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WA Gas Networks, Gas Access
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WA GAS NETWORKS – OCTOBER 2010 REVISED ACCESS ARRANGEMENT FOR THE MID-WEST AND SOUTH-WEST GAS DISTRIBUTION SYSTEMS

Alinta Pty Ltd (Alinta) appreciates the opportunity to comment on:

1. the Economic Regulation Authority's draft decision on WA Gas Networks (WAGN) Revisions Proposal for the access arrangement for the Mid-West and South-West Gas Distribution Systems (the Draft Decision); and
2. WA Gas Networks' (WAGN) response to the Draft Decision, including its October 2010 proposed Access Arrangement (AA) and October 2010 Template Haulage Contract (THC), October 2010 Access Arrangement Information (AAI), and its supporting Submission.

Alinta has commented only on certain issues arising from WAGN's 2010 AA, AAI and THC, and the absence of a comment on any specific issue should not be taken to indicate that Alinta supports, or does not support, that particular aspect of WAGN's October 2010 proposed AA, AAI and THC.

Alinta's submission is structured as follows.

- Comments on a number of key conceptual issues are provided below.
- Attachment A comments on pipeline services that are to be included in the AA as reference services and the AA Application process, as well as certain matters raised by WAGN in its October 2010 Submission to support its decision not to make the amendments required by the Authority;
- Attachment B comments on WAGN's October 2010 AA; and
- Attachment C comments on WAGN's October 2010 THC.

Exclusion of 'commercial matters' from Access Arrangement

In its Draft Decision, the Authority notes that Rule 48(1)(d)(ii) of the NGR provides that a full access arrangement must specify for each reference service the other terms and conditions (that do not concern revenue or pricing) on which the reference service will be provided. Nevertheless, the Authority also suggests (e.g. at paragraph 1478) that its assessment is directed solely at the compliance of WAGN's proposed revisions with the national gas objective, and not necessarily with matters that relate to the commercial arrangements between WAGN and Users or Prospective Users.

The regulation of natural monopoly markets focuses predominantly on regulating access and pricing for the provision of "bottle neck" infrastructure services, which are services that are used as inputs into other industries. The natural monopoly characteristics of such markets mean that the service provider can potentially withhold access to the service and/or charge monopoly prices. Exercising monopoly power through withholding access to "bottleneck" services and/or charging monopoly prices have the potential distort efficient production and consumption decisions in downstream and/or upstream markets.

The gas distribution system (GDS) operated by WAGN in the Mid-West and South-West Supply Areas is a natural monopoly, and therefore the potential arises for it to withhold gas distribution services and/or to charge monopoly prices. It is for this reason that the objective of the NGR is to promote outcomes that are aligned with efficient market outcomes – that is, to promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas.

The natural monopoly nature of the GDS, and the fact that the ongoing viability of gas retailers is highly dependent on access to the services provided by the GDS, means there appears to be little prospect for commercial matters where a default position is not determined in the AA or the THC being resolved by bilateral agreement as anticipated by the Authority.

For these reasons, Alinta is concerned that the deletion of a number of clauses from the THC (e.g. certain conditions precedent and pre-conditions to access, representations and warranties, GST) on the basis they relate to commercial matters between the parties rather than compliance with the NGL or NGR, are inconsistent with the national gas objective, specifically the efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas.

Alinta notes that WAGN has similar concerns, indicating that the deletion of clauses relating to such 'commercial matters' would introduce ambiguity that is likely to lead to inefficiencies and increases the likelihood of disputes.



Duration of haulage contract

The Authority required that WAGN amend clause 2(b) of the THC so that a haulage contract for reference services can only extend past the date of revision or expiry of the access arrangement with the user's agreement and on the basis of this contract being varied to incorporate the terms and conditions of the subsequent access arrangement.

Alinta considers that clause 2(b) of the THC, (with or without Authority's required amendment) when read with clauses 12.2, 12.3, 12.4 and 12.5, override the normal principles and sanctity of contract. A significant User should be entitled to enter into a long term haulage contract that continues on the agreed terms and conditions, regardless of revisions to the access arrangements and changes made to future haulage services by the service provider for its own convenience. If the User is prepared to embrace the revised access arrangement or varied haulage service, it can bilaterally agree with the service provider to amend the contract. Alinta and other Users should be able to plan for the medium to long term for its use of the network and not have the whole basis of its access / haulage arrangements placed at large every five years.

The natural monopoly nature of the GDS, and the fact that the ongoing viability of gas retailers is highly dependent on access to the services provided by the GDS, means there appears to be little prospect for this matter to be resolved by bilateral agreement as anticipated by the Authority.

Rate of return

The basis for deriving a rate of return, and in particular the cost of equity, for regulated gas transmission and distribution businesses has been the subject of significant debate and analysis by economic regulators throughout Australia. Alinta simply notes that the Authority did not agree with WAGN that other versions of CAPM, namely Black CAPM, Fama-French CAPM or the Zero-beta Fama French CAPM, were well accepted models. For this reason, it appears unsound to rely on the outputs of such models, as WAGN appears to have done, to derive an estimate of the cost of equity.

Should the Authority require further information on any of the above issues, or those discussed in the attachment, I can be contacted on 9486 3749.

Yours sincerely

Corey Dykstra
Manager Regulatory Affairs
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Att.

WA GAS NETWORKS – OCTOBER 2010 PROPOSED ACCESS ARRANGEMENT FOR THE MID-WEST AND SOUTH-WEST GAS DISTRIBUTION SYSTEMS

Access Arrangement

Reference Services

- *WAGN's October 2010 proposed Access Arrangement (AA) incorporates the Authority's required amendment to include deregistration services, meter lock services, disconnection and reconnection services as reference services.*

Alinta concurs with the Authority's Draft Decision that deregistration services, meter lock services, disconnection and reconnection services are all pipeline services that will be sought be a significant part of the market during the period covered by the access arrangement. Consequently, Alinta agrees that these services should be specified as reference services in the AA, and notes that this is the case in WAGN's October 2010 proposed AA.

Application Procedure

- *WAGN's October 2010 proposed AA did not incorporate the Authority's required amendment Clause 5.2.*

Alinta agrees with the Authority's assessment that clause 5.2 of WAGN's January 2010 proposed AA had the potential to create a barrier to entry. While Alinta welcomes the inclusion of Annexure F in the October 2010 proposed AA, which articulates the technical information that will be required by WAGN in respect of an Application, it remains concerned that subclauses 5.2(b), (c) and (e) provide WAGN with very broad discretion in respect of the information required to be provided as part of the Application, that this broad discretion continues to represent a potential barrier to entry and that the lack of certainty about the information required for an Application is inefficient.

For example, in the absence of all of the information required for an Application being specified in clause 5.2 (or elsewhere in the AA), it would appear that WAGN would have significant discretion to determine whether or not all of the information for an Application had been received. Consequently, and even if the additional information WAGN may require be provided under clause 5.2(b) were consistent with the NGL and the NGR, it would be possible to claim that the Prospective User had not submitted an Application that met the requirements of clause 5.2 until such (as yet unspecified) information had been provided by the Prospective User.

The uncertainty created by clause 5.2 of WAGN's revised proposed AA as to whether a Prospective User has provided the information for an Application appears inefficient.

Further, subclause 5.2(b) would permit WAGN to require an application to contain additional information in respect of an application for Pipeline Services (whereas clause 5.2(a) relates only to haulage services). While WAGN now intends that its ability to require a Prospective User to provide additional information be limited by the requirement that the request is consistent with the NGL and NGR, this ability appears unreasonably broad.

Alinta also notes that procedures for applying for certain pipeline services, including deregistration services, meter lock services, disconnection and reconnection services, are currently prescribed by the gas Retail Market Rules (RMR). It is not clear whether WAGN's broad discretion under subclause 5.2(b) might allow it to unilaterally require changes to procedures for applying for these pipeline services outside of the standard RMR processes for making such changes, which would include careful consideration of the technical and information system implications of any change.

Alinta remains concerned that neither the October 2010 proposed AA nor the October 2010 proposed THC appear to define or specify WAGN's minimum prudential requirements given the Application made by a Prospective User under clause 5.2 is to contain information as to compliance with WAGN's minimum prudential requirements. Alinta considers it would not be reasonable for the AA to require a Prospective User to provide this information where WAGN has not specified its minimum prudential requirements.

Currently, it appears WAGN will only specify its minimum prudential requirements in respect of an Application made under clause 5.2 as part of a subsequent Access Offer made under clause 5.3. Specifically, clause 5.3(b)(i) of WAGN's October 2010 proposed AA indicates that the Access Offer that may be made to the Prospective User will contain the terms and conditions on which WAGN is prepared to provide the requested Pipeline Service. It appears these terms and conditions would include WAGN's prudential and financial requirements as the Conditions Precedent in clause 1.1(a)(ii)(A) of the THC make reference to the *"...minimum prudential and financial requirements specified by <Service Provider> in the Access Offer..."*.

The lack of clarity about the information required to be provided by a Prospective User in an Application under clause 5.2 is compounded by the reference in clause 15.3 of the THC (which purports to relate to insurance matters) to the requirement that the User must meet *"...requirements as to its ability to meet all financial obligations under this Haulage Contract"*. While the purpose and intent of this clause is unclear, it would appear to potentially allow WAGN to seek security for the full expected cost of pipeline services provided over the duration of the Haulage Contract. That is, clause 15.3 of the THC may apply in addition to any requirement to provide security under clause 15.2.

Alinta submits that this would be unreasonable, and that the objective of the NGL would be best, and most efficiently achieved, if the AA and the haulage contract specified the minimum prudential requirements that a Prospective User is required to meet.

In addition, clause 15.2(b)(ii) of WAGN's October 2010 proposed AA would permit WAGN to require a user to provide a bank guarantee for:

...the greater of <Service Provider>'s reasonable estimate of all Haulage Charges and other amounts payable that will be incurred by <User> under the Haulage Contract in the 2 months following the date of estimation or an amount that is necessary in <Service Provider>'s reasonable opinion to protect <Service Provider>'s legitimate business interests.

Where a User or Prospective User meets WAGN's minimum prudential requirements, it would be reasonable to preclude WAGN from requiring security to be provided. A similar provision operates in respect of access to Western Power's electricity transmission and distribution system. There, under clause 9 of the Electricity Transfer Access Contract, Western Power may

- determine that the User's (or the Indemnifier's) technical or financial resources are such that a Reasonable and Prudent Person would consider there to be a material risk that the User (or the Indemnifier) will be unable to meet its obligations, and may then require the User (or the Indemnifier) to provide security equivalent to charges for two months' services; **but**
- it may not make such a determination where the User (or the Indemnifier) has an unqualified credit rating of at least BBB from Standard and Poor's Australia Pty Ltd or Baa from Moody's Investor Service Pty Ltd.
- *WAGN's October 2010 proposed AA did not incorporate the Authority's required amendment Clause 5.3.*

Alinta notes that WAGN has amended clause 5.3(a) only to specify that the request by a Prospective User must be in writing. However, neither WAGN's October 2010 proposed AA nor its AAI appear to include the application form that is to be used by Prospective Users in requesting a Pipeline Service. The Authority concluded in its Draft Decision that it could not assess the compliance of the proposed form with the NGL and the GNR in its absence.

Alinta agrees with the observations and conclusions of the Authority in its Draft Decision, and considers that WAGN should either include the application form to be used by Prospective Users in requesting access to a Pipeline Service, or otherwise specify the information required to be provided by such a form. This approach would appear to be consistent with other approved Access Arrangements for gas distribution pipeline services, including the Australian Energy Regulator's (AER) Final Decision on the Jemena Gas Networks Access arrangement proposal for the NSW gas networks (the Jemena Decision (WAGN's Submission itself makes reference to the Request for Service form at Schedule 5) and the AER's Wagga Wagga Decision (refer Appendix 1, Terms and Conditions, clause 8.7, p.16).

As a result, Alinta considers that the Authority should require WAGN to:

- delete clause 5.3(a) from its revised proposed AA; or
- include the application form that is to be used by Prospective Users in requesting access to a Pipeline Service as part of its revised proposed AA; or

- specify in the AA the information that would be required to be provided by a Prospective User in the application form.

The Authority comments in its Draft Decision that clauses 5.3(c) to (h) concerning the making of an access offer by WAGN and the acceptance thereof by the prospective user do not correspond to any provision regarding the procedure for gaining access under the NGL or NGR, and as such potentially impose restrictions on the gaining of access to pipeline services.

Notwithstanding the Authority's comments, WAGN has retained clauses 5.3(c) to (h), indicating that these regulate how a Prospective User can accept an Investigation Proposal or Access Offer and how long the respective offers are open for. WAGN claims that removal of paragraphs 5.3(c) to (h) would increase uncertainty and increases the risk of an access dispute. Alinta considers this to be a possible outcome, and agrees with WAGN's concerns that the absence of a definitive period before an Access Offer lapses would be likely to be seen by a Prospective Applicant as reserving capacity until the Prospective User had formally declined the Access Offer and the capacity described in the offer.

While the extent to which such an outcome could act as a potential barrier to entry to other Prospective Users is unclear, the inability of WAGN to prescribe how long a respective offer may be open for would be likely expose WAGN to technical and commercial risks. As a result, Alinta does not object to WAGN's revised proposed AA including clauses 5.3(c) to (h) as drafted.

Total Revenue (Reference Tariff Building Blocks)

Depreciation and rolling forward the capital base

- *WAGN's October 2010 proposed AA did not incorporate the Authority's required amendment to use the CPI (All Groups, Eight Capital Cities) rather than CPI (All Groups, Perth) for the purpose of expressing its operating and capital expenditure, and asset values in constant December 2009 prices.*

WAGN claims that prices of materials and services purchased by WAGN are rising at the CPI (All Groups, Perth) rate, which is higher than the CPI (All Groups, Eight Capital Cities), and that using the CPI (All Groups, Eight Capital Cities) to express its expenditure in constant December 2009 prices would therefore lead to reference tariffs for the next access arrangement period, other things being equal, that diverge from the costs they were intended to recover.

WAGN's comments appear to relate only to historical capital and operating expenditure, and asset values, as it indicates it has derived its estimate of forecast inflation, used in establishing future asset values and the rate of return under NGR 87(1), as the geometric mean of the Reserve Bank of Australia's (RBA) inflation forecasts (forecast changes in the CPI) for the next ten years.

As noted in Alinta's April 2010 Submission, the RBA's inflation forecasts are an Australia-wide forecast, and WAGN's proposed revisions to the AA would therefore be internally inconsistent if it were to adopt as the CPI the CPI (All Groups, Perth) instead of the CPI (All Groups, Eight Capital Cities). To the extent that the use of CPI (All Groups, Perth) instead of the CPI (All Groups, Eight Capital Cities) creates an inconsistency, it appears that WAGN's proposed revised Access Arrangement would not comply with NGR 73(3), which requires that all financial information must be provided, and all calculations made, consistently on the same basis.

In any event, the actual nominal capital and operating expenditure incurred by WAGN (i.e. the actual cost of materials and services purchased) is included in the Opening Capital Base irrespective of which rate of inflation is used to convert nominal expenditure and asset values into real expenditure and asset values. To the extent that the actual nominal cost of materials and services purchased by WAGN did increase at a rate faster than implied by the CPI (All Groups, Eight Capital Cities), or for that matter the CPI (All Groups, Perth), this would be appropriately reflected in the Opening Capital Base.

Given the CPI measures changes in the weighted average price of a basket of consumer goods and services, there also appears to be no basis for believing that movements in the cost of gas distribution materials and services purchased by WAGN, or movements in the economic value of the GDS, should be consistent with movements in the CPI, irrespective of whether the CPI (All Groups, Perth) or the CPI (All Groups, Eight Capital Cities) is used. Support for such a conclusion is provided by WAGN in its January 2010 Submission, which indicated that it expected (future) labour and material prices to escalate above expected inflation (for example, refer to p.58 of its January 2010 submission). Based on this evidence, it appears reasonable to assume that past labour and material prices also increased at a rate greater than actual inflation.

Whether changes in the unit cost of material and services purchased by WAGN are most accurately captured by movements in the CPI (All Groups, Perth), the CPI (All Groups, Eight Capital Cities) or neither of these indices appears to be an entirely factual matter that the Authority could elect to examine.

However, Alinta does not consider that the available evidence supports a view that reference tariffs for the next access arrangement period would diverge from the costs they were intended to recover if the CPI (All Groups, Eight Capital Cities) were used to express operating and capital expenditure, and asset values in constant December 2009 prices rather than the CPI (All Groups, Perth). For these reasons, Alinta submits that the Authority should continue to require that, in establishing the Opening Capital Base for the GDS for the Next Access Arrangement Period, all nominal values are to be escalated, at the rate of inflation as measured by the CPI (All Groups, Eight Capital Cities).

- *WAGN's revised proposed AA did not incorporate the Authority's required amendment to model the effects of inflation using the CPI (All Groups, Eight Capital Cities) at the mid point of each modelling period.*

WAGN's October 2010 Submission argues that by requiring costs to be escalated from the end of the year in which they are incurred through to December 2009, the Authority fails to take into account the effect of inflation on costs incurred during the year.

To the extent that there is no systematic bias in when during a modelling period WAGN incurs costs (i.e. WAGN can demonstrate that costs have been incurred relatively equally throughout the year, and that this is anticipated to continue), Alinta submits it would appear reasonable to convert nominal values to real values at the mid-point of each modelling period.

Capital expenditure

- *While the Authority did not approve WAGN's proposal regarding past capital expenditure, this appears to be due only to its requirements that WAGN use the CPI (All Groups, Eight Capital Cities) rather than CPI (All Groups, Perth) for the purpose of expressing its operating and capital expenditure, and asset values in constant December 2009 prices, and that it model the effects of inflation using the CPI (All Groups, Eight Capital Cities) at the mid point of each modelling period.*
- *The Authority indicated it was satisfied that WAGN's forecast capital expenditure... is conforming in accordance with NGR 79, although it required further information prior to the final decision on projects listed in EnergySafety's report requiring clarification.*

In order for WAGN's actual and forecast capital expenditure to be added to its capital base, the capital expenditure must be 'conforming', meeting the tests set out in **both** NGR 79(1)(a) and NGR 79(2).

Essentially, NGR 79(1)(a) requires that capital expenditure be 'efficient' – the capital expenditure is such as would be incurred by a prudent service provider acting efficiently, in accordance with accepted good industry practice, to achieve the lowest sustainable cost of providing services.

In addition to satisfying NGR 79(1)(a), NGR 79(1)(b) requires that the capital expenditure must also satisfy at least one of the tests in NGR 79(2) for the capital expenditure to be added to the capital base. This requires that:

1. the overall economic value of the expenditure is positive [NGR79(2)(a)]; **or**
2. the present value of the expected incremental revenue to be generated as a result of the expenditure exceeds the present value of the capital expenditure [NGR79(2)(b)]; **or**
3. the capital expenditure is necessary (for certain defined reasons, including maintaining safety and integrity of services, and to meet regulatory obligations or requirements) [NGR79(2)(c)]; **or**
4. a combination of 2 and 3 above [NGR79(2)(d)].

The Authority's Draft Decision indicates that EnergySafety, a division of the Department of Commerce, evaluated capital projects that were justified by WAGN under NGR 79(1)(a) and 79(2)(c), and that EnergySafety concluded that in relation to the requirements of:

- NGR 79(1)(a), the projects detailed and associated costs appear to be reasonable for a prudent service provider acting efficiently and in accordance with good industry practice; and

- NGR 79(2)(c), capital expenditure on the majority of projects that fell under NGR 79(2)(c)(i), (ii) and (iii) were justifiable, although in a number of cases, it concluded that further information was required.

Further, Frontier Economics (Frontier) provided the Authority with a draft report relating to capital expenditure that WAGN justified under NGR 79(2)(a), (b) and (d), which concluded that WAGN's forecast capital expenditure met the requirements of the net incremental revenue test in the NGR assuming that:

- the test applies to aggregate actual expenditure; and
- the test can be satisfied over a 20 year time frame.

EnergySafety report

EnergySafety's website indicates that in respect of gas distribution infrastructure, its responsibilities are to ensure the safety and acceptable performance by:

- auditing gas network operators' design standards and constructed networks for compliance with prescribed safety requirements;
- monitoring the safe work practices of network operators' employees and contractors, including attendance to incidents;
- monitoring the quality of gas provided to consumers generally, for compliance with prescribed requirements;
- investigating consumers' complaints about gas supply reliability and quality; and
- auditing network operators' compliance with prescribed meter management requirements, to ensure acceptable meter accuracy

Notwithstanding the fact that EnergySafety may have undertaken similar assessments in the past, its report does not comment on whether its corporate experience, capability or capacity extends to undertaking an assessment of whether WAGN's actual and forecast capital expenditure meet the requirements of NGR 79(1)(a).

This is relevant because while EnergySafety's responsibilities in respect of gas distribution infrastructure may allow it to comment on whether WAGN's actual and proposed capital expenditure is in accordance with accepted good industry practice, its ability to provide an independent assessment of whether such expenditure is efficient and achieves the lowest sustainable cost of providing services is unclear. In this context, no information is provided on the skills, knowledge and experience of EnergySafety personnel that may have been involved in the assessment of WAGN's actual and forecast capital works.

Alinta requests that the Authority clarify whether EnergySafety evaluated all actual and forecast capital projects in order to assess whether all capital expenditure met the requirements of NGR 79(1).

This clarification appears necessary as EnergySafety's report appears only to consider (or at least comment on) whether actual and forecast capital projects claimed by WAGN (or suggested by Frontier) to satisfy one of the requirements of NGR 79(2)(c) met the requirements of NGR 79(1)(a).

This implies that EnergySafety may not have considered whether actual and forecast capital expenditure claimed by WAGN (or suggested by Frontier) as meeting the requirements of either NGR 79(2)(a), (b) or (d) met the requirements of NGR 79(1). The tables in EnergySafety's report identify numerous information technology and business operations capital projects that were not assessed by EnergySafety against the requirements of NGR 79(2)(c). As a result, it can clearly not be the case that all of WAGN's actual and forecast capital expenditure is conforming, as the EnergySafety report fails to demonstrate that all actual and forecast capital expenditure meets the requirements of NGR 79(1)(a), before considering which of the tests in 79(2) are satisfied in respect of each individual capital project.

In respect of those NGR 79(2)(c) projects on which EnergySafety does comment, it generally indicates that 'costs are reasonable', and therefore concludes that "*...the projects detailed and the costs associated appear to be reasonable for prudent service provider acting efficiently and in accordance with accepted good industry practice...*". However, the manner in which EnergySafety assessed WAGN's actual and forecast capital expenditure in order to form this conclusion is not clear, and at no point does EnergySafety indicate that it considers WAGN's 'reasonable costs' are also consistent with achieving the lowest sustainable cost of providing services as is required by NGR 79(1)(a).

Finally, EnergySafety notes that there are a number of occurrences where project names are repeated, but with different justifications. For example, refer to Table 2.1, projects 25, 34 and 86. It is unclear whether in those instances the description of the project was simply repeated without affecting the aggregate amount of actual capital expenditure (i.e. the expenditure had only been included once in the amount of actual capital expenditure claimed by WAGN to be conforming capital expenditure), or whether an adjustment was required to be made to the amount of actual capital expenditure claimed by WAGN to be conforming capital expenditure.

Return on capital

- *WAGN's revised proposed AA did not incorporate the Authority's required amendment to Annexure A.*

Table 19 of the Authority's Draft Decision identified the point estimates that the Authority considered may be reasonably applied to parameters of the CAPM in estimated the rate of return for WAGN. These are reproduced in Table A.1 below, along with the values proposed by WAGN in its January 2010 and October 2010 proposed AAs.

Table A.1 WAGN rate of return – input parameter values

Parameter	Notation	January 2010 value proposed by WAGN	Authority Draft Decision	October 2010 value proposed by WAGN
Nominal risk free rate of return (%)	R_{fn}	5.59%	5.16%	5.02%
Expected inflation (%)	π_e	2.47%	2.60%	2.60%
Real risk free rate of return (%)	R_{fr}	3.04%	2.50%	2.50%
Market risk premium (%)	MRP	8.00%	6.00%	6.50%
Equity beta	β_e	0.80	0.80	0.80
Debt margin (%)	DM	4.50%	3.293%	4.10%
Debt issuance costs (%)		0.125%	0.125%	0.125%
Debt refinancing costs (%)		0.163%	Not allowed	0.165%
Corporate tax rate (%)	t	30.00%	30.00%	30.00%
Franking credit value	γ	0.20	0.60	0.20
Debt to total assets ratio (%)	D/V	60.00%	60.00%	60.00%
Equity to total assets ratio (%)	E/V	40.00%	40.00%	40.00%

Further comments on the key areas of difference between the parameter values that the Authority considered reasonable and those proposed by WAGN in its October 2010 proposed AA are provided below.

Market Risk Premium

- *In its Draft Decision, the Authority indicated that it considered that a reasonable point estimate for the MRP was 6 per cent, finding that:*
 - *the most recent long term historical average excess returns estimated over a range of long term estimation periods (1883-2008, 1937-2008, 1958-2008), once 'grossed-up' for a utilisation rate of 0.65 and estimated relative to the yield on 10-year Commonwealth Government Securities, is close to 6 per cent (between 5.7 and 6.2 per cent);*
 - *recent regulatory decisions by IPART and the Queensland Competition Authority used a MRP of 6 per cent; and*
 - *its own analysis did not provide any convincing evidence for it to depart from the value of 6 per cent for MRP widely accepted by many Australian regulators.*

WAGN's October 2010 proposed AA reduces its proposed MRP from 8 per cent to 6.5 per cent, which it argues is "*indicative of the current conditions in the market for funds*" although no further information is provided in WAGN's Second Submission in support of this revised value.

Alinta notes that the value now proposed by WAGN for the MRP (i.e. 6.5 per cent) is consistent with that recently adopted by the AER in its:

- Final Decision on the Jemena Gas Networks Access arrangement proposal for the NSW gas networks in June 2010;¹ and
- Final Decision on the Victorian electricity distribution network service providers in October 2010.²

In respect of its Final Decision on the Victorian electricity distribution network, Alinta notes that the AER contemplated that it may be appropriate to revert back to the long term historic MRP of 6 per cent based on the current outlook of economic conditions and capital markets.³

However, it is important to recognise that a departure from the values, methods and credit rating levels set out in the AER's Statement of Regulatory Intent (SORI), which it published in the midst of the Global Financial Crisis, is not permissible for its electricity transmission revenue determinations. In respect of distribution building block determinations, a departure from the SORI is only permissible where there is persuasive evidence to do so.⁴

In its Final Decision on the Victorian electricity distribution network, the AER concluded that it could not be persuaded there was sufficient evidence to depart from the MRP of 6.5 per cent it had adopted in its SORI. It noted that the recovery of global economic conditions remained debatable, with prominent economic bodies warning that recovery in the global economy and conditions in global capital markets remained fragile.⁵

The MRP value now proposed by WAGN in its October 2010 proposed AA is also within the range of 5 per cent to 7 per cent, previously adopted by the Authority in its:

- Final Decision in December 2009 on Western Power's proposed revisions to the Access Arrangement for the SWIN;⁶ and
- Final Decision on Proposed Revisions to the Access Arrangement for the Goldfields Gas Pipeline⁷

¹ Australian Energy Regulator 2010, *Jemena Gas Networks Access arrangement proposal for the NSW gas networks*, Final decision—Public, 1 July 2010 – 30 June 2015, June.

² Australian Energy Regulator 2010, *Victorian electricity distribution network service providers, Distribution determination 2011–2015*, Final decision, October 2010.

³ Australian Energy Regulator 2010, *Victorian electricity distribution network service providers Distribution determination 2011–2015*, Final decision, October 2010, p.xxxix.

⁴ Australian Energy Regulator 2009, *Electricity transmission and distribution network service providers, Statement of the revised WACC parameters (transmission) and Statement of regulatory intent on the revised WACC parameters (distribution)*, May 2009, p.3

⁵ Australian Energy Regulator 2010, *Victorian electricity distribution network service providers Distribution determination 2011–2015*, Final decision, October 2010, p.xxxix.

⁶ Economic Regulation Authority 2009, *Final Decision on Proposed Revisions to the Access Arrangement for the South West Interconnected Network*, 4 December 2009

⁷ Economic Regulation Authority 2010, *Final Decision on GGT's Proposed Revisions to the Access Arrangement for the Goldfields Gas Pipeline*, 13 May 2010.

although in both these cases, the Authority adopted a mid-point value of 6 per cent.

Consequently, it would appear that if the Authority was not previously persuaded as to the evidence for a MRP greater than 6 per cent, it appears unlikely that either WAGN's Second Submission or the AER's recent Final Decision on the Victorian electricity distribution network service providers contains new information that would provide a persuasive basis for it to change its position. Had the AER not been bound by the values in its SORI, it is arguable the current outlook of economic conditions and capital markets would have seen it revert back to the long term historic MRP of 6 per cent.

Debt margin

- *In its Draft Decision, the Authority did not approve WAGN's proposal in relation to the credit rating for the GDS of BBB/BBB+, instead considering that the credit rating of BBB+ approved under the current access arrangement for the GDS remains appropriate.*

The Authority considered that a reasonable value as of 30 July 2010 for the debt risk premium for the GDS was 3.293 per cent, which was derived from CBASpectrum data for BBB+ rated securities for the 20-trading day period to 30 July 2010.

WAGN's revised proposed AA is for a debt margin of 4.10 per cent, which it indicates is primarily based on an extrapolation of the Bloomberg BBB band fair value curve for 6 years durations (which it indicates is the longest duration currently available). Given WAGN's reference to the 'Bloomberg BBB band fair value curve', it would appear that WAGN may not have adopted the credit rating of BBB+ required by the Authority in its Draft Decision.

Alinta notes that the AER's Final Decision on the Victorian electricity distribution network service providers in October 2010 considered in detail the manner in which the debt margin is appropriately established given the lack of data from CBASpectrum.

Debt Raising Costs

- *In its Draft Decision, the Authority did not approve WAGN's proposal to include an additional allowance of 16.3 basis points per annum (bpsa) (i.e. 0.163 per cent) in relation to pre-financing costs, instead deciding that the 'standard' allowance of 12.5bpsa for debt raising costs was appropriate.*

WAGN's October 2010 proposed AA now includes debt raising costs of 29bpsa (i.e. 0.29 per cent), which it indicates is the sum of 12.5bpsa for 'standard' debt raising costs plus 16.3bpsa for pre-financing costs.

Alinta's previous submission indicated that it had been noted that:⁸

*Regulatory precedent has varied from attempts at precise calculation of debt issuance costs, to adopting a benchmark allowance of 12.5 [basis points], **which is generally acknowledged as a conservatively generous allowance for these costs** [emphasis added].*

Alinta notes that the AER's current approach to determining standard debt raising cost allowances for regulated electricity and gas businesses is based on the refined Allen Consulting Group (ACG) benchmark debt raising cost method, which the AER argues produces the best estimate possible of debt financing costs.⁹ Under this approach, the debt raising cost allowance is dependent on the number of standard sized debt issue required (based on the regulated entity's notional debt value) and the applicable WACC, and has consistently led the AER to determine that allowances for 'standard' debt raising costs should be in the order of between around 9bpsa to 10bpsa.

For example, while Jemena had proposed including an allowance for debt raising costs in its operating expenditure based on the standard allowance of 12.5bps, the AER's Draft Decision concluded that this was an "unsupported estimate" and instead determined that an allowance equivalent to 9.2bps was a reasonable benchmark.¹⁰ This was adjusted to 9.1bps in the AER's Final Decision in October 2010, although the dollar value of the allowance (which was included in forecast operating expenditure rather than the WACC) increased marginally.¹¹

The AER's Draft and Final Decisions on the Victorian electricity distribution network service providers considered in detail whether to include a further allowance for re-financing costs.¹² There, as in a previous decision in respect of ETSA Utilities in South Australia, the AER did not consider that an additional allowance should be made for pre-financing costs, as to do so would result in the double counting of costs allowed for managing refinancing risk in the ACG benchmark debt raising cost method. Specifically, in assessing early refinancing costs, the AER concluded that of the alternative refinancing methods analysed, the underwriting volume only method was the efficient and prudent approach and that the characteristics and costs of this method are consistent with the underwriting component in the ACG method. For these reasons, the AER concluded that including a further allowance for early refinancing costs would be inefficient.

⁸ Allen Consulting Group 2007, *Review of the Weighted Average Cost of Capital for the Purposes of Determining the Maximum Reserve Capacity Price*, November 2007 (Corrected September 2008), pp.31-32.

⁹ Australian Energy Regulator 2010, *Victorian electricity distribution network service providers Distribution determination 2011–2015*, Draft decision, June 2010, p.267 and Appendix P.

¹⁰ Australian Energy Regulator 2010, *Jemena Gas Networks Access arrangement proposal for the NSW gas networks*, Draft decision—Public, 1 July 2010 – 30 June 2015, February.

¹¹ Australian Energy Regulator 2010, *Jemena Gas Networks Access arrangement proposal for the NSW gas networks*, Final decision—Public, 1 July 2010 – 30 June 2015, June, pp.277-278.

¹² Australian Energy Regulator 2010, *Victorian electricity distribution network service providers Distribution determination 2011–2015*, Draft decision, June 2010, p.267 and Appendix P.

Finally, as commented in its previous submission, Alinta remains concerned that there may be some element of double counting of WAGN's financing costs between the formulation of the WACC and forecast operating expenditure. Specifically, WAGN's January 2010 Submission noted that forecast of corporate operating expenditure include "...an allocation of costs incurred by WAGN in managing debt and equity portfolios...." (p.20). Alinta requests that the Authority consider this matter further in order to ensure that WAGN's proposal complies with the requirements of the NGL and the NGR.

For these reasons, Alinta submits that the Authority should:

- reject WAGN's proposed allowance for debt raising costs of 29bpsa in the cost of debt;
- not accept the inclusion of a 'standard' allowance for debt raising costs of 12.5bpsa, and instead determine an allowance using the refined ACG benchmark debt raising cost method (as applied by the AER); and
- not accept a further allowance for pre-financing costs on the basis that to do so would result in the double counting of costs allowed for managing refinancing risk, which would not be consistent with the requirements of the NGL and the NGR.

Imputation (Franking) Credit Value

- *In its Draft Decision, the Authority did not approve WAGN's proposal to adopt a value for the utilisation of imputation credits (commonly referred to as 'gamma' or γ) of 0.2, instead deciding that a value of 0.6 was appropriate based on a 'distribution rate' (F) of 1.0 and the 'distribution value' or theta (θ) of 0.60 (where $\gamma = F \times \theta$).*

WAGN's October 2010 proposed AA retains a value for gamma of 0.2, and in its October 2010 Submission claims this value is "commensurate with prevailing conditions in the market for funds".

Alinta previously noted that the issues raised by WAGN (and its consultants, NERA) had been considered and responded to in detail in the Authority's Draft and Final Decision on Western Power's proposed revisions to the Access Arrangement for the SWIN, and (at paragraph 909, p.245):

....the Authority concluded that a reasonable range in the value of gamma is 0.57 to 0.81, based on a distribution rate of 1.0 in combination with a range of values of the utilisation rate of 0.57 to 0.81.

However, in its Final Decision on the Victorian electricity distribution network service providers in October 2010, the AER:

- accepted that the appropriate interpretation of empirical evidence means that the payout ratio should be less than the value of 100 per cent it had adopted in its SORI and in its Draft Decision; and
- based on material currently available to it, concluded that a theta value of 0.65 remained a reasonable approximation given uncertainty about empirical evidence from dividend drop-off studies and tax statistics.

Combining the two extreme values for the payout ratio (70 per cent and 100 per cent) with a theta of 0.65, provided a range for gamma of 0.465 to 0.65, with the AER concluding that a departure from the gamma value of 0.65 adopted in the SORI and its Draft Decision, and instead adopting a value of 0.5 was justified.

Alinta submits that the Authority should have regard to the evidence considered by the AER in its Final Decision on the Victorian electricity distribution network service providers in determining whether it should adopt a value for gamma that is different to the value of 0.6 adopted in the Draft Decision.

Operating expenditure

- *Although WAGN's revised proposed AA did not incorporate the Authority's required amendment to include as the values for forecast operating expenditure the values provided by the Authority in Table 22 of its Draft Decision, the Authority accepted WAGN's forecasts of marketing, corporate, information technology and network expenditure (other than costs associated with delaying the lodgement of the proposed access arrangement).*

The Authority's Draft Decision concluded that WAGN's proposal for the following categories of operating expenditure – marketing, corporate, information technology and network expenditure (other than costs associated with delaying the lodgement of the proposed access arrangement):

- provided a reasonable basis for the forecast expenditure over the forthcoming access arrangement;
- comply with the applicable requirements of the NGL and NGR, in particular NGR 91(1); and
- are consistent with applicable criteria prescribed by the NGL: and the NGR, in particular NGR 74(2).

Specifically, the Authority indicates (at paragraph 846) that its conclusions are based on an assessment of WAGN's forecasts of expenditure in these categories against audited historical expenditure, and an assessment of how increases in labour and resource costs might cause future expenditure to diverge from historical expenditure.

Alinta submits that it is unclear how the Authority was able to conclude that WAGN's forecasts of expenditure in these categories provided a reasonable basis for the forecast expenditure over the forthcoming access arrangement if it relied only on audited historical expenditure, and an assessment of how increases in labour and resource costs might cause future expenditure to diverge from historical expenditure. This is because in the case of marketing, corporate and information technology expenditure:

- forecast expenditures over the forthcoming access arrangement are materially higher than audited historical expenditures; and
- there is a step increase in forecast expenditures over the forthcoming access arrangement in each of these categories when compared with audited historical expenditures, which is not consistent with the gradual divergence of future expenditures from historical expenditures that would be expected if increases in labour and resource costs above the CPI were the major driver of future expenditure in these categories (as implied by the Authority's comments).

The following sections provide further comments in respect of forecast marketing and corporate expenditures.

Marketing

Table A.2 WAGN –Access Arrangement, marketing expenditure

	1	2	3	4	5	Total	Average
AA2 Operating cost allowance (\$M, December 2004)	1.03	1.03	1.03	1.03	1.03	5.15	1.03
AA2 Operating cost allowance (\$M, December 2009)	1.19	1.19	1.19	1.19	1.19	5.96	1.19
AA2 Actual expenditure (\$M, December 2009)	0.33	0.37	0.35	0.24	0.21	1.50	0.30
AA3 Forecast expenditure (\$M, December 2009)	0.18	2.60	1.09	1.09	1.10	6.05	1.34

Source: Authority 2005, Final Decision on the Proposed Revisions to the Access Arrangement for the South-West and Mid-West Gas Distribution Systems, Table 10, p.83.
WAGN 2010, Access Arrangement Information for the WA Gas Networks Gas Distribution Systems, Table 4, p.5.
WAGN 2010, Proposed Revisions to the Access Arrangement for the WA Gas Networks Gas Distribution Systems, Table 41, p.59.

As shown in Table A.2, despite average annual marketing expenditure of just \$0.3 million in AA2, WAGN is now forecasting marketing expenditure of \$2.6 million in 2010/11 falling to around \$1.1 million in the remaining years of the AA3, a total of \$6.0 million for AA3.

WAGN's January 2010 Submission indicates that the marketing activities during AA3 will be largely of the same nature as those in AA2, being directed to:

- promotion of gas as an energy source to limit the rate of reduction in gas demand; and
- applied research and development to investigate alternative uses for gas.

Alinta submits that an assessment of WAGN's forecast marketing expenditure against historical marketing expenditure cannot support a conclusion that forecast marketing expenditures are reasonable, even taking into account that future increases in labour and resource costs above the CPI might well cause future costs to diverge from historical expenditure.

Corporate expenditure

Table A.3 WAGN –Access Arrangement, corporate expenditure

	1	2	3	4	5	Total	Average
AA2 Operating cost allowance (\$M, December 2004)	5.03	5.03	5.03	5.03	5.03	25.15	5.03
AA2 Operating cost allowance (\$M, December 2009)	5.82	5.82	5.82	5.82	5.82	29.10	5.82
AA2 Actual expenditure (\$M, December 2009)	5.94	5.90	6.76	4.55	5.80	28.96	5.79
AA3 Forecast expenditure (\$M, December 2009)	3.98	7.97	7.97	7.97	7.97	35.85	7.97

Source: Authority 2005, Final Decision on the Proposed Revisions to the Access Arrangement for the South-West and Mid-West Gas Distribution Systems, Table 10, p.83.
WAGN 2010, Access Arrangement Information for the WA Gas Networks Gas Distribution Systems, Table 4, p.5.
WAGN 2010, Proposed Revisions to the Access Arrangement for the WA Gas Networks Gas Distribution Systems, Table 41, p.59.

As shown in Table A.3 above, WAGN's actual corporate expenditure for AA2 was consistently around \$5.8 million, whereas its forecast corporate expenditure for AA3 is consistent just below \$8 million.

Again, an assessment of WAGN's forecast corporate expenditure against historical corporate expenditure cannot support a conclusion that forecast corporate expenditures are reasonable, even taking into account that future increases in labour and resource costs above the CPI might well cause future costs to diverge from historical expenditure.

In particular, the step increase in forecast corporate expenditures in the forthcoming access arrangement when compared with audited historical expenditures, and the fact that the forecast corporate expenditure then remains at that level, are not consistent with a gradual divergence of future expenditures from historical expenditures as would results if increases in labour and resource costs above the CPI were the major driver of future expenditure in these categories (as implied by the Authority).

Further, given WAGN has indicated that it sources its corporate services from an external provider and that, at least in part, the increase in forecast corporate operating expenditure is due to a higher allocation of corporate costs (rather than due to increases in labour and resource costs above the CPI), Alinta submits there is a requirement for the Authority to do more to satisfy itself and users and prospective users of the GDS that the WAGN's forecast corporate expenditure complies with the applicable requirements of the NGL and NGR.

Reference Tariffs

- *Although the Authority was satisfied that the volume forecasts in relation to A1, A2, B1 and B2 customers met the requirements of NGR 74, WAGN has updated the volumes forecasts in some instances.*
- *The Authority did not approve WAGN's forecast of volumes of gas delivered to B3 customers, and for the purposes of the draft decision assumed a forecast volume of 18.5GJ for each B3 customer.*

- *Although the Authority was satisfied that the customer forecasts by tariff class, WAGN has updated the customer forecasts.*

Tariff Class B2

WAGN's Second Submission indicates that it connects around 500 new B2 customers annual, although Table 11 indicates that there were almost 600 B2 connections in 2008/09 and 2009/10. Given this evidence, it is not apparent to Alinta why WAGN is forecasting just 400 new B2 customer connections per year for AA3.

Tariff Class B3

Originally, WAGN forecast average annual demand of 17.5GJ per B3 connection for 2010/11, declining to 17.0GJ in 2011/12 through to 2013/14. In comparison, the Authority found that the average volume of gas delivered to B3 connections over the 2007 and 2008 years was 19.0GJ and concluded that, after allowing for a reduction in use, usage of 18.5GJ per year represented a reasonable estimate for the forthcoming access arrangement period.

As part of the Gas Tariff Review being undertaken by the Office of Energy, the volume of gas consumed by Alinta's residential customers has been examined. For the following reasons, Alinta cautions that this data is not necessarily directly comparable to the volume of gas that might be delivered to B3 customers.

- While by number the majority of B3 connections on the GDS supply gas to Alinta's residential customers, a significant proportion of Alinta's small to medium sized non-residential customers are also supplied gas via a B3 connection.
- Customers that have churned to another retailer will also be supplied gas via a B3 connection.
- There are likely to be B3 connections where there is no active customer account, such as for newly-built properties where the customer has not yet moved in or for vacant rental properties.

That said, and consistent with WAGN's advice, Alinta can confirm that it has experienced a reduction in the average volume of gas delivered to residential customers since 2004, although its records indicate that average residential consumption was around 18.5GJ per annum in calendar 2009.

In terms of WAGN's revised forecast of B3 customer connections in Table 18 of its October 2010 AAI, Alinta notes that the annual percentage increase aligns closely with its forecast of the percentage change in residential customer connections.

Reference tariff structure

- WAGN's revised proposed AA did not incorporate the Authority's required amendment to Annexure A.

Alinta estimates that distribution costs account for around 32 per cent of the annual gas bill for a residential B3 customer based on annual consumption of around 18.5GJ (converted to an average daily consumption) and the gas retail tariff cap that applied from April 2010 in the supply areas served by the GDS.

Prices able to be charged by gas retailers are regulated by government, with gas tariff caps established by the *Energy Coordination (Gas Tariffs) Regulations 2000* (the Tariff Regulations). The Tariff Regulations currently provide only for a single annual increase in the gas tariff that is linked to movements in the CPI. There is no mechanism in the Tariff Regulations that links gas tariff caps to costs, or that enables changes in costs that are outside of a retailer's control, such as distribution charges, to be passed through to customers.

Table A.4 WAGN October 2010 Submission - Actual and estimated proposed B3 distribution charges (nominal)

		Actual January 2010	WAGN Original	ERA Jan-11	WAGN Revised			
					Jan-12	Jan-13	Jan-14	
Fixed Charge (\$)	[\$ /year]	28.59	73.09	52.30	65.93	69.23	73.19	78.90
Consumption Tier 1	[\$ /GJ]	9.50	9.92	7.10	14.02	14.73	15.57	16.78
Consumption Tier 2	[\$ /GJ]	5.69			6.06	6.40	6.72	7.25
Consumption Tier 3	[\$ /GJ]	3.86						
Total		191.01	256.61	183.65	257.64	270.88	286.00	308.34
Percentage change			34.3%	-3.9%	34.9%	5.1%	5.6%	7.8%

As shown in Table A.4 above, WAGN's October 2010 Submission would continue to result in an increase of around 35 per cent in the cost of B3 distribution services. Alinta estimates that the pass through of this increase in distribution costs alone would lead to an 11 per cent increase in residential gas bills for the last half of 2010/11, with a further increase of more than seven per cent in 2011/12, and then smaller increases of between three and two per cent in 2012/13 and 2013/14.

In the absence of a pass through of the increases in distribution costs proposed by WAGN, the potential detrimental financial impact for gas retailers, and particular Alinta as the incumbent retailer supplying almost 100 per cent of price regulated customers, is significant.

Specifically, most price regulated small use (residential and business) customers are supplied a B3 or a B2 Reference Service, although a significant proportion of business tariff customers are supplied a B1 Reference Service. Based on information contained in WAGN's October 2010 Submission, it would appear that the total additional cost that may be incurred by Alinta in respect of gas supplied to B1, B2 and B3 customers may be in the order of \$65 million to \$70 million per annum.

Given distribution network costs are entirely outside of a retailer's control, Alinta considers that the Tariff Regulations should be amended to include a mechanism that allows the gas tariff caps to be adjusted automatically for any changes in distribution charges that may be approved by the Authority or imposed by WAGN.¹³ Ultimately, any increase in distribution costs needs to be reflected in the regulated tariff caps in order to maintain the commercial viability of industry participants and to support ongoing investment in the Western Australian energy industry.

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¹³ The Authority does not regulate distribution prices in the Kalgoorlie-Boulder or the Albany supply areas as these areas are not covered by an access arrangement. However, it is understood that WAGN determines distribution prices for these areas using the same methodology as that used to determine prices for the Mid-West/South-West supply area. WAGN's distribution tariffs for the Kalgoorlie-Boulder and Albany Areas increased by around 12.5 per cent on 1 January 2010.

ATTACHMENT B

WA GAS NETWORKS – OCTOBER 2010 REVISED ACCESS ARRANGEMENT FOR THE MID-WEST AND SOUTH-WEST GAS DISTRIBUTION SYSTEMS, ACCESS ARRANGEMENT (AA)

PAA Clause and Draft Decision paragraph numbers	Authority's Draft Decision	WAGN Amendments	Alinta's Further Submissions
<p>5.2(a)</p> <p>Application Information</p> <p>Draft Decision at [165 – 176]</p>	<p>The Authority required that clause 5.2 be deleted for being inconsistent with rule 112(2) of the NGR. It was to be replaced with a clause that requires an application:</p> <ul style="list-style-type: none"> state when pipeline services will be required and the capacity to be utilised; identify the entry and exit points for gas into the pipeline; and state the relevant technical details for connection to the pipeline and to ensure reliability of supply. 	<p>Authority's required amendments not incorporated. WAGN has made further amendments.</p>	<p>WAGN have incorporated a reasonableness requirement regarding prudential requirements and insurance requirements information. They have also added Annexure F for info to be provided when requesting a Haulage Service.</p> <p>However, they have not included a provision that WAGN's actual minimum prudential requirements and insurance requirements be reasonable, or that identifies what WAGN's respective minimum requirements are. Alinta submits that in the absence of its minimum requirements being identified, an objective 'reasonableness' criterion must be included.</p>
<p>5.3</p> <p>Application Procedure for Prospective Users</p> <p>Draft Decision at [177 – 188]</p>	<p>The Authority required that clauses 5.3(a) and 5.3(c) – (h) be deleted for being inconsistent with rule 112 of the NGR. The Authority considers clause 5.2 (as amended) deals with the Application Procedure adequately.</p>	<p>Authority's required amendments not incorporated.</p>	<p>Alinta has no objection to the PAA establishing a process for the making and treatment of Applications and considers this will provide some helpful clarity for prospective Users. Alinta's concern is the number of unconstrained discretions which WAGN reserves to itself in the process. Examples are the form of Application under clause 5.3(a) and the form and content of an Access Offer under clause 5.3(b)(i). Alinta would prefer to see detailed forms for all the documents contemplated</p>

PAA Clause and Draft Decision paragraph numbers	Authority's Draft Decision	WAGN Amendments	Alinta's Further Submissions
			in clause 5.3 prescribed, and detailed prescription of all the information required and criteria for accepting or rejecting an Application. In the absence of this level of prescription, Alinta submits that WAGN should be obliged to act reasonably in its conduct under clause 5 of the PAA.
5.5 Pre-conditions to and restrictions on the provision of Pipeline Services Draft Decision at [194 – 208]	The Authority required this clause be deleted for being inconsistent with the NGL and NGR as it covered both reference and non-reference services to which different criteria apply (i.e. terms and condition of access are a matter for commercial negotiation between the parties regarding non-reference services but are to be set by the regulator in regards to reference services).	Authority's required amendments not incorporated.	Alinta supports the Authority's decision to require the deletion of clause 5.5 of the PAA, and for any relevant provisions from that clause to be dealt with in clause 1.1 of the THC. Alinta reiterates its earlier submission on the provisions of clause 1.1 of the THC.
5.7 System Pressure Protection Plan Draft Decision at [218 – 241]	<p>The Authority required this clause be deleted and replaced with provisions consistent with clauses 28-34 of Part A of the CAA.</p> <p>The Authority considered this clause to be inconsistent with the National Gas Objective as it imposed firm upstream capacity requirements that had the potential to hamper the development of competition and create barriers to entry.</p>	Authority's required amendments partially incorporated.	<p>See comments on clauses 1.1(a)(i), 1.1(a)(ii)(A) and 5.10(c) of the THC.</p> <p>Alinta considers that clause 5.7 and Annexure D of the PAA are an appropriate approach to the requirement for a System Pressure Protection Plan, provided clauses 1.1(a)(i) and 1.1(a)(ii)(A) are deleted and clause 5.10(c) is amended to conform to Annexure D.</p>

PAA Clause and Draft Decision paragraph numbers	Authority's Draft Decision	WAGN Amendments	Alinta's Further Submissions
<p>6.4(a)(ii)</p> <p>Advance conditions</p> <p>Draft Decision at [1912 – 1945]</p>	<p>The Authority required this clause be deleted as it refers to compliance with pre-condition in clause 5.5, which it required be deleted.</p>	<p>Authority's required amendments not incorporated.</p>	<p>Alinta supports the Authority's decision to require the deletion of clause 6.4(a)(ii), consistent with the requirement to delete clause 5.5. Alinta has previously outlined its submissions on the amendments which should be required to clause 1.1 of the THC.</p>
<p>7.1 – 7.3</p> <p>Extension and Expansion Requirements</p> <p>Draft Decision at [1946 – 1970]</p>	<p>The Authority required that these clauses be deleted and replaced with clauses specified by it. These clauses dealt with incorporation of extensions and expansions into the WAGN GDS.</p> <p>The amended clauses provide that:</p> <ul style="list-style-type: none"> • high pressure pipelines are not covered automatically. The Service Provider is required to obtain the Authority's determination as to whether the extension will be covered; • low and medium pressure pipeline extensions will be covered; and • expansions will be covered. 	<p>Authority's required amendments not incorporated.</p>	<p>Alinta supports the Authority's decision to require the deletion of clauses 7.1, 7.2 and 7.3 of the PAA and the replacement of those clauses in the form required by the Authority at Required Amendment 70.</p>
<p>8.2(a)(iv)</p>	<p>The Authority required this clause be deleted as it refers to compliance with pre-conditions in</p>	<p>Authority's required amendments not incorporated.</p>	<p>Alinta supports the Authority's decision to require the deletion of clause 8.2(a)(iv), consistent with the required</p>

PAA Clause and Draft Decision paragraph numbers	Authority's Draft Decision	WAGN Amendments	Alinta's Further Submissions
Principles governing changing Receipt Points and Delivery Points Draft Decision at [1971 – 1998]	clause 5.5 which has been deleted. The required amendment actually refers to clause 8.1(a)(iv). The correct reference, as referred to in the Authority's assessment of this provision, appears to be clause 8.2(a)(iv).		deletion of clause 5.5.
12 Definitions and Interpretation Draft Decision at [1999 – 2008]	The Authority required that the following definitions be amended: <ul style="list-style-type: none"> • CPI: "CPI All Groups, Perth" has been amended to "CPI All Groups, Eight Capital Cities". • Delivery Point, National Gas Access (WA) Legislation, National Gas Regulations, National Gas Rules, Receipt Point, Reference Tariff Variation Mechanism and User: These definitions are to be amended to read the same as the corresponding definitions in the NGL and NGR. • Retail Market Rules and Retail Market Scheme: These definitions have been amended to provide for changes in laws and regulations affecting them. 	Authority's required amendments partially incorporated.	Alinta refers to its submissions on clause 22.1 of the THC.



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ATTACHMENT C

WA GAS NETWORKS – OCTOBER 2010 REVISED ACCESS ARRANGEMENT FOR THE MID-WEST AND SOUTH-WEST GAS DISTRIBUTION SYSTEMS, TEMPLATE HAULAGE CONTRACT (THC)

THC Clause and Draft Decision paragraph numbers	Authority's Draft Decision	WAGN Amendments	Alinta's Further Submissions
General drafting issue Draft Decision at [1212 – 1220]	The Authority stated that it has proposed amendments to the extent that provisions conflicted with each other (see for example in relation to clause 5.10(a) below), but that it is not going to require amendments purely to make to drafting more consistent.	WAGN's amendments to meet the Authority's requirements to remove conflicts are addressed against each relevant clause of the THC.	Alinta's further submissions are indicated against the relevant clause of the THC.
1.1(a)(i) Conditions Precedent Draft Decision at [1221 – 1246]	<p>The Authority required that this clause, along with clauses 1.1(a)(ii)(A) and 1.1(a)(ii)(D), are to be deleted and replaced by a clause stipulating that compliance with clause 5.7 of the Proposed Access Arrangement (PAA) is a pre-condition.</p> <p>The Draft Decision goes on to delete proposed clause 5.7 of the PAA and requires it to be replaced with a clause consistent with clauses 28-34 of Part A of the Current Access Arrangement (CAA).</p>	The Authority's required amendments not incorporated in respect of clauses 1.1(a)(i) and 1.1(a)(ii)(A).	Clauses 1.1(a)(i) and 1.1(a)(ii)(A) are not consistent with clause 5.7 of the PAA, and to give proper effect to the Authority's required amendment to the PAA, the clauses must be deleted.
1.1(a)(ii) Conditions Precedent Draft Decision at [1221 –			A 'reasonableness' qualification needs to be applied to the "Service Provider's satisfaction". The current discretion is too broad.

THC Clause and Draft Decision paragraph numbers	Authority's Draft Decision	WAGN Amendments	Alinta's Further Submissions
1246]			
1.1(a)(ii)(B) Conditions Precedent Draft Decision at [1221 – 1246]	<p>The Authority states in the last line of paragraph 1243 of the Draft Decision that it accepts clauses 1.1(ii)(C), (C), (E) and (F).</p> <p>The context indicates that the reference to clauses 1.1(ii)(C) and (C) is actually to clauses 1.1(a)(ii)(B) and (C).</p>		<p>Clause 5.2 of the PAA has been amended to include a reasonableness requirement regarding the information that the Service Provider can require as to a Prospective User's compliance with WAGN's minimum prudential requirements.</p> <p>There is still no reasonableness requirement as to what may be required under the Access Offer and WAGN's minimum prudential requirements are not identified. A reasonableness criteria should be included in clause 1.1(a)(ii)(B).</p>
1.1(a)(ii)(E) [now clause 1.1(a)(ii)(D)] Conditions Precedent Draft Decision at [1221 – 1246]			<p>The condition should relate to the status of User's ability to deliver Gas at the time for satisfaction of the condition only. Including in the condition a requirement to presently demonstrate future compliance by the User throughout the duration of the Haulage Contract is so difficult to satisfy as to be misconceived, and should be deleted. Alternatively the words "and will for the duration of this Haulage Contract be able to" should be deleted.</p>
1.1(d) Conditions Precedent	<p>The Authority required that clauses 1.1(b) – 1.1 (f) be deleted as it considers these to be procedural issues to do with the commercial arrangements between the parties and not</p>	Authority's required amendments not incorporated.	<p>Alinta agrees with WAGN's submissions that these are appropriate matters to be dealt with in the THC but reiterates its submissions that it is the Service Provider that approves the satisfaction of the Conditions</p>

THC Clause and Draft Decision paragraph numbers	Authority's Draft Decision	WAGN Amendments	Alinta's Further Submissions
Draft Decision at [1221 – 1246]	matters that go to compliance of WAGN's PAA with the National Gas Objective.		<p>Precedent. It is misconstrued to require the User to notify the Service Provider of the satisfaction of the Conditions Precedent.</p> <p>The clause should be deleted or reworded to require the Service Provider to promptly advise the User of the satisfaction of each of the Conditions Precedent.</p>
<p>2(b)</p> <p>Duration of this Haulage Contract</p> <p>Draft Decision at [1247 – 1254]</p>	The Authority required that this clause be amended so that a Haulage Contract for Reference Services can only be extended past the date of revision or expiry of the access arrangement on the basis that the contract is varied to incorporate the terms and conditions of the Proposed Access Arrangement if the User agrees.	Authority's required amendments not incorporated.	<p>Alinta considers that clause 2(b), (with or without Authority's required amendment) when read with clauses 12.2, 12.3, 12.4 and 12.5, override the normal principles and sanctity of contract. A significant User such as Alinta should be entitled to enter into a long term haulage contract which continues on its agreed terms and conditions regardless of revisions to the access arrangements and changes made to future haulage services by the service provider for its own convenience. If the User is prepared to embrace the revised access arrangement or varied haulage service it can bilaterally agree with the service provider to amend the contract. Alinta and other Users should be able to plan for the medium to long term for its use of the network and not have the whole basis of its access / haulage arrangements placed at large every 5 years.</p>
4.2(a)(ii)	The Authority required that clauses 4.2(a)(ii), 4.2(a)(iii) and 4.2(b)(v) be deleted.	Authority's required amendments not incorporated.	Alinta supports the Authority in insisting on the removal of clauses 4.2(a)(ii), 4.2(a)(iii) and 4.2(b)(v). Further,

THC Clause and Draft Decision paragraph numbers	Authority's Draft Decision	WAGN Amendments	Alinta's Further Submissions
<p>Ongoing obligation to pay</p> <p>Draft Decision at [1260 – 1267]</p>	<p>The Authority acknowledged that requiring the User to pay for a service even when the Service Provider is unable to provide the service goes beyond the scope of the CAA and WAGN had provided no justification for allowing it a more favourable commercial position in the PAA.</p> <p>The removal of these provisions means that the User is not expressly liable for charges during a Force Majeure event affecting only the Service Provider.</p>		<p>Alinta submits that the THC should contain provisions which make it clear that acts or omissions of the Service Provider and events of Force Majeure affecting only the Service Provider that result in the User being unable to use a Haulage Service should be express exceptions to the User's obligation to pay under this clause.</p>
<p>5.5</p> <p>New Delivery Points and increasing Contracted Peak Rate</p> <p>Draft Decision at [1296 – 1303]</p>	<p>The Authority required that this clause be amended to limit the grounds on which the Service Provider may refuse a request.</p> <p>The words "if Service Provider agrees" were to be removed and "subject to Service Provider withholding consent on reasonable grounds, based on technical or commercial considerations" were to be inserted.</p>	<p>Authority's required amendments not incorporated.</p>	<p>Alinta supports the Authority's decision to require amendment of clause 5.5(a) and deletion of clause 5.5(b)(i). WAGN's submission that this creates differences between existing Users and potential Users which are not permitted under the National Gas Rules is not correct; there is nothing in the National Gas Rules which prevents a Service Provider from minimising the administrative or technical requirements required of an existing User. As to the substantive issue, Alinta submits that the Service Provider should also consistently refuse applications for capacity from potential Users only on reasonable grounds, based on technical or commercial considerations, so no difference will result.</p>

THC Clause and Draft Decision paragraph numbers	Authority's Draft Decision	WAGN Amendments	Alinta's Further Submissions
5.8(d)(i) Gas quality and Gas Quality Data Draft Decision at [1318 – 1333]			Alinta submits clause 5.8(d)(i) should be deleted, as it is not an acknowledgement which can or should be given by it or other Users. The Service Provider may have no control over the quality of Gas entering the WAGN GDS, but does have control over what happens to the quality of Gas once in that system.
5.9(a) Gas balancing Draft Decision at [1334 – 1347]	The Authority required that the absolute obligation that 'gas in' equal 'gas out' has been replaced with an obligation for 'gas in' to equal the quantity of gas that in "the user's good faith estimate, acting as a reasonable and prudent person," it is likely to withdraw.	Authority's required amendments not incorporated.	Alinta supports the Authority's required amendment to clause 5.9(a) which is a reasonable obligation relating to balancing. Additionally, Alinta also reiterates its previous submission that: <ol style="list-style-type: none"> clause 5.9(c) should be amended so that the Service Provider should be liable to the extent it contributed to such loss, damage or other consequence; and clause 5.9(d)(iv) (now (iii)) is an open ended obligation which is not related to the WAGN GDS or the access / haulage contract. A User's obligations in relation to its conduct should be limited to that relating to usage of the WAGN GDS, and not to conduct in general.
5.10(a)	The Authority required that this clause be	Authority's required amendments partially incorporated.	Alinta accepts the approach to the requirement for a System Pressure Protection Plan taken by WAGN in

THC Clause and Draft Decision paragraph numbers	Authority's Draft Decision	WAGN Amendments	Alinta's Further Submissions
<p>Approved System Pressure Protection Plan</p> <p>Draft Decision at [1348 – 1359]</p>	deleted.		<p>clause 5.10(a) of the THC and clause 5.7 and Annexure D of the PAA.</p> <p>However, Alinta submits that clause 5.10(c) goes well beyond what is contemplated and required under Option 3 of Annexure D. The User should not release the Service Provider or indemnify the Service Provider under Option 3 in circumstances where the contractual entitlements required under Option 1 (if the User had elected Option 1) would not have prevented the Direct Damage or Indirect Damage.</p>
<p>6.2(a) and (b)</p> <p>Only User may take delivery, title and possession of Gas from Service Provider</p> <p>Draft Decision at [1373 – 1378]</p>			<p>Regardless of the content of clause 12 in Part C of the CAA, Alinta submits that it is inappropriate to provide that the User receives gas (clause 6.2(a)) and that possession of the gas passes to the User (clause 6.2(b)) at the Delivery Point. This is manifestly untrue and providing it in the access / haulage contract will not make it true. The provisions should be deleted in the case of clause 6.2(a) and amended to remove the reference to "possession" in the case of clause 6.2(b).</p>
<p>6.6(a), (b) and (d)</p> <p>Interconnection issues</p> <p>Draft Decision at [1385 –</p>		<p>WAGN has made amendments beyond those required by the Authority.</p> <p>It has expanded the definition of an Interconnection Event to include instances where there is a current</p>	<p>Given the severity of the potential ramifications to the User under clause 6.6, it is unacceptable that the Service Provider not be required to act as a reasonable and prudent person in exercising its rights under clause 6.6(a)(ii) and when making a determination under clause</p>

THC Clause and Draft Decision paragraph numbers	Authority's Draft Decision	WAGN Amendments	Alinta's Further Submissions
1393]		Interconnection Agreement but a party to that current Interconnection Agreement has a right under that Interconnection Agreement to wholly or partly Curtail or refuse to accept Gas or otherwise reduce or limit the flow of Gas.	<p>6.6(d). This represents a significant shift from the qualifications present under the CAA and no justification is given for the removal of this qualification. Clauses 6.6(a)(ii) and 6.6(d) should be made subject to the requirement that the Service Provider act as a reasonable and prudent person.</p> <p>Further, Alinta reiterates its submissions that it is imperative that clause 6.6(b) reflects the fact that acts or omissions of the Service Provider may be responsible for an Interconnection Event in many circumstances that do not amount to breach by the Service Provider or termination of the Interconnection Arrangements. WAGN's amendment of the definition of Interconnection Event highlights the facts that the Service Provider's right to refuse or Curtail gas under clause 6.6(a)(ii) may arise for a number of other reasons. The User should not be liable for any damage it suffers as a result of the exercise of the Service Provider's rights under clause 6.6(a)(ii) to the extent they were caused or contributed to by the direct or indirect actions or omissions of the Service Provider.</p> <p>Contrary to WAGN's submissions, the expansion of the definition of Interconnection Event does very much affect the rights of the User. It is the status of, or actions of the parties to, the Interconnection Agreement that triggers an Interconnection Event and the Service Provider's ability</p>

THC Clause and Draft Decision paragraph numbers	Authority's Draft Decision	WAGN Amendments	Alinta's Further Submissions
			<p>to exercise its rights under clause 6.6(a)(ii). It is the liability for damage resulting from the exercise of those rights that clause 6.6(b) seeks to address.</p> <p>Clause 6.6(b) should be amended to provide that the Service Provider is liable for any Direct or Indirect Damage suffered by the User as a result of an interruption or Curtailment of Gas delivery under 6.6(a)(ii) to the extent that it is caused or contributed to by the direct or indirect acts or omissions of the Service Provider.</p>
<p>6.6(e)</p> <p>Interconnection issues</p> <p>Draft Decision at [1385 – 1393]</p>	<p>The Authority required that this clause be amended to make it subject to clause 20.2, which provides that a Party must not disclose confidential information unless the circumstances fall within one of the listed exceptions.</p>	<p>Authority's required amendments incorporated.</p>	<p>Alinta submits that amending the clause to make the right to disclose information subject to clause 20.2 does not provide sufficient protection of the User's information.</p> <p>The clause should be amended to require the Service Provider to obtain a confidentiality agreement from the operator of the Interconnected Pipeline before making any disclose of the User's information, and disclosure should be strictly on the basis that the information is used only as required for the operation of the interconnection.</p>
<p>6.7</p> <p>Delivery facilities</p>	<p>The Authority required that this clause be amended to make it consistent with the national gas objective.</p>	<p>Authority's required amendments not incorporated.</p> <p>WAGN has stated that it is electing to revert to the</p>	<p>Alinta supports reverting to the position under the CAA.</p> <p>To reflect the position under the CAA, clauses 6.7(a) and</p>

THC Clause and Draft Decision paragraph numbers	Authority's Draft Decision	WAGN Amendments	Alinta's Further Submissions
<p>installation, maintenance and operation</p> <p>Draft Decision at [1394 – 1404]</p>		<p>position under the CAA.</p>	<p>6.7(e) of the THC should be amended to change the wording “in the course of” back to the wording “in the reasonable course of” as appears in the CAA.</p> <p>The User should not have to indemnify the Service Provider and the Service Provider should not be exempt from liability where it has not conducted itself in a reasonable and prudent manner.</p>
<p>7.2(d)</p> <p>Curtailment Events</p> <p>Draft Decision at [1405 – 1412]</p>			<p>Alinta is concerned that the Authority has approved clause 7.2 of the THC primarily because it is consistent with the provisions of the CAA. This cannot be the criteria that the Authority applies as it results in access arrangement reviews which are a one way valve; Users have no rights to submit changes on matters which are not working for them while the service provider can revise the access arrangement at large. It is better for the Authority to be ultimately right than consistently wrong.</p> <p>Alinta submits that clause 7.2 should be amended to prevent Users being unfairly treated by Curtailments. The point is that there is no required nexus between the Delivery Point being curtailed and the Interconnected Pipeline. Alinta submits that clause 7.2 be required to be amended so that WAGN may only curtail if the event relates to or derives from an Interconnected Pipeline</p>

THC Clause and Draft Decision paragraph numbers	Authority's Draft Decision	WAGN Amendments	Alinta's Further Submissions
			which is connected to the sub-network to which the Delivery Point belongs.
<p>7.5</p> <p>User to comply with notice of Curtailment</p> <p>Draft Decision at [1429 – 1434]</p>	<p>The Authority required that this clause be amended to oblige the Service Provider to issue a notice to the User in order to effect a Curtailment.</p>	<p>Authority's required amendments not incorporated.</p>	<p>Alinta reiterates its submissions that, if the Service Provider issues a notice under clause 7.5(a), it should be required to use reasonable endeavours to provide the User with:</p> <ul style="list-style-type: none"> • reasons for the Curtailment; • details regarding the magnitude and expected duration that the User will be required to Curtail Gas or comply with any other conditions; and • reasonable ongoing notice of any material changes to the likely magnitude and expected duration. <p>It is critical that the User is provided with reasons for any Curtailment as the potential ramifications for the User are significant. It is also vital that the User has the right to be provided with such information as in certain circumstances (i.e. clause 6.6(b)(i)) the Service Provider is liable for damage suffered by the User as a result of a Curtailment. The User may also have recourse against a third party responsible for a Curtailment and the User</p>

THC Clause and Draft Decision paragraph numbers	Authority's Draft Decision	WAGN Amendments	Alinta's Further Submissions
			<p>should have the right to be provided with the reasons for the Curtailment that would allow the User to make such an assessment.</p> <p>Further, the User should be provided with the same level of information regardless of whether the Service Provider effects a Curtailment or requires the User to effect a Curtailment.</p> <p>These submissions apply equally to clause 7.6 (b) and both clauses should be amended accordingly.</p>
<p>7.8</p> <p>Method of Curtailment or refusal to accept</p> <p>Draft Decision at [1446 – 1452]</p>	<p>The Authority required that this clause be amended to provide that the Service Provider must act as a reasonable and prudent service operator, rather than in its absolute discretion, when making determinations regarding curtailment or refusal to accept gas under this clause.</p> <p>The Authority also required that a new clause 7.8(d) be inserted requiring the Service Provider to provide ongoing information during any Curtailment or refusal to accept Gas.</p>	<p>Authority's required amendments were incorporated with further amendment.</p>	<p>For the reasons set out in respect of clause 7.5(b), this clause should be further amended or a new clause inserted requiring the Service Provider, when exercising its rights under clauses 7.2, 7.3 or 7.4, to provide reasons for any Curtailment or refusal to accept Gas and the additional, relevant information.</p> <p>Clause 7.8(d) of the THC should also be amended by changing the wording "materially greater" to "materially different" as a smaller or greater extent of the expected duration or magnitude could affect the operations and planned arrangements of the User.</p>
8.2			<p>Alinta reiterates its submission that gas quality data should only be used across locations in the same sub-</p>

THC Clause and Draft Decision paragraph numbers	Authority's Draft Decision	WAGN Amendments	Alinta's Further Submissions
Use of Gas Quality Data from other locations Draft Decision at [1458 – 1462]			network. The reason for this is that there is a significantly greater likelihood that gas quality will be uniform across a sub-network.
9.1 and 9.2 Invoicing Draft Decision at [1467 – 1480]	The Authority required that these clauses be deleted and replaced by clauses consistent with the current invoicing procedure set out in Part C of the CAA.	Authority's required amendments not incorporated.	Alinta supports the Authority's decision to replace clause 9.1(c), and to align clause 9.2, with the matters in clauses 30 and 33 of Part C of the CAA. Alinta sees no reason why WAGN can't comply with these requirements and the provisions of the Retail Market Rules which have co-existed for some time.
10 Taxes & GST Draft Decision at [1515 – 1520]	The Authority required that this clause be deleted as it relates to taxation, which the Authority considers to be the subject of a separate and distinct legal and regulatory system beyond the Authority's jurisdiction as an economic regulator.	Authority's required amendments not incorporated.	Alinta supports the Authority's decision to require deletion of clause 10.1, but not necessarily clause 10.2. Clause 10.2 seems appropriate as the Reference Tariffs are GST exclusive.
11(b) Force Majeure Draft Decision at [1521 – 1528]	<p>The Authority required that this clause be amended by making it subject to a new clause 11(c) to be inserted.</p> <p>The new clause 11(c) was to be the equivalent of clause 37(3) of Part C of the CAA, which excuses the User from the obligation to pay the</p>	Authority's required amendments not incorporated.	Alinta supports the Authority's decision to require a new clause 11(c), as indicated in Alinta's comments on clause 4.2, and to make clause 11(b) subject to clause 11(c).

THC Clause and Draft Decision paragraph numbers	Authority's Draft Decision	WAGN Amendments	Alinta's Further Submissions
	Reference Tariff (including any standing and demand charge) if AGN (now WAGN) fails to provide a Service under the Haulage Contract and claims Force Majeure.		
12.2 to 12.4 Revisions to Access Arrangement that affect the terms and conditions of Pipeline Services Draft Decision at [1542 – 1551]	<p>The Authority required that clauses 12.2 – 12.4 be deleted.</p> <p>The Authority stated that parties' rights and obligations only operate for so long as the access arrangement remains in force. The Authority's amendment provides that the Template Haulage Contract will continue beyond the date of revision or expiry of the access arrangement with the User's agreement, but on the basis of the contract being varied to incorporate the terms and conditions of the subsequent access arrangement.</p> <p>See also comments on clause 2(b).</p>	Authority's required amendments not incorporated.	Alinta reiterates its submissions on clause 2(b). The Authority should not approve a situation where a significant User of this Network is compelled to have its access / haulage contract automatically amended to include revised access arrangement provisions, or is compelled to renegotiate its contract following each access arrangement revision, or lose its access/haulage rights.
12.6 Continued application of variation provisions Draft Decision at [1560 –	The Authority required that this clause be deleted for the same reason it required that clauses 12.2 to 12.4 be deleted.	Authority's required amendments not incorporated.	Alinta refers to the submissions it made regarding clauses 12.2 to 12.4.

THC Clause and Draft Decision paragraph numbers	Authority's Draft Decision	WAGN Amendments	Alinta's Further Submissions
1564]			
12.7 Right to terminate if Access Arrangement terminates or expires Draft Decision at [1565 – 1571]	The Authority required that this clause be deleted.	Authority's required amendments not incorporated.	Alinta refers again to the submissions it made regarding clauses 12.2 to 12.4.
12.8 Review of this Haulage Contract in response to Regulatory Event Draft Decision at [1572 – 1579]	The Authority required that this clause be deleted for purporting to provide a mechanism for varying the terms and conditions of access to a reference service other than in accordance with the procedure for such variation provided under the NGL and NGR.	Authority's required amendments not incorporated.	Alinta supports the Authority's decision to require the deletion of clause 12.8.
13.3(c) Other transfers Draft Decision at [1593 – 1599]	The Authority required that this clause be amended to the extent that the pre-conditions that the Service Provider can specify have been changed from those in the PAA to those in the Template Haulage Contract.	Authority's required amendments not incorporated.	Alinta supports the Authority's decision to require the amendment of clauses 13.3(c)(i) and (ii).

THC Clause and Draft Decision paragraph numbers	Authority's Draft Decision	WAGN Amendments	Alinta's Further Submissions
13.6(b) Novation Rights Draft Decision at [1606 – 1618]	The Authority required that this clause be amended in regards to the pre-conditions that the Service Provider can specify by replacing the reference to the "Access Arrangement" with the "Template Haulage Contract".	Authority's required amendments not incorporated.	Alinta supports the Authority's decision to require deletion of clause 5.5 of the PAA, and to amend clause 13.6(b) as a consequence.
13.6(c) Novation Rights Draft Decision at [1606 – 1618]			Alinta reiterates its original submission on clause 13.6(c). The unqualified right to novate may prejudice the interests of the User and the provision is unfair, unreasonable and lacks any balance. Put simply, the novation could be to a party which has no rights to control or operate the GDS and no capability to perform the access / haulage contract.
13.7(b)(iii) and (c) Changing a Receipt Point or Delivery Point Draft Decision at [1619 – 1627]	The Authority required that clauses 13.7(b)(iii) & (c) be deleted.	Authority's required amendments not incorporated.	Alinta considers WAGN's amendment to clause 13.7(b)(iii) is appropriate and submits that a similar approach and wording is appropriate for clauses 5.5(a) and (b). Alinta supports the Authority's decision to require the deletion of clause 13.7(c).
15.1(b) Relationship between the			Alinta considers that clause 15.1(b) is acceptable provided its suggested deletions of clauses 1.1(a)(i) and 1.1(a)(ii)(A) and its suggested amendment of clause 5.10(c) (relating to Option 3 of the System Pressure

THC Clause and Draft Decision paragraph numbers	Authority's Draft Decision	WAGN Amendments	Alinta's Further Submissions
Parties Draft Decision at [1635 – 1645]			Protection Plan) are made. Alinta reiterates its submission that clause 15.1(c) be deleted for the reasons previously submitted. Alinta will not be in a position to provide that evidence while WAGN will have that information available to it from several sources.
15.2(b)(i) Security for performance Draft Decision at [1646 – 1655]			Alinta reiterates its submissions regarding the bank guarantee expiring with the termination or expiry of the Haulage Contract. It is noted that the Authority, in its assessment of this clause at paragraph 1652 of the Draft Decision, accepted Alinta's submission concerning the expiration of the bank guarantee and stated that clause 15.2(b)(i) should revert back to the position under the CAA that the bank guarantee applies only for the duration of the haulage contract. The Authority should require WAGN to amend the THC in this respect.
15.2(c) – (k); 15.3 Security for performance Draft Decision at [1646 – 1655]	The Authority required that these clauses be deleted.	Authority's required amendments not incorporated.	Alinta supports the Authority's decision to require the deletion of clauses 15.2(c)-(k) and 15.3.

THC Clause and Draft Decision paragraph numbers	Authority's Draft Decision	WAGN Amendments	Alinta's Further Submissions
<p>16.4</p> <p>Extended operation of clause 16.3</p> <p>Draft Decision at [1680 – 1686]</p>	<p>The Authority required that this clause be amended by deleting any reference to the Upstream Person.</p>	<p>Authority's required amendments not incorporated.</p>	<p>Alinta supports the Authority's decision to require the deletion of the reference to "Upstream Person".</p>
<p>17.1</p> <p>User representations and warranties</p> <p>Draft Decision at [1692 – 1700]</p>	<p>The Authority required that clauses 17.1 – 17.3 be deleted and replaced by provisions equivalent to clause 60 of Part C of the CAA.</p>	<p>Authority's required amendments not incorporated.</p>	<p>Alinta supports the Authority's decision to require clauses 17.1 to 17.3 to be replaced by equivalent provisions in clause 60 of Part C of the CAA.</p>
<p>18.2</p> <p>Disposition of unresolved disputes</p> <p>Draft Decision at [1713 – 1720]</p>	<p>The Authority has required that this clause be amended to revert back to cover the two alternatives for parties to proceed to arbitration under clause 56 of Part C of the CAA. This reinstates the obligation to ensure that the dispute is not one that can be dealt with under the NGL before parties can refer the dispute to arbitration under clause 18.3.</p>	<p>Authority's required amendments not incorporated.</p>	<p>Alinta supports the Authority's decision to require the THC to provide for the two (in fact 3) alternatives for the parties to proceed to arbitration as set out in clause 56 of Part C of the CAA, with appropriate amendments replacing the reference to the Code with the NGL.</p> <p>The amendments proposed by WAGN are ambiguous. It appears to put forward a mechanism for running jointly with the process under clause 18.2 and the dispute resolution process under the NGL or the Retail Market Rules, until the clause 18.2 process is unsuccessful and</p>

THC Clause and Draft Decision paragraph numbers	Authority's Draft Decision	WAGN Amendments	Alinta's Further Submissions
			<p>then reverting to the other process as applicable. This could lead to a conflict in the time periods applicable in the different processes. The definition of Alternative Process Dispute is also unclear and could lead to uncertainty regarding when the processes under the THC would apply.</p> <p>Alinta submits that clause 18.1 and 18.2(a) should be replaced with wording similar to that approved by the Australian Energy Regulator in relation to the access arrangement for the Wagga Wagga gas distribution network for 1 July 2010 to 30 June 2015. An equivalent provision would provide wording to the following effect:</p> <p>18.1(a): To the extent that the National Gas Access Law or the Retail Market Scheme applies to a dispute under the Haulage Contract, the parties agree to apply the respective dispute resolution procedure to that dispute.</p> <p>18.1(b): Subject to clause 18.1(a) and clauses 9.2, 9.4 and 9.5 (regarding Disputed Invoices), any dispute or difference arising between the parties out of or in connection with the Haulage Contract must be resolved in accordance with clauses 18.2 to 18.4.</p> <p>18.2(a): If clause 18.1(b) applies to a dispute or difference, either Party may give written notice to the</p>

THC Clause and Draft Decision paragraph numbers	Authority's Draft Decision	WAGN Amendments	Alinta's Further Submissions
			<p>other Party specifying the details of the dispute.</p> <p>Consequential amendments would be required to clauses 18.2(b) to 18.4. Clause 18.2(c) should also be amended by changing the words "within 5 Business Days of the day referred to in clause 18.2(b)" to "within 5 Business Days of the expiry of the period referred to in clause 18.2(b)".</p>
<p>18.3(f)</p> <p>Arbitration</p> <p>Draft Decision at [1721 – 1730]</p>	The Authority required that this clause be deleted.	Authority's required amendments not incorporated.	Alinta supports the Authority's decision to require that clause 18.3(f) be deleted.
<p>20.1(b)</p> <p>Intellectual Property</p> <p>Draft Decision at [1740 – 1745]</p>	The Authority required that clause 20.1 be deleted.	Authority's required amendments not incorporated.	<p>Alinta supports the Authority's decision to require that clause 20.1 be deleted.</p> <p>If the Authority is moved by WAGN's submission that the ownership of intellectual property is a matter which goes to the compliance of WAGN's proposed THC with the National Gas Objective, then Alinta reiterates its earlier submissions that the competing interests of WAGN and the User require a provision that all documents, tools, software, reports, etc, created by the User are owned by the User, even if they are created under or for the</p>

THC Clause and Draft Decision paragraph numbers	Authority's Draft Decision	WAGN Amendments	Alinta's Further Submissions
			purposes of the Haulage Contract.
20.2(c) Disclosure of Confidential Information Draft Decision at [1746 – 1751]	The Authority required that clause 20.2 be deleted.	Authority's required amendments not incorporated.	Alinta submits that clause 20.2 does not relate only to intellectual property, and should be retained as providing a reasonable prohibition against the disclosure of confidential information.
22.1 Dictionary Draft Decision at [1803 – 1815]	The Authority required that this clause be amended.	Authority's required amendments partially incorporated.	Alinta supports the Authority's decision to require the definition of "CPI" to be amended in the manner required by the Authority.
22.2 Rules for interpreting this Haulage Contract Draft Decision at [1816 – 1819]	The Authority required that this clause be deleted for going beyond compliance with the National Gas Objective and relating to commercial matters to be dealt with between the parties.	Authority's required amendments not incorporated.	Alinta supports the retention of clause 22.2.
2(c) of Schedules 1 & 2, 2(d) of Schedule 3; 2(b) of	The Authority required that these clauses be amended to include an obligation on the Service	Authority's required amendments not incorporated.	Alinta supports the Authority's decision to require the Service Provider to consult with the User under these

THC Clause and Draft Decision paragraph numbers	Authority's Draft Decision	WAGN Amendments	Alinta's Further Submissions
Schedules 4 & 5 Draft Decision at [1820 – 1828]	Provider to consult with the user if intending to modify User Specific Delivery Facilities.		provisions.
Schedule 1 – 2(e), 9(c)(i) Schedule 2 – 2(e), 9(c)(ii) Schedule 3 – 2(f), 8(c)(ii) Schedule 4 – 2(d), 7(c)(ii), 8(c)(ii), 9(c)(ii), 10(c)(ii), 11(c)(ii) Schedule 5 – 2(d), 7(c)(ii), 8(c)(ii), 9(c)(ii), 10(c)(ii), 11(c)(ii) Draft Decision at [1829 – 1835]	The Authority required that these clauses be deleted.	Authority's required amendments not incorporated.	Alinta supports the Authority's decision to require these provisions to be deleted.
Schedule 1 – 4(b) Schedule 2 – 4(b) Schedule 3 – 4(b)	The Authority required that these clauses be amended such that the wording "Service Provider determines, in its absolute discretion from time to time" be changed to "Service Provider and User agree".	Authority's required amendments not incorporated.	Alinta supports the Authority's decision to require an amendment to clause 4(b) of Schedules 1, 2 and 3. Alinta also reassures WAGN that it has the technical ability to partake in relevant discussions and to reach

THC Clause and Draft Decision paragraph numbers	Authority's Draft Decision	WAGN Amendments	Alinta's Further Submissions
Draft Decision at [1836 – 1841]			agreement on a sensible amended pressure.
<p>9(c)(i) of Schedules 1 & 2; 8(c)(i) of Schedule 3, 7(c)(i) of Schedules 4 & 5</p> <p>Draft Decision at [1856 – 1863]</p>	The Authority required that clause 9 of Schedules 1 & 2; clause 8 of Schedule 3 and clause 7 of Schedules 4 & 5 be deleted.	Authority's required amendments partially incorporated.	<p>Alinta does not support the Authority's deletion of clause 9 of Schedules 1 & 2; clause 8 of Schedule 3 and clause 7 of Schedules 4 & 5.</p> <p>This would leave only clause 5.6 of the THC to deal with deregistration of Delivery Points, and removes the reference to the User being able to request Service Provider to deregister a Delivery Point.</p> <p>Clause 5.6 (as amended) only deals with deregistration at the End Date – the User would not specifically have the option to request deregistration if desired/needed before the End Date.</p> <p>There are also procedural aspects of these clauses that ought to remain such as the requirement for the Service Provider to deregister a Delivery Point when it receives a request to do so from the User and the requirement of the Service Provider to notify the User once a Delivery Point is deregistered.</p> <p>Alinta considers that it is only the provisions which seek to exculpate WAGN from liability that should be removed from these clauses; as these issues can and should be</p>

THC Clause and Draft Decision paragraph numbers	Authority's Draft Decision	WAGN Amendments	Alinta's Further Submissions
			left to clause 16 to resolve. Alinta supports WAGN's approach to this issue.
Annexure B Bank Guarantee Draft Decision at [1646 – 1655]	The Authority required that this annexure be deleted for the same reason it deleted clauses 15.2(c) to (k).	Authority's required amendments not incorporated.	Alinta supports the Authority's decision to require the deletion of Annexure B for the same reason as, and to be consistent with, the deletion of clauses 15.2(c) to (k) of the THC.
New Clause: Changing Receipt and Delivery Points Draft Decision at [1971 – 1998]	The Authority stated in its assessment of clause 8 of the PAA that it required a new clause to be inserted in the THC in identical terms to clause 8 of the PAA (as amended) to ensure that service agreements for reference services contain terms and conditions for changing receipt and delivery points (as required by the NGRs).		The draft decision refers to the inclusion of a term identical to clause 8.2 of the PAA. However, the proposed amendment refers to clause 8.