

IN THE WESTERN AUSTRALIAN GAS REVIEW BOARD

No 1 of 2004

Re Application for review of the decision by the Western Australian Independent Gas Pipelines Access Regulator published on 30 December 2003 to approve its own Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline owned and operated by the Applicants for review

Application by:

**EPIC ENERGY (WA) NOMINEES PTY LTD (ACN 081 609 289) and
EPIC ENERGY (WA) TRANSMISSION PTY LTD (ACN 081 609 190)**

Applicants

No 3 of 2004

Re Application for review of the decision by the Western Australian Independent Gas Pipelines Access Regulator dated 30 December 2003 to approve the Regulator's own Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline.

Application by:

WESTERN POWER CORPORATION (WA 0124360E)

Applicant

ORDERS AND DIRECTIONS

Members: Mr Edel, Mr Kimber and Dr Harman

Date of Directions: 16 April 2004

Where made: Perth

THE GAS REVIEW BOARD CONSIDERS THAT having regard to the complexity of the matter, the nature of issues, and the extent of the material likely to be before the Western Australian

Independent Gas Pipelines Access Regulator in relation to its determination, the application for review in Proceedings No 1 of 2004, No 2 of 2004, No 3 of 2004 and No 4 of 2004 cannot be dealt with properly in the period referred to in sub-section 38(3) of the *Gas Pipelines Access (Western Australia) Act 1998* (“**Act**”), and **THE GAS REVIEW BOARD EXTENDS** the ninety (90) day period referred to in sub-section 38(3) of Schedule 1 to the Act in relation to Proceedings No 1 of 2004, No 2 of 2004, No 3 of 2004 and No 4 of 2004 pursuant to sub-section 38(4) of the Act by 7 consecutive 30 day periods totalling 210 days from Tuesday 6 May 2004

THE GAS REVIEW BOARD ORDERS THAT:

- 1 Proceeding No 1 of 2004 be heard first and Proceeding No 3 of 2004 be heard immediately thereafter.
- 2 For Proceeding No 1 of 2004:
 - (a) Epic Energy (WA) Nominees Pty Ltd and Epic Energy (WA) Transmission Pty Ltd (together “**Epic Energy**”) to appear as Applicants ;
 - (b) Western Power Corporation (“**WPC**”) to appear as Respondent; and
 - (c) the Economic Regulation Authority (“**ERA**”) be granted leave to be a respondent and may seek leave to appear at the hearing.
- 3 For Proceeding No 3 of 2004:
 - (a) WPC to appear as Applicant;
 - (b) Epic Energy to appear as Respondents; and
 - (c) the ERA be granted leave to be a respondent and may seek leave to appear at the hearing.
- 4 Each party in any of Proceedings No 1, 2, 3 and 4 of 2004 is to be given prompt access to the transcript for all or any of the hearings of all or any of those Proceedings, upon

written request by the party, and subject to the party paying the relevant fee for the transcript and to the relevant hearing, or part of the hearing, not having been conducted in camera.

5 Subject to any further order, all information and documents claimed to be confidential by a party in Proceedings No 1 of 2004 or No 3 of 2004, or identified by the ERA to be confidential, will be provided only to:

- (a) any member of the Gas Review Board ("the Review Board") as constituted for Proceedings No 1 of 2004 and No 3 of 2004;
- (b) the following counsel:
 - (i) Chris Zelestis QC;
 - (ii) Wayne Martin QC;
 - (iii) Graeme Murphy SC; and
 - (iv) Joshua Thomson;
- (c) the following persons provided they have signed a Confidentiality Undertaking substantially similar in terms to the Confidentiality Undertaking attached and marked "A":
 - (i) for Epic Energy:
 - (A) Beau Deleuil
 - (B) Sharon Henrick
 - (C) Carman Yung
 - (D) Michael Googan

(E) Any other individual who the person claiming confidentiality has consented to the information being disclosed to.

(ii) for WPC:

(A) Neil Gentili

(B) Peter Walton

(C) Eva Lin

(D) Rebecca Fisher

(E) Any other individual who the person claiming confidentiality has consented to the information being disclosed to.

IN PROCEEDINGS NO 1 OF 2004 AND NO 3 OF 2004, THE REVIEW BOARD DIRECTS THAT:

Documents

- 6 Epic Energy and WPC provide to each other a copy of all written submissions they have provided to, and all correspondence with, the Western Australian Independent Gas Pipelines Access Regulator concerning the establishment of an access arrangement for the Dampier to Bunbury Natural Gas Pipeline, specifying which of those written submissions or items of correspondence is subject to a claim of confidentiality, by 30 April 2004. Epic Energy and WPC shall additionally serve 3 copies of such material on the Review Board by 30 April 2004.
- 7 The ERA to provide to Epic Energy and WPC a draft Index of Documents described in sub-section 39(5) of Schedule 1 to the *Gas Pipelines Access (Western Australia) Act* 1998, similar in format to the Draft Index attached and marked “B”, specifying which of those documents (if any) is the subject of a claim of confidentiality (“**Draft Index**”), by 7 May 2004.

- 8 Epic Energy and WPC to request in writing from the ERA copies of any of the documents listed in the Draft Index by 14 May 2004, other than those documents which they can obtain from www.era.wa.gov.au.
- 9 The ERA to provide such documents requested by Epic Energy and WPC under Direction 8, subject to the ERA receiving evidence of appropriate undertakings in accordance with Order 5(c) as to confidentiality and the payment of reasonable photocopying fees, by 7 May 2004.
- 10 By 4 June 2004 Epic Energy and WPC to file and serve on each other and the ERA an annotated copy of their respective grounds of appeal indicating how each ground falls within matters raised by the applicants in the submissions filed by them with the Regulator before he made his decision.
- 11 Epic Energy and WPC identify which documents each of them believes should be added to or removed from the Draft Index and provide the ERA with a revised Draft Index, and attempt to agree an Agreed Draft Index and, failing agreement, identify the basis of objections, by 28 June 2004. In the event that there are objections, Epic Energy, WPC and the ERA to apply to the Gas Review Board for directions before 16 July 2004.

Statements of facts, issues and contentions

- 12 Epic Energy, as the Applicants in Proceeding No 1 of 2004, and WPC, as the Applicant in Proceeding No 3 of 2004, file and serve on each of the parties and the ERA, a statement of facts, issues and contentions by 11 June 2004.
- 13 WPC, as the Respondent in Proceeding No 1 of 2004, and Epic Energy, as the Respondent in Proceeding No 3 of 2004, file and serve on each of the parties and the ERA, a statement of facts, issues and contentions by 2 July 2004, in respect of any of the issues on which it wishes to be heard, admitting, denying or otherwise responding to the statements served pursuant to the preceding direction, together with a statement identifying any issues on which it does not wish to be heard.

- 14 The ERA to file its statement of facts, issues and contentions by 9 July 2004.
- 15 Epic Energy, as the Applicants in Proceeding No 1 of 2004, and WPC, as the Applicant in Proceeding No 3 of 2004, file and serve on each of the parties and the ERA, a statement of facts, issues and contentions in reply to the statements served pursuant to the preceding direction, by 16 July 2004.

Written submissions

- 16 By 30 July 2004 Epic Energy, as the Applicants in Proceeding No 1 of 2004, and WPC, as the Applicant in Proceeding No 3 of 2004, file and serve on each of the parties, and the ERA, a written outline of their submissions, identifying those documents or parts of those documents in relation to which they will maintain a claim for confidentiality at the hearing.
- 17 By 13 August 2004 WPC, as the Respondent in Proceeding No 1 of 2004, and Epic Energy, as the Respondent in Proceeding No 3 of 2004, file and serve on each of the parties and the ERA a written outline of their submissions in response to the submissions served pursuant to the preceding direction, in respect of those issues on which they have indicated they wish to be heard, identifying those documents or parts of those documents in relation to which they will maintain a claim for confidentiality at the hearing.
- 18 By 20 August 2004 the ERA file and serve on each of the parties a written outline of its submissions.
- 19 Epic Energy, as the Applicants in Proceeding No 1 of 2004, and WPC, as the Applicant in Proceeding No 3 of 2004, file and serve on each other party their submissions in reply (if any) by 27 August 2004.
- 20 On or before 30 August 2004, each of:
- (a) Epic Energy;

(b) WPC; and

(c) the ERA,

identify the documents that each of them request the Review Board to consider for the purposes of the proceedings.

21 On or before 13 September 2004, Epic Energy file and serve on WPC:

(a) an Index of Documents for Hearing, listing the documents identified pursuant to Direction 18; and

(b) a paginated trial bundle, containing a copy of each of the documents listed in the Index of Documents for Hearing.

22 Any documents that are required to be filed with the Review Board pursuant to the orders made above:

(a) may be filed in electronic form, save for the documents referred to at paragraph 20(b); and

(b) shall be filed in triplicate unless in electronic form.

23 Proceeding No. 1 of 2004 be listed for hearing for 10 days on 4 October 2004, and Proceeding No. 3 of 2004 be listed for hearing for 5 days thereafter.

24 Each party has liberty to re-list the matter for further directions on three (3) days' notice. Further directions may be heard by the Presiding Member only, on behalf of the Gas Review Board.

.....
RM Edel

“A”

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Application by:

WESTERN POWER CORPORATION (WA 0124360E)

Applicant

CONFIDENTIALITY UNDERTAKING

I, _____ of _____ undertake to [Name of party whose document/information is claimed to be confidential] (“**Disclosing Party**”), and the Western Australian Gas Review Board (the “**Review Board**”) that:

1 Subject to the terms of this Undertaking and any order of the Review Board, I will at all times keep confidential the documents and information which is provided to me in the course of the conduct of Review Board proceedings No 1 of 2004 and No 3 of 2004 and any proceedings which are joined to, or are to be heard with, those proceedings (the “**Proceedings**”) and which is claimed by the Disclosing Party to be its confidential information (“**the information**”).

2 I acknowledge that I may disclose the information to:

- (a) any person for the purposes of the conduct of the Proceedings, who has:
 - (i) been approved of by the Disclosing Party in writing, or by order of the Review Board, for disclosure of the information; and
 - (ii) signed a confidentiality undertaking in the form of this undertaking, or in a form otherwise acceptable to the Disclosing Party, and served the undertaking on the Disclosing Party;
- (b) a secretarial or support staff member of any person approved under paragraph 2(a) provided that person has:
 - (i) been approved of by the Disclosing Party in writing, or by order of the Review Board, for disclosure of the information; and
 - (ii) signed a confidentiality undertaking in the form of this undertaking, or in a form otherwise acceptable to the Disclosing Party, and served the undertaking on the Disclosing Party;
- (c) any member of the Review Board or their associate or staff in connection with the Proceedings; and

“A”

(d) any person to whom I am required by law to disclose the information.

3 Except as required by law, within one (1) month after the occurrence of any of the following events:

(a) the conclusion of the Proceedings; or

(b) my ceasing to be employed or retained by a party to the Proceedings,

I will destroy or deliver to the Disclosing Party’s solicitors any documents or things (or parts of documents or things) provided to me in the course of the Proceedings, or any copies of those documents or things, recording or containing any of the information in my possession, custody or control.

4 Nothing in this undertaking will impose an obligation upon me in respect of information:

(a) which is in the public domain; or

(b) which has been obtained by me otherwise than from the Disclosing Party in the course of the Proceedings,

provided that the information is in the public domain and/or has not been obtained by me by reason of, or in circumstances involving, any breach of confidentiality undertaking in these proceedings or a breach of any other obligation of confidence in favour of the Disclosing Party of any other unlawful means.

Signed: _____

Dated:

Print name: _____

“B”

DRAFT INDEX

No	Date	Type	Title	Author	Author Organisation	Recipient	Recipient Organisation	Confidential
<i>Example</i>								
401	4-12-2003	Report	Examples of operations and maintenance budgets	J Smith	ABC Consulting			No
402	8-12-2003	Letter	Application for review of access arrangement	T Jones	XYZ Solicitors	C Black	Gas Company	Yes