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TRANSCRIPT OF PROCEEDINGS

PRODUCTIVITY COMMISSION

INQUIRY INTO THE GAS ACCESS REGIME

MR A. HINTON, Presiding Commissioner
DR M. FOLIE, Associate Commissioner

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON TUESDAY, 2 SEPTEMBER 2003, AT 9 AM

MR HINTON: Good morning, everyone. Welcome to the public hearings for the Productivity Commission's review of the gas access regime. This is the second day of our public hearings. My name is Tony Hinton, and I am the presiding commissioner for this inquiry. My fellow associate commissioner on my right is Michael Folie. For the record, I note that this inquiry started with terms of reference from the Commonwealth Treasurer in June 2003 and covers, in brief terms, the following six matters: the benefits, costs and effects of the gas access regime, including its effect on investment; secondly, improvements to the gas access regime, its objectives and its application to ensure uniform third party arrangements are applied on a consistent national basis; thirdly, how the gas access regime might better facilitate a competitive market for energy services; fourthly, the appropriate consistency between the gas code, the national access regime and other access regimes; fifthly, the institutional and decision-making arrangements under the gas access regime; and, lastly, the appropriateness of including in the Gas Code minimum - that's price and nonprice - requirements for access to users.

We have already met with a range of organisations, companies and individuals with an interest in these issues, and the commission has received several submissions, and they will continue to be received in following weeks. This followed the release of an issues paper in July. We are grateful to the various organisations and individuals in Western Australia who have already participated in this inquiry. As I said yesterday, we are delighted to be over here in the west.

The purpose of these hearings is to provide an opportunity for interested parties to discuss their submissions and their views on the public record. Following this hearing in Perth, we will hold hearings in Adelaide - that's tomorrow, Melbourne, Brisbane and Sydney. We will then be working towards completing a draft report for public comment, and that is expected to be released by mid December. Following that, we will invite participation at another round of hearings after interested parties have had time to read that draft report.

Consistent with established practice for the commission, we like to conduct our hearings in a reasonably informal manner, but I remind participants that a full transcript is being taken. For this reason, comments from the floor cannot be taken, but at the end of the day's proceedings I will provide an opportunity for anyone who wishes to do so to make a brief presentation. Participants are not required to take an oath but are required under the Productivity Commission Act to be truthful in their remarks. I also note that participants are welcome to comment on the issues raised in other submissions. The transcript will be made available to participants and will be available also from the commission's web site following the hearings. Copies may also be purchased using the forms that are available from staff here today. Also, as probably everyone knows, submissions to this inquiry are also available on the commission's web site.

To comply with requirements in the Commonwealth occupational health and safety legislation, I draw the attention of everyone here to the procedures concerning evacuation. If there is a fire, they work on a "beep beep" or "whoop" system, which you're all familiar with and the gathering point is just outside the lifts, where staff will show us where to get out, with the two exits being to my left and behind you all seated there. That's the conclusion of my introductory comments and standard introductory statements.

I'd now like to welcome to the microphones our first appearances today for this public hearing representatives from Goldfields Gas Transmission, Mr David King, Ms Suzy Tasnady, Mr Andy Wilkinson and Mr Fred Howie. Thank you. As we usually do, I would be grateful if you could, for the purposes of the transcript and to test the sound system, introduce yourselves with your name and who you represent, please.

MR KING: Good morning. Thank you for inviting us to attend, or accepting our application to attend. My name is David King. I'm the general manager of Goldfields Gas Transmission, GGT, and with me today I have three colleagues who work for CMS Energy, as the commercial service provider, including regulatory issues, for CMS. I'll let them introduce themselves.

MS TASNADY: Suzy Tasnady from CMS Energy. I'm the regulatory and technical manager and here in the capacity of both the CMS Energy as well as providing the regulatory services for Goldfields.

MR WILKINSON: Andy Wilkinson. I consult to CMS Energy.

MR HOWIE: Fred Howie. Like Andy, I consult to CMS Energy.

MR HINTON: Thank you very much for that. I invite you to make an introductory statement, if you so wish, that might set off proceedings this morning.

MR KING: We have prepared an introductory presentation, I guess you would call it. The overview of that was just really to go through the Goldfields pipeline, to put some context there; the code process in relation to the Goldfields pipeline, where we see there's some failings with the current code process; and also the coverage criteria. We want to spend a little bit of time on the state agreement, which is the mechanism under which the Goldfields was facilitated just as a comparison to the code process. So we'll go through the prime features of the state agreement and then some comments on the relative impacts of the code process on users and pipeline owners.

We had a bit of an introduction yesterday from Western Mining on the Goldfields. It's a 1830-kilometre pipeline. It was developed under a state agreement. The expression of interest process started in 1993, and it was commissioned in 1996,

so a relatively short process to get the pipeline up and running. It currently has a contracted capacity of around about 100 terajoules a day, 25 per cent of which is third party capacity, and it continues to be subject to the state agreement regime and will continue to be subject to that regime, even with the format of the coal under the code.

The other 75 per cent is what's known as initial committed capacity, and that is deemed to be outside the application of both the state agreement and the code, so that's a difference where the Goldfields has, in its state agreement, a large amount of its capacity outside the reach of the code. There are only 10 customers, and I think that's something that needs to be stated for the Goldfields. It is a pipeline that supplies mainly to the mining industry in the regions of Western Australia. It has only 10 customers and, as I say, that's something that's unusual in a lot of the pipelines that are covered under the code, where they have a large customer base. I guess the other feature of the Goldfields is that 90 per cent of the gas that's transported is used for the generation of electricity. So a large portion of the load is used for electricity, which is obviously competing with the electricity in that common electricity market. That electricity is either from the grid, the south-west interconnector system, or via alternative fuels, such as diesel.

The code process, GGP is slightly different to a lot of other pipelines, although every pipeline has its own nuances. It is protected from material adverse affect, the application of the code, under the state agreement, and that's something that's an ongoing issue that is being resolved, hopefully, through the code process. It was never evaluated like most of the other pipelines that have appeared under the schedule and was never evaluated under the code criteria, but it was included on the original list of pipelines. As far as the code process goes, a draft access arrangement was lodged at the end of 1999, December 99, and a draft decision was published in 2001, so there's quite a gap between those two processes. The draft decision that was proposed drastically lowered the tariffs - some 30 per cent from the tariffs that were offered in the access arrangement submitted. Towards the end of 2001, after much discussion with the regulator and departments, GGT commenced legal action against the regulator and the state.

To put that in context, that's something that GGT was reluctant to do and certainly explored all avenues to try to avoid the necessity to take legal action. With the benefit of hindsight, the decision, as a consequence of the Epic decision, the regulator has decided to go back somewhat to the things that GGT was advocating at the beginning - that the regulator needed to take account of the state agreement and the clause on material adverse affect, in particular, under the state agreement. As I said, that decision was overtaken by the Epic decision in 2002, and a new three-stage process was initiated by the regulator in November 2002. GGT supports that three-stage process. As I say, it basically followed along the lines upon which GGT advocated the process should have occurred when we submitted the access

arrangement. We have yet to get to the first stage of that process, the amended draft decision. We believe that might be out in the next few months. Unfortunately, with that process, the overlap between the state agreement and the code process is not much closer to resolution. We still have a way to go through that process to determine what the outcome of that process is.

So where do we see the failings of the code? We don't believe that really there has been any benefit in WA from the code process in five years. It's hard to identify anyone who has had a benefit from the code process in that five years. It's intrusive; it's very costly, particularly in WA, with the current mechanisms for recouping costs of the regulator; and it's very distracting. As you can see with the number of people we have on the panel this morning, a good deal of resources of Goldfields are put towards handling the code and the interaction with the state agreement. It doesn't really affect the Hilmer light-handed aim, which we'll get to later, which is really in contrast with the state agreement, which we believe better reflects the original Hilmer approach.

The discretions that are available under the code - and there are relatively broad discretions under the code process - appear to have been wrongly applied. The Epic decision has given the regulators more direction as to how we should apply those discretions. There appears to be consumer bias to the code process. Obviously, in the state here we have our own regulator, who is not affiliated with the ACCC, but there still seems to be a tendency to follow the consumer bias approach, or favouring the consumer that the ACCC has started in the eastern states. There's no distinction between transmission and distribution pipelines; we think they're different beasts and they have different issues. Certainly, the Goldfields as a pipeline with only 10 customers, compared with a distribution system such as the Linton system, which has 400,000 customers. There's a vast difference in the way that the markets are developed.

The focus tends to have been on tariff reductions rather than looking at the long-term investment of the pipelines. There seems to be a mind-set that a tariff reduction up front has to be in the range of 10, 20 or 30 per cent tariff reduction. New investment in being deterred, and I guess our focus is on WA. We don't think that the Goldfields would have been developed under the code. I mean, the processes that were put in place with the state agreement facilitated that development and the code process wouldn't have given the certainty that was required for the owners.

Moving on to something more specific - the coverage criteria. We believe that the statement of ejectors must be broader than natural gas in terms of the competition and we are particularly competing in a market that is dominated by electricity and other sources of energy. It should also emphasise the importance of new investment so that we're encouraging new investment in vital infrastructure. It should be confined to essential infrastructure rather than any infrastructure and only be applied

where material benefits arise from the introduction of regulation and the criteria should be strengthened such that it's easier to apply, I guess.

If we look at the Goldfields example - which is a state agreement - as an example of regulation - a regulatory regime that pre-existed the code. It did enable rapid development of a pipeline. It did deliver significant upstream and downstream benefits to the Goldfields area and the north-west gas production area. It also incorporated obligations to build a capacity for third parties, which is something that is not there under the code, as we see with the current situation with the Dampier-Bunbury expansion, so there is an obligation to build additional capacity. It did address specific project risks, which the code tends to ignore. The code tends to look at a one-size-fits-all type of approach.

It also took a whole-of-life approach for the rates of return and tariff part so it looked at the 42-year life of the pipeline and addressed concerns regarding the market and the whole-of-the-life approach. The expansion of the pipeline was limited, I guess, to some extent by being able to achieve a reasonable rate of return - something obviously that an owner wouldn't be looking at expanding without getting some return for the capital involved, but there was an obligation - unless you could demonstrate otherwise - that you would expand the pipeline, and - it is I guess relatively minor - a low-cost regime. It's something that has in the past and I think continues to be applied in a relatively low-cost way, unlike the code process, which has cost GDT, in particular, significant resources and money.

The prime features of the state agreement. It does give regulatory exemption from foundation capacity - something that has been discussed in the previous submissions. The third party access regime only applies to surplus capacity, so that's over and above the foundation capacity. The tariff-setting principles and parameters are negotiated for the third party capacity only, so the regime applies - the tariff-setting principles are for negotiated third party capacity, and the commitments apply for the life of the project, so it's the whole-of-life type approach.

There is obviously arbitration under the regime, but that's for third party capacity again only, so the regime does apply for third parties, whereas the foundation shippers rely on their contract, so there are mechanisms under the contracts for arbitration, et cetera, but those mechanisms are stipulated in the contract and the state agreement regime does not apply to those; in fact, as I said previously, the code regime doesn't apply to the initial committed capacity, as well.

Just to sum up what the impacts are on the relative stakeholders within the industry. For an entity like Goldfields the ownership and operation of the pipeline is 100 per cent of its business. It's specially set up to operate the Goldfields pipeline and it is its only business, so it has not diversified into other areas. It's actually operating as a stand-alone entity to operate the pipeline. The costs involved with that

are essentially fixed. It's a large capital investment and relatively fixed costs in terms of operating the pipeline and operating compression, et cetera. Any sort of tariff reductions have an immediate effect on the bottom line and they can be substantial effects on the bottom line.

I guess it is important to put that into context with most of the users - certainly on the goldfields - that the transmission costs comprise only a very small portion - a very small percentage - of the user's operating costs and, if you put that in the context of their total costs, it is less than 5 per cent. It's single-digit percentage costs on the total costs of the end user. I guess the bottom line, literally, is that a small percentage change in a tariff that's stipulated by a regulator can have large order manager costs on the service provider whereas the end user may gain half a per cent in its total operating costs.

Obviously that is something that it is well worth them pursuing and we've seen that many of the larger end users made submissions and that's obviously something they would do to reduce their operating costs, but I guess it must be borne in mind that the actual effect on the standing of the company - on the viability of the company - is orders of magnitude greater on the pipeline owner than it is on an end user. That's a rather long introduction, but hopefully we have put our salient points across and there is still time for questions.

MR HINTON: David, thank you very much for that. That's a very useful introductory statement and I don't think it's excessively long; in fact you have covered a whole range of issues that are very valid to our inquiry. I also want to thank you for your written submission. That's a substantive document that's a valuable input to our process, so thank you for that. I am sure we could spend a lot of time going through that submission, so let's choose just a couple of things in the available time today. The first one I want to pick up on is one of your early comments in your introductory remarks regarding the gas access regime that applies to both distribution and transmission, but you think that it doesn't sufficiently make a distinction between two fundamentally different activities.

MR KING: Yes.

MR HINTON: That seems to conflict with the perception of some others - or at least be inconsistent with the perception of some others - that the flexibility of the gas access regime does enable a distinction, a differentiation to be made between distribution and transmission activities. Can you elaborate a bit on your concerns about lack of differentiation?

MR KING: Yes. We're not a particular advocator of different codes for the different distribution or transmission pipelines, but the fact that they are completely different beasts in the way that the market is - obviously distribution assets have a

growing market. If you lose one customer - someone sells a house, someone else is going to buy that house, and there is generic growth in that market whereas on the transmission side, if Goldfields loses a customer it can be 5 per cent of its load, 10 per cent of its load.

I guess the areas where they're treated commonly is in the areas of rates of return in particular, where the margin between the rates of return between a distribution asset and a pipeline asset is remarkably small and it goes to the risk, I guess, involved with operating a transmission pipeline versus a distribution pipeline. There may be flexibility in the code to accommodate those, but it appears that the precedents are set by the regulators and they have set those in a rather narrow bound, which doesn't allow the true recognition of the risk associated with running a transmission asset.

MR HOWIE: I think, just to back up what David is saying, that transmission lines and distribution systems do have things in common. I mean, they both have economies of scale, they are both capital intensive, but they have also got - as David identified - substantial differences, and we believe that where there are commonalities between the two types of system - if you like, generic approaches is appropriate, but where there are differences they should be properly recognised.

MR HINTON: The question then that arises for us is, which particular areas or how prescriptive should the access regime be with regard to that differentiation; that is, the generic common components can be handled by coming under the access regime equally. Where would we seek to have in the access regime in the code specific, explicit differentiation? Is it pricing? Is it measurement of competition or market power? Is it upstream-downstream linkages? Can you elaborate at all?

MR KING: Certainly the markets are different and the risks associated with operating the pipelines, so without I guess going through every section of the code and saying, "Well, this actual section ought to be separated into two sections" - I think if you go in with that mind-set that they're different beasts - you could actually construct subsections for both - one for distribution and one for transmission assets. Certainly in terms of the - as I said before - risks involved and the rate of returns and the calculations, et cetera - I mean, determining capital basis may be similar, but certainly I guess the key area is the risks between the two assets because of the markets, different markets, they serve.

DR FOLIE: Can I just follow up on that. In essence - and listening to the responses - it is more about determining the appropriate return. What you are really saying is that the return level might be for transmission because of the nature of the demand - the demand level could be actually more risky than the demand level for actual distribution.

MR KING: I think that's the key - one of the key areas. I am sure if you go through the process there are areas that try and cover things like capacity trading, et cetera. I mean, obviously that is something you would do on a transmission pipeline, but it depends on the end market. It's very difficult if you have got 10 customers to have someone trade capacity because there isn't that fluid market for someone to pick up spare capacity and use it for six months or one year. Generally it's an area where people want the certainty of having the capacity with a large capital-intensive investment - in a mine for example - they don't want to be just taking capacity for a year or so - whereas in a more fluid market, like a distribution system, you could actually trade capacity with someone quite easily for a few months and make more use of that type of market rather than just wear the cost of that.

DR FOLIE: The other alternative - just moving away and listening to some of your responses - having struggled with reading the code - I mean, superficially it appears that it would cover both. They are totally different beasts in their own right - but it can be the way therefore the regulators - what you're saying - are interpreting them uniformly or not recognising when they're going through the process of doing their determinations there are appropriate areas you need to apply to a transmission line which are somewhat different to a distribution, but the code per se can cover it but you have got to then, in implementing the code, look at the specifics of each case and it may not give something specific but specific to the type of business you indulge in.

MR KING: Yes, but I guess in that respect there needs to be some guidance to the regulator in identifying the differences, and I guess among the other areas is future investment in pipelines. I mean, that is something that - it's a long-term high capital investment in a pipeline, whereas for a distribution system it would generally be a small extension, you know, putting it into another suburb or a street, and that investment decision is completely different to a decision to expand the pipeline and spend many tens of millions of dollars. There needs to be a bit more guidance there to identify the differences between the two types of assets - - -

DR FOLIE: - - - or we will be here all morning otherwise on it, but I just wanted to draw the point out, that was all, because it is quite important.

MR HOWIE: No, but is it worthwhile talking a little bit about assumed life? I mean, one of the implicit assumptions behind the code is that gas transport systems will operate indefinitely and that assumption is closer to the mark with distribution systems than it is with transmission pipelines, and particularly pipelines like the Goldfields pipeline. There are not too many distribution systems that have stopped operating because the demand has gone away, but with transmission pipelines, particularly those servicing remote areas, and I will use Goldfields as an example, if the market being served comprises the extraction of a non-renewable resource and that source is depleted, then the need for the pipeline goes away. That can happen in much shorter time frames than might happen with a distribution system. I mean,

bear in mind that again looking at the Goldfields region of Western Australia, the population of Kalgoorlie over the last 100 years has fluctuated considerably. So it is difficult to say that distribution systems, having guaranteed load, the issue of life is more certain.

MR HINTON: Certainly the nature of demand is quite different in the two examples you give. The question then becomes whether or not the code is sufficiently geared to address those differences. I think David is referring to the possibility of the regulator being given clearer guidelines as to recognising those differences, as opposed to it being a deficiency in the code itself, if I read your comments correctly.

MR WILKINSON: Our submissions pretty clearly, I think, point out that we have a problem putting our finger on deficiencies in the code that lead to the deficiencies that we see in the way the code has been implemented. A common theme that we hear from regulators is that they are constrained to what they can do by the precedents that they have got, and they say that the code does not enable them to do this. But generally, when you look for that restriction it's actually not a restriction written in the code, it's their interpretation of the way they are honour-bound to the precedents that have gone before them.

MR HINTON: Thank you for that. Let's move on to a second area that emerges from David's introductory remarks, and that is this intersection between the state agreement and the National - or the Gas Access Regime itself. I would like you to sort of explore further for me that tension between the two. You have certainly given a very clear description of why the nature of the state agreement and state regulation has significant advantages over how the code is operated, and I fully understand and appreciate the point you're making there. But what I want you to explore for me here now is this - the potential conflict, or the tension, between these two sources of regulation.

MR KING: I think as we outlined in the introduction, the state agreement takes the whole of life approach to the asset. It takes a 42-year approach, and then looks at, under the tariffs and in principle, establishing a tariff for that 42-year approach. But the code tends to take a shorter-term view, a five-year approach. It tends to take the approach on the rate of return that it's not project-specific. It looks at the return that you can get from the market, which will tend to vary over time. It doesn't have basically that longer-term view of the asset, so it takes a rather shorter-term approach to the situation. That is something for - I guess it ties it back to the greenfields pipeline issue.

It is something that - we consider the Goldfields is a good worked example of a greenfields pipeline in that respect. It's a pipeline that is hard to get up, to finance and to have people invest their capital in, and the certainty that is required for that is

something that is set when the investment is made in the pipeline. So it is set at the day that the investment dollars are put into the pipeline and literally sunk into the ground. There needs to be a certainty as to certain principles that are established at that point going forward for the pipeline.

MR HINTON: Let us move on to greenfields then - that's the context you have raised - there are a number of suggestions around that I'm sure you're aware of, including of course the ACCC draft guidelines, there is the Parer report that is referred to, some other possibilities regarding access holidays, for a shorthand term, to try and have a system that better addresses a greenfields investment. Do you think these sorts of refinements or improvements would be improvements?

MR KING: Yes, I think they would be improvements. I guess a lot of the discussion is about how long, 15 years or 20 years, et cetera. I think something that needs to be recognised is that whatever that length of holiday is will dictate, at the end of the day, what the tariffs will be, because what will happen is that that holiday will be used to determine the period of tariff. So if you say 15 years, what will happen is that people will run their project models over the 15-year period and say, "Well, I've got certainty for this period of time. I don't know what is going to happen outside this period of time, and I will determine my tariffs and I will get my full return on my investment over that period of time." If it's 20 years, obviously that means the tariffs will go down. So the longer period it is, the investment decision will be - you will end up with lower tariffs with the longer period of time.

If you look at the Goldfields, it has a 42-year life under the state agreement, and that is the sort of term that the models will end up - be run out, for the 42 years to determine what the tariff is. I guess with the standard MBV-type models, obviously you will end up with a lower up-front tariff, a levelised tariff. With a levelised tariff approach you will get a lower up-front tariff, depending on the term that you are allowed to lock in, I guess, at the point of the investment in the pipeline.

MR WILKINSON: There needs to be some qualification on some of the statements that have been made about the 20-year evaluation period too, in that if you look at how they are expressed they are generally talking about the finance arrangements, which is quite a different thing to the project evaluation from an investor's point of view, or from the project proponent's point of view, when they evaluate a project, to look at the overall economics of the project to show that it's viable or how profitable it is, how attractive it is, relative to their other investment options. That is a different situation to looking at then how you go about funding that and the realities of managing your cash flow, that sort of thing, leveraging those sorts of issues.

So a 20-year period may be quite pertinent, and I suggest probably is quite pertinent, to funding arrangements, to the borrowings, and may have direct

applicability for those reasons to tax depreciation-type considerations. But in terms of project evaluation, looking at the big picture and the tariffs that you are going to establish over the life of your project, your expectations for future growth, and the economy is a scale that you can realise, I would be highly suspicious that anybody with a large investment, certainly of the nature of a transmission pipeline and possibly of a distribution network, would evaluate that over a 20-year period. I'm certainly not aware of any significant projects, other than perhaps a resource extraction-type project, with a finite life determined by the quantity of resource they have got. I can't imagine that anybody would evaluate a transmission pipeline over a 20-year period.

MR HINTON: In these circumstances of a greenfield project being properly funded and properly tested, and commercial imperatives being met, does a system of access holiday lead you to conclusions that the capacity built is actually constrained by the foundation customers only, and there is no excess capacity? Is there a link between - how would you have a system that would generate the potential for excess capacity to be available for third party customers? Maybe there is no problem.

MS TASNADY: I suppose it's - - -

MR HOWIE: It would provide incentive to have it built.

MR WILKINSON: In other words, allow a rate of return on the pre-investment on that capital.

DR FOLIE: One of the propositions that one hears in doing this, is that the code - it goes something like this: because of the code and basically the fear of being covered, and the uncertainty of what being covered means for tariffs, that therefore, if you're doing a greenfields project, to actually build fit-for-purpose. Take what you think you can sign up as foundation customers and size the pipeline for that, whereas in a more- less uncertain world you would tend to build a pipeline somewhat bigger. That is because effectively the fixed costs are in the trenching and other things effectively get a lot of extra capacity for a very small amount of capital, so it's not so much the capital risk of putting in that extra capital, it's actually the horrible thing it's going to actually do to your rate base that people are nervous about when you are being covered.

MR WILKINSON: There is two key - - -

DR FOLIE: There are two things running. We would like your views about - this is the issue about a set of rules for greenfields that might offset that, so we would be interested in your views on those two points.

MR WILKINSON: There is two key aspects of that. One is that the coverage by

itself, besides anything else it means about your rate case, is that it has provisions in the code that says any extra capacity you pre-invested in, to try and realise those economy scales you alluded to, is going to be - unless you've got an immediate use for it can be called speculative capital and it reduces your capital base, so that it enhances the current tariff. The economic theory goes along the lines that you're going to get your return one day on that, and you are allowed to put it into a notional pool of pre-investment that is indexed, so that one day, when you can recruit, you will get your money back. That is all well and good, but I don't know that many businesses would like to invest on that basis. The other aspect of that is in terms of the - you've got the fact of coverage - - -

MS TASNADY: I think that one of the other key issues about greenfields pipelines is that you can - the decision of whether or not it will be expanded to meet additional demand in the future will be a commercially-based decision on what that investment is about, not in the inverse. With the code coverage threat at the moment it will not be made. The expansion capabilities of that pipeline will be made on whatever the proponent's view of what the future markets will be, and will do that according to how he sees that investment, rather than be deterred from doing that because of the threat of coverage. I think that's the key difference. I mean, with the GGP case it was a state agreement that guaranteed the investment over the whole of life, which allowed the original JVs to be able to - well, it was mandated to build the extra capacity, but as a consequence the benefit of that was that they would be able to receive the rates of returns to put that in, because there was still risk of the markets not being realised.

At the time the state agreement was established, and the pipeline was built, there was only initial customers that used the pipeline. There were no third parties. The third parties came later, so there was no guarantee of those third parties. So in that respect that was one way of being able to guarantee a return. But getting back to my original point, it's the proponent's view of what he sees as the market. But certainly the way we are seeing things happen now, is that with the code coverage threat pipelines are being built to size regardless of whether there is a view of what the future markets might be.

MR HINTON: Being built to?

MS TASNADY: Size, individual size, yes.

MR KING: I guess the point is, you know, where is the incentive under the code to do otherwise? You could lose significant capital investment from day one by oversizing. There is no real incentive to oversize. You might as well build to your user and the next person who comes along you build another pipeline for them. I mean, in terms of engineering sense I guess in building a pipeline, you wouldn't think that that would be a rational approach, but that has happened. I mean, capital bases

for notional pipelines have been dictated by the regulator.

MR HINTON: Some have put to us that the code is flexible enough to handle that circumstance, with the scope for third parties to fund expansion of capacity using compressors and loops on existing pipeline and that that is one way of meeting this emerging extra demand that might not have been perceived when the pipeline was first built and that it's that flexibility of the code, with the burden being borne by the third party new customers that emerge, being one of the strengths of the code. Are you casting some reality check on that?

MR KING: I don't know of any end user that is comfortable investing capital in a piece of compression equipment on a pipeline they don't own. Generally, it's hard enough, when you're talking to miners, to have them invest in capital for their own use let alone come up with several tens of millions of dollars for an asset that they don't understand on a pipeline that they don't own.

MR WILKINSON: For shared benefit.

MR KING: Yes, for shared benefit. They may only get a portion of that capacity.

MR WILKINSON: But that also does away with all the economies of scale that are inherent in pipeline construction. If you're going to build fit for purpose, then you lose low incremental costs to put in additional capacity and there's a trade-off at the start. When you're going to design your pipeline, you've got to negotiate with your foundation customers. You've got to strike a bargain as to how much extra you can spend as a service provider in anticipation of possibly being able to get extra through-put on that marginal priced - hence, considerably more profitable - through-put that you can get versus what the customers are willing to pay now to underscore the entire investment you're going to put up. Hopefully, you strike a bargain such that there's an economy of scale. You've got spare capacity. The price is acceptable to your base consumers. The fact you've got the infrastructure in there sees new people being able to access that, and your load grows and everybody shares the benefit in that you can actually then start to realise there's economies of scale and translate that through into your tariffs.

Under the code, it says any pre investment in capital is purely speculative and don't expect a return on that until sometime in the future. So there's one adverse effect. If you say you can get around that by having third parties come and front the money, well, there's a consideration that for most people their cost of capital - for a miner or even an upstream producer - is probably going to be higher than for somebody who's investing in pipe work. So there's a disincentive for them to want to put up the money anyway, even if they were able to. In the nature of GGT, some people will tell you they've got uncertainty in a year's time. They might stretch themselves to commit to five years but, as long as they've got some escape route,

they might be there for 10 or 15 years, but it's inconceivable to look that far ahead. Even the big players are quite uncertain about that sort of future.

MR HOWIE: I think we had a worked example in people other than pipeline owners investing in pipelines yesterday, when we heard from Alcoa. As they said, they're the biggest shipper of gas in Australia. According to their own statements, they are unhappy with the outcome. So there's an example where someone did do that, but I think Andy picked up the key point, that whoever it is that is going to put the capital up front to build a compressor, or whatever, is doing that at their cost of capital, which could be substantially higher than a pipeline owner's cost of capital. The other thing is that generally there's too many alternatives available. There's too many alternative fuels, or whatever the gas is being used for. If the gas is being used to generate electricity, you can get electricity by other means. So I think it's just unrealistic to say, "Yes, third parties will put up the money. Having put up the money, they hold no equity in what they've just built. It's there for a common good. It facilitates their competitors as well."

I certainly agree with the principle that, under the code, service providers should not be required to spend capital money. I certainly agree with that, but I think the other side, the assumption that, well, if they don't then someone else will, I think that's flawed, and that's a personal view.

MR HINTON: How about the intersection with what seems to be the emerging market practice of MFN contracts? Does this intersect, interrupt or impede commercial negotiation with regard to use of available capacity?

MR KING: No, I don't believe so. Any contract if it has an MFN clause in there would have to be left untouched by the regulatory regime, and certainly it may be something that's considered. What happens under the state agreement is the initial capacity is isolated from the application of the state agreement tariff regime and also the code tariff regime. So the sanctity of the contract is left untouched. Generally the foundation customers are large users and they're underpinning the development of the pipeline. They have enough lawyers and people working for them that they can actually drive the decision that they want, and often they will go out to tender. If someone has a large enough load, they will go out to pipeline owners to choose the best deal that they can get. We have an example with the Telfer project, where they're looking to construct a pipeline from Port Hedland to Telfer, and they will go out and bid and get the best deal they can get. Obviously, that's a deal that's understood by both sides of the party from day one, and it will be hard fought and negotiated, so it should be left untouched by the code process.

MR WILKINSON: I presume the perceived problem with the MFN arrangements are that you would have somebody who has got capacity tied up that's not actually being utilised. I can't see too many other situations where there's an economic

inefficiency, if you like, or an apparent inefficiency there. But as long as you've got the ring fencing provisions, which we have - and we're staying behind them and we live with those; we're ring fenced - and you don't have the integrated monopoly who's using those MFN-type arrangements to hold out competitors, as long as you can discount that, which I believe you can even under the code, then it shouldn't be an issue because it's a matter of commercial negotiation. If a commercial entity of a foundation user wanted to pre-invest in capacity that they've bought but they're not using, they're going to be paying for that and, of course, they're going to have a commercial incentive, one would think, to on-sell it, to trade it, to engage in capacity trading. It's one of the enablers of that to happen, one would think.

DR FOLIE: I'm not sure we're talking about the same thing.

MR WILKINSON: Well, perhaps not.

DR FOLIE: What one hears is that, particularly with greenfields and people signing up customers now, effectively you sign up as a foundation customer. Because of the events, or fear of events, about what coverage means, third parties will come in at a lower tariff, and the foundation customers - people who are now as foundation customers - are requiring to have what we've been told is an MFN clause. In other words, if the other guy gets a low price, the foundation ones have got to match that price, which of course people are putting to us is another problem for actually signing up, because you get covered and then suddenly your revenue base is going down if they give it to the other group. This appears to be a growing tendency, and all rational foundation customers are requiring that clause in their contracts.

MR KING: Again, I guess that's the relative powers of the two sides negotiating in terms of coming to an understanding. For the code process, that type of clause ought to be recognised by the regulator in his determination of the tariff.

DR FOLIE: We could have asked the question whether it's the industry's views the regulator is recognising this or not. The current status is the fear that he might not recognise it, but we don't know if there's any evidence that he has or hasn't, so it sits there as a hypothetical. I don't want to push you into an area that you don't know about; we're not here for that.

MR KING: For greenfields, it's at the onset. Both sides will take a view as to the load growth and determine whether it's better to go at a regulator return, or whether the risks of a tariff determined by the regulator - it gets back to the rates return. With a low rate of return, if that's going to roll onto their foundation customers, anyone would be looking at having some other clause in the contract which negates that effect if they think that it's going to put them out of business to have a low rate of return.

DR FOLIE: I'd like to ask a question about state agreement and coverages. It may be a slightly difficult question to ask in a way. I'm not too sure whether perhaps the two systems are intersecting or not but, under the state agreement, you still appear to be having a dispute with foundation customers. I'm not interested in the merits or whatever, but there is, and that's proving to have some duration in being resolved. Is that right? If the state agreement was so good, with arbitration and other things, it may well be, and the point of the question is, that the nature of the business always ends with protracted settlements. I'm really trying to understand - it doesn't matter which regime you put in, it may well be that we always end up with these sort of protracted settlements because of the commercial nature of them.

MR KING: I think it's important to recognise that, under the state agreement and also under the code, the initial committed capacity of the foundation users was excluded from the application of the third party tariff regime. So again we get back to the foundation customers' contracts; they're exempt from the application of the state agreement. So any arbitration processes, et cetera, that are included in the state agreement regime, or the code regime, don't apply to the initial customers. They have their own contractual arrangements. Certainly, for Goldfields, it's important to point out that the separate owners of the Goldfields have separate contractual arrangements with the previous owners of the Goldfields pipeline and, under those contracts, there are different arbitration, dispute resolution, tariffing, et cetera, and that does not affect the tariff-setting principles for third parties. So it's a completely separate area of GGT's operation.

GGT, in terms of GGT rather than the joint venturers, applies the tariff-setting principles and applies the state agreement in regard to third parties and is concerned purely with third parties - that is, other parties other than the initial owners, or initial committed capacity. So they are different dispute mechanisms under those contracts.

MR HINTON: I'd like to move on to at least two more areas, but I'm sure there's many more, depending on how time goes. The first one is in relation to the objects clause, and then I hope we'll move into a discussion of some coverage issues. But let's go back to the objects clause, and your written submission is very comprehensive in that regard. It very usefully runs through a whole range of issues associated with links to Part IIIA and links to previous work that's been undertaken in this area. So thank you for that. I don't wish to go into every item that you raise, but I would like to pick up two that raise questions in my mind.

The first one is that you thought that the focus of the current objects clause and some others around that have been put up as alternatives has been too narrow and that, rather than just natural gas, it should be widened to cover energy. This is not quite novel but certainly hasn't been brought to our attention by others as such. The focus has been on natural gas. I welcome your comments, or elaborating on why you think it should be energy. What is this link to this wider sector, energy, as opposed

to being a natural gas access regime?

MR KING: I will start with making an overall comment, and I might pass to Andy because he's done a lot of work on this. The wider coverage in terms of energy - I mean specifically for the Goldfields pipeline - we are competing in a market which is predominantly for electricity. The main competitor to the Goldfields Gas Transmission is electrical generation in the Kalgoorlie area, and that's generated from the inner south-west of the state, transmitted out to the Goldfields area. It's also diesel in the central areas and in the northern areas, the north-west inter-connector system connects to the northern areas of the goldfields, so just to look at gas in isolation and gas transportation in isolation is something which we believe needs to take a wider focus and take a look, and I guess it's an issue we brought up in terms of the coverage tests and our current application for revocation.

MR HINTON: That come under - - -

MR KING: Yes. The importance of recognising that we're competing in an energy market rather than a gas - or, in our respect, a gas transportation market - needs to be recognised.

MR HOWIE: If I could just interject. The Goldfields pipeline is a prime - or perhaps a straight example of that, but I think there is a general recognition that gas and electricity markets in Australia - and indeed the world - are converging. It's not just Goldfields, although it is definitely Goldfields - the state government here is encouraging independent power production in the South-West and fired by gas is the preferred view. I don't think you can look at Goldfields as being an isolated example. It's a prime example, but it's not the only example.

MR HINTON: Let me be a devil's advocate here. If you've got an access regime relating to gas pipelines then, prima facie, the objectives of that regime should relate to gas, not energy. The fact that you rightly point out - the obvious - that there are linkages and relationships between gas and other alternative energy suppliers is a valid point, but should we take into account the regulator's approach to questions of market power and alternative sources of energy to the gas; that is, rather than pick up that linkage of different alternative energy sources in an objects clause you should be picking it up in the next level of guidelines for the regulator making judgments about whether there is market power; what type of market power; what sort of pricing structure should follow from this sort of working environment, commercial environment, and alternative energy source environment, might be operating for that particular gas supply. That was behind my question. Not to dispute the linkages, but to see how one takes account of those linkages.

MR HOWIE: One of the problems we face is that in the administration of the code to date what we've seen is in some instances regulators exercising discretion that

goes beyond the scope and ambit of the code in certain circumstances. In other circumstances they have chosen not to exercise discretion at all and they have interpreted the code in a fundamentalist manner and, worse still, selectively in a fundamentalist manner. One of the drivers for having an objects clause is to make it clearer as to what regulators should do. My personal view is that regulators need a lot of direction - need a whole lot of direction - and if that's the case then perhaps there is cause to have the objects clause or clauses more expansive rather than less expansive.

MR WILKINSON: And the other thing: should not the objects clause in the code reflect the objectives of the whole package of competition policy - energy policy reform - that it forms part of? Should it not reflect that greater objective? You're talking about coverage issues, so it's not necessarily in the total application.

MR HINTON: I'll come on to coverage in a minute.

MR WILKINSON: I thought you were referring to coverage there.

MR HINTON: No.

MR WILKINSON: It's particularly important to the coverage aspect, I'd say.

MR KING: Just to put it into context. It can become rather narrow just to focus on transmission pipeline and ignore the rest of the energy market around and if there are signals that are coming from the energy market that need to be taken into account in terms of how the code is applied then that ought to be taken into account by the regulator.

MR HINTON: My questioning was whether or not it is taken into account in the objects clause or whether it's the next level of guidelines for the regulator - that was the issue. If we are seeking to have an access regime that has an objective with regard to economic efficient operation and use of energy that would seem to be too wide an objectives clause for something that relates to gas access.

MR KING: I'm just trying to think of an example where the use of energy efficiently - I was thinking of something in the goldfields where the development of the infrastructure in the goldfields and the development of lateral supply mine sites to generate energy - electricity from gas - oughtn't to be something that was encouraged by the regulator in terms of the risks associated with these things and you get back to the risk profile. That's something that ought to be weighed up against the alternatives for energy, being electricity supply, and some weighting given to the overall energy market and the benefits to the energy market of taking a view - a specific view - on the transmission section of the gas chain.

MR HINTON: My questioning is not expressing a view by the way. It is seeking to elaborate your thinking behind this point because I am going to go to the second one I want to raise under the objectives clause, and that's in relation to your terminology about lack of any threshold test in your submission, where you refer to the need to pick up - "Benefits should be material in national terms" and that leads you to include that sort of parameter in the objectives clause, or the objects clause. I'm assuming you don't mean to say that it has to be of national significance. That's the implication and I wanted to explore that with you. What do you mean by or how would you elaborate on your item (b), your suggested new objectives clause? "Applies only in circumstances" - this is a framework for access - "where the anticipated benefits are material in national terms". Page 7.

MR KING: Was that to do with coverage or the objects, as well?

MR HINTON: No. It's in your document entitled Coverage but, within the Coverage document, it's in the issues relating to objectives, section 3.0, and in your summary at page 8, section 5, you actually give a proposed, revised objectives clause.

DR FOLIE: It could be page 7 or page 8. It's page 7 on mine and page 8 on my fellow commissioner's.

MR HINTON: We have got different versions, have we?

DR FOLIE: No, just the pagination.

MR HOWIE: Different printers.

MR HINTON: Different printers. I apologise for those differences, but the point being that your new item (b) puts this framework for third party access to only applying in circumstances where the anticipated benefits are material in national terms. That seems to me to be rather ambiguous, prima facie, what is material in national terms. You don't mean a nationally-significant proposal because then, why would you look at something in Western Australia, which is only Western Australia, for example? It seems to be a size criterion, but I am interpreting - I am really seeking from you an elaboration of your thinking behind your suggestion.

MR WILKINSON: It stems from being in line with - going back to Hilmer - original proposals and the thinking behind that and some of the wording that's in there, but I'm not sure that that would restrict it in the way that you commented there - that if it was only Western Australia. I mean, Western Australia has the largest source of gas in the country. It has got the single largest gas user here. For quite a while it was the most likely source of gas to supply the east coast when gas supplies there were diminished.

I mean, there may be competing sources now. It's still talked about as being the fall-back. There are aspects that transcend the borders, but I guess when you consider what the competition policy is supposed to be achieving for the national benefit, then there is - again in line with - the expansive discussions that have gone before, sort of thing, in line with Hilmer and that - there is a need to tune that so that you're not just picking up everything in the net; otherwise you get the situation that we do have at the moment, where you have got small, regional distribution networks who suddenly put their head up and realise what they have got into and sort of realise that they need to get out of it because it just doesn't make sense.

MR KING: I mean, this is the objects clause, but I guess it gives the guidance to the regulator that really they should only be applied where there is going to be a material benefit to the - I guess to some extent for the pipelines that are already covered you could probably argue if you had a good coverage test you wouldn't end up - unless it was a significant pipeline it wouldn't be covered by a future code or by the code.

MR HOWIE: I think there is a pretty obvious attraction towards trying to formularise things when it comes to regulation. It's a lot easier for everybody if there is a black-and-white, cut-and-dried criterion or criteria for whatever it is that you are dealing with and, if you lived in a black-and-white world that might work, but unfortunately we don't. One of the issues that has been talked about indirectly over the last couple of days is this issue of discretion or regulators, and I think part of that comes down to exercising - if I can use the phrase - commonsense and, unfortunately, commonsense is demonstrably not so common. To say that - I don't know - a pipeline should be covered if it's 10-inch or bigger and not - - -

MR HINTON: That's getting into coverage. This is actually on the objectives clause, which is one of the reasons why I am raising it. It seems to be almost getting into coverage issues, because I am going to ask you about your proposed covered criteria, as well, which is the next stage - following on from an objectives clause you need then coverage criteria. This is your proposed objectives clause, which is quite specific with regard to national benefits - "material in national terms".

MR KING: I guess it goes to some extent to the degree of application of the code. I mean, it has been talked about having various codes for different infrastructure, so you could have a light-handed code that applied to a pipeline that wasn't of huge national significance and you may have a more heavier-handed code that applied to a pipeline that supplied - or a distribution system or pipeline - the large metro areas, so some sort of guidance to the degree of application of the code.

MR WILKINSON: That would only be one of the factors obviously.

MR KING: Yes.

MS TASNADY: Yes.

MR HINTON: Let's move on to your coverage criteria - your specific coverage criteria - discussion, which also is quite comprehensive, so I thank you for that, as well. We don't have time to run through each of the items, but the last one which you - that's criterion (f), which is in existence today, but you endorse as having continuing validity. This is the one that says that access - or increased access - to the service would not be contrary to the public interest.

I wanted to explore with you why you think that is a valid, continuing criterion for coverage in circumstances where, prima facie, that is a very, very broad, potentially unclear, criterion to apply with regard to coverage. It in effect becomes whatever is in the eye of the regulator or whoever. What is contrary to the national interest without criteria seems to me to be in effect not addressing what I thought was one of your basic concerns about coverage criteria; that is, lack of precision and too open to flexible, undisciplined judgments.

MR WILKINSON: It is the only criteria that addresses costs and benefits, and that's a fundamental issue that we have with the way the code is applied, the way it is implemented. I guess in any form of regulation you have got to really know that for what it costs you you're getting something out of it. I mean, a broad test for the public interest gives you that flexibility. I mean, it would be nice to refine it, but how you could possibly do that eludes us I guess.

MR HINTON: It's a negative test, not a positive test, not contrary to the national interest. It's not a benefits test at all.

MR WILKINSON: I guess in the simplistic breakdown of the four existing criteria you have the competition test, the monopoly test, the safety test and the costs and benefits test.

MR HINTON: Yes.

MR WILKINSON: That is the costs and benefits test. That's how we understand it and pretty much how it is seen in implementation. I guess, for want of any better way of expressing it, we have left it alone. Simplistic - a simple answer.

MR HINTON: That explains the thinking behind it, which is what I was after.

MR KING: Yes, I mean the - - -

MR HINTON: Others have put to me that that particular criterion is one that needs

to be challenged, which is why I raised it with you this morning, given the circumstances of where you've endorsed its continuing validity.

MR KING: Maybe we should more endorse the way it's applied, rather than the wording as it is.

DR FOLIE: It does seem to conflict with your comments later on about information gathering, et cetera.

MR WILKINSON: We do underscore all that with the need that the costs and benefits should be demonstrated, and that there should be some quantification there that is completely lacking. Much of the supposed efficiency gains and the like that are claimed are very airy-fairy sweeping statements. They are couched in economic terms, but they have no econometric substantiation. They have no substantiation of any form. Most businesses, if they were going to proceed with an efficiency program of some sort would want to see what the cost is going to be and what the sizes of the potential rewards are. We go into national policy and huge public costs, huge costs to society, if you like, with the most airy-fairy idea of what the benefits are. I think it's one of the points that we make in our submission that now is probably a good time to start looking for some empirical evidence, to stick some numbers in and quantify the costs and benefits.

MR HINTON: Thanks for that. We are running out of time, but I would welcome your comments on - I think Michael is going to ask you about information gathering I suspect, but the timeliness of decision-making, the need for natural justice for efficient regulation producing timely outcomes. Can you give me your summary position on that?

MR KING: Just the summary position? We wouldn't wish that the national justice be weakened any. I mean, obviously we would like to see decisions made in a more timely manner, but that shouldn't detract from the ability to test those. I think it has been demonstrated here in Western Australia that every test of those decisions has been successful in terms of the service provided, demonstrating that the code is being misapplied. Obviously the time taken in processing these, the uncertainty behind those, I don't think anyone wants, but in terms of getting it right you really do need to have the ability to test it in the courts.

DR FOLIE: You have made a lot about costs and benefits and the costs of actually having to service a code. I would just like you to perhaps say a little bit about what you think about the level of information that is required under the code, the discretion of the regulator to effectively call for more information. I mean, do you have an answer to the process about - do you believe that a subset of information could be given that could answer most of the issues, or not?

MR KING: We believe the regulator has enough power to ask for what information it has, and I know they are seeking further powers. But the power that they have under section 41 we believe is more than sufficient. I guess, as an overriding principle, that the regulator shouldn't be looking at micro-managing the business. They should be analysing the access arrangements submission that is put forward and taking a wider view of that, rather than actually having to delve into every little detail, every little operating cost, et cetera. So it is as a consequence of that that there is information overload and I guess the amount of time, the amount of consultants, et cetera, that are required to delve through this information is - that is what is causing the delay in the process.

MR WILKINSON: We should understand, I guess, that our background is from a regime that is light-handed and seeks to redress market failure if it happens, sort of thing, and hasn't - until the code came along and provided certain opportunities and incentives there wasn't any evidence of market failures there, and now there is a regime that is imposed that is considerably more intrusive. The problem we see in fixing that, on that path, is you've got to make it even more prescriptive. You have got to provide precise guidance and even more rules. That makes it an uncomfortable thing to recommend, but given the nature of the beast it's hard to see how else you could actually fix what we've got at the moment, but that is because our perspective is steeped in what we think is a more effective form of regulation where you address market failure, and only in the event that you address the market failure effectively with minimum oversight. Oversight, but minimum intervention.

MR HOWIE: Yes, and you do not need, as someone said, the forensic accuracy to do that. I mean, information has value, but it only has value to achieve end purposes, and I think the issue here is that regulators want more information predicated on the assumption that they want to get further into your business, whereas that's not necessarily applicable.

MS TASNADY: One thing that we haven't actually commented on, and that I would like to add, is that in Western Australia we have had open access for all of our pipeline infrastructure from the beginning of whenever they were built, in the Parmelia case that was in 1971 and then subsequently with DBNGP in 1983, with a variety of producers having access to those pipelines. All of those operated before the code was implemented and I would like to add that since the code - the code has actually done nothing to improve that situation. If anything, you could say that without the code the DBNGP expansions would be occurring today, the GGP third party access would be continuing under its own arrangements, Parmelia would have its open access like it has always had since 1971. The code has actually done nothing to improve that situation.

I would say that the code has had something to do with impairing that situation by imposing additional cost burdens, and with respect to perhaps one exception, the

Alinta Gas Distribution System, the code has actually introduced higher tariffs on that system where everywhere else in Australia tariffs have been effectively reduced under the code process. I'm not proposing that they should be reduced. I'm just saying that you have one example where the only benefit has been to Alinta Gas Distribution System. The rest of the industry has had very much not benefits in that respect with the code.

MR HOWIE: The point there is that the tariff increases that Suzy is talking about in the distribution system is not percentage points. It's integer multiples. I mean, it's factors of five and 10. Not 5 per cent and 10 per cent, but 500 per cent.

MR WILKINSON: In specific areas.

MR HOWIE: In particular cases, that's right. One of CMS's submissions provides a graphic indication of that.

MR HINTON: Is there any other matter that you think that we have overlooked, that really we should be at least recording this morning, as of significance? We have, of course, your detailed submission and that stands in its own right, but whether or not there is anything else you would want to raise at this public hearing this morning.

MR KING: I don't believe so. I think we have covered all the points we wish to cover, and the submissions obviously stand for themselves I guess.

MR HINTON: Yes. Thank you again very much for not only your submission, but also appearing today. We appreciate it and it's a valuable part of our process. So thanks again.

MR KING: Thank you.

MR HINTON: We will now take a short break for coffee, morning tea, even biscuits and we will return here at about 25 to.

MR HINTON: Good morning, again. We'll recommence proceedings. I now invite Mr Peter Kolf and Mr Robert Pullella from the Office of Gas Access Regulation. Thank you for your draft submission. We appreciate that the timetable between the release of our issues paper and the commencement of public hearings was very tight and, therefore, we were quite flexible in taking draft submissions to facilitate these public hearings in advance of finalising submissions, and that's happened on a number of occasions. So thank you for your efforts in providing that prior to this morning. What I'd like to do is invite you to identify yourself for the purposes of the transcript - name and where you're from - and then I'll make some very brief comments.

MR KOLF: Thank you very much. My name is Peter Kolf. I'm from the Office of Gas Access Regulation, of which I am the executive director.

MR PULLELLA: I am Robert Pullella. I am the senior business analyst at the Office of Gas Access Regulation.

MR HINTON: Thank you very much. I invite you, if you wish, to make an introductory statement. Depending on your own wishes, I'm happy to move straight into questions, but if you'd like to make a short statement, that's fine as well.

MR KOLF: We do have a statement that we would like to make. It shouldn't take too long. First of all, I'd like to thank you for the opportunity on behalf of the regulator to be able to make a statement. I guess what I'd like to do also is to draw attention to the issues that we would like to focus on. Given the circumstances of a regulator, we see it as important for us to focus on the process and, in particular, the timing and the cost of the process that we're involved in and that which is the subject of this review. We would prefer not to make specific comment on any of the assessments that we have under assessment at the moment and, indeed, would prefer to avoid even those that we have completed.

In relation to the work of the regulator, one of the issues that I'd like to raise is that the regulator's submission is, indeed, consistent with the role of the regulator, in the sense that he administers an access regime and is independent and, for those reasons, he is not an advocate for any of the parties. The regulator doesn't have a policy role but, as you would appreciate, there are times when indeed he is required to give consideration to matters of policy and, in particular, for example, to have regard to the public interest. Bearing in mind the role of the regulator and his particular position, possibly not unlike that of an umpire, he does see that there is an opportunity for him to comment on matters of process.

The overview of the submission, if I may just quickly give you an indication, is ordered in such a way as to provide a little bit of historical overview. The main focus, I guess, of the submission is on timeliness, and that issue is related to

discretion in the code, issues about the decisiveness, or indecisiveness of the code, the status of draft decisions and the implications that has. The areas that are also very close to the process issues include matters relating to information collection and disclosure. Now, in addition, I'd like to also touch on very briefly the matter that is also particular to our regulator, in that he is also the regulator for rail access and sees some opportunity to comment there on the way that access is regulated there, and he has had the opportunity to give some consideration to the different ways in which, in fact, it works.

Insofar as the historical overview is concerned, that's really been provided by way of assistance, and I wouldn't wish to elaborate on that at this time but, indeed, you may ask us questions and we'll do what we can to respond to those. On the issue of timeliness, we'd like to draw attention to the process that we have experienced throughout Australia. In Western Australia there have been three decisions that have been completed by the regulator, and those three decisions averaged a period of 19 months. We have two decisions, or assessments, that have not been completed. They have taken 45 months to date. Nationally, there have been 19 assessments - "nationally", that is to say in other parts of Australia, including Western Australia - averaging 22 months each, and there is currently one access arrangement, or one assessment that is still outstanding, and that's taken 52 months.

In that situation, it is reasonable to draw attention to the very long period of time that it has taken to do these assessments, and I think it's probably also appropriate to comment that it's unlikely that reviews of these assessments would take as long and, indeed, I think the experience to date is that reviews of assessments are very much more quickly achieved. The reason for that has a lot to do with settling one of the key issues in the access arrangement, and that is the initial capital base.

Insofar as discretion in the code is concerned, I guess we would draw attention to the fact that there are no overriding objectives and also the very complex nature of the code. That really is brought about by the complex interrelationship between principles and factors to be taken into consideration, in particular sections 2.24, 8.1, 8.10 and 8.11 of the code. I think as a general comment, our experience suggests that the code does lack clarity and introduces uncertainty and with that, of course, also the opportunity for debate and the consequential impact that that has on timeliness and on cost. We would, however, observe that the code is not a prescriptive document and, indeed, the very fact that it isn't a prescriptive document gives rise to the considerable opportunity for debate that is provided by the code. It does provide very fertile code for judicial and merits reviews and, again, this has very significant impacts on timeliness and cost.

A specific example of difficulties that we have experienced is in relation to draft decisions. It appears that the draft decisions are reviewable by the court, and

the point that we would make is that really does require input at a very early point in time of expert advice and considerable legal input, and that in itself has very serious implications for the costing and the timeliness of those types of decisions. Indeed, I think that the nature of the code, given the circumstances that surround draft decisions, really leads regulators to be looking towards doing things such as issuing discussion papers and avoiding, or at least mitigating the opportunity of reviewability at court. Again, the consequence of that really is timeliness and cost.

Information collection is another issue that has been of some significance to us and, although I don't wish to go into a great deal of detail, I would like to point out that section 41 does have some specific problems with it. It does provide the opportunity for a regulator to obtain information of which he is aware and information that exists. The code doesn't provide the regulator to require information to be kept, and that has some very serious consequences, particularly and to the extent that the code would see the need for any degree of monitoring, and there is some degree of that, particularly in relation to the ring fencing obligations. Also, it has very serious implications in the area of seeking to verify tariffs, and that particular issue almost appears as a contradiction in section 4.2 in the ring fencing section of the code, and I'd draw the commission's attention to that particular issue. There is, in fact, an issues paper that was prepared by Ofgar to the National Gas Pipelines Advisory Committee, NGPAC, and we propose to make a copy of that paper available.

I think we would have to also make mention of an associated section to section 41, which is section 42, which we find to be particularly cumbersome and time consuming. I think that where section 42 particularly gets to the point of being a major concern is that the regulator is restricted under that section to some degree to being able to provide confidential information to his consultants without first checking that information with the parties who provided that information. In fact, it goes further than that - it goes as far as the parties that have provided that information to the parties that provided the information to the regulator. Now, our experience there is particularly significant in the sense that the process there has caused us to have to go through delays and, indeed, in several cases the situation was in fact that we were unable to make available information public that the regulator certainly felt should have been made public. I won't go any further with that.

In relation to alternate regulatory approaches - and this is really drawing on the regulator's experience as the rail access regulator - we would like to draw attention to the way in which the process works in that particular regime, which is that it focuses mainly on the approval of elements of an access arrangement rather than approving access arrangements in totality every single time on all of the issues of the regime. In particular, for instance, the rate of return in the case of the rail access regime is set once a year, and it would apply to any access arrangements or any contracts that are entered into under that regime in that year. The view that we would have is that

there may be some opportunity to provide for a more generalised approach to approving elements of an access arrangement rather than doing it on every single occasion for every single access arrangement, and the types of areas that could benefit from that type of an approach might well be areas such as rate of return which, in themselves, are very contentious. Indeed it could also apply to areas such as certain aspects of terms and conditions and what have you which, to a large extent, could well be common across jurisdictions.

That really brings me to the conclusion - and really what I would like to do is just simply reiterate that the regulator's intention in making his submission is to improve the clarity - or seek to draw the commission's attention to the possibility of improving the clarity of the code - to provide greater certainty, to provide process and timeliness - to improve process and timeliness, to enhance acceptance and compliance, and avoid adversarial confrontation, which should all lead to improved timeliness and reduction in costs.

MR HINTON: Peter, thank you very much for that. First of all, I fully understand, appreciate and the Commission is entirely sensitive to your point that we're not here to review, examine, comment on, past, current or future possible cases before you, and that's well understood, but what is important for us - and we find your involvement very valuable for us in that your day-to-day experiences in operating as the regulator in fact does throw up generic comment on how the code operates - how the access regime is operating - that can in fact lead to lessons to be drawn with direct implications for possible improvements, and that in no way compromises your statutory responsibilities associated with decision-making and judgment, so thank you very much for your participation and we fully understand the parameters around which that participation is set.

Secondly, thank you very much for that offer of sending us a copy of that issues paper done for NGPAC regarding section 4.2 conflict. We look forward to that. We think that might be valuable, so thank you. In terms of where to now, I think that you very usefully touch on a number of aspects that lead directly to possible improvements, especially with regard to what drives process - efficient process - and inappropriate costs and inappropriate delays in timely regulatory outcomes. That's very valid and valuable for our examination of possible refinements.

The first one I want to take up is the ambiguity of the code. You say the code is not prescriptive, but nevertheless provides fertile ground for judicial review. That leads to questions in our mind, well, how does one remove ambiguity? How does one bring clarity that does not become too prescriptive? Which areas of the code need to be made clearer, more specific? Is it the objects clause? Is it the guidelines of pricing principles? What sort of area do you think is the most fertile for us with regard to bringing clarity to remove regulatory or at least reduce regulatory

uncertainty?

MR KOLF: I guess there is an element of balance here and I think the balance, on the one hand, is to provide flexibility and discretion to a party to be able to take into account the circumstances of any particular situation. At the other extreme there is the danger that a particular approach might be too prescriptive and I can understand that in finding a particular balance there that in itself requires some considerable consideration.

I think our experience would suggest that there is possibly an opportunity to be somewhat more precise about what the objectives of the regulator might be, on the one hand, so I do believe that we would support the idea of an objects clause as one way in which to address this, but that is very much still at the flexible end of the way in which the code could be changed, and I am not convinced that that in itself would necessarily improve timeliness or necessarily reduce the need for the regulator to weigh up all these various issues that he has in front of him or that it would necessarily eliminate a great deal of debate.

At the end of the day the debate can be dealt with in a way perhaps at a much earlier point in time - and that is, well, what kind of an asset-value approach would you have? In the case of the code that is a very wide range of possible valuation methodologies. Indeed perhaps a lot more consideration might be given to determining something of that nature at a much earlier point in time and embedding it into the code rather than leaving the amount of discretion for the regulator on that, but let me say that at the end of the day the regulator is there to administer whatever process is put in place - and that is what he would do - but there are these issues of timeliness and cost and, to the extent that the code provides the opportunity for debate and if the commercial circumstances are such that the debate is worth having, then you will have that debate and that will impact on issues such as timeliness and cost.

MR HINTON: I have taken, Peter, your introductory comments to imply that you find that the time that is taken for regulatory outcomes and the processes involved in that do need to be improved. You haven't quite said so precisely, but I assume that that's your starting point. I should have said that right up front as the first question. I have taken it that that is what you were saying, but I - - -

MR KOLF: Yes, I would say that and I would say that on the basis that one of the things the office has done on a regular basis, annually, is seek the views of stakeholders in Western Australia that are registered with our office to receive information on the work of our office. I think the one response that has come back very, very clearly on every single occasion is in relation to timeliness. Indeed there are very few, if any, of our respondents that have been satisfied - indeed very satisfied - with the timeliness issue and indeed we have broken that particular

question into two parts: on the one hand, the timeliness as is provided for under the code and the timeliness of the office itself.

MR HINTON: Yes.

MR KOLF: The responses there have also indicated very clearly that it's not just the office - it's the regime, as well. Indeed the response rate - of those satisfied were very satisfied - has tended to be in the order of around about 14 per cent or less, so it has been fairly clear to us that that is an issue that is of concern to all parties and would be an obvious area that should be improved and so it's a very appropriate focus for the commission - to look at ways in which the code can be refined and improved to address regulatory efficiency with regard to timeliness.

MR HINTON: We have touched on clarity of the objects clause. Do you think there is potential benefit for a regulator for there to be not only positive statements but also negative statements regarding objects clauses? I have in mind here saying what it is not about may be an option. Do you think that that is an option that can generate regulatory clarity from your perspective?

MR KOLF: I think that to the extent that any approach taken provides better and clearer guidance to the regulator. I would feel that that would have a very positive impact, whether it's a negative or a positive.

MR HINTON: Thank you.

DR FOLIE: Can we ask the very specific of it then - a clause like "not contrary to the public interest", which is - it's a hard one to answer, but that's a serious negative, if you like.

MR KOLF: Let me say that that actually raises some quite significant issues. I mean, the negativity of the question itself I guess is one issue. The other side of the question really is, well, what is the public interest and how is a regulator meant to interpret that? Does he draw on submissions? No doubt ultimately he would need to do that, but how does he really come to a view on that, not being an elected officer or person? It is a particularly difficult issue for a regulator to deal with.

Indeed even section 2.24 of the code actually does have a provision for him to take into consideration the public interest, and that is a difficult one and always has been. As to whether converting it to a negative would help or even provide some degree of how serious a situation needs to be - unless he has some specific guidance as to how to work out exactly, "Well, what is the public interest in these things?" I think it's very difficult for a regulator.

DR FOLIE: Could I ask a sort of ancillary - without going too far away from it, but

it does come up - one of the areas you have got to do is actually you've got to consult with the so-called public, the general public. Does that really add a lot to the time duration draw-out and then the criteria under which you then assess the public reaction? Is that another part of causing this delay?

MR KOLF: It can do. In some cases it can work very efficiently but, in other cases, it may take a very long time. In one of the access arrangements - in one of our assessments - the consultation time has itself taken 10 months and much of that - I mean there is a certain code required - time to undertake public consultation - but aside from that which is actually prescribed in the code, the rest of it is required to be at the request of some party and that was very much the case, so that the regulator, in having to provide for that 10 months of public consultation, really was responding to other people's wishes for that.

MR HINTON: On this issue of clarity regarding objects, there are some suggestions to us that the hierarchical nature of objectives is one of the problems in the code; that is, that while there is an objects clause of sorts there are also then scattered throughout the documentation associated with the regime other areas that have also implied or explicit objectives that some suggest generates its own tension. Is that your perception of an area of possible refinement that would improve the operation of the code?

MR KOLF: I think that it would be very useful to have an understanding of what the hierarchical process really is. Indeed, I'd have to say that this was an issue that we have debated amongst ourselves for some time, and it's certainly an issue that Dr Michael has given considerable attention to himself - just how do all these different elements interrelate. Indeed, I think that the advice of the Supreme Court decision in Western Australia actually quite explicitly provided advice on the interrelationship of these different elements. I must admit that the outcome that the court came to, which was really to indicate that the relationship was through one paragraph of section 8.1, which is a set of pricing principles in the code, was that if there is a tension in those principles the regulator would need to take regard of the factors to be taken into consideration under section 2.24. I would have to say that I'm not aware that any party actually drew attention to that as a possible way of interpreting the code in that way.

Therefore, yes, there is a very high degree of non clarity there, if I can put it in that way, and if it were much more clearly stated how one set of principles were to relate to another set of principles, it would indeed possibly avoid the need of having to deal with each permutation and combination of these in the development of either draft or final decisions that are produced by the regulator, which works out to make those decisions extraordinarily complex, extremely difficult to read and, as one journalist has described it, a cure for insomnia.

DR FOLIE: Could I ask a follow-up on that. In the various sections of the code you do have all these things laid down, I think, in the discussions. Because of, let's presume, court challenges and other such things, unless you give absolute consideration to each of those elements, then you can't show that you've actually done the job according to this legislation and the code. To what extent, though, are all those, if they could be simplified down, the really material words, and then left and simplified down to any other factors? Would that still probably enable you to discharge your regulatory position but make it less robust for court challenge? It's a feeling that, if you could simplify it down, you probably don't have to do all those things there to be able to discharge the regulatory obligation.

MR KOLF: I think that the practical reality is that you don't do all the permutations and combinations; indeed, if you did, the document would be probably 10 or more times the size than is really sensibly required to do the job. But the only way that you can do that is to make sure that those combinations and permutations that are really critical to the decision are clearly presented. There is always the danger that, in going through that process, you may actually miss one, and that may be because of lack of information; it may be that you don't really fully appreciate the circumstance of a particular party, and that indeed again could be the result of not complete information. Therefore, not having a process or an arrangement that actually guides the regulator in being able to clearly work through the decision exposes the regulator to the danger of judicial review and it adds to cost and timeliness, both whether there is or whether there is not judicial review.

DR FOLIE: Following on, is it my naive view, let's say, that, as basically the entity of pipeline distribution systems is about to come under your regime, effectively, it's their obligation to provide sufficient material information to meet the objectives of the code about access and the other elements?

MR KOLF: That's correct.

DR FOLIE: As it's their obligation to give all the necessary information to be able to make an appropriate decision, they then can't challenge backwards on the fact that you didn't consider a factor that actually wasn't in their information; in other words, the obligation is on them to actually help make the case. You assess it, and then there are a limited number of elements in your determination. Is it possible to sort of work a code like that, or would that be too difficult, in your experience?

MR KOLF: I think that one of the issues that was raised by the Supreme Court in Western Australia did seem to suggest that there is a considerable obligation on the part of a party to put forward the information to make its case. That was certainly one of the issues that was raised in the decision of the court. The question is whether the code could be further improved to clarify that, and I guess it could. The next part of that would be, well, would that assist the regulator. I think it certainly would have

an impact on the opportunity for judicial review and merits review, and it would also make it necessary for the submitting party to give greater attention to what it puts in and so on. I think it would leave open the question, though, as to whether a regulator has any obligation to carry out research and follow up on issues. The view that I would have at this point in time is that there is a grey area as to whether it would be possible and whether it would be workable to fill in that grey area. I think I have some doubt about that.

There will always need to be some degree of reliance on a regulator to not simply rely on what's been put to him but to consider the logic of it and follow up on issues that may need further clarification, particularly in circumstances where you have not just one party. But really the regulator is very much in the nature of an umpire where there are other parties and not simply the owners of pipelines and the users of pipelines, but also government and other interested parties who all may have a particular view. When these things come forward, they may not all fit together, and there may be a need there for the regulator to follow up on those issues.

MR HINTON: Peter, you've been exploring the range of issues that a regulator needs to look at that can increase the potential for review, judicial review, challenge and appeal, or whatever. But there is also a systemic issue - whether or not the code, the gas access regime, has sufficient or inappropriately too many opportunities for appeal; that is, the system of review itself is one thing; the detail that might be subject to review is another. Are you in a position to give any comment about whether or not the structure of the regime, the structure of the code, has the balance about right, or should it be improved in terms of the opportunities to ensure delivery of natural justice and delivery of appropriate review systems? Are you in a position to comment on that?

MR KOLF: I think the feeling that I would have is that the basic structure of the code is possibly quite within a sort of reasonable arrangement. I believe that the structure of the code itself does follow through from the elements - the process of coverage, the process of what elements of an access arrangement need to be addressed - focusing, finally, on the very specific issues of tariffs. So I believe that the code in structure and in content cover the right areas. I think the only area where I believe the code does make it very difficult for its administrators to meet timely outcomes, to do that efficiently in a cost-effective way. I believe it is the very wide discretion and the unspecific approaches that it did take. Now, I know that that was done specifically to provide flexibility, but with that flexibility comes a cost, and I think that's what we've really experienced.

MR HINTON: Let's move on to your comments about information collection. I have one quite narrow query and one more general one, and my narrow one is in relation to the issue of consultants that the regulator might use, having access to the information that the regulator has access to. You implied that there was a time

element involved in the regulator going back to the information provider to confirm that the consultant can have access.

MR KOLF: Yes.

MR HINTON: The question that immediately came to my mind was usually a consultant can be deemed to be the same entity as the hiring body - that is, the consultant then becomes an integral part of the regulator and is bound by the same degree and force of law regarding commercial-in-confidence, confidentiality and all the force of law that protects that. I was wondering why that didn't apply in this case.

MR KOLF: It doesn't apply under the code. It doesn't apply under section 42, which unfortunately doesn't make provision for that. I might add that, as an administrative process, within our own agency we have taken a position on requiring that any consultants that we have indeed enter into confidentiality deeds with the regulator. So the regulator is therefore able to go to the parties and say, "Well, this particular consultant is a party that I'm confident will not cause you any harm and, for those reasons, he should be able to have access to the information." I might add that, in most cases, the situation with those confidentiality deeds, having contacted the parties and having advised them of it, that is generally then a means by which we're able to move forward and deal with that.

The areas where the additional difficulties do come in - and we've had, I think, probably three or four cases of this - is where a party has in fact objected, not necessarily in relation to a consultant but simply making information public under the section 42 process. There is then the opportunity for the party to object to the regulator's decision to make information public, and that then triggers the possibility for a review by the Gas Review Board. The Gas Review Board in Western Australia is not a standing body; it is one that needs to be established in the event of a review. That process itself - to simply establish the review board - could take four or even maybe six weeks because there is a process that needs to be followed. The attorney-general needs to appoint the chairman, the chairman needs to appoint the members, and that administrative process takes time. So in the situation of where a regulator is seeking to, for instance, make some information public that is subject to a section 41 information request, it's not inconceivable that you could find yourself delayed by anything up to three or four months as a result of having to go through that entire process.

MR PULLELLA: If I may add, Tony, in relation to the specific issue of consultants, I think there is some lack of clarity within the actual legislation that says that it - it does try and address that issue by saying "staff and employees". It's a case of whether, within the scope of the definition of those terms and if they are not defined, whether or not the consultants fall within that definition, and that is the

specific area of concern.

MR HINTON: My wider question of information gathering was in relation to your view that our review should address the problem of only limited powers for the regulator to require service providers to maintain and provide information. There has been an alternative view put to us that the tendency for forensic examination of accounts and books by regulators is not really warranted, but is usually directly related to the nature of the requirements on the regulator to what he has to look at. Therefore, it would seem to follow that if the items, issues, being examined by the regulator were narrowed, made sharper and were more prescriptive, nevertheless that would suggest prima facie that your need to require service providers to maintain and provide information to strengthen those powers would in fact perhaps not have the same force if the nature of the code itself were changed. Is that reading too much into a conclusion?

MR KOLF: I think that the point that you make is a good one, and I think that there is undoubtedly a reduced need for detailed information where the code is more specific about what it requires of the regulator. I think the only issue that I would raise is whether the code should, however, not address issues that are of a nature such as benchmarking, and we are really referring to the benchmarking-type requirements under the ring fencing arrangements. I mean, they are very limited, but at the end of the day there is a requirement there for the regulator to have an understanding of the regulatory accounts, the ongoing regulatory accounts, the ongoing value of the asset base and also the derivation of tariffs themselves. If you are unable to obtain adequate information about the cost allocation parameters that are used in those areas, it raises serious difficulties for the regulator to be able to verify those sorts of things. I am not aware that those sorts of aspects could be easily overcome by adding additional prescription in other parts.

MR HINTON: Thank you. I have only one final question, but I have saved it until last, because it is out of left field, so you may not wish to respond. It has been put to us that the objects clause is too narrow, in the sense that it's focusing on gas, but gas is one part of a wider sector called energy. Therefore, in looking at an objects clause the regulator should be looking at the energy sector, even though it would be a gas access regime, a gas code. Are you in a position to react to that sort of suggestion?

MR KOLF: I think that, and Rob may wish to comment on this as well, the issue is really within - I mean, even as it stands it is within the context of an energy sector. In any event, as to whether the objects themselves are at a broader level, I am not clear that that would necessarily change the fundamentals when you get down to let's say specifically considering what the tariff for a particular transmission or distribution system might need to be. I think that in any event there is a basis for having to take into consideration the broader issues.

MR HINTON: Thank you.

DR FOLIE: In the back table of your submission, it is very interesting to see that the average is 22, but if you do distribution just broadly around Australia - let's say it's around 14 weeks and the pipelines are all sort of up around 45 weeks. The reason we're actually drawing out the difference between the two is that we do have differing views from the industry side about whether the code needs to actually take into account more aspects of distribution and transmission some people say are different and, to pick up the highlights of those differences, possibly something needs to be done in the code. Clearly the process for achieving agreement is much faster on distribution. Do you think that then lends through to actually doing something in the code to differentiate between the two? It just adds more burden onto you.

MR KOLF: I must say I hadn't really seen that particular relationship before, but yes, you are right that it does seem that way. It may have some implications, but really I've got to say I haven't really given any consideration as to why there might be a difference between the types of systems and why some take longer than others. I think I would have a difficulty in commenting on that. Do you have a view on that?

MR PULLELLA: No, I think you're right, Peter. I think it's really a case of looking at the overall issues concerning distribution versus transmission, before you can make any real assessment.

DR FOLIE: We haven't got many distributions here, but effectively have been through distributions and whether the code process works smoother with that and takes more into account for that, or whether it's, in other words, really trying to focus on: is the code the reason for that or is it just the nature of the beast that it has been a little easier?

MR KOLF: I think that really from where our agency comes from on this issue, is that we have only really had an involvement in one distribution system, and that one distribution system was, and this issue is raised in our submission - it was a bit of a special case in that at the time it was government owned and it was being prepared for sale, and there was a need for all parties to move quickly on this in order to meet deadlines. Being a government-owned system, and the government having spent some time with the utility in developing and giving consideration to its application to the regulator, actually produced a situation where the gap between the regulator and the application itself - where that wasn't really a very significant gap, and indeed that is indicated by the decision that was finally made on that pipeline, the two are very close both in terms of initial capital base and in terms of the rate of return.

I think that that possibly may be a attributed to the close involvement the government may have had with the utility in developing the access regime. There

was a good understanding of the principles. So our experience in this area is very much coloured by that and we would see that that would be the reason why it was so much reduced. Insofar as other distribution systems are concerned, not having been close enough to them, it makes it very difficult for us to draw any conclusions on that.

MR HINTON: Thank you very much, both of you again, for your appearance today. Bringing your particular perspective to our inquiry is very valuable for us, so thank you. We look forward to your final submission in due course. Thanks again.

MR KOLF: Thank you very much.

MR PULLELLA: Thank you.

MR HINTON: That brings us to a conclusion of the scheduled proceedings for today's hearings, but I would like to give an opportunity now to anyone on the floor who would wish to make an appearance before this public inquiry. You are most welcome to, the only condition being that I ask you to come up and sit in front of a microphone and identify yourself. The process of public inquiry with public hearings is also one of giving anyone else an opportunity to get up and speak if you would like to speak. So you are most welcome to if you would so wish. If there is no-one wishing to take up that warm and wonderful invitation I will now adjourn these proceedings and note that the Commission will resume tomorrow at 10 am in Adelaide. Thank you very much, and thank you all for participating.

AT 11.42 AM THE INQUIRY WAS ADJOURNED UNTIL
WEDNESDAY, 3 SEPTEMBER 2003