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The Intercreditor Agent
for the DBNGP Bank Syndicate
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AUSTRALIA

3 September, 2001

Dr K Michael
Western Australian Independent Gas Pipelines Access Regulator
Office of Gas Access Regulation
6th Floor
197 St Georges Terrace
PERTH WA 6000

Attention: Mr Robert Pullella

Dear Sir

Submission in relation to Draft Decision on Access Arrangement for DBNGP

We constitute part of the syndicate of financiers (the "Bank Syndicate") which financed the purchase by Epic Energy of the Dampier to Bunbury Natural Gas Pipeline (the "Pipeline") from the Western Australian Government in 1998.

The Bank Syndicate has provided acquisition facilities totalling \$1.91 billion to Epic Energy on a limited recourse basis. Accordingly, the Bank Syndicate has a significant financial interest in the Pipeline and we are making this submission in response to the draft decision issued by the Western Australian Independent Gas Pipelines Regulator (the "Regulator") on the proposed access arrangement for the Pipeline.

We understand that Epic Energy intends submitting a comprehensive response addressing in detail the validity of the draft decision (together with responses to all of the specific amendments proposed in the draft decision by the Regulator).

Based on the Bank Syndicate's review of the draft decision and discussions with Epic Energy, we wish to outline our principal concerns. These concerns can be summarised as follows :

1. Methodology and Approach

The methodology and approach adopted by the Regulator in the draft decision to determine the initial capital base appears to give no recognition to what we understand to be Epic Energy's expectation and understanding at the time of acquisition as to the future tariffs that would apply for the transportation of gas in the Pipeline.

We understand that when Epic Energy determined its proposed purchase price for the Pipeline, it was given a legitimate expectation that the tariff under the Access Arrangements would be around \$1.00/GJ to Perth and, that Epic Energy determined the price it was prepared to pay for the Pipeline based upon that legitimate expectation.

We feel that by adopting a Depreciated Optimised Replacement Cost ("DORC") methodology to determine the capital base for the Pipeline, the Regulator has not taken sufficient account of this legitimate expectation.

Further, the Regulator is required under the Code to take into account the service provider's legitimate business interests and investment in the Pipeline. In the case of Epic Energy these interests could be expected to include the actions which we understand were taken by Epic Energy as a result of the representations made to it by the Western Australian Government.

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2. Financial Consequences

Should the draft decision be implemented, then the financial consequences for Epic Energy are likely to be significant.

From our comparison of the base case under the finance documents and the base case which the Regulator developed, it appears there will be a reduction in the tariff Epic Energy will receive of about 25%.

We would point out that since Epic Energy acquired the Pipeline the tariffs have already been reduced by about 25%.

We are most concerned that this further reduction in the tariff would reduce the revenues of Epic Energy to such an extent that it would be likely to :

- (a) restrict Epic Energy's ability to fund further development of the Pipeline; and
- (b) result in Epic Energy being unable to meet its obligations to us under the finance documents which would result in an event of default thereunder.

3. Expansion

The approach by the Regulator also appears not to recognise Epic Energy's legitimate expectation that the tariff would facilitate future capital investment to increase the capacity of the Pipeline.

In preparing the base case for the financing of the acquisition of the Pipeline, we understand Epic Energy relied upon a number of factors and expectations at that time as to the expansion of the Pipeline. A relevant factor in determining the appropriate level of bank finance was the level of revenue that could be generated through the incremental expansion of the Pipeline.

Further, if required by the Regulator, Epic Energy is obliged to expand the capacity of the Pipeline.

However, on the basis of the tariffs under the draft decision of the Regulator, it seems unlikely that (a) such expansion would be economically viable for Epic Energy or (b) the incremental cash flow from such expansion would permit the expansion to be financed.

In conclusion, it is difficult to reconcile the draft decision of the Regulator with the three public policy objectives which we understand from Epic Energy underpinned the sale process for the Pipeline, namely :

- A reduction in the transportation tariffs on the pipeline to around \$1.00/GJ to Perth;
- Ensuring that the State achieved the maximum sale price for the Pipeline to deliver economic benefits to the State; and
- A commitment to expand the capacity of Pipeline.

If, in addition, Epic Energy is shown to have determined the amount it paid for the Pipeline on the basis of representations made by or on behalf of the Western Australian Government, lenders may be concerned with investing in such projects in Western Australia in the future. In particular it seems unlikely that lenders would be prepared to finance an acquisition in similar circumstances.

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Yours faithfully

Signed for and on behalf of **AMP Henderson Global Investors Limited as manager responsible for AMP Life Limited's investment in senior debt issued by Epic Energy (WA) Nominees Pty Limited**

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