p>	<p>Clauses 3.1(iv)(A) and (B) and 3.1(v) of Annexure B of the Access Arrangement have been retained without amendment in the amended Access Arrangement for the reasons set out in the commentary.</p>
<p>Required Amendment 8</p> <p>The Authority requires Annexure A and sections 1 and 2 of Annexure B of WAGN's access arrangement to be amended as follows:</p> <p>Annexure A</p> <p>Replace the haulage reference tariffs set out under Annexure A with the haulage reference tariffs set out in Table 27.</p> <p>Annexure B (sections 1 and 2)</p> <ul style="list-style-type: none"> • Inflation - tariffs need to be set to account for inflation by adjusting the real tariffs modelled, using 31 December 2009 dollars, based on CPI (All Groups, Eight Capital Cities) at the end of each modelling period; • Regulatory operating costs - clause 2.3(c), which includes the 2009 regulatory operating costs under the tariff variation mechanism for the 1 July 2011 adjustment, should be deleted; • Regulatory capital costs - references to regulatory capital expenditure should be deleted; and • The real pre-tax rate of return should be amended to 6.89 per cent. 	<p>WAGN relies on the commentary and analysis at Sections 2 and 3 of Part A</p>	<p>Annexure A and sections 1 and 2 of Annexure B of the Access Arrangement have been retained without amendment in the amended Access Arrangement for the reasons set out in the commentary.</p>
<p>Required Amendment 9</p> <p>The Authority requires clause 11.1(b)(i) of WAGN's access</p>	<p>WAGN has elected to adopt the suggestion of the ERA in relation to clause 11.1(b)(i) referred to in</p>	<p>Clause 11.1(b)(i) of the Access Arrangement has been deleted from the amended Access Arrangement for the</p>

arrangement to be deleted.	Required Amendment 9.	reasons set out in the commentary.
<p>Required Amendment 10</p> <p>The Template Haulage Contract should be amended as follows:</p> <p>a) Delete clauses 1.1(a)(i), 1.1(a)(ii)(A) and 1.1(a)(ii)(D), and replace with a clause which provides for compliance by the user with the pre-condition to access in clause 5.7 of the access arrangement as a pre-condition to provision of the reference service under the haulage contract.</p> <p>b) Delete clauses 1.1 (b), (c), (d), (e), (f).</p>	<p>Clauses 1(a)(i) and 1.1(a)(ii)(A) have been retained. The amendments made by WAGN in relation to the System Pressure Protection Plan (see above at Required Amendment 5) mean that clauses 1(a)(i) and 1.1(a)(ii)(A) accord materially with the suggested amendments of the ERA.</p> <p>Clause 1.1(a)(ii)(D) has been deleted as this is one of the options that a User may adopt by way of the SPPP (see above at Required Amendment 5).</p> <p>There is no basis under the National Gas Access Law or National Gas Rules for the conclusion of the ERA at paragraph 1244 of the Draft Decision to determine that clauses 1.1(b) to (f) are procedural and not matters that go to “compliance of WAGN’s proposed variations”.</p> <p>In considering any provision of the Template Haulage Contract the ERA is required to consider the competing interests of WAGN and the Users in the context of the national gas objective (i.e. it is insufficient for the ERA to have just had regard to WAGN’s compliance with the national gas objective).</p> <p>The deletion of clauses 1.1(b) to (f) is inconsistent with the national gas objective in that the amendment suggested by the ERA will introduce ambiguity into the Template Haulage Contract leading to inefficiencies and increase the likelihood of a dispute</p> <p>With reference to the National Gas Rules, National Gas Rule 48(1)(d)(ii) requires the “terms and</p>	<p>Clauses 1(a)(i) and 1.1(a)(ii)(A) of the Template Haulage Contract have been retained in the Amended Template Haulage Contract for the reasons set out in the commentary.</p> <p>Clause 1.1(a)(ii)(D) of the Template Haulage Contract has been deleted from the Amended Template Haulage Contract for the reasons set out in the commentary.</p> <p>Clauses 1.1 (b), (c), (d), (e), (f). of the Template Haulage Contract have been retained in the Amended Template Haulage Contract without amendment for the reasons set out in the commentary.</p>

	<p>conditions on which the Reference Service will be provided” to be referred to in the Access Arrangement. Clauses 1.1(b) to (f) are terms and conditions on which the Reference Services will be provided. The provisions reflect the law relevant to conditions precedent (ie they are intended to address the key areas of dispute that have arisen in the context of conditions precedent and the resulting judicial determinations). As such they are not procedural matters but terms and conditions that provide certainty in respect to the party’s rights and obligations thus being consistent with the national gas objective.</p> <p>By executing the Template Haulage Contract WAGN commits to providing the Reference Services to the relevant Prospective User subject to satisfaction of the conditions precedent. Without clauses 1.1(b) to (f) there is no obligation on the Prospective User to endeavour to satisfy the conditions precedent and no entitlement of WAGN to terminate in the event that they are not satisfied within a specific period. In effect this means the Prospective User has indefinitely reserved the capacity referred to in the Template Haulage Contract as WAGN will not be able to offer that capacity to another Prospective User creating a barrier for entry to those other Prospective Users.</p> <p>The suggestion of the ERA at paragraph 1244 of the Draft Decision (that the parties are free to agree such matters for themselves) is an agreement to agree so unenforceable at law. In the event that the parties do not agree then WAGN is bound to offer the Reference Services on the terms set out in the draft Template</p>	
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	Haulage Contract which will cause the reserve of capacity referred to above.	
<p>Required Amendment 11</p> <p>Clause 2(b) of the Template Haulage Contract should be amended to read:</p> <p>This Haulage Contract:</p> <p>b) ends on the earlier of:</p> <p>i) when the access arrangement is revised or expires in accordance with the NGL and NGR and <user> does not agree to continue this Haulage Contract on the basis of the Haulage Contract being varied to incorporate the terms and conditions of the access arrangement which replaces the current access arrangement.</p> <p>ii) when <user> is no longer entitled to take delivery of Gas at any Delivery Point under this Haulage Contract; or</p> <p>iii) when it is terminated under clause 14 or as otherwise provided for under this Haulage Contract.</p>	<p>The amendments to clause 2(b) of the Template Haulage Contract are inconsistent with the National Gas Access Law and the National Gas Rules for the reasons described in the commentary in relation to Required Amendment 37.</p>	<p>Clause 2(b) of the Template Haulage Contract has been retained in the Amended Template Haulage Contract without amendment for the reasons set out in the commentary.</p>
<p>Required Amendment 12</p> <p>Clauses 4.2(a)(ii), 4.2(a)(iii) and 4.2(b)(v) should be deleted from the Template Haulage Contract.</p>	<p>Contrary to the view expressed by the ERA at paragraph 1265 of the Draft Decision clause 4.2(a)(ii) of the Template Haulage Contract is materially consistent with clause 3(2)(b) of Part C of the Current Access Arrangement. There is therefore no basis for the conclusion of the ERA that clause 4.2(a)(ii) of the Template Haulage Contract ought to be deleted.</p> <p>Given the existence of clause 3(2)(b) of Part C of the Current Access Arrangement. WAGN will be under a less favourable commercial position if clause 4.2(a)(ii)</p>	<p>Clauses 4.2(a)(ii), 4.2(a)(iii) and 4.2(b)(v) of the Template Haulage Contract have been retained in the Amended Template Haulage Contract without amendment for the reasons set out in the commentary.</p>

	<p>of the Template Haulage Contract is deleted (the ERA's rationale for deleting was that the addition of the clause was going to place WAGN in a more favourable commercial decision). The potential for additional costs arising from the less favourable commercial position is not reflected in the Reference Tariffs and so clause 4.2(a)(ii) of the Template Haulage Contract must be retained.</p> <p>The addition of the reference to Force Majeure in clause 4.2(a)(iii) and 4.2(b)(v) of the Template Haulage Contract was required to remove potential ambiguity in the wording of the Current Access Arrangement documents. As stated the Current Access Arrangement contains clause 3(2)(b) which contemplates that a Tariff (as defined) is still payable even though the requested Service (as defined) is not able to be provided or undertaken. In contrast clause 37(3) of 3(2)(b) of Part C of the Current Access Arrangement contemplates that if WAGN claims Force Majeure the User (as defined) is not required to pay the Tariff (as defined and including the standing charge). WAGN confirms that the ERA has required an equivalent provision to clause 37(3) of 3(2)(b) of Part C of the Current Access Arrangement to be included in the amended</p> <p>The release from the obligation of a User to pay if WAGN relies on Force Majeure is inconsistent with the National Gas Access Law and National Gas Rules.</p> <p>Force Majeure requires "any occurrence or circumstance which is not within a Party's control and</p>	
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	<p>which the Party, by applying the standard of a reasonable and prudent person, is not able to prevent or overcome” (see the definition in the Template Haulage Contract). By definition Force Majeure relates to matters not within the control of WAGN but are risks that arise from the performance of the Reference Services. As such any provision that denies WAGN the opportunity to be paid the Reference Tariffs during an event of Force Majeure is inconsistent with the revenue and pricing principles in section 24 of the National Gas Access Law (i.e. WAGN will be required to incur the costs associated with Force Majeure and will not be able to recover those costs, or at least a part of the costs, by the Reference Tariffs).</p> <p>In addition, denying WAGN the opportunity to be paid the Reference Tariffs during an event of Force Majeure is inconsistent with the national gas objective.</p> <p>A gas distribution system by its nature has a high ratio of fixed cost to total costs (please refer to Section 12.4 of the Amended Access Arrangement Information).</p> <p>Not allowing WAGN to recover some of those costs (in the event of a Force Majeure the costs able to be claimed would be the Standing Charges referred to in Annexure A of the Access Arrangement) is inconsistent with the national gas objective in that it:</p> <ul style="list-style-type: none"> prevents the fixed costs from being shared by all of the Users (and ultimately the End Users); 	
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	<ol style="list-style-type: none"> 1. is likely to be a serious impediment to WAGN in obtaining finance or increase the cost of obtaining that finance; and 2. discourages WAGN from investing in the gas distribution system because of the financial risk associated with the event of Force Majeure. <p>WAGN confirms that the AER has approved:</p> <ol style="list-style-type: none"> 1. a cost pass through event referring to the concept of force majeure (please refer to paragraph 12.5 of the Access Arrangement for the Wagga Wagga gas distribution network approved by the AER on 23 April 2010); 2. a cost pass through event referring to concepts similar to that of force majeure (please refer to definition of “Business Continuity Event” and “General Pass Through Event” referred to in clause 3(C)(b) of paragraph 12.5 of the Access Arrangement for the Jemena Gas Networks NSW gas distribution network approved by the AER on 28 June 2010); and 3. the obligation to continue to pay notwithstanding force majeure (please refer to clause 26.5 and 26.6 of the Reference Services Agreement in the Access Arrangement for the Jemena Gas Networks NSW gas distribution network approved by the AER on 28 June 2010). 	
<p>Required Amendment 13</p> <p>Clause 5.3 of the Template Haulage Contract should be retitled: ‘Start Date and End Date for the receipt and delivery</p>	<p>WAGN has elected to adopt the suggestion of the ERA in relation to clause 5.3 of the Template Haulage</p>	<p>Clause 5.3 of the Template Haulage Contract has been amended as described in amended Template Haulage</p>

of gas’.	Contract.	Contract for the reasons set out in the commentary.
<p>Required Amendment 14</p> <p>Clause 5.5(a) of the Template Haulage Contract should be amended as follows:</p> <p>(a) Subject to clause 5.5(b), <User> may request <Service Provider> to:</p> <p>i) add a new Delivery Point to the Delivery Point Register;</p> <p>ii) increase the Contracted Peak Rate for a Delivery Point to which Service A1, Service A2 or Service B1 applies; or</p> <p>iii) change the End Date for a Delivery Point to a date which is later than the End Date specified in the Delivery Point Register for the Delivery Point,</p> <p>and, if <Service Provider> agrees, <Service Provider> must make appropriate adjustments to the Delivery Point Register, <u>subject to <Service Provider> withholding consent on reasonable grounds, based on technical or commercial considerations</u></p> <p>Clause 5.5(b)(i) should be deleted</p>	<p>In drafting the Access Arrangement and the Template Haulage Contract WAGN has endeavoured to align the documents such that there is consistency between the two.</p> <p>Currently, the Access Arrangement and the Template Haulage Contract contemplate that all Users (whether they are a party to an existing Haulage Contract or not) will be treated equally in relation to applications for additional Capacity. Required Amendment 14 contemplates that WAGN is obligated to treat applications from Users who are already a party to an existing haulage contract differently. This is inconsistent with the National Gas Access Law and the National Gas Rules which contemplate equal treatment for all Users.</p> <p>The amendments also create a potential breach of contract in that WAGN may be bound contractually to follow a different application process than that described in the Access Arrangement. As such the requested amendments create uncertainty and inefficiency contrary to the national gas objective. Required Amendment 14 is also inconsistent with the view expressed by the ERA at paragraph 216 of the Draft Decision which confirms in relation to the process for access an “orderly process is consistent with the national gas objective”.</p> <p>The introduction of the concept of only being able to withhold consent “on reasonable grounds based on technical or commercial considerations” is a limitation not contemplated by National Gas Rule 112 (the relevant National Gas Rule for an application for additional capacity).</p>	<p>Clauses 5.5 of the Template Haulage Contract have been retained in the amended Template Haulage Contract without amendment for the reasons set out in the commentary.</p>

	<p>National Gas Rule 106 which relates to the changing of receipt and delivery points does contemplate such a limitation as materially consistent words to those inserted by the ERA in clause 5.5(a) are used in National Gas Rule 106(1)(b).</p> <p>Clearly, Parliament has drawn a distinction between a request to change a receipt or delivery point which limits a service provider's ability to withhold consent (National Gas R106(1)(b) noting that WAGN has amended its Draft Template Haulage Contract to account for the distinction - see Required Amendment 45) and a request for access to additional capacity which has no such limitation.</p> <p>The provisions of clause 5. 5 of the template Haulage Contract are appropriate as drafted because:</p> <ol style="list-style-type: none"> 1. requiring a current User to make an application using the same process as a new User means a single point of entry for all Users and so consistent with the national gas objective; 2. the concern of the ERA referred to at paragraph 1302 is addressed by confirmation in paragraph 5.5 of the amended Access Arrangement (see above and the commentary at Required Amendment 4); 3. the commentary of the ERA at paragraph 1301 that WAGN would already have all of the information that would be required does not take into account that haulage contracts are long term agreements and is appropriate that WAGN be entitled to consider the information relating to the User's prudential 	
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	<p>and financial ability whenever a further request for Haulage Services is made as a User's ability to perform its obligations in the past is not determinative of its future ability; and</p> <p>4. the provisions as drafted are materially consistent with the Current Access Arrangement (see clause 56 of Part A of the Current Access Arrangement) and there is no apparent material difference between the intent of the National Gas Access Law and the Code in regards to applications from existing Users.</p>	
<p>Required Amendment 15</p> <p>Clause 5.6 of the Template Haulage Contract should be amended as follows:</p> <ul style="list-style-type: none"> • Delete clause 5.6(a) and replace with the following: <p>(a) No later than 30 days prior to the End Date, <Service Provider> will give written notice to <user> specifying the procedure to Deregister the Delivery Point.</p> <p>(b) If on the End Date for a Delivery Point no other user is identified as the Current user for the Delivery Point under the Retail Market Rules or <user> has not applied for an extension to the End Date, then <user> must request <Service Provider> to Deregister the Delivery Point.</p> <ul style="list-style-type: none"> • Renumber clause 5.6(b) as 5.6(c). 	<p>WAGN has elected to adopt the suggestion of the ERA in relation to clause 5.6 of the Template Haulage Contract materially in the form suggested by the ERA.</p>	<p>Clause 5.6 of the Template Haulage Contract has been amended as described in the amended Template Haulage Contract for the reasons set out in the commentary. The amendment is materially in the form requested by the ERA.</p>

<p>Required Amendment 16</p> <p>Annexure A to the Template Haulage Contract should be amended as follows:</p> <ul style="list-style-type: none"> • Delete 1(a) and replace with “the gas specification requirements detailed under the Gas Standards (Gas Supply and System Safety) Regulations 2000”. • Rename 1(b) to 1(c), • Insert 1(b) as “the gas specification requirements detailed under part 1 of Schedule 1 (Western Australian standard specification) under Gas Supply (Gas Quality Specifications) Regulations 2010”. • Delete the table under Annexure A. 	<p>WAGN has elected to adopt the suggestion of the ERA in relation to Annexure A to the Template Haulage Contract materially in the form suggested by the ERA.</p> <p>WAGN has not adopted the suggestion of the ERA in its entirety because some of the components of the gas quality specification referred to by the ERA in Required Amendment 16 are not suitable for the Parmelia Pipeline.</p>	<p>Annexure A of the Template Haulage Contract has been amended as described in the amended Template Haulage Contract for the reasons set out in the commentary. The amendment is materially in the form requested by the ERA</p>
<p>Required Amendment 17</p> <p>Clauses 5.8(b) and 5.8(d)(iii) should be deleted from the Template Haulage Contract.</p>	<p>WAGN has elected to adopt the suggestion of the ERA in relation to clauses 5.8(b) and 5.8(d)(iii) of the Template Haulage Contract.</p>	<p>Clauses 5.8(b) and 5.8(d)(iii) of the Template Haulage Contract have been deleted from the amended Template Haulage Contract for the reasons set out in the commentary.</p>
<p>Required Amendment 18</p> <p>Clause 5.9(a) of the Template Haulage Contract should be amended to read:</p> <p>For each Gas Day, <user> must ensure that it delivers <u>procures the injection of an amount of Gas into each Sub-network that is equal to the <user> <user>’s good faith estimate, acting as a reasonable and prudent person, of the quantity of Gas receives from that Sub-network on that <user> is likely to withdraw from the Sub-network on that Gas Day.</u></p>	<p>WAGN does not control the amount of gas that is injected into, or taken from, its gas distribution system. The only person that can exert control is the User that contracts with the End Users and the owners of the relevant interconnected transmission pipelines. In the event that gas in does not equal gas out in respect to any one User then the possible consequences are:</p> <ol style="list-style-type: none"> 1. where there is more Gas injected than taken then the distribution system will be over pressurised; or 	<p>Clause 5.9(a) of the Template Haulage Contract has been retained in the amended Template Haulage Contract without amendment for the reasons set out in the commentary.</p>

	<p>2. where there is less gas injected than taken in absence of a swing service (as defined in the Retail Market Rule) system depressurisation of the gas distribution system may occur.</p> <p>Given WAGN's inability to manage any of the identified consequences (and the possible damage that might arise to the gas distribution system in the event of over pressurisation or depressurisation) it is appropriate that User has an absolute obligation.</p> <p>For the reasons set out above the amendment requested by the ERA is inconsistent with the national gas objective in that it is neither efficient nor safe and will give rise to issues of reliability of supply as the form of Clause 5.9(a) required by the ERA allows there to be a discrepancy between amounts injected and amounts withdrawn.</p> <p>As drafted by the ERA provided the User has made a "good faith estimate" of the gas that is "likely" to be withdrawn WAGN will be denied a remedy for loss or damage caused by the imbalance even though it has no ability to control the circumstances giving rise to an imbalance.</p> <p>WAGN confirms that the AER has approved an absolute obligation to balance gas in to gas (please refer to clause 7.6 of the Reference Services Agreement in the Access Arrangement for the Jemena Gas Networks NSW gas distribution network approved by the AER on 28 June 2010).</p>	
<p>Required Amendment 19 Clause 5.10(a) of the Template Haulage Contract should be</p>	<p>WAGN does not agree that there is any possibility for inconsistency between clause 5.9(d)(iii) and clause</p>	<p>Clauses 5.9(d)(iii) and 5.10(a) of the Template Haulage Contract has been amended as set out in the amended</p>

<p>deleted.</p>	<p>5.10(a) of the Draft Template Haulage Contract. (and notes that the ERA does not identify any inconsistency). In order to deal with the ERA's perception that there may be inconsistency WAGN has elected to delete 5.9(d)(iii) and amend clause 5.10(a) of the Draft Template Haulage Contract.</p>	<p>Template Haulage Contract for the reasons set out in the commentary.</p>
<p>Required Amendment 20 The words 'be it direct or indirect' should be deleted from clause 5.11(d) of the Template Haulage Contract.</p>	<p>WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 20.</p>	<p>Clause 5.11(d) of the Template Haulage Contract has been amended as described in the amended Template Haulage Contract for the reasons set out in the commentary.</p>
<p>Required Amendment 21 Clause 6.6(e) of the Template Haulage Contract should be amended to read: Subject to clause 6.6(f) and clause 20.2, <Service Provider> may disclose to an operator of an Interconnected Pipeline information which <Service Provider> determines, as a reasonable and prudent network operator, to be the minimum amount of information required to be disclosed for operational reasons relating to the interconnection of that, or any other, Interconnected Pipeline with the WAGN GDS.</p>	<p>WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 20.</p> <p>WAGN has also re-considered the definition of Interconnection Event. Currently as drafted the definition only addresses the circumstances in which the relevant contract terminates (i.e. "is not or ceases to be"). It may be that the relevant contract has not been terminated but either party to the Interconnection Agreement may have a right to Curtail or refuse to accept. WAGN has added in wording to address this issue. Please refer to the amended definition of Interconnection Event.</p> <p>The amendment is required as the definition of Interconnection Event as drafted is inconsistent with the national gas objective in that there is some ambiguity in regards to WAGN's rights to Curtail or refusal to accept.</p> <p>WAGN notes the provisions that regulate WAGN's liability in the event that it Curtails or refuses to accept Gas (clause 6.6(b)) have not been amended so a</p>	<p>Clause 6.6(e) of the Template Haulage Contract has been amended as described in the amended Template Haulage Contract for the reasons set out in the commentary.</p> <p>The definition of Interconnection Event has been amended as described in the amended Template Haulage Contract for the reasons set out in the commentary.</p>

	User's rights under the Haulage Contract have not been affected.	
<p>Required Amendment 22</p> <p>Clause 6.7(b) of the Template Haulage Contract should be amended to read:</p> <p>If, in the course of installing user Specific Delivery Facilities or Standard Delivery Facilities, <Service Provider> causes damage to land or premises including the opening or breaking up any sealed or paved surface, or damaging or disturbing any lawn, landscaping or other improvement, then <Service Provider> will if necessary and in its absolute discretion acting as a reasonable and prudent person either:</p> <p>i) fill in any ground to restore it to approximately its previous level; or</p> <p>ii) at <User>'s expense and without after obtaining prior consent from <User>, restore the land or premises including the sealed or paved surface, lawn, landscaping or other improvement to the extent reasonably practicable.</p>	<p>The intent of the clause 6.7(b) of the Template haulage Contract as drafted was to provide WAGN with the ability to avoid being involved in a dispute with an End User for compensation by providing WAGN an entitlement to make good and claim the costs from the User. As drafted by the ERA there is an obligation to consider the alternative as a reasonable and prudent person. In some circumstances this may require WAGN to request consent from the User to restore to the condition prior to undertakings the works. There is no obligation on the User to act as a reasonable and prudent person in giving its consent or any time frames within which to provide the consent. As such the amendments suggested by the ERA are inconsistent with the national gas objective (they lack certainty and so will give rise to inefficiencies and will likely lead to a dispute).</p> <p>WAGN elects to revert to the position under the Current Access Arrangement. In addition WAGN has also inserted words that were unintentionally omitted from clause 6.7(b) and 6.7(e) of the Draft Template Haulage Contract. The words are "maintaining or operating" to match the use of those words in clause 6.7(a) and 6.7(c).</p>	<p>Clause 6.7(b) of the Template Haulage Contract has been amended as described in the amended Template Haulage Contract for the reasons set out in the commentary.</p>
<p>Required Amendment 23</p> <p>Clause 7.3(b) of the Template Haulage Contract should be amended to read</p>	<p>WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 23.</p> <p>WAGN has also added words to clarify that the rights</p>	<p>Clause 7.3(b) of the Template Haulage Contract has been amended as described in the amended Template Haulage Contract for the reasons set out in the commentary.</p>

<p>b) at any time at least 40 30 days after giving <User> written notice,</p>	<p>under clause 7.3(b) are in addition to any rights it may have at law.</p>	
<p>Required Amendment 24 Clause 7.4 of the Template Haulage Contract should be amended so that clause 7.4(i) is deleted.</p>	<p>WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 23.</p>	<p>Clause 7.4(i) of the Template Haulage Contract has been deleted from the amended Template Haulage Contract for the reasons set out in the commentary.</p>
<p>Required Amendment 25 Clause 7.5(a) of the Template Haulage Contract should be amended to read: In order to effect a Curtailment under this Haulage Contract (including under clause 7.2) <Service Provider> may must issue a notice to <User> requiring <user> to: i) Curtail receiving Gas at one or more Delivery Points and Curtail delivering Gas to every associated Receipt Point; and ii) comply with any other condition necessary to effect the Curtailment or refusal to accept Gas.</p>	<p>The ERA appears to confusing the provisions of clauses 7.5 and 7.6 with a notice under clause 7.8(c). The intent of clauses 7.5 and 7.6 is that instead of WAGN curtailing or refusing to accept then WAGN “may” direct a User to curtail or refuse to accept using its rights under its contractual arrangements or under the <i>Energy Coordination Act 1994</i>. WAGN has amended clauses 7.5 and 7.6 to clarify the intent of the clauses.</p>	<p>Clause 7.5(a) of the Template Haulage Contract has been amended as described in the amended Template Haulage Contract for the reasons set out in the commentary.</p>
<p>Required Amendment 26 Clause 7.6(a) of the Template Haulage Contract should be amended to read: In order to enforce a refusal to accept Gas under clause 7.4, <Service Provider> may must issue a notice to <User> requiring <user> to: i) cease delivering Gas to a Physical Gate Point or Receipt Points and Curtail taking delivery from any and all associated Delivery Points; and ii) comply with any other condition necessary to effect the Curtailment or refusal to accept Gas.</p>	<p>The ERA appears to confusing the provisions of clauses 7.5 and 7.6 of the Template Haulage Contract with a notice under clause 7.8(c). The intent of clauses 7.5 and 7.6 is that instead of WAGN curtailing or refusing to accept then WAGN “may” direct a User to curtail or refuse to accept using its rights under its contractual arrangements or under the <i>Energy Coordination Act 1994</i>. WAGN has amended clauses 7.5 and 7.6 to clarify the intent of the clauses.</p>	<p>Clause 7.6(a) of the Template Haulage Contract has been amended as described in the amended Template Haulage Contract for the reasons set out in the commentary.</p>

<p>Required Amendment 27</p> <p>Clause 7.8(a) of the Template Haulage Contract should be amended to read:</p> <p>When exercising its rights under clauses 7.2, 7.3 or 7.4, <Service Provider> shall determine, in its absolute discretion <u>acting as a reasonable and prudent service operator</u>:</p> <p>i) which Delivery Points it will Curtail and the order of that Curtailment; or</p> <p>ii) the quantity of Gas that it refuses to accept delivery of and Receipt Points at which it will refuse to accept, as the case may be.</p>	<p>WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 27 save that the term “network operator” will be used.</p>	<p>Clause 7.8(a) of the Template Haulage Contract has been amended as described in the amended Template Haulage Contract for the reasons set out in the commentary.</p>
<p>Required Amendment 28</p> <p>Insert a new clause as 7.8(d) to read:</p> <p>d) <Service Provider> will where practicable use reasonable endeavours to provide <User> with reasonable on-going notice during a period of Curtailment under clause 7.2 or refusal to accept delivery of Gas under clause 7.4 as to the magnitude and expected duration of the ongoing Curtailment or refusal to accept delivery of Gas.</p> <p>Existing clause 7.8(d) should consequentially be renumbered as clause 7.8(e).</p>	<p>The amendment suggested by the ERA is inconsistent with the national gas objective in that it might be interpreted as a requirement to give a notice notwithstanding that the magnitude and expected duration</p> <p>of the curtailment is no different to that set out in the notice referred to at clause 7.8(c) of the Template Haulage Contract (so the amendments suggested by the ERA will introduce ambiguity into the Template Haulage Contract leading to inefficiencies and increase the likelihood of a dispute).</p> <p>WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 28 save that the obligation to provide ongoing notice is only when the magnitude and expected duration is materially greater than that described in clause 7.8(c) of the Template Haulage Contract.</p>	<p>Clause 7.8(d) of the Template Haulage Contract has been included as described in the amended Template Haulage Contract for the reasons set out in the commentary.</p>

<p>Required Amendment 29</p> <p>Clause 9.1 of the Template Haulage Contract should be amended to delete clause 9.1(c) which sets out WAGN's proposed revised invoicing procedure.</p> <p>Clause 9.1 of the Template Haulage Contract should be amended to include an invoicing procedure consistent with clause 30(2) of Part C of the current access arrangement.</p>	<p>National Gas Rule 100(b) requires the terms of the Access Arrangement to be consistent with the Procedures (meaning the Retail Market Rules).</p> <p>WAGN confirms that the some of the amendments requested by the ERA do not comply with the Retail Market Rules and so do not comply with National Gas Rule 100(b) (see below in regards to how a User must respond to a payment claim in that it must provide two notices in a specific form). WAGN has not endeavoured to incorporate the parts of the ERA's Requested Amendment 29 that do accord with National Gas Rule 100(b) and has instead explained its reasoning for the wording of clause 9 in the Template Haulage Contract (below).</p> <p>As the sub-clauses of clause 9 of the Template Haulage Contract cross refer to each other (see for example clause 9.1(c)(B) and (E)). WAGN has elected to provide commentary on clause 9 generally and will rely on that commentary for each of the ERA's Required Amendments that refer to clause 9).</p> <p>In some circumstances (identified below) the Retail Market Rules do not regulate the circumstances contemplated by the Template Haulage Contract. In those circumstances, as required by National Gas Rule 48(d)(ii), WAGN has included the applicable terms and conditions.</p> <p>Notwithstanding the commentary (above) WAGN has reflected on the ERA's Requested Amendments in relation to clause 9 and, where appropriate and consistent with the Retail Market Rules, has made</p>	<p>Clause 9 of the Template Haulage Contract has been retained in the amended Template Haulage Contract without amendment except for the deletion of clauses 9.2(c)(iv) 9.4(c) for the reasons set out in the commentary.</p>
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	<p>some minor amendments to the clauses (which are described below).</p> <p>Clause 20.4 of the Template Haulage Contract contemplates that any information provided under the Template Haulage Contract must be provided in accordance with the Retail Market Rules (to the extent that they apply). The provisions of clause 9.1 of the Template Haulage Contract have been drafted such that they are materially consistent with the Retail Market Rules (including the relevant B2B procedures) and the current practice of Users and WAGN in relation to payment claims.</p> <p>The procedures set out at clause 9.2(a) of the Template Haulage Contract are materially consistent with the Retail Market Rules B 2 B procedures (see REMCo B2B SID v3.2 2005 06 01 page 132) which requires two separate notices to be provided. The notices are the NetworkDUoS Billing Notification transaction carrying dispute details in a CSV format and a NetworkDUoS Billing Notification transaction with details attached in a CSV format).</p> <p>In addition, the procedures set out at clause 9.2(a) are consistent with current practice. Prior to the FRC Implementation all of the participants in the market agreed that the bulk of the line items could be verified and the relevant notices issued within 3 business days of receipt of a payment claim. The participants also agreed that payment within 10 Business Days of a payment claim was appropriate (which is why the processes described in clause 9.2 are contemplated to be completed within 10 Business Days of a</p>	
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	<p>payment claim).</p> <p>The procedures set out at clause 9.2(b)(ii) are materially consistent with Retail Market Rules B2B procedures (see REMCo B2B SID v3.2 2005 06 01 page 132 which requires a NetworkDUoS Billing Notification transaction where the details of the resolution are provided in CSV format). The format of the file, which is an auto-system-generated aseXml does not allow a column in which to provide a reason for the decision).</p> <p>REMCo B2B SID v3.2 2005 06 01 page 132 contemplates that there will consultation between WAGN and the User in relation to any disputed item (“It is envisaged that email or phone will be utilised to resolve the billing dispute..”). As a matter of practice this occurs between WAGN and the Users and this process is used to confirm the reason for the decision and determine if the decision has been correctly made.</p> <p>The “Resolution Notification” referred to in clause 9.2(b) is the confirmation of WAGN’s findings following the consultation process. Resolution of the dispute means that WAGN agrees or disagrees with the User. In the event that the User is not satisfied with WAGN’s decision then it may dispute the issue further under clauses 9.4 or 18.</p> <p>The procedure set out at clause 9.2(c)(iii) is materially consistent with current practice and the Retail Market Rules B 2 B procedures. Clause 9.2(c)(iii) operates in the event that the “Resolution Notification” referred to</p>	
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	<p>in clause 9.2(b) confirms that WAGN does not agree that a line item in the payment claim was incorrect. In the event that the User is not satisfied with WAGN's decision then it may dispute the issue further under clauses 9.4 or 18.</p> <p>Clause 9.2(c)(iv) was inserted to clarify the process in the event that WAGN does not provide a Resolution Notice. After further consideration of the intent of the payment process WAGN agrees it is a risk that WAGN can manage and does not object to the deletion of clause 9.2(c)(iv).</p> <p>Clause 9.2(f) is not referred to in Retail Market Rules B 2 B procedures. It operates in the event that WAGN has made a final payment claim but the subsequent process under 9.2 indicates there needs to be an adjustment of that payment claim. Given the parties have agreed a procedure to correct payment claims it is appropriate that the same procedure is followed. (i.e. the payment claim process).</p> <p>Clause 9.4(c) is not referred to in Retail Market Rules B2B procedures and was inserted to clarify the process in the event that WAGN does not provide a Retrospective Resolution Notice. After further consideration of the intent of the payment process WAGN agrees it is a risk that WAGN can manage and does not object to the deletion of clause 9.4(c).</p> <p>Clause 9.5 is not referred to in Retail Market Rules B 2 B procedures. It operates in the event that WAGN determines there is an error in a payment claim (i.e. grants WAGN a similar right to that of User under</p>	
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	<p>clause 9.4).</p> <p>In the event that the User is not satisfied with WAGN's decision under clause 9.5 then it may dispute the decision under clause 18.</p>	
<p>Required Amendment 30</p> <p>Clause 9.2(a) of the Template Haulage Contract should be amended to provide that the user should:</p> <ul style="list-style-type: none"> i) be given at least 10 (rather than 3) business days to respond to a payment claim as to whether any line items are disputed; ii) do so in a single return notice (rather than separate notices); and iii) provide details of the reasons for any dispute (which is not provided for under WAGN's revisions proposal); and iv) if the user does not dispute any line item the user should be taken to agree to pay (rather than having to lodge a payment notice). <p>Clause 9.2 of the Template Haulage Contract should be amended to delete clause 9.2(b) regarding the giving of a resolution notification by WAGN, and all provisions contingent on that notification, namely 9.2(c) to (h).</p> <p>Clause 9.2 of the Template Haulage Contract should be amended to be consistent with the provisions of:</p> <ul style="list-style-type: none"> i) clauses 30(3) & (4) of Part C of the current access arrangement with respect to adjustments for payments under disputed invoices; ii) clause 32(1) of Part C of the current access arrangement 	<p>Please refer to the commentary in relation to Required Amendment 29.</p>	<p>Clause 9 of the Template Haulage Contract has been retained in the amended Template Haulage Contract without amendment except for the deletion of clauses 9.2(c)(iv) and 9.4(c) for the reasons set out in the commentary.</p>

<p>with respect to the interim payment of disputed invoices; and</p> <p>iii) clauses 32(2) and (3) of Part C of the current access arrangement with respect to the payment of interest on resolution of invoice disputes.</p>		
<p>Required Amendment 31</p> <p>Clause 9.4 of the Template Haulage Contract should be amended to delete clause 9.4(a) regarding the giving of a retrospective resolution notification by WAGN, and all provisions contingent on that notification, namely 9.4(b) to (i).</p> <p>Clause 9.4 of the Template Haulage Contract should be amended to be consistent with the provisions of clause 33 of Part C of the current access arrangement with respect to correction of payment errors.</p>	<p>Please refer to the commentary in relation to Required Amendment 29.</p>	<p>Clause 9 of the Template Haulage Contract has been retained in the amended Template Haulage Contract without amendment except for the deletion of clauses 9.2(c)(iv) and 9.4(c) for the reasons set out in the commentary.</p>
<p>Required Amendment 32</p> <p>Clause 9.5 of the Template Haulage Contract should be amended to delete clause 9.5(a) regarding the giving of a retrospective error notification by WAGN, and all provisions contingent on that notification, namely 9.5(b) and 9.5(c).</p> <p>Clause 9.5 of the Template Haulage Contract should be amended to be consistent with the provisions of clause 33 of Part C of the current access arrangement with respect to correction of payment errors.</p>	<p>Please refer to the commentary in relation to Required Amendment 29.</p>	<p>Clause 9 of the Template Haulage Contract has been retained in the amended Template Haulage Contract without amendment except for the deletion of clauses 9.2(c)(iv) and 9.4(c) for the reasons set out in the commentary.</p>
<p>Required Amendment 33</p> <p>Clauses 9.6(a) and 9.6(b) of the Template Haulage Contract should be deleted.</p>	<p>WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 33.</p>	<p>Clauses 9.6(a) and 9.6(b) of the Template Haulage Contract has been deleted from the amended Template Haulage Contract.</p>
<p>Required Amendment 34</p> <p>Clauses 10.1 and 10.2 of the Template Haulage Contract</p>	<p>Contrary to the view of the ERA expressed at paragraph 1518 of the Draft Decision the ERA is not</p>	<p>Clause 10.1 and 10.2 of the Template Haulage Contract have been retained in the amended Template Haulage</p>

<p>should be deleted.</p>	<p>being asked to determine matters relating to tax regulation.</p> <p>The clauses are dealing with contractual issues arising from legislative matters that parties undertaking arms length negotiations are required to agree upon. National Gas Rule 48(1)(d)(ii) requires these to be included in the haulage contract (thus deletion of the clauses is contrary to National Gas Rule 48(1)(d)(ii)).</p> <p>The Reference Tariffs are expressed to be GST exclusive (please refer to clause 2.2 of Annexure A of the Access Arrangement) and the Reference Tariffs are not exempt from GST as there is a taxable supply for the purposes of the GST Law.</p> <p>In absence of clause 10.2 of the Template Haulage Contract the Reference Tariffs will be deemed to be inclusive of GST. As such, the deletion of clause 10.2 is inconsistent with the revenue and pricing principles in section 24 of the National Gas Access Law in that the ERA is denying WAGN the opportunity to recover the efficient cost of providing the Reference Services (i.e. WAGN will be required to pay the GST on the Reference Tariffs without a right to claim that GST from the User).</p> <p>WAGN confirms the AER has approved a GST clause when Reference Tariffs are expressed to be GST exclusive (please refer to clause 23 of the Reference Services Agreement in the Access Arrangement for the Jemena Gas Networks NSW gas distribution network approved by the AER on 28 June 2010).</p>	<p>Contract without amendment for the reasons set out in the commentary.</p>
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	<p>The rationale for the inclusion of clause 10.1 is similar to that of 10.2 in that the basis for the calculation of the reference tariff is that it is on a tax free basis except those taxes that might arise by way of haulage (but not taxes relating to receipt and delivery). As such the deletion of clause 10.1 is also inconsistent with the revenue and pricing principles in section 24 of the National Gas Access Law in that the ERA is denying WAGN the opportunity to recover the efficient cost of providing the Reference Services (in the event that such costs from taxes arise).</p> <p>The suggestion of the ERA at para 1519 of the Draft Decision (that the parties are free to agree such matters for themselves) is, in addition to not complying with Rule 48(1)(d)(ii), an agreement to agree (so unenforceable at law).</p> <p>In the event that the parties do not agree then WAGN is bound to offer the Reference Services on the terms set out in the Template Haulage Contract meaning the Reference Tariffs are offered inclusive of GST (even though that is not the basis upon which they have been calculated) and without agreement on what taxes are included in the Reference Tariffs.</p> <p>WAGN refers to clause 11 of Part C of the Current Access Arrangement and confirms that the effect of the indemnity provided under clause 11(2)(b) is materially similar to the approach taken by WAGN in relation to clauses 10.1 and 10.2 of the Template Haulage Contract.</p> <p>For the reasons set out above clauses 10.1 and 10.2 are consistent with the National Gas Access Law and</p>	
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	the National Gas Rules.	
<p>Required Amendment 35</p> <p>Clause 11 of the Template Haulage Contract should be amended by inserting under a new clause 11(c), the equivalent of clause 37(3) of the current access arrangement.</p> <p>Clause 11(b) should also be amended so that it is subject to clause 11(c).</p>	<p>Please refer to the commentary in relation to Required Amendment 12.</p>	<p>Clause 11 of the Template Haulage Contract has been retained without amendment in the amended Template Haulage Contract for the reasons set out in the commentary.</p>
<p>Required Amendment 36</p> <p>Clause 12.1(b) of the Template Haulage Contract should be amended by deleting the words '10 Business Days' in the first line and inserting the words '20 Business Days'.</p>	<p>WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 36</p>	<p>Clause 12.1(b) of the Template Haulage Contract has been amended as described in the amended Template Haulage Contract.</p>
<p>Required Amendment 37</p> <p>Clauses 12.2, 12.3, and 12.4 should be deleted from the Template Haulage Contract.</p>	<p>At paragraph 1546 of the Draft Decision the ERA incorrectly concludes that there are no equivalent clauses in the Current Access Arrangement to clauses 12.2, 12.3, and 12.4. WAGN refers the ERA to clause 34 of Part C of the Current Access Arrangement and confirms that clauses 12.2, 12.3, and 12.4 regulate similar events as clause 34 of Part C of the Current Access Arrangement was intended to regulate (the provisions in the Current Access Arrangement regulate Reference Services and Reference Tariffs upon variation of the access arrangement).</p> <p>WAGN refers to the ERA's rational for not allowing clauses 12.2, 12.3, and 12.4 in that the clauses bind the service provider and User to rights and obligations</p>	<p>Clause 12.2, 12.3, and 12.4 of the Template Haulage Contract has been amended as described in the amended Template Haulage Contract for the reasons set out in the commentary.</p>

	<p>that are created by a subsequent access decision (paragraph 1549 of the Draft Decision). WAGN also refers the ERA to Required Amendment 11 and confirms that the affect of the amendments that the ERA has requested is that the clause binds the service provider and User to rights and obligations that are created by a subsequent access decision. Given the analysis above the only difference between clauses 12.2, 12.3, and 12.4 and Required Amendment 11 is the level of detail that WAGN has included.</p> <p>WAGN refers to the analysis of the ERA at paragraphs 1547 and 1548 of the Draft Decision and confirms that the ERA has interpreted the haulage contract as being a statutory obligation to provide Reference Services as the terms and conditions do not survive the variation or termination of the Access Arrangement. WAGN does not object to this interpretation but notes there are two distinct sets of obligations (the statutory obligation to offer the Haulage Services on the terms and conditions approved by the ERA and the contractual rights and obligations that arise once the offer is accepted) and that there is nothing in the National Gas Access Law or the National Gas Rules that expressly confirms the view expressed by the ERA. Given the absence of any express statutory provision that confirms the affect of the variation of the Access Arrangement (in that it may vary the Reference Tariffs, the Reference Services or the terms and conditions on which those tariffs and services are provided) it is appropriate that the terms and conditions confirm that they are</p>	
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	<p>amended by the variation of an Access Arrangement (clause 12.4 in the Template Haulage Contract).</p> <p>Clauses 12.2 and 12.3 provide a process to regulate the circumstances where there has been an amendment of a Reference Service (either the activities undertaken by WAGN that relate to the Reference Service or a change in description but not necessarily a change to the activities that comprise the Reference Service) and are intended to replace clause 34 of Part C of the Current Access Arrangement.</p> <p>The amendments that the ERA have suggested should be made to clause 2(b) and the deletion of clauses 12.2, 12.3, and 12.4 are inconsistent with the national gas objective in that they are ambiguous and likely to give rise to a dispute in that</p> <ol style="list-style-type: none"> 1. there is no time within which the User is to agree to be bound by the amendments (clause 2(b)); 2. there is no specified form which the User has to communicate its acceptance (clause 2(b)); and 3. the absence of detail referred to at items 1 and 2 (above) in the event of variation to the Access Arrangement is (in effect) a reservation of capacity until items 1 and 2 can be determined (which might be lengthy and by way of the dispute resolution process); 4. clause 12.4 provides certainty in respect to the effect of the variation of the Access Arrangement (in absence of any express 	
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	<p>statutory provisions); and</p> <p>5. Clauses 12.2 and 12.3 provide an orderly and efficient process to regulate the more material amendments to Reference Services that may occur through the variation of the Access Arrangement.</p> <p>Notwithstanding the analysis above WAGN has considered the submissions of the ERA and acknowledges that clauses 12.2, 12.3, and 12.4 are complex and can be simplified. The amendments WAGN has made are set out in the amended Draft Haulage Contract.</p>	
<p>Required Amendment 38</p> <p>Clause 12.5 should be deleted from the Template Haulage Contract.</p>	<p>WAGN has elected to adopt the suggestion of the ERA in relation to clause 12.5 referred to in Amendment 38</p>	<p>Clause 12.5 of the Access Arrangement has been deleted from the amended Template Haulage Contract.</p>
<p>Required Amendment 39</p> <p>Clause 12.6 should be deleted from the Template Haulage Contract.</p>	<p>Please refer to the commentary in relation to Required Amendment 37.</p>	<p>Clause 12.6 of the Template Haulage Contract has been retained in the amended Template Haulage Contract without amendment for the reasons set out in the commentary.</p>
<p>Required Amendment 40</p> <p>Clause 12.7 should be deleted from the Template Haulage Contract.</p>	<p>Please refer to the commentary in relation to Required Amendment 37. Notwithstanding that analysis WAGN considers that by addition of the words “without making provision for how this Haulage Contract will terminate” the ERA’s concerns have been addressed.</p>	<p>Clause 12.7 of the Template Haulage Contract has been retained in the amended Template Haulage Contract without amendment except for the addition of the words “without making provision for how this Haulage Contract will terminate”.</p>
<p>Required Amendment 41</p>	<p>Clause 12.8 is dealing with contractual issues arising</p>	<p>Clause 12.8 of the Template Haulage Contract has been</p>

<p>Clause 12.8 should be deleted from the Template Haulage Contract.</p>	<p>from legislative matters that parties undertaking arms length negotiations are required to agree upon. National Gas Rule 48(1)(d)(ii) requires these to be included in the haulage contract (thus deletion of clause 12.8 is contrary to National Gas Rule 48(1)(d)(ii)).</p> <p>The analysis of the ERA at paragraphs 1575 to 1578 of the Draft Decision suggests that the terms of a haulage contract are unaffected by a change in law for the period of the Access Arrangement. There is no basis for this proposition under the National Gas Access Law of the National Gas Rules. That a change of law might arise during the term of the Access Arrangement and amend the obligations of WAGN under the Template Haulage Contract is apparent (i.e. the Access Arrangement contemplates that the costs from such changes will be passed through - please refer to Annexure B of the Access Arrangement and the concept of "Cost Pass Through Events"). The ERA appears to be confusing the concepts of complying with a change in law (which WAGN and a User must do) and whether WAGN is entitled to a variation to the Reference Tariffs because of the change in law).</p> <p>Clause 12.6 of the Template Haulage Contract contemplates that amendments may need to be made to the Template Haulage Contract arising from a change in law and that a dispute may arise if there is uncertainty as to the changes that are required are to be applied. As such the clause is consistent with the terms of the Access Arrangement and also consistent with the national gas objective as it describes an</p>	<p>retained in the amended Template Haulage Contract without amendment save for the removal of the word "material" and the consequential amendments required because of the amendments to clause 18 required by the ERA (see Required Amendment 54) for the reasons set out in the commentary.</p>
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	<p>efficient and definite process that the parties must follow in the event of the prescribed event (in this regard WAGN considers that the word “material” should be deleted in order to allow all Regulatory Events to be regulated by this clause).</p> <p>In addition, the ERA appears to have misinterpreted the affect of clause 12.8 of the Template Haulage Contract. In paragraph 1576 and 1577 of the Draft Decision the ERA opines that the clause (in effect) allows WAGN to unilaterally vary the terms of the Template Haulage Contract. In the event that there is a change of law that affects the Template Haulage Contract there is no entitlement for WAGN to decide how the Template Haulage Contract is to be varied if the parties cannot agree. This is decided by the arbitrator who will determine how the terms of the Template Haulage Contract will be varied (if at all) such that they comply with the change of law.</p> <p>Given the analysis above the deletion of clause 12.8 is inconsistent with the national gas objective in that the amendment suggested by the ERA will introduce ambiguity into the Template Haulage Contract leading to inefficiencies and increase the likelihood of a dispute</p> <p>WAGN confirms that the AER has approved a change of law provision that is materially similar to clause 12.8. Please refer to clause 18.13 of the terms and conditions for the Access Arrangement of the Wagga Wagga gas distribution network approved by the AER on 23 April 2010.</p>	
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<p>Required Amendment 42</p> <p>Clause 12.9 should be deleted from the Template Haulage Contract.</p>	<p>WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 42</p>	<p>Clause 12.9 of the Template Haulage Contract has been deleted as described in the amended Template Haulage Contract.</p>
<p>Required Amendment 43</p> <p>Clause 13.3(c)(i) of the Template Haulage Contract should be amended to read:</p> <p>(i) Third Party making an Application under and the transfer being subject to, the Application Procedure (including in particular the pre-conditions to and restrictions on the provision of Pipeline Services specified in the Access Arrangement);</p> <p>Clause 13.3(c)(ii) should read:</p> <p>(ii) Third Party complying with one or more pre-conditions to and restrictions on the provision of Pipeline Services specified in the Access Arrangement Template Haulage Contract, as directed by <Service Provider> in writing;</p>	<p>Required Amendment 43 relies on the same analysis that the ERA has relied upon for Required Amendment 4. WAGN relies on the commentary that it made in relation to Required Amendment 4.</p>	<p>Clause 13.3(c)(i) 13.3(c)(ii) and of the Template Haulage Contract have been retained in the amended Template Haulage Contract without amendment for the reasons set out in the commentary.</p>
<p>Required Amendment 44</p> <p>Clause 13.5(c) of the Template Haulage Contract should read:</p> <p>(c) A quote provided under clause 13.35(b) does not limit the costs which must be reimbursed under clause 13.5(a) provided that it is prepared in good faith.</p>	<p>WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 44</p>	<p>Clause 13.5(c) of the Template Haulage Contract has been amended as described in the amended Template Haulage Contract</p>
<p>Required Amendment 45</p> <p>Clause 13.6(a) of the Template Haulage Contract should read:</p> <p>(a) <User> may novate this Haulage Contract with <Service Provider>'s prior written consent, and such consent must not</p>	<p>WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 45 in relation to addition of the words "acting as a reasonable and prudent person" in clause 13.6(a). Required Amendment 45 in relation to the</p>	<p>Clause 13.6(a) of the Template Haulage Contract has been amended as described in the amended Template Haulage Contract</p> <p>Clause 13.6(b)(i) of the Template Haulage Contract has been retained in the amended Template Haulage Contract</p>

<p>be unreasonably withheld. <Service Provider>'s consent will not be unreasonably withheld if it is withheld on the ground that, if the novation occurred, there would be, in <Service Provider>'s opinion <u>acting as a reasonable and prudent person</u>, an increase in the commercial or technical risk to <Service Provider>.</p> <ul style="list-style-type: none"> • Clause 13.6(b)(i) of the Template Haulage Contract should read: <p>(i) the person to whom it is proposed the Haulage Contract will be novated to complying with one or more pre-conditions to and restrictions on the provision of Pipeline Services specified in the Access Arrangement Template Haulage Contract, as directed by <Service Provider> in writing;</p>	<p>amendment of clause 13.6(b)(i) relies on the same analysis that the ERA has relied upon for Required Amendment 4. WAGN relies on the commentary that it made in relation to Required Amendment 4.</p>	<p>without amendment for the reasons set out in the commentary.</p>
<p>Required Amendment 46 Clauses 13.7(b)(iii) and 13.7(c) should be deleted.</p>	<p>The amendments requested by the ERA have deleted the specific provisions that require the User to comply with the Application Procedure in relation to changing a receipt point or delivery point (clauses 13.7(b)(iii) and 13.7(c) of the Template Haulage Contract) and so create uncertainty and inefficiency in the sense that it is unclear precisely what information WAGN may require from a User. As such the amendments required by the ERA are inconsistent with the national gas objective.</p> <p>Required Amendment 46 is also inconsistent with the view expressed by the ERA at paragraph 216 of the Draft Decision which confirms in relation to the process for access an "orderly process" "is consistent with the national gas objective".</p> <p>WAGN acknowledges National Gas Rule 106(1)(b) and has amended the drafting of clause 13.7 of the Template Haulage Contract to deal with the concerns</p>	<p>Clause 13.7(b)(iii) and 13.7(c) of the Template Haulage Contract has been retained in the amended Template Haulage Contract without amendment for the reasons set out in the commentary.</p>

	<p>of the ERA at paragraphs 1623 and 1624 of the Draft Decision. WAGN notes 106(2) and confirms its view that provided National Gas Rule 106(1)(b) is complied with there is nothing to prevent WAGN requiring a User to comply with the Application Procedure.</p> <p>The provisions of clause 13.7(b)(iii) and 13.7(c) of the amended Template Haulage Contract are appropriate because:</p> <ol style="list-style-type: none"> 1. requiring a User to make an application to change a receipt or delivery point means a single point of entry for all applications; 2. the concern of the ERA referred to at paragraph 1623 and 1624 of the Draft Decision have been addressed; 3. the commentary of the ERA at paragraph 1624 of the Draft Decision does not take into account that haulage contracts are long term agreements and is appropriate that WAGN be entitled to consider User's ability to comply with the terms of the Template Haulage Contract whenever a further request for Haulage Services is made as a User's ability to perform its obligations in the past is not determinative of its future ability; and 4. the provisions as drafted are materially consistent with the Current Access Arrangement (see clause 42 of Part A of the Current Access Arrangement i.e. the Current Access Arrangement requires an application to be made) and there is no apparent material difference between the intent of the National Gas Access Law and the Code in regards to such applications from existing 	
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	Users.	
<p>Required Amendment 47</p> <p>Clause 14.2(b) should be amended to read:</p> <p>(b) if <user> is in default under any other Haulage Contract between the parties with the <Service Provider>;</p>	<p>WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 47 save that it has elected to refer to any agreement under which WAGN provides “Pipeline Services” to the User. The suggested amendment by the ERA is ambiguous and uncertain and so contrary to the national gas objective as “Haulage Contract” as defined means “this agreement...” such that the clause would read:</p> <p>“if <User> is in default under any other this agreement ... between the parties with the <Service Provider>”</p> <p>WAGN has elected to refer to Pipeline Services and not Reference Services as a default under an agreement relating to Pipeline Services may well impact upon WAGN ability to provide Reference Services. As such the use of the broader term is consistent with the national gas objective.</p>	<p>Clause 14.2(b) of the Template Haulage Contract has been amended as described in the amended Template Haulage Contract</p>
<p>Required Amendment 48</p> <p>Clauses 15.2(c) to 15.2(k) of the Template Haulage Contract should be deleted.</p> <p>Annexure B to the Template Haulage Contract should be deleted.</p>	<p>There is no basis under the National Gas Access Law or National Gas Rules for the conclusion at paragraph 1654 of the Draft Decision to determine that clauses 15.2(c) to (k) relate to commercial arrangements between contracting parties and not to matters that go to compliance of “WAGN’s proposed revisions with the national gas objective”. In forming this view the ERA have failed to apply the National Gas Access Law and National Gas Rules as parliament intended. The ERA is bound to consider the National Gas Access Law and National Gas Rules as a whole.</p> <p>The ERA has determined incorrectly that the detailed</p>	<p>Clauses 15.2(c) to 15.2(k) of the Template Haulage Contract have been retained in the amended Template Haulage Contract without amendment for the reasons set out in the commentary.</p>

	<p>bank guarantee provisions are merely a matter of WAGN's compliance with the national gas objective (paragraph 1654 of the Draft Decision). In considering any provision of the Template Haulage Contract the ERA is required to consider the competing interests of WAGN and the Users in the context of the national gas objective (i.e. it is insufficient for the ERA to have just had regard to WAGN's compliance with the national gas objective).</p> <p>Rule 48(1)(d)(ii) requires the “terms and conditions on which the Reference Service will be provided” to be referred to in the Access Arrangement. Clauses 15.2(c) to (k) are terms and conditions on which the Reference Services will be provided. The provisions reflect the law relevant to bank guarantees (i.e. the are intended to address the key areas of dispute that have arisen in the context of bank guarantees and the resulting judicial determinations). As such they are not procedural matters but terms and conditions that provide certainty in respect to the party's rights and obligations thus being consistent with the national gas objective.</p> <p>The suggestion of the ERA at paragraph 1654 of the Draft Decision (by implication) that the parties are free to agree such matters for themselves is, in addition to not complying with Rule 48(1)(d)(ii), an agreement to agree (so unenforceable at law). In the event that the parties do not agree then WAGN is bound to offer the Reference Services on the terms set out in the draft Template Haulage Contract meaning it will have an entitlement to request security but not to direct the form, when it is to be provided or how it is to be</p>	
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	<p>accessed.</p> <p>WAGN refers to section 28(2)(b) of the National Gas Access Law. Such is the uncertainty created by the amendments suggested by the ERA WAGN considers the ERA should have regard to the revenue and pricing principles in section 24 of the National Gas Access Law. The intent of clauses 15.2(c) to 15.2(k) are to provide certainty in respect to WAGN's ability to recover the Reference Tariffs in the event that a User is unable, or elects not to, pay.</p> <p>The amendments required by the ERA would present WAGN with material legal issues with regard to WAGN's ability to rely on the bank guarantees. As such, the ERA is denying WAGN the opportunity to recover the efficient costs of providing the Reference Services (drawing down on the bank guarantee being recovery of the efficient costs of providing the services).</p> <p>As such it is contrary to the national gas objective for the ERA to approve a bank guarantee to be provided but not the form of bank guarantee, when it is to be provided or when WAGN may access the bank guarantee.</p> <p>The deletion of clauses 15.2(c) to (k) will introduce ambiguity into the Template Haulage Contract leading to inefficiencies and increase the likelihood of a dispute this being inconsistent with the national gas objective.</p>	
Required Amendment 49	There is no basis under the National Gas Access Law or National Gas Rules for the conclusion at paragraph	Clause 15.3 of the Template Haulage Contract has been retained in the amended Template Haulage Contract

<p>Clause 15.3 of the Template Haulage Contract should be amended to delete clauses 15.3(a) to 15.3(c) and to replace these clauses with insurance requirements consistent with clause 61 of Part C of the current access arrangement.</p>	<p>1663 of the Draft Decision to determine that clause 15.3 relates to commercial arrangements between contracting parties and not to matters that go to compliance requirements of WAGN with the national gas objective. In forming this view the ERA have failed to apply the National Gas Access Law and National Gas Rules as parliament intended that being the ERA is bound to consider the National Gas Access Law and National Gas Rules as a whole.</p> <p>The ERA has determined incorrectly that the detailed insurance provisions go beyond WAGN's compliance with the national gas objective (paragraph 1663 of the Draft Decision). In considering any provision of the Template Haulage Contract the ERA is required to consider the competing interests of WAGN and the Users in the context of the national gas objective (i.e. it is insufficient for the ERA to have just had regard to WAGN's compliance with the national gas objective).</p> <p>Rule 48(1)(d)(ii) requires the "terms and conditions on which the Reference Service will be provided" to be referred to in the Access Arrangement. Clause 15.3 and 15.2 are terms and conditions on which the Reference Services will be provided. The provisions materially reflect insurance provisions that are commonly included in commercial agreements that have been subject to third party review (see for example the insurance provisions of the Standards Australia suite of agreements such as AS 4000). The detailed provisions are intended to identify precisely what each parties obligations are in relation to insurance and so are not procedural matters but terms and conditions that provide certainty in respect</p>	<p>without amendment except for the reduction in the Standard & Poor rating from "AA" to "A" for the reasons set out in the commentary.</p>
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	<p>to the party's rights and obligations. As such the inclusion of the clauses is consistent with the national gas objective and deletion inconsistent in that deletion will introduce ambiguity leading to inefficiencies and increase the likelihood of a dispute.</p> <p>With reference to the requirement that WAGN insert the current insurance provisions in clause 61 of Part C of the Current Access Arrangement the ERA has failed to have regard to the national gas objective. As stated above it is not just WAGN's compliance with the national gas objective that the ERA must consider. The insurance provisions (as drafted) regulate the Users obligations appropriately with regard to the national gas objective because they:</p> <ol style="list-style-type: none"> 1. consider the financial standing of the insurer meaning there is a better chance of the insurances responding in the event of an incident; 2. they include a requirement to carry product liability (which the Current Access Arrangement does not) which is the type of insurance that will respond in the event that the User does not comply with the gas quality specifications in the Template Haulage Contract; 3. includes a requirement for a cross liability clause to support the current requirement that WAGN's interests be noted on the policy; and 4. are materially consistent with the form required by other agreements that have been reviewed by a third party (see above). 	
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	<p>The suggestion of the ERA at paragraph 1665 of the Draft Decision that the parties are free to agree such matters for themselves is, in addition to not complying with Rule 48(1)(d)(ii), an agreement to agree (so unenforceable at law).</p> <p>In the event that the parties do not agree then WAGN is bound to offer the Reference Services on the terms set out in the draft Template Haulage Contract meaning there is, at best, uncertainty as to the matters referred to above and at worst no entitlement to require the matters to be appropriately addressed.</p> <p>WAGN refers to section 28(2)(b) of the National Gas Access Law. Such is the uncertainty created by the amendments suggested by the ERA WAGN considers the ERA should have regard to the revenue and pricing principles in section 24 of the National Gas Access Law. The intent of clause 15.3 of the Template Haulage Contract is to provide certainty in respect to WAGN's ability to rely on the insurance proceeds in the event of a claim by WAGN on a User.</p> <p>The amendments required by the ERA materially reduce the chance of the insurance proceeds being available. As such, the ERA is denying WAGN the opportunity to recover the efficient costs of providing the Reference Services (being compensated by the proceeds from the insurance provisions being the recovery of the efficient costs of providing the Reference Services).</p> <p>Notwithstanding the above analysis WAGN has reconsidered the requirement for the insurer to have a Standard & Poors rating of "AA" and considers that</p>	
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	<p>the rating is arguably higher than that required by the national gas objective and considers a reduction to “A” is appropriate.</p>	
<p>Required Amendment 50</p> <p>Clause 16.1(b)(i) and (ii) of the Template Haulage Contract should be amended to read:</p> <p>(i) any refusal to accept gas at a Receipt Point or Curtailment of Gas deliveries to <user>, undertaken in accordance with the terms of this Haulage Contract or otherwise pursuant to Law;</p> <p>(ii) any non-delivery of Gas into the WAGN GDS <u>where non-delivery has not been caused, or contributed to, by the <Service Provider></u>;</p>	<p>WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 50 save that WAGN has amended clause 16.1(b)(ii) to confirm that WAGN acting in accordance with its rights under the Template Haulage Contract is not included in the words “caused, or contributed to, by the Service Provider”.</p>	<p>Clause 16.1(b)(i) of the Template Haulage Contract has been amended as described in the amended Template Haulage Contract.</p> <p>Clause 16.1(b)(ii) of the Template Haulage Contract has been amended as described in the amended Template Haulage Contract.</p> <p>The amendment is materially in the form requested by the ERA.</p>
<p>Required Amendment 51</p> <p>Clause 16.4 of the Template Haulage Contract should be amended to delete any reference to the ‘Upstream Person’.</p>	<p>The rationale for the inclusion of an indemnity in relation to a Downstream Person is referred to at page 28 of the AAI of the Current Access Arrangement (please refer to the amended AAI dated 29 July 2010). The information in the AAI for the Current Access Arrangement refers to possible claims being made by Downstream Persons against WAGN for consequential loss or damage. It is possible that an Upstream Person may also make a claim for consequential loss or damage against WAGN. There is no objective basis for distinguishing between claims made by Downstream Persons and Upstream Persons.</p> <p>As the ERA accepts that WAGN should be protected from claims made by Downstream Persons (and that</p>	<p>Clause 16.4 of the Template Haulage Contract has been retained in the amended Template Haulage Contract without amendment for the reasons set out in the commentary.</p> <p>Please note that WAGN has included the words “including negligence” in clause 16.3 after the word “tort” to confirm that the exclusion of liability for Indirect Damage includes liability for negligence. The addition of the words “including negligence” have been included such that it is consistent with the definition of “Claim”(where those words are used in the context of the word “tort”).</p>

	<p>it is consistent with the national gas objective) it must also accept that WAGN should be protected from claims from Upstream Persons (and that to make a finding to the contrary is inconsistent with the national gas objective).</p> <p>The inclusion of Upstream Person is reflective of the operation of the gas market in Western Australia in that the owner of the gas distribution system is not the same person that retails gas. WAGN does not have a contractual relationship with the persons most likely to make a claim against it (i.e. both downstream and upstream). In these circumstances it is appropriate that a User uses the contractual relationship it has with an Upstream Person and limit WAGN's liability.</p>	
<p>Required Amendment 52</p> <p>Clause 16.8 of the Template Haulage Contract should be deleted.</p>	<p>WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 52.</p>	<p>Clause 16.8 of the Template Haulage Contract has been amended as described in the amended Template Haulage Contract.</p>
<p>Required Amendment 53</p> <p>Clauses 17.1 to 17.3 of the Template Haulage Contract should be deleted and replaced with equivalent provisions to those in clause 60 of Part C of the current access arrangement.</p>	<p>There is no basis under the National Gas Access Law or National Gas Rule law for the conclusion at paragraph 1698 of the Draft Decision to determine that clauses 17.1 to 17.3 relate to commercial arrangements between contracting parties. In forming this view the ERA have failed to apply the National Gas Access Law and National Gas Rules as parliament intended. The ERA is bound to consider the National Gas Access Law and National Gas Rules as a whole.</p> <p>The ERA has determined incorrectly that the warranty</p>	<p>Clauses 17.1 to 17.3 of the Template Haulage Contract have been retained without amendment for the reasons set put in the commentary.</p>

	<p>provisions cannot be included as they are not a matter that goes to WAGN's compliance with the national gas objective (paragraph 1698 of the Draft Decision). In considering any provision of the Template Haulage Contract the ERA is required to consider the competing interests of WAGN and the Users in the context of the national gas objective (i.e. it is insufficient for the ERA to have just had regard to WAGN's compliance with the national gas objective).</p> <p>Rule 48(1)(d)(ii) requires the "terms and conditions on which the Reference Service will be provided" to be referred to in the Access Arrangement. Clauses 17.1 to 17.3 are terms and conditions on which the Reference Services will be provided. As such they are not procedural matters but terms and conditions that provide certainty in respect to the party's rights and obligations thus being consistent with the national gas objective.</p> <p>The suggestion of the ERA at paragraph 1654 of the Draft Decision (by implication) that the parties are free to agree such matters for themselves is, in addition to not complying with Rule 48(1)(d)(ii), an agreement to agree (so unenforceable at law). In the event that the parties do not agree then WAGN is bound to offer the Reference Services on the terms set out in the Template Haulage Contract (so with only the representations and warranties set out in the Template Haulage Contract).</p> <p>The ERA determines at paragraph 1697 of the Draft Decision that there are currently no specific representations and warranties in the Current Access</p>	
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	<p>Arrangement. The ERA appears to have misinterpreted clause 60 of the Part 3 of the Current Access Arrangement. That clause calls up a number of representations and warranties.</p> <p>While clauses 17.1 to 17.3 are more detailed than the representations and warranties in clause 60 of the Part 3 of the Current Access Arrangement none of the representations and warranties is oppressive and all are consistent with the national gas objective.</p> <p>In addition to the above analysis WAGN has considered the submissions of Alinta referred at paragraphs 1693 to 1695.</p> <p>In regards to:</p> <p>Alinta submission:</p> <p>The provisions of clauses 17.1(b), (c), (d) and (e) should also contain a materiality threshold.</p> <p>WAGN response:</p> <p>The warranties requested are materially consistent with provisions in commercial agreements. There is no reasonable basis as to why Alinta should not be able to warrant the matters referred to in clauses 17.1(b), (c), (d) and (e).</p> <p>Alinta submission:</p> <p>Clause 17.1(h) Given the significance of the consequences of a breach of warranty under the Haulage Contract, it is not appropriate to include a warranty that can be triggered by the threat of an</p>	
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	<p>action or proceeding. The warranty is too broad and should be deleted.</p> <p>WAGN response:</p> <p>The warranties requested are materially consistent with provisions in commercial agreements. In any event clause 17.1(h) requires the action to “materially affect”.</p> <p>Alinta submission:</p> <p>Clause 17.1(m) User has contractual arrangements with pipeline operators and gas suppliers, and can seek to enforce its rights under those arrangements – however User cannot procure their compliance with the Retail Market Scheme. Service Provider has its own contractual arrangements with operators of interconnected pipelines and should seek to enforce any compliance directly. Clause 17.1(m) should be deleted</p> <p>WAGN response:</p> <p>The clause is appropriate given it is limited by the words “to the extent necessary to permit the parties to perform their respective obligations under this Haulage Contract”.</p>	
<p>Required Amendment 54</p> <p>Clause 18.2 of the Template Haulage Contract should be</p>	<p>WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 54 save that WAGN has included a reference to the dispute resolution process under the Retail Market Scheme</p>	<p>Clause 18.1 of the Template Haulage Contract has added as described in the amended Template Haulage Contract.</p>

<p>amended to revert back to the two alternatives for the parties to proceed to arbitration as set out in clause 56 of Part C of the current access arrangement, with appropriate references to the NGL.</p>	<p>and inserted a new clause 18.1. Consequential amendments have been made to clauses 12.2 and 12.6</p>	<p>The amendment is materially in the form requested by the ERA in relation to clause 18.2.</p>
<p>Required Amendment 55 Clause 18.3(f) of the Template Haulage Contract should be deleted.</p>	<p>There is no basis under the National Gas Access Law or National Gas Rule for the comment of the ERA at paragraph 1728 of the Draft Decision that the Template Haulage Contract should not have fundamental changes to the National Gas Access Law procedure. The procedures for dispute resolution under the Template Haulage Contract and the National Gas Access Law can be different as they deal with different subject matters and are intended to be exclusive of each other. In any event the amendment is not fundamental. As drafted clause 18.3(f) allows the parties to agree whether the rules of evidence will apply or not and in absence of agreement the arbitrator is empowered to make the decision (which may be that the rules of evidence do not apply). As drafted the provisions provide flexibility and enable the parties or the arbitrator to modify the process to best suit the dispute.</p>	<p>Clause 18.3(f) of the Template Haulage Contract has been retained in the amended Template Haulage Contract without amendment for the reasons set put in the commentary.</p>
<p>Required Amendment 56 Clause 20.1 of the Template Haulage Contract should be deleted.</p>	<p>There is no basis under the National Gas Access Law or National Gas Rules for the conclusion at Paragraph 1744 of the Draft Decision to determine that clause 20.1 relates to commercial arrangements between contracting parties and not to matters that go to compliance of "WAGN's proposed Template Haulage Contract with the national gas objective". In forming this view the ERA have failed to apply the National Gas Access Law and National Gas Rules as</p>	<p>Clause 20.1 of the Template Haulage Contract has been retained in the amended Template Haulage Contract without amendment for the reasons set put in the commentary.</p>

	<p>parliament intended. The ERA is bound to consider the National Gas Access Law and National Gas Rules as a whole.</p> <p>The ERA has determined incorrectly that the ownership of intellectual property is to be determined solely with reference to WAGN's compliance with the national gas objective (paragraph 1744 of the Draft Decision). In considering any provision of the Template Haulage Contract the ERA is required to consider the competing interests of WAGN and the Users in the context of the national gas objective (i.e. it is insufficient for the ERA to have just had regard to WAGN's compliance with the national gas objective).</p> <p>Rule 48(1)(d)(ii) requires the "terms and conditions on which the Reference Service will be provided" to be referred to in the Access Arrangement. Clause 20.1 is a term and condition on which the Reference Services will be provided. The provisions regulate the ownership of intellectual property relevant to the WAGN GDS. As such they are not procedural matters but terms and conditions that provide certainty in respect to the party's rights and obligations thus being consistent with the national gas objective.</p> <p>The suggestion of the ERA at paragraph 1744 of the Draft Decision (by implication) that the parties are free to agree such matters for themselves is, in addition to not complying with Rule 48(1)(d)(ii), an agreement to agree (so unenforceable at law). In the event that the parties do not agree then WAGN is bound to offer the Reference Services on the terms set out in the Template Haulage Contract meaning there is</p>	
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	<p>uncertainty as to the effect of one party providing information to another. In addition it does not provide WAGN with express property rights in relation to intellectual property.</p> <p>The amendment suggested by the ERA is inconsistent with the approach taken by the ERA in relation to other property rights (i.e. the ERA has approved provisions that confirm that WAGN owns the Standard Delivery Services and the User Specific Delivery Services).</p> <p>Lastly, the provisions in clause 20.1(b) reflect the operation of the gas market in Western Australia in that the operation of the gas distribution system and the retail arrangements are undertaken by separate entities and under difference licence regimes. As such it is not a matter that can be left for the parties to endeavour to agree on (i.e. WAGN requires ownership in all documents evidencing the location, dimensions and specifications of the WAGN GDS as WAGN is responsible under the Licence for the construction, operation and maintenance of that system).</p>	
<p>Required Amendment 57</p> <p>Clause 20.2 of the Template Haulage Contract should be deleted.</p>	<p>The basis for Required Amendment 57 is ambiguous and conflicts with Required Amendment 21. Paragraph 1749 of the Draft Decision refers just to clause 20.2(c) and confirms it is not in the Current Access Arrangement. The ERA then determines at paragraph 1751 of the Draft Decision that clause 20.2 is not approved (despite a similar provision in the Current Access Arrangement) please refer to clause 66 of Part C of the Current Access Arrangement and</p>	<p>Clause 20.2 of the Template Haulage Contract has been retained in the amended Template Haulage Contract without amendment for the reasons set put in the commentary.</p>

	Required Amendment 21 making express reference to clause 20.2).	
<p>Required Amendment 58</p> <p>Clause 20.4 of the Template Haulage Contract should be amended to read:</p> <p>(b) Where information is not exchanged in accordance with clause 20.4(a), <Service Provider> or <User> may recover from the person providing or requesting the information the reasonable additional costs involved in dealing with the information.</p>	WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 58.	Clause 20.4 of the Template Haulage Contract has been amended as described in the amended Template Haulage Contract.
<p>Required Amendment 59</p> <p>Clause 20.5 of the Template Haulage Contract should be deleted.</p>	WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 59.	Clause 20.5 of the Template Haulage Contract has been deleted as described in the amended Template Haulage Contract.
<p>Required Amendment 60</p> <p>Clause 21.4 of the Template Haulage Contract should be deleted.</p>	<p>The clauses are dealing with contractual matters arising from legislative matters that parties undertaking arms length negotiations are required to agree upon. National Gas Rule 48(1)(d)(ii) requires these to be included in the haulage contract (thus deletion of the clauses is contrary to National Gas Rule 48(1)(d)(ii)).</p> <p>The Reference Tariffs have been calculated on a basis that they are exclusive of any stamp duty that may be payable on the Template Haulage Contract and that each party pay its own legal costs.</p>	Clause 21.4 of the Template Haulage Contract has been retained in the amended Template Haulage Contract without amendment for the reasons set put in the commentary.

	<p>As such the deletion of clause 21.4 is inconsistent with the revenue and pricing principles in section 24 of the National Gas Access Law in that the ERA is denying WAGN the opportunity to recover the efficient cost of providing the Reference Services (in the event a duty arises or a claim that WAGN ought to pay the other parties costs).</p> <p>The suggestion of the ERA at paragraph of the Draft Decision 1786 (that the parties are free to agree such matters for themselves) is, in addition to not complying with Rule 48(1)(d)(ii), an agreement to agree (so unenforceable at law).</p> <p>In the event that the parties do not agree then WAGN is bound to offer the Reference Services on the terms set out in the Template Haulage Contract meaning the Reference Tariffs are offered without agreement on the duty that may be payable or how the parties costs are to be managed (even though that is not the basis upon which they have been calculated).</p> <p>For the reasons set out above clause 21.4 is consistent with the National Gas Access Law and the National Gas Rules.</p>	
<p>Required Amendment 61</p> <p>Clause 22.1 of the Template Haulage Contract should be amended as follows:</p> <p>1) The definition of CPI should refer to 'CPI All Groups Eight Capital Cities'.</p> <p>2) The following definitions should read the same as the</p>	<p>The following is a list of the items that comprise Required Amendment 61 with WAGN's response being included after the relevant item. Where WAGN has elected not to adopt the suggestion by the ERA it does so because the amendment suggested by the ERA is inconsistent with the national gas objective in that the amendment suggested by the ERA will introduce ambiguity into the Template Haulage</p>	<p>To the extent that WAGN has elected to adopt Required Amendment 61 the amendments are described in the commentary column and have been included in the amended Template Haulage Contract.</p>

<p>corresponding definitions in the NGL and NGR:</p> <p>a) Access Arrangement; b) Delivery Point; c) End user; d) National Gas Rules; e) Receipt Point; f) Regulator; and g) User.</p> <p>3) The following definitions should read as follows:</p> <p>a) 'REMCo' means the Retail Energy Market Company Limited (ABN 15 103 318 556), or any other corporation managing the retail energy market.</p> <p>b) 'REMCo Registry' has the meaning given to that term in the Retail Market Rules, as amended from time to time, or any other rules applying to the retail energy market.</p> <p>c) 'Retail Market Rules' means the rules applying under the Retail Market Scheme, as amended from time to time, or any other scheme applying to the retail energy market.</p> <p>d) 'Retail Market Scheme' means the retail market scheme, including the Retail Market Rules, approved under section 11ZOJ of the Energy Coordination Act 1994 (WA) as applying in respect of the WAGN GDS, as amended from time to time, or any other scheme applying to the retail energy market.</p> <p>4) The terms 'Service Provider' and 'Covered Pipeline Service Provider' should read:</p> <p>'Service Provider' has the meaning given to that term under the National Gas Access Law and for the purposes of this Haulage Contract, WAGN is the Covered Pipeline Service</p>	<p>Contract leading to inefficiencies and increase the likelihood of a dispute. The suggestions put forward by the ERA are in bold with WAGN's response underneath in regular text.</p> <p>WAGN has assumed that the reference by the ERA to aligning a definition with that in the "NGL" means aligning it with the relevant definition in the National Gas Access Law. The reference to the "NGL" is a generic statement that does not take into account the manner in which the National Gas Access Law was enacted in Western Australia. The definition of National Gas Access Law refers to section 7 of the <i>National Gas Access Western Australia) Act 2009 (WA)</i> which calls up the modified text of the relevant South Australian legislation.</p> <p>The definition of CPI should refer to 'CPI All Groups Eight Capital Cities'.</p> <p>The ERA has relied upon the same analysis for this item as it has for Required Amendment 6. WAGN relies on the commentary that it made in relation to Required Amendment 6 (noting that a reference to CPI is no longer required in the Draft Haulage Contract.</p> <p>WAGN has elected not to adopt the suggestion of the ERA referred to in Required Amendment 61 in relation to the definition of CPI.</p> <p>The following definitions should read the same as the corresponding definitions in the NGL and NGR</p> <p>Access Arrangement</p> <p>The reference to Access Arrangement in the National Gas Access Law is a generic description. The intent</p>	
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<p>Provider for the WAGN GDS.</p> <p>'Covered Pipeline Service Provider' means a service provider that provides or intends to provide Pipeline Services by means of a covered pipeline.</p>	<p>of the definition of Access Arrangement in the Template Haulage Contract is to cross reference the Template Haulage Contract to the Access Arrangement (i.e. the access arrangement specific to the WAGN GDS).</p> <p>WAGN has elected not to adopt the suggestion of the ERA referred to in Required Amendment 61 in relation to the definition of Access Arrangement.</p> <p>Delivery Point</p> <p>The reference to Delivery Point in the National Gas Rules encompasses two concepts (delivery and receipt) and is a generic description. The Template Haulage Contract deals with those two concepts separately and is specific to the WAGN GDS (the definition of Delivery Point in the Template Haulage Contract refers to the Delivery Point Register meaning that a Delivery Point is only those parts of the WAGN GDS referred to in the Delivery Point Register).</p> <p>WAGN confirms that the AER has approved a materially similar approach to the definition of Delivery Point. Please refer to Glossary section of the Wagga Wagga Access Arrangement for the Wagga Wagga gas distribution network approved by the AER on 23 April 2010.</p> <p>WAGN has elected not to adopt the suggestion of the ERA referred to in Required Amendment 61 in relation to the definition of Delivery Point.</p> <p>End user</p> <p>The definition of End User in the National Gas Access Law is generic and so broader than the use of the</p>	
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	<p>term “End User” in the Template Haulage Contract (i.e. an End User is specific to the WAGN GDS and is only someone who proposes, or does, acquire Gas from a User at a Delivery Point).</p> <p>WAGN has elected not to adopt the suggestion of the ERA referred to in Required Amendment 61 in relation to the definition of End User.</p> <p>National Gas Rules</p> <p>WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 61 in relation to the definition of National Gas Rules.</p> <p>Receipt Point</p> <p>The reference to Receipt Point in the National Gas Rules encompasses two concepts (delivery and receipt) and is a generic description. The Template Haulage Contract deals with those two concepts separately and is specific to the WAGN GDS (the definition of Receipt Point contemplates that WAGN will designate a Receipt Point for a Sub-network).</p> <p>WAGN confirms that the AER has approved a materially similar approach to the definition of Receipt Point. Please refer to Glossary section of the Wagga Wagga Access Arrangement for the Wagga Wagga gas distribution network approved by the AER on 23 April 2010.</p> <p>WAGN has elected not to adopt the suggestion of the ERA referred to in Required Amendment 61 in relation to the definition of Receipt Point.</p>	
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	<p>Regulator</p> <p>WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 61 in relation to the definition of Regulator.</p> <p>User</p> <p>There is no basis for the request by the ERA as the definition of User in the Template Haulage Contract already refers to the National Gas Access Law.</p> <p>WAGN has elected not to adopt the suggestion of the ERA referred to in Required Amendment 61 in relation to the definition of User.</p> <p>The following definitions should read as follows:</p> <p>‘REMCo’ means the Retail Energy Market Company Limited (ABN 15 103 318 556), or any other corporation managing the retail energy market.</p> <p>The words “retail energy market” are broader than the gas retail market that REMCO regulates.</p> <p>WAGN has elected not to adopt the suggestion of the ERA referred to in Required Amendment 61 in relation to the definition of REMCo.</p> <p>‘REMCo Registry’ has the meaning given to that term in the Retail Market Rules, as amended from time to time, or any other rules applying to the retail energy market.</p> <p>With the introduction of the words “as amended from time to time” the ERA has assumed an inconsistent position with regard to that which they should regulate. Under Required Amendment 62 the ERA determines that matters of interpretation are for the parties to decide. Under this amendment they are</p>	
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	<p>requesting the insertion of as “amended from time to time” which would have the same affect as clause 22.2(b) (i) which the ERA has requested be deleted.</p> <p>With the introduction of the words “or any other rules applying to the retail energy market” the ERA has introduced words that are not in the definition of “REMCo Registry” as described in the Retail Market Rules. The words “retail energy market” are broader than the gas retail market that the Retail Market Rules regulate.</p> <p>Retail Market Rules’ means the rules applying under the Retail Market Scheme, as amended from time to time, or any other scheme applying to the retail energy market.</p> <p>With the introduction of the words “as amended from time to time” the ERA has assumed an inconsistent position with regard to that which they should regulate. Under Required Amendment 62 the ERA determines that matters of interpretation are for the parties to decide. Under this amendment they are requesting the insertion of as “amended from time to time” which would have the same affect as clause 22.2(b) (i) which the ERA has requested be deleted.</p> <p>The words “retail energy market” are broader than the gas retail market that the Retail Market Rules regulate.</p> <p>‘Retail Market Scheme’ means the retail market scheme, including the Retail Market Rules, approved under section 11ZOJ of the Energy Coordination Act 1994 (WA) as applying in respect of the WAGN GDS, as amended from time to time, or any other scheme applying to the retail energy market.</p> <p>With the introduction of the words “as amended from</p>	
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	<p>time to time” the ERA has assumed an inconsistent position with regard to that which they should regulate. Under Required Amendment 62 the ERA determines that matters of interpretation are for the parties to decide. Under this amendment they are requesting the insertion of as “amended from time to time” which would have the same affect as clause 22.2(b) (i) which the ERA has requested be deleted.</p> <p>The words “retail energy market” are broader than the gas retail market that the Retail Market Rules regulate.</p> <p>The terms ‘Service Provider’ and ‘Covered Pipeline Service Provider’ should read:</p> <p>‘Service Provider’ has the meaning given to that term under the National Gas Access Law and for the purposes of this Haulage Contract, WAGN is the Covered Pipeline Service Provider for the WAGN GDS.</p> <p>‘Covered Pipeline Service Provider’ means a service provider that provides or intends to provide Pipeline Services by means of a covered pipeline.</p> <p>The definition of “Service Provider” has been amended materially in the form requested by the ERA save that WAGN has elected to incorporate the concept of “Service Provider” in addition to “Covered Pipeline Service Provider”.</p> <p>The definition of “Covered Pipeline Service Provider” has been included save that the definition relies on the definition in the National Gas Access Law.</p>	
Required Amendment 62	There is no basis under the National Gas Access Law or National Gas Rules for the conclusion at paragraph	Clause 22.2 of the Template Haulage Contract has been retained in the amended Template Haulage Contract

<p>Clause 22.2 of the Template Haulage Contract should be deleted.</p>	<p>1818 of the Draft Decision to determine that clause 22.2 relates to commercial arrangements between contracting parties and not to matters that go to compliance with the national gas objective. In forming this view the ERA have failed to apply the National Gas Access Law and National Gas Rules as parliament intended. The ERA is bound to consider the National Gas Access Law and National Gas Rules as a whole.</p> <p>In considering any provision of the Template Haulage Contract the ERA is required to consider the competing interests of WAGN and the Users in the context of the national gas objective (i.e. it is insufficient for the ERA to have just had regard to WAGN's compliance with the national gas objective).</p> <p>Rule 48(1)(d)(ii) requires the “terms and conditions on which the Reference Service will be provided” to be referred to in the Access Arrangement. Clauses 22.2 are the terms and conditions on which the Reference Services will be provided.</p> <p>Clause 22.2 deals with common interpretation issues that commercial agreements regulate. In absence of such a clause there is uncertainty as to how the terms of the haulage contract will be interpreted. This means an increased possibility of disputes arising.</p> <p>The provisions of clause 22.2 reflect the law relevant to interpretation issues (i.e. they are intended to address the key areas of dispute that have arisen in the context of interpretation issues). As such they are not procedural matters but terms and conditions that provide certainty in respect to the party's rights and</p>	<p>without amendment for the reasons set put in the commentary.</p>
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	<p>obligations thus being consistent with the national gas objective and to delete them is inconsistent with that principal.</p> <p>The suggestion of the ERA at paragraph 1618 of the Draft Decision (by implication) that the parties are free to agree such matters for themselves is, in addition to not complying with Rule 48(1)(d)(ii) an agreement to agree (so unenforceable at law). In the event that the parties do not agree then WAGN is bound to offer the Reference Services on the terms set out in the draft Template Haulage Contract meaning it will to offer the Reference Services without the certainty provided by the inclusion of clause 22.2.</p> <p>WAGN also considers that the statement at paragraph 1818 of the Draft Decision that the "Template Haulage Contract is not a complete document" is wholly inconsistent with the intent of including the Template Haulage Contract in the Access Arrangement (please refer to WAGN's submissions referred to at paragraphs 1214 and 1215 of the Draft Decision and the ERA's approval of that approach at paragraph 1219 of the Draft Decision).</p> <p>WAGN confirms that clause 22.2 is materially consistent with the Schedule 1 of Part A of the Current Access Arrangement. WAGN also confirms that the AER has approved an interpretation clause in an agreement to provide Reference Services. Please refer to clause:</p> <ol style="list-style-type: none"> 1. 1 of the terms and conditions for the Wagga Wagga Access Arrangement for the Wagga Wagga gas distribution network approved by 	
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	<p>the AER on 23 April 2010; and</p> <p>2. 1.2 of the Reference Services Agreement in the Access Arrangement for the Jemena Gas Networks NSW gas distribution network approved by the AER on 28 June 2010.</p>	
<p>Required Amendment 63</p> <p>The following clauses of the Template Haulage Contract:</p> <p>a) Clauses 2(c) of Schedules 1 and 2;</p> <p>b) Clause 2(d) of Schedule 3; and</p> <p>c) Clauses 2(b) of Schedules 4 and 5</p> <p>should be amended to read as follows:</p> <p><Service Provider> will own, operate and maintain, and may from time to time modify, subject to consultation with <User>, any User Specific Delivery Facilities.</p>	<p>WAGN confirms that the relevant wording in the Access Arrangement is materially consistent with the same provisions in the Current Access Arrangement (see Schedule 1 to 4 Part C of the Current Access Arrangement).</p> <p>Required Amendment 63 is inconsistent with the national gas objective in that:</p> <ol style="list-style-type: none"> 1. the Standard Delivery Facilities and User Specific Delivery Facilities are the property of WAGN (so WAGN is conferring with someone with no property interest in the assets); 2. the requested amendment will prevent WAGN from modifying its property without consultation (such modifications are likely to be required for safety or operational matters which the User is not qualified to comment on); 3. the User's has contractual rights in the event that the modification causes the haulage of gas to be interrupted (so it is inefficient to introduce additional procedural requirements into the process); 4. there are already notice provisions in the event that the modifications result in a need to curtail (see clause 7 of the Template Haulage Contract); 	<p>Clauses 2(c) of Schedules 1 and 2;</p> <p>Clause 2(d) of Schedule 3; and</p> <p>Clauses 2(b) of Schedules 4 and 5,</p> <p>of the Template Haulage Contract have been retained without amendment in the amended Template Haulage Contract for the reasons set put in the commentary.</p>

	<p>5. there is uncertainty as to what comprises a “consultation”; and</p> <p>6. the conferral process may place WAGN in breach of its obligations under the Licence (see below).</p> <p>Under the Licence WAGN is required to classify any gas leak in its gas distribution system as described in Appendix G of AS4645-2005 (this is a requirement of Schedule 2 of the <i>Gas Standards (Gas Supply and System Safety) Regulations 2000</i> by the incorporation of AG 603-1978 which has been now replaced by AS4645-2005).</p> <p>In the event that the gas leak is classified as a Class 1 incident then WAGN must “immediately” (please refer to Appendix G of AS4645-2005) commence action to investigate and repair the leak. In these circumstances it will not be possible to consult with the User prior to modification.</p>	
<p>Required Amendment 64</p> <p>The following clauses of the Template Haulage Contract should be deleted:</p> <p>a) Clauses 2(e) of Schedules 1 and 2;</p> <p>b) Clause 2(f) of Schedule 3;</p> <p>c) Clauses 2(d) of Schedules 4 and 5;</p> <p>d) Clauses 9(c)(ii) of Schedules 1 and 2;</p> <p>e) Clauses 8(c)(ii) of Schedules 3 to 5;</p> <p>f) Clauses 7(c)(ii) of Schedules 4 and 5;</p> <p>g) Clauses 9(c)(ii) of Schedules 4 and 5;</p>	<p>Required Amendment 64 is inconsistent with the national gas objective in that clause 8.3(a) contains acknowledgements that WAGN’s ability to provide the Reference Services relies on User providing unfettered access but does not expressly grant unfettered access (unfettered access is granted by the provisions referred to in Required Amendment 64). Without the entitlements in the clauses referred to in Required Amendment 64 there is no express obligation on the User to provide unfettered access.</p>	<p>The clauses referred to in Required Amendment 64 have been retained in the amended Draft Template Haulage Contract without amendment for the reasons set put in the commentary.</p>

<p>h) Clauses 10(c)(ii) of Schedules 4 and 5; and i) Clauses 11(c)(ii) of Schedules 4 and 5.</p>		
<p>Required Amendment 65</p> <p>Clauses 4(b) of Schedules 1 to 3 of the Template Haulage Contract should be amended as follows:</p> <p>b) Notwithstanding clause 4(a) of this Schedule the pressure described at clause 4(a) of this Schedule will be amended from time to time to the pressure that <Service Provider> and <User> agree determines, in its absolute discretion from time to time, as the minimum nominal operating pressure for the main to which the Delivery Point is connected.</p>	<p>Required Amendment 65 is inconsistent with the national gas objective in that the purpose of clause 4(b) was to allow WAGN to amend the relevant minimal nominal operating pressure in the event that it was required for operating or maintenance purposes or because of unforeseen system. As redrafted by the ERA the clause 4(b) is an agreement to agree and is unenforceable at law leaving WAGN with no ability to amend the relevant operating pressure in the circumstances described above.</p> <p>In addition Required Amendment 63 is inconsistent with the national gas objective in that:</p> <ol style="list-style-type: none"> 1. the requested amendment assumes that a User has the technical ability to meaningfully partake in discussion regarding the minimum nominal operating pressure of the WAGN GDS (which is unlikely given the different roles the retail gas market requires WAGN and a User to perform so the process adds no value and will be inefficient); 2. the User's has contractual rights in the event that the amendment of the minimum nominal operating pressure causes the haulage of gas to be interrupted (so it is inefficient to introduce additional procedural requirements into the process); and 3. the requirement that the parties agree (in addition to being unenforceable at law) may place WAGN in breach of its obligations under the Licence (see below). 	<p>Clause 4(b) of Schedules 1 to 3 of the Template Haulage Contract have amended as described in the amended Template Haulage Contract for the reasons set out in the commentary.</p>

	<p>Under the Licence WAGN is required to classify any gas leak in its gas distribution system as described in Appendix G of AS4645-2005 (this is a requirement of Schedule 2 of the <i>Gas Standards (Gas Supply and System Safety) Regulations 2000</i> by the incorporation of AG 603-1978 which has been now replaced by AS4645-2005).</p> <p>In the event that the gas leak is classified as a Class 1 incident then WAGN must “immediately” (please refer to Appendix G of AS4645-2005) commence action to investigate and repair the leak. In these circumstances it will not be possible to consult with the User prior to modification.</p> <p>WAGN has considered the concerns of the ERA at paragraph 1840 of the Draft Decision and believes the insertion of the words as a “reasonable and prudent network operator” addresses those concerns.</p>	
<p>Required Amendment 66</p> <p>Clause 5(b) of Schedules 1 and 2 of the Template Haulage Contract should read:</p> <p>(b) <Service Provider> will endeavour to take such Telemetry readings each day.</p>	<p>WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 66.</p>	<p>Clause 5(b) of Schedules 1 and 2 of the Template Haulage Contract have been amended as described in the amended Template Haulage Contract</p>
<p>Required Amendment 67</p> <p>Clause 8(c) of Schedule 1 of the Template Haulage Contract should be amended to either make notification mandatory or confer a right upon a user to have a flow control installed.</p>	<p>WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 67.</p>	<p>Clause 8(c) of Schedule 1 of the Template Haulage Contract has been amended as described in the amended Template Haulage Contract</p>

<p>Required Amendment 68</p> <p>The following clauses of the Template Haulage Contract should be deleted:</p> <p>a) clause 9 of Schedules 1 and 2</p> <p>b) clause 8 of Schedule 3; and</p> <p>c) clauses 7 of Schedules 4 and 5</p>	<p>The basis for Required Amendment 68 is ambiguous in that the commentary of the ERA refers to the issue of an exclusion of liability contained in one sub clause of the clauses referred to in and Required Amendment 68 and then purports to delete the entire clause (which deals with deregistration of delivery points).</p> <p>To the extent that Required Amendment 68 relates to the deletion of the sub-clause that regulates liability WAGN elects to adopt the suggestion of the ERA.</p>	<p>Clause 9 of Schedules 1 and 2;</p> <p>Clause 8 of Schedule 3; and; and</p> <p>Clauses 7 of Schedules 4 and 5,</p> <p>have been amended as described in the amended Template Haulage Contract insofar far as those clauses purport to limit WAGNs liability for failing to deregister a Delivery Point.</p>
<p>Required Amendment 69</p> <p>Clause 6.4(a)(ii) of the access arrangement should be deleted.</p>	<p>Required Amendment 69 relies on the same analysis that the ERA has relied upon for Required Amendment 4. WAGN relies on the commentary that it made in relation to Required Amendment 4.</p>	<p>Clause 6.4(a)(ii) of the Access Arrangement has been retained in the amended Access Arrangement without amendment for the reasons set out in the commentary.</p>
<p>Required Amendment 70</p> <p>Clauses 7.1, 7.2 and 7.3 of the access arrangement should be deleted and replaced with the following:</p> <p>7.1 Extensions of high pressure pipelines</p> <p>i) If WAGN proposes a high pressure pipeline extension of the covered pipeline it must apply in writing to the Authority for a decision on whether the proposed extension will be taken to form part of the covered pipeline and will be covered by this access arrangement. The application must describe the extension and set out why the extension is necessary.</p> <p>ii) The application referred to in (i) above must be made before the proposed high pressure pipeline extension comes into service.</p> <p>iii) After considering WAGN's application and undertaking such consultation as the Authority considers appropriate the</p>	<p>There is no basis for the amendments referred to in Required Amendment 70 under the National Gas Access Law or the National Gas Rules. WAGN also confirms that Required Amendment 70 is inconsistent with the national gas objective as it is ambiguous, requires inefficiencies and increases the likelihood of a dispute in that:</p> <ol style="list-style-type: none"> 1. clause 7.1(v) of the suggested amendment states an "extension under clause 7.1" will not affect Reference Tariffs during the Current Access Arrangement Period but the clause does not refer to extensions under clause 7.2 so it is uncertain if these might affect Reference Tariffs; 2. there is no time within which the ERA has to 	<p>Clause 7.1, 7.2 and 7.3 of the Access Arrangement have been retained in the amended Access Arrangement with some minor amendments for the reasons set out in the commentary.</p>

<p>Authority will inform WAGN of its decision.</p> <p>iv) The Authority’s decision referred to in (iii) above may be made on such reasonable terms as determined by the Authority and will have the effect stated in the decision.</p> <p>v) An extension under this clause 7.1 will not affect reference tariffs during a current access arrangement period.</p> <p>7.2 Extensions of medium and low pressure pipelines</p> <p>i) Any low or medium pressure pipeline extension of the covered pipeline will be treated as part of the covered pipeline and accordingly covered by this access arrangement.</p> <p>ii) No later than 20 business days following the expiration of the financial year WAGN must notify the Authority of all low and medium pressure pipeline during that year including all extensions commenced in progress or completed.</p>	<p>make its decision under clause 7.1(iii);</p> <ol style="list-style-type: none"> 3. the term “high pressure pipeline extension” is not defined in the Access Arrangement; and 4. the information referred to at clause 7.2(ii) is already provided to the ERA under another process. 	
<p>Required Amendment 71</p> <p>The second sentence of clause 8.1(a) of the access arrangement should be deleted.</p> <p>Clause 8.1(a)(iv) of the access arrangement should be deleted.</p> <p>The Template Haulage Contract should be amended to insert a term in identical terms to clause 8 of the access arrangement as amended in this draft decision.</p>	<p>WAGN elects to adopt the analysis of the ERA at paragraph 1993 of the Draft Decision and amend the references to clauses 5.3 and 5.4 of the Template Haulage Contract to clause 13.7 of Template Haulage Contract.</p>	<p>Clause 8.1(a) of the Access Arrangement has been amended as described in the amended Access Arrangement for the reasons set out in the commentary.</p>
<p>Required Amendment 72</p> <p>The definition of CPI in clause 12 of the access arrangement should be amended to CPI All Groups, Eight Capital Cities.</p>	<p>Required Amendment 72 uses the same analysis that the ERA has relied upon for Required Amendment 6. WAGN relies on the commentary that it made in relation to Required Amendment 6.</p>	<p>The definition of CPI of the Access Arrangement has been retained in the amended Access Arrangement without amendment for the reasons set out in the commentary.</p>
<p>Required Amendment 73</p>	<p>The following is a list of the items that comprise</p>	<p>To the extent that WAGN has elected to adopt Required</p>

<p>The following definitions should be amended to read the same as the corresponding definitions in the NGL and NGR:</p> <ul style="list-style-type: none"> a) Delivery Point; b) National Gas Access (WA) Legislation; c) National Gas Regulations d) National Gas Rules; e) Receipt Point; f) Reference Tariff Variation Mechanism; and g) User. 	<p>Required Amendment 73 with WAGN's response being included after the relevant item. Where WAGN has elected not to adopt the suggestion by the ERA it does so because the amendments suggested by the ERA are inconsistent with the national gas objective in that the amendment suggested by the ERA will introduce ambiguity into the Template Haulage Contract leading to inefficiencies and increase the likelihood of a dispute. The suggestions put forward by the ERA are in bold with WAGN's response underneath in regular text.</p> <p>WAGN has assumed that the reference by the ERA to aligning a definition with that in the "NGL" means aligning it with the relevant definition in the National Gas Access Law. The reference to the "NGL" is a generic statement that does not take into account the manner in which the National Gas Access Law was enacted in Western Australia. The definition of National Gas Access Law refers to section 7 of the <i>National Gas Access Western Australia) Act 2009 (WA)</i> which calls up the modified text of the relevant South Australian legislation.</p> <p>The following definitions should be amended to read the same as the corresponding definitions in the NGL and NGR:</p> <p>Delivery Point</p> <p>WAGN relies on its commentary in relation to the definition of "Delivery Point" under Required Amendment 61.</p> <p>National Gas Access (WA) Legislation</p>	<p>Amendment 73 the amendments are described in the commentary column and have been included in the amended Template Haulage Contract.</p>
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	<p>This defined term does not appear in this form in either the National Gas Access Law or the National Gas Rules.</p> <p>National Gas Regulations</p> <p>WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 73 in relation to the definition of National Gas Regulations.</p> <p>National Gas Rules</p> <p>WAGN has elected to adopt the suggestion of the ERA referred to in Required Amendment 73 in relation to the definition of National Gas Rules.</p> <p>Receipt Point</p> <p>WAGN relies on its commentary in relation to the definition of “Receipt Point” under Required Amendment 61.</p> <p>Reference Tariff Variation Mechanism</p> <p>WAGN has elected to adopt the suggestion of the ERA materially in the form requested.</p> <p>User</p> <p>There is no basis for the request by the ERA as the definition of User in the Access Arrangement already refers to the National Gas Access Law.</p>	
<p>Required Amendment 74</p> <p>Retail Market Rules’ means the rules applying under the Retail Market Scheme, as amended from time to time, or any other scheme applying to the retail energy market.</p>	<p>Required Amendment 74 uses the same analysis that the ERA has relied upon for Required Amendment 61. WAGN relies on the commentary that it made in relation to Required Amendment 61.</p>	<p>The definitions referred to in Required Amendment 74 have been retained in the amended Access Arrangement without amendment for the reasons set out in the commentary.</p>

<p>'Retail Market Scheme' means the retail market scheme, including the Retail Market Rules, approved under section 11ZOJ of the Energy Coordination Act 1994 (WA) as applying in respect of the WAGN GDS, as amended from time to time, or any other scheme applying to the retail energy market.</p>		
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