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REGULATOR'S FURTHER FINAL DECISION ON DBNGP ACCESS ARRANGEMENT

On Tuesday 30 December 2003 the Regulator, Dr Ken Michael, issued his "Further Final Decision" under the Code¹ on Epic's proposed revised Access Arrangement for the DBNGP. That decision was to not approve the Access Arrangement proposed by Epic. At the same time the Regulator drafted and approved his own Access Arrangement (the "approved Access Arrangement"). This bulletin identifies some key features of the approved Access Arrangement, and describes what lies ahead.

The Further Final Decision and approved Access Arrangement are available from www.era.wa.gov.au (see below for an explanation of the change from OffGAR to the ERA).

Background

Epic submitted its proposed Access Arrangement to OffGAR in 1999. The Regulator issued his Draft Decision in June 2001. Epic sued the Regulator regarding the Draft Decision. In August 2002, the Supreme Court ruled that the Draft Decision was affected by errors of law. The Regulator issued his Final Decision in May 2003. That decision was to not approve the Access Arrangement proposed by Epic. The Final Decision listed 47 amendments to Epic's proposed Access Arrangement that would be required in order for the Regulator to approve Epic's access arrangement. The Regulator also issued Supplementary Reasons & Amendment to the Final Decision on 18 November 2003. Epic submitted its revised proposed Access Arrangement to OffGAR in response to the Final Decision, however the revised proposed Access Arrangement did not adopt all of the amendments contained in the Final Decision.

Key aspects of the approved Access Arrangement

- ▶ It is based on Epic's proposed Access Arrangement submitted to OffGAR in 1999, which the Regulator says has been modified only to the extent necessary for it to comply with the Final Decision. This is not correct. The approved Access Arrangement contains new matters which were not contained in the original proposed Access Arrangement, nor the Final Decision. For example, a minimum contract term of 20 years now applies for developable capacity.
- ▶ The Regulator has set an **initial capital base as at 31 December 1999 of \$1.550bn**. Epic had asked for \$2.1bn in its revised proposed Access Arrangement.
- ▶ The approved Access Arrangement adopts a **real pre-tax rate of return of 7.4%**. Epic had asked for 7.78% in its revised proposed Access Arrangement.
- ▶ The Regulator has calculated a full-haul 100% load factor tariff for Epic's proposed Firm Service (exclusive of GST and delivery point charges), at 1 January 2000, of:
 - \$0.91/GJ for Perth;
 - \$0.97/GJ for Kwinana & Rockingham laterals; and
 - \$0.98/GJ downstream of Compressor Station 10.
- ▶ Consistent with the Final Decision, the Regulator declined to impose a T1-equivalent Reference Service or Reference Tariff.



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- ▶ In the Final Decision the Regulator expressed a view on what a T1-equivalent tariff might be. He has not done so in the Further Final Decision.
- ▶ The zonal tariff structure is implemented, including Epic's anomalous placement of the Zone 9-10 boundary. Compression charges will be charged on a "pass-through", not zonal, basis.
- ▶ Epic's proposed 1500% penalties are largely (but not all) reigned back to 350%. Imbalance tolerances are to be 8% of MDQ rather than Epic's proposed 2%.
- ▶ The zonal aggregation system for peaking is implemented. Shippers can aggregate loads for peaking purposes, but only within zones or laterals.

Where to from here?

- ▶ If you are unhappy with any aspect of the approved Access Arrangement, and made a submission in relation to Epic's proposed Access Arrangement, you may wish to ask the Gas Review Board to review the Regulator's decision.
- ▶ You have until **14 January 2004**² to apply to the Gas Review Board for a review.

The "Approval Date" occurs on 13 January 2004

On the Approval Date:

- ▶ the *DBNGP Access Manual* and its associated legislation ceases to apply;
- ▶ access is thereafter governed by the Access Arrangement and the Code;
- ▶ for those shippers with GTR contracts³ who have accepted an offer under section 20 of the *Dampier to Bunbury Pipeline Act 1997*, the "statutory price" which applies in their contracts will change.

This change of access regime has implications for:

- ▶ applications for access contracts that are already in Epic's queue;
- ▶ disputes that have commenced before the Approval Date;
- ▶ the tests which apply to Epic's obligation to expand the DBNGP (which, contrary to media reports, arises under statute and not merely as a result of a contract with the State);
- ▶ the rules which govern the tariff for any expanded capacity (once again, these appear in the Code, not in a contract with the State).

The Office of Energy is still considering transitional regulations to address some of these matters.

Establishment of the Economic Regulation Authority

On 1 January 2004, the office of the Western Australian Independent Gas Pipelines Access Regulator (OffGAR) ceased to exist. This was because the *Economic Regulation Authority Act 2003* ("the Act") came into operation. The Act established the Economic Regulation Authority ("ERA")

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whose functions include regulating the gas, rail, water and electricity industries in Western Australia. The ERA takes over the role of the Regulator and OffGAR.

The ERA will be managed by a governing body, consisting of a Chairman and such other members as are necessary for the proper performance of the Authority's functions. Former staff of OffGAR are now employed in the ERA's Gas Division.

Importantly, a decision of an official replaced by the ERA is not affected and is to be treated as if it were a decision made by the ERA. Dr Ken Michael, who was the Independent Gas Pipelines Access Regulator up until the commencement of the Act, has now been appointed an Alternate Chairman of the ERA until such time as a Chairman is appointed.

The ERA has established an initial senior structure to facilitate transitional arrangements and has appointed:

- ▶ Peter Kolf as the ERA's Acting General Manager; and
- ▶ Robert Pullella as the ERA's Acting Director Gas Regulation.

The ERA also takes over the role of:

- ▶ the Office of the Rail Access Regulator;
- ▶ the Coordinator of Energy in administering the licensing scheme for gas distribution licences and gas trading licences; and
- ▶ the Coordinator of Water Services in administering the water licensing scheme.

Parts of the ERA that have not yet come into force provide for the ERA to administer the licensing scheme for electricity. It is expected that the ERA will acquire additional functions in relation to electricity as electricity reform progresses.

A website has been established at www.era.gov.au

We are of course continuing to assess the Further Final Decision and the approved Access Arrangement and their implications for industry participants, and the move to the ERA. If you have any queries please call **Matt Bowen** on **9426 6888** or **Mel Mistilis** on **9426 6628**, or email us on mbowen@jacmac.com.au or mmistilis@jacmac.com.au

Footnotes

¹ The *National Third Party Access Code for Natural Gas Pipeline Systems*, applying in Western Australia under the *Gas Pipelines Access (Western Australia) Act 1998*.

² Under s. 38(2) of Schedule 1 to the *Gas Pipelines Access (Western Australia) Act 1998*, applying under s. 39(6) of Schedule 1 to that Act, you have 14 days from when the decision was placed on the Code Registrar's public register. The Code Registrar placed the decision on its public register on 31 December 2003.

³ I.e. contracts entered into under the *Gas Transmission Regulations 1994*, prior to 25 March 1998.