

FORM 1

FDN

IN THE DISTRICT COURT OF SOUTH AUSTRALIA
ADMINISTRATIVE AND DISCIPLINARY DIVISION

No 502 of 2006

IN THE MATTER OF A REVIEW UNDER PART 6 OF THE
GAS PIPELINES ACCESS (SOUTH AUSTRALIA) ACT 1997

ENVESTRA LIMITED

ACN 078 551 685

Applicant

and

ESSENTIAL SERVICES COMMISSION OF SOUTH AUSTRALIA

Respondent

AMENDED APPLICATION FOR REVIEW

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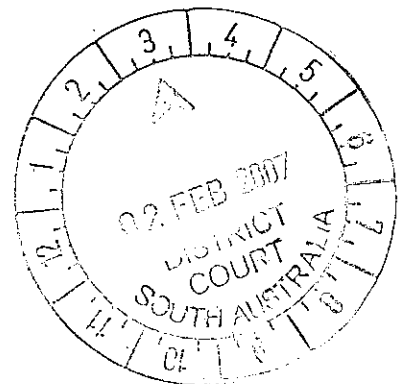
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APPLICATION FOR REVIEW

The Applicant applies to the appeals body for a review of a decision pursuant to section 39 of Schedule 1 to the *Gas Pipelines Access (South Australia) Act 1997* ("the Act"). The Applicant is the service provider under the proposed Access Arrangement the subject of the decision.

Decision under review

The decision under review is the Further Final Decision of the Essential Services Commission of South Australia ("the Regulator") published on 27 October 2006 ("the Further Final Decision") not to approve the Applicant's amended revisions to the proposed Access Arrangement and associated Access Arrangement Information, submitted to the Regulator for approval under the National Third Party Access Code for Natural Gas Pipeline Systems ("the Code"), and to instead draft and approve the Regulator's own amended revisions of those documents. Those parts of the Further Final Decision the subject of this application for review are described more particularly by reference to the grounds of review set out below.

Grounds of Review

<i>Ground</i>	<i>Paragraphs</i>
Initial Capital Base	1-4
Network Management Fee	5-10
Rate of Return	11-14
Payment Terms	15-18
Site Remediation	19-23

INITIAL CAPITAL BASE

1. Section 8.9(a) of the Code provides that, for the Cost of Service methodology adopted by the Applicant, the Capital Base at the commencement of the Access Arrangement period is to be determined by reference to the Capital Base at the start of the immediately preceding Access Arrangement period (that is, the first Access Arrangement period – 1 July 2003).

Decision Reviewed

2. Those parts of the Further Final Decision the subject of the review on this ground are:
 - 2.1. The Regulator's decision in section 2.6.1.1 on page 25 of the Further Final Decision not to approve the Applicant's amended revisions to the Access Arrangement insofar as they include an Initial Capital Base of \$810.21 million (expressed in 31 December 2005 dollars) and to instead approve the Regulator's own amendments to the Access Arrangement in respect of its decision that the value of the Capital Base at the commencement of the first Access Arrangement Period (1 July 2003) was \$796.35 million (expressed in 31 December 2005 dollars).
 - 2.2. The consequential decision in section 2.6.2.1 on page 26 of the Further Final Decision not to approve the Applicant's amended revisions to the Access Arrangement Information and to instead approve the Regulator's own amendments to the Access Arrangement Explanatory Information, insofar as those amendments relate to the description, under the Reference Tariff Policy, of the principles by which the value of the Capital Base at the commencement of the previous (first) Access Arrangement Period has been determined.
 - 2.3. The consequential decision in section 2.6.3.1 on page 26 of the Further Final Decision not to approve the Applicant's amended revisions to the Access Arrangement Information and to instead approve the Regulator's own amendments to the Access Arrangement Explanatory Information, insofar as those amendments relate to descriptions of the other elements of the Capital Base at the commencement of the second Access Arrangement Period.
 - 2.4. The consequential decision in section 2.9.3.1 on page 57 of the Further Final Decision not to approve the Applicant's amended revisions to the Access Arrangement Information relating to Total Revenue and to instead approve the Regulator's own amendments to the Access Arrangement Explanatory Information in respect of Total

Revenue insofar as this reflects the consequential impact on Total Revenue of the Regulator's decision in paragraph 2.1 above.

- 2.5. The consequential decision in section 2.10.2.1 on page 58 of the Further Final Decision not to approve the Reference Tariff Schedules included in the Applicant's amended revisions to the Access Arrangement and instead to approve the Reference Tariff Schedules included in the Regulator's revised Access Arrangement, insofar as this reflects the consequential impact on Reference Tariffs of the Regulator's decision in paragraph 2.1 above.
- 2.6. The consequential decision in section 2.10.6.1 on page 59 of the Further Final Decision not to approve the Applicant's amended revisions to the Access Arrangement in relation to the X factor and to instead approve the Regulator's own X factor in the revised Access Arrangement insofar as this reflects the consequential impact on the X factor of the Regulator's decision in paragraph 2.1 above.
- 2.7. The consequential decision in section 2.10.7.1 on page 60 of the Further Final Decision not to approve the Applicant's amended revisions to the Access Arrangement Information in relation to the X factor and to instead approve the Regulator's own amendments to the Access Arrangement Explanatory Information in relation to the applicable X factor insofar as this reflects the consequential impact on the X factor of the Regulator's decision in paragraph 2.1 above.

Grounds of Review

3. The Regulator in determining that the Initial Capital Base at the commencement of the First Access Arrangement Period (1 July 2003) was \$796.35 million (expressed in 31 December 2005 dollars) made errors of fact and/or exercised its discretion incorrectly or unreasonably having regard to all of the circumstances for the following reasons:
 - 3.1. The Regulator incorrectly decided that \$796.35 million (in 31 December 2005 dollars) represented the value of the Initial Capital Base set by the South Australian Independent Pricing and Access Regulator ("SAIPAR") as at 1 July 2003 by reference to Table 15 of the existing Access Arrangement Information.
 - 3.2. The Regulator's exercise of discretion miscarried and/or it made erroneous findings of fact in that:
 - 3.2.1. SAIPAR's Final Decision dated 21 December 2001 stated that the Initial Capital Base was to be calculated based on the 30 June 1998 DORC

Valuation rolled forward to the commencement of the Access Arrangement and adjusted for redundant capital, actual inflation, actual capital expenditure and depreciation;

- 3.2.2. the Access Arrangement approved by SAIPAR did not set out the actual figure which results from performing the above calculation. The relevant calculation, and the resulting figure, are clear and easily ascertainable;
- 3.2.3. the Regulator relied on an incorrect figure, being the figure based on Table 15 in the Access Arrangement Information approved by SAIPAR, which does not reflect the calculation of the Initial Capital Base. That table sets out a roll forward based on information used for the purposes of the calculation of Total Revenue during the first Access Arrangement Period; and
- 3.2.4. the Regulator failed to give consideration to the distinction between the calculation of the Capital Base for the purposes of calculating Total Revenue and the calculation of the Capital Base at the commencement of an Access Arrangement Period.
- 3.3. The Regulator failed to apply, and/or give sufficient weight to and/or misinterpreted SAIPAR's Final Decision and Further Final Decision, including section 5.9 of SAIPAR's Final Decision (dated 21 December 2001) which states:

"the final value for the Initial Capital Base as at the commencement of the Access Arrangement is to be SAIPAR's determined DORC valuation as at 30 June 1998, adjusted to take into account

Removal of Redundant Capital

Inflation adjustments

Capital Expenditure, and

Depreciation

Rolled through until the access commencement date as determined in the Final Decision.

The adjustment for inflation is to utilise the actual CPI (All Groups – Average of 8 state capitals) published by the Australian Bureau of Statistics."

- 3.4. The Regulator wrongly relied upon correspondence between the Applicant and an officer of SAIPAR in circumstances where that correspondence does not evidence any departure from the principle that forecast values would be used for calculating Total Revenue within a regulatory period but actual values would be used to roll forward the Capital Base between regulatory periods.
- 3.5. The Regulator wrongly relied upon correspondence between the Applicant and an officer of SAIPAR, which applied a figure of 3.09 percent in respect of inflation in the 2000/2001 year, to roll forward the Capital Base for the purposes of calculating Total Revenue within the regulatory period, and wrongly interpreted the correspondence as representing a decision to roll forward the Capital Base for subsequent regulatory periods using a figure of 3.09 per cent. The correspondence was not concerned with the adoption of an inflation figure for calculating the Capital Base for a subsequent regulatory period. That exercise is required to conform with section 5.9 of SAIPAR's Final Decision (dated 21 December 2001) referred to in paragraph 3.3 above.

Correct Decision

4. The correct decision pursuant to the Code is to:
- 4.1. Calculate the Initial Capital Base based on the 30 June 1998 DORC Valuation rolled forward to the commencement of the Access Arrangement and adjusted for actual values, including actual inflation.
- 4.2. In all the circumstances, approve the Applicant's amended revisions to the Access Arrangement and the Access Arrangement Information insofar as they incorporate, reflect or give effect to an Initial Capital Base of \$810.21 million as at 1 July 2003.

PARTICULARS

The Applicant relies on all of the material which was before the Regulator at the time it made its Further Final Decision, including but not limited to the material listed in Part 1 of the Attachment to this Application for Review.

NETWORK MANAGEMENT FEE

5. For the Cost of Service methodology adopted by the Applicant in its Access Arrangement the Total Revenue is calculated in part by reference to section 8.4(c) of the Code on the basis of "the operating, maintenance and other non-capital costs incurred in providing all Services (Non-Capital Costs)".

6. The operation and maintenance of the Applicant's distribution network is undertaken by Origin Energy Asset Management Limited ("OEAM") pursuant to an operation and maintenance agreement between OEAM and the Applicant ("O&M Agreement") dated 30 June 1997.
7. Pursuant to that O&M Agreement, OEAM is paid the direct costs incurred by it as well as a network management fee of 3 percent of network revenue ("Network Management Fee").

Decision Reviewed

8. Those parts of the Further Final Decision the subject of the review on this ground are:
 - 8.1. The decision in section 2.8.1.1(A) on page 33 of the Further Final Decision that, in deriving the Applicant's Reference Tariffs, the Network Management Fee is to be excluded from the Applicant's Non-Capital Costs.
 - 8.2. The consequential decision in section 2.8.1.1(A) on page 33 of the Further Final Decision not to approve the inclusion of the Network Management Fee in the Applicant's resubmitted Access Arrangement and to draft its own amendments such that the Network Management Fee is excluded.
 - 8.3. The consequential decision by the Regulator in section 2.8.2 on page 47 of the Further Final Decision not to approve the Applicant's revisions to the Access Arrangement Information insofar as those revisions relate to the inclusion of the Network Management Fee in the Applicant's Non-Capital Costs and instead to incorporate its own Forecast Non-Capital Costs into the Regulator's Access Arrangement Explanatory Information.
 - 8.4. The consequential decision in section 2.9.3.1 on page 57 of the Further Final Decision not to approve the Applicant's amended revisions to the Access Arrangement Information relating to Total Revenue and to instead approve the Regulator's own amendments to the Access Arrangement Explanatory Information in respect of Total Revenue insofar as this reflects the consequential impact on Total Revenue of the Regulator's decisions in paragraph 8.1 to 8.2 above.
 - 8.5. The decision in section 2.10.2.1 on page 58 of the Further Final Decision not to approve the Applicant's re-submitted Reference Tariff schedules and to instead approve the Regulator's own Reference Tariff schedules in the revised Access Arrangement insofar as this reflects the consequential impact on Reference Tariffs of the Regulator's decisions in paragraphs 8.1 to 8.2 above.

- 8.6. The consequential decision in section 2.10.6.1 on page 59 of the Further Final Decision not to approve the Applicant's amended revisions to the Access Arrangement in relation to the X factor and to instead approve the Regulator's own X factor in the revised Access Arrangement insofar as this reflects the consequential impact on the X factor of the Regulator's decisions in paragraphs 8.1 to 8.2 above.
- 8.7. The consequential decision in section 2.10.7.1 on page 60 of the Further Final Decision not to approve the Applicant's amended revisions to the Access Arrangement Information in relation to the X factor and to instead approve the Regulator's own amendments to the Access Arrangement Explanatory Information in relation to the applicable X factor insofar as this reflects the consequential impact on the X factor of the Regulator's decisions in paragraphs 8.1 to 8.2 above.

Grounds of Review

9. The Regulator in excluding the Network Management Fee from the Applicant's Non-Capital Costs made errors of fact and/or exercised its discretion incorrectly or unreasonably having regard to all of the circumstances for the following reasons:
 - 9.1. The Regulator misconstrued section 8.37 of the Code and its discretion thereby miscarried.
 - 9.2. The Regulator erred in disallowing the Network Management Fee on the basis that it represents a profit margin to OEAM instead of determining whether the Network Management Fee was a cost incurred by the Applicant acting efficiently, in accordance with accepted and good industry practice to achieve the lowest sustainable cost of delivering the Reference Service.
 - 9.3. The Regulator placed too much weight on requiring the quantum of the Network Management Fee to equate to specific identifiable costs incurred by OEAM and its related bodies corporate.
 - 9.4. The Regulator incorrectly and unreasonably determined that it could only allow recovery of the Network Management Fee if the indirect costs represented by that fee were set out in an audited set of regulatory accounts.
 - 9.5. The Regulator erroneously had regard to OEAM's actual costs instead of the Applicant's, as the Service Provider, in determining the lowest sustainable cost of delivering the Reference Service.

- 9.6. The Regulator erred in dismissing and/or giving insufficient weight to the benchmarking evidence demonstrating that the Applicant's costs, inclusive of the Network Management Fee, are prudent and efficient in that:
- 9.6.1. the Regulator incorrectly concluded such evidence was unreliable; and
 - 9.6.2. the Regulator routinely relies on benchmarking evidence in other contexts, rendering its dismissal of such evidence in relation to this matter arbitrary and inconsistent.
- 9.7. The Regulator ignored, dismissed, or alternatively did not give sufficient weight to relevant evidence indicating the Network Management Fee is a prudent and efficient cost consistent with acting in accordance with accepted and good industry practice to achieve the lowest sustainable cost of delivering the Reference Services.
- 9.8. The Regulator made incorrect assumptions and findings of fact as to the operation of clause 10.2 of the O&M Agreement.

PARTICULARS

The Regulator incorrectly decided in section 2.8.1.1(A.5) on page 38 of the Further Final Decision that clause 10.2 of the O&M Agreement allows for the recovery of indirect costs by Origin Energy.

The Regulator incorrectly dismissed the Applicant's evidence as to the operation of clause 10.2 of the O&M Agreement.

The Regulator incorrectly decided in section 2.8.1.1(A.5) on pages 37-41 of the Further Final Decision that the evidence submitted by the Applicant and OEAM demonstrating that certain indirect costs associated with the provision of the Reference Services are recovered via the Network Management Fee was not credible.

The Regulator incorrectly decided in section 2.8.1.1 on page 39 of the Further Final Decision that the Network Management Fee was not intended to provide a means of recovering indirect costs.

- 9.9. The Regulator's exercise of discretion miscarried in that it failed to afford adequate weight to section 2.46 of the Code and failed to properly carry out the balancing of the factors contained in section 2.24 and section 8.1 of the Code in determining whether or not to include the Network Management Fee in the Applicant's Non-Capital Costs.

- 9.10. The Regulator incorrectly proceeded on a prima facie assumption that the Network Management Fee was likely to be inflated.
- 9.11. The Regulator incorrectly concluded that to the extent the Network Management Fee represents compensation for risk and working capital requirements, such amounts were already taken into account in the calculation of Total Revenue for the Applicant.

Correct Decision

10. The correct decision pursuant to the Code is to:
- 10.1. Calculate the Applicant's Non-Capital Costs to include the cost paid to the service provider OEAM for the services it provides, including the Network Management Fee.
- 10.2. In all the circumstances, approve the Applicant's amended revisions to the Access Arrangement and the Access Arrangement Information insofar as they incorporate, reflect or give effect to the inclusion of the Network Management Fee in the Applicant's Non-Capital Costs and in deriving the Applicant's Reference Tariffs.

PARTICULARS

The Applicant relies on all of the material which was before the Regulator at the time it made its Further Final Decision, including but not limited to the material listed in Part 2 of the Attachment to this Application for Review.

RATE OF RETURN

11. For the Cost of Service methodology adopted by the Applicant in its Access Arrangement the Total Revenue is calculated in part by reference to section 8.4(a) of the Code on the basis of "a return (Rate of Return) on the value of the capital assets that form the Covered Pipeline or are otherwise used to provide Services (Capital Base)." The Applicant has set its Rate of Return, in accordance with section 8.31 of the Code, by using the Capital Asset Pricing Model to fix a real pre-tax weighted average cost of capital ("WACC").

Decision Reviewed

12. Those parts of the Further Final Decision the subject of the review on this ground are:
- 12.1. The decisions in section 2.9.1.1 on pages 48 and 49 of the Further Final Decision not to approve the Applicant's amended revisions to the Access Arrangement in relation to the parameters equity beta, value of imputation credits and debt margin and the resulting real pre-tax WACC and instead to approve the Regulator's own revisions to

the Access Arrangement in relation to the real pre-tax WACC and the underlying parameter values.

- 12.2. The decision in section 2.9.1.1(A) on page 49 of the Further Final Decision not to accept the Applicant's range of values of 0 to 0.35 for the value of imputation credits and to determine that a range of 0.35 and 0.60 is a reasonable range for the purposes of determining the Rate of Return.
- 12.3. The decisions in section 2.9.1.1(B) on pages 52 and 55 of the Further Final Decision not to approve the Applicant's amended revisions to the Access Arrangement in relation to the value of imputation credits.
- 12.4. The decision in section 2.9.1.1 (B.1) on page 56 of the Further Final Decision not to approve the Applicant's amended revisions to the Access Arrangement and the Access Arrangement Information in relation to the value of the debt premium and the resulting Rate of Return used to determine the Reference Tariffs and to instead approve the Regulator's own amendments to the Access Arrangement and the Access Arrangement Explanatory Information.
- 12.5. The decision in section 2.9.2.1 on page 57 of the Further Final Decision not to approve the Applicant's amended revisions to the Access Arrangement Information to include a real pre-tax WACC of 7.3 percent and instead to approve the Regulator's own amendments to the Access Arrangement Explanatory Information to include a real pre-tax WACC of 6.14 percent.
- 12.6. The consequential decision in section 2.9.3.1 on page 57 of the Further Final Decision not to approve the Applicant's amended revisions to the Access Arrangement Information relating to Total Revenue and to instead approve the Regulator's own amendments to the Access Arrangement Explanatory Information in respect of Total Revenue insofar as this reflects the consequential impact on Total Revenue of the Regulator's decisions in paragraph 12.1 to 12.5 above.
- 12.7. The consequential decision in section 2.10.2.1 on page 58 of the Further Final Decision not to approve the Applicant's re-submitted Reference Tariff schedules and to instead approve the Regulator's own Reference Tariff schedules in the revised Access Arrangement insofar as this reflects the consequential impact on Reference Tariffs of the Regulator's decisions in paragraphs 12.1 to 12.5 above.
- 12.8. The consequential decision in section 2.10.6.1 on page 59 of the Further Final Decision not to approve the Applicant's amended revisions to the Access Arrangement

in relation to the X factor and to instead approve the Regulator's own X factor in the revised Access Arrangement insofar as this reflects the consequential impact on the X factor of the Regulator's decisions in paragraphs 12.1 to 12.5 above.

- 12.9. The consequential decision in section 2.10.7.1 on page 60 of the Further Final Decision not to approve the Applicant's amended revisions to the Access Arrangement Information in relation to the X factor and to instead approve the Regulator's own amendments to the Access Arrangement Explanatory Information in relation to the applicable X factor insofar as this reflects the consequential impact on the X factor of the Regulator's decisions in paragraphs 12.1 to 12.5 above.

Grounds of Review

13. The Regulator in rejecting the Applicant's real pre-tax WACC of 7.3 per cent made errors of fact and/or exercised its discretion incorrectly or unreasonably having regard to all of the circumstances for the following reasons:

The real pre-tax WACC

- 13.1. The Regulator in rejecting the Applicant's real pre-tax WACC of 7.3 percent in the Further Final Decision and approving a real pre-tax WACC of 6.14 percent in the revised Access Arrangement and Access Arrangement Explanatory Information failed to correctly exercise its discretion to provide a return to the Applicant which is commensurate with prevailing conditions in the market for funds and the risk involved in delivering the Reference Service as required by section 8.30 of the Code.
- 13.2. The Regulator incorrectly exercised its discretion by applying inconsistent parameters across the WACC equation.

PARTICULARS

The Regulator applied inconsistent estimates for the value of a dollar of dividends relative to a dollar of capital gains when estimating the return on equity and the value of franking credits.

The Regulator also applied inconsistent estimates of the return from franking credits when estimating the value of imputation credits and the market risk premium.

- 13.3. The Regulator erred in rejecting the Applicant's amended revisions to the Access Arrangement in circumstances where the Applicant's real pre-tax WACC of 7.3 percent was consistent with sections 8.30 and 8.31 of the Code and within the range of

rates commensurate with the prevailing market conditions and the relevant risk, and accordingly should have been accepted.

- 13.4. By approving a real pre-tax WACC of 6.14 percent in the revised Access Arrangement and the Access Arrangement Explanatory Information, the Regulator failed to properly apply the objectives and factors set out in sections 8.1 and 2.24 of the Code.

Equity Beta

- 13.5. The Regulator applied a range for the value of equity beta of 0.8 to 1.0 at a gearing of 60 per cent debt in circumstances where the available evidence, expert opinion and regulatory precedent, shows that the value of equity beta should be at least 1.0.
- 13.6. The Regulator failed to give due weight to the advice of its own consultant, the Allen Consulting Group, that the range of the Applicant's equity beta should be estimated at 0.8 to 1.1, with a recommended single point estimate of 1.0.
- 13.7. The Regulator failed to adequately consider the systematic risk of the Applicant when setting a range for equity beta between 0.8 and 1.0.
- 13.8. The Regulator failed to adequately consider the imprecision of empirical estimates of equity beta when setting a range for equity beta between 0.8 and 1.0 and failed to apply accepted statistical techniques to account for such imprecision.
- 13.9. The Regulator failed to adequately consider the asymmetric risk of estimating an equity beta which is too low.
- 13.10. The Regulator erred in rejecting the Applicant's proposed range of 0.9 to 1.1 for equity beta which was within a range that is reasonable and is consistent with the Reference Tariff principles and accordingly should have been accepted by the Regulator.

Value of Imputation Credits (Gamma)

- 13.11. The Regulator applied a range for value of imputation credits (γ) of 0.35 to 0.6 contrary to empirical evidence that gamma is 0.
- 13.12. The range of gamma approved by the Regulator of 0.35 to 0.6 is inconsistent with other parameters in the Capital Asset Pricing Model and results in a downward bias of the regulatory WACC.

- 13.13. The Regulator placed undue weight on prior regulatory decisions when rejecting the Applicant's range for gamma of 0 to 0.35 in circumstances where the underlying basis of the prior regulatory decisions has since changed.
- 13.14. The Regulator failed to give adequate consideration to the asymmetric risk of estimating a range for gamma which is too high.
- 13.15. The Regulator failed to give consideration to admitted data errors in its own consultant's advice by maintaining that the appropriate range for gamma is 0.35 to 0.60.
- 13.16. The Regulator gave undue weight to the assertion of its consultant, the Allen Consulting Group, that it has not been demonstrated that a market risk premium of 6 percent and gamma of 0.5 provides inadequate returns to investors, based on the prices obtained on the sale of regulatory assets and the level of investment.
- 13.17. The Regulator erred in rejecting the Applicant's proposed range for gamma of 0 to 0.35 which was within a range that is reasonable and is consistent with the Reference Tariff principles and accordingly should have been accepted by the Regulator.
- 13.18. The Regulator placed insufficient weight on the advice of its consultant, the Allen Consulting Group, that the empirical evidence shows that the lower bound of the range of gamma is 0.

Debt Margin

- 13.19. The Regulator applied an unsupported debt margin of 124.5 basis points in circumstances where there had been little change to the debt margin since the Regulator's Draft Decision setting the debt margin at 142.5 basis points and where the available analytical evidence and expert opinion of debt margin shows that a range of 132 to 142 basis points should be applied.
- 13.20. The Regulator:
 - 13.20.1. erred by changing the method for the calculation of the debt margin from that set out in the Draft Decision; and
 - 13.20.2. gave insufficient weight to standard regulatory practice when determining the debt margin.

- 13.21. The Regulator erred in rejecting the Applicant's range of 132 to 142 basis points which was within a range that is reasonable and is consistent with the Reference Tariff principles and accordingly should have been accepted by the Regulator.

The Methodology for setting the real pre-tax WACC

- 13.22. The Regulator incorrectly calculated the range for the real pre-tax WACC and incorrectly and arbitrarily selected the value of WACC as the mid point of the range:
- 13.22.1. without regard to the asymmetric risk that flows from applying a WACC that is too low; and
 - 13.22.2. without properly having regard to the considerations in section 8.1 and 2.24 of the Code.
- 13.23. The Regulator incorrectly and unreasonably rejected the use of the Monte Carlo simulation to determine the real pre-tax WACC.

Correct Decision

14. The correct decision pursuant to the Code is to:
- 14.1. Apply a Monte Carlo simulation to the calculation of the real pre-tax WACC, inputting the following parameter values:
 - 14.1.1. equity beta of 0.9 to 1.1;
 - 14.1.2. gamma of 0.35 to 0;
 - 14.1.3. market risk premium of 6 percent;
 - 14.1.4. debt risk margin of 1.32 percent to 1.42 percent;
 - 14.1.5. nominal risk free rate of 5.75 percent;
 - 14.1.6. forecast inflation of 3.17 percent; and
 - 14.1.7. corporate tax rate of 30 percent.

PARTICULARS

The average of the 50th and 75th percentile of the plausible range of estimates of WACC resulting from the Monte Carlo simulation gives a real pre-tax WACC of 7.4 percent.

- 14.2. In the alternative, calculate the WACC using the range of parameters identified in paragraph 14.1.
- 14.3. In all the circumstances approve the Applicant's amended revisions to the Access Arrangement and the Access Arrangement Information insofar as they incorporate, reflect or give effect to a real pre-tax WACC of 7.3 percent.

PARTICULARS

The Applicant relies on all of the material which was before the Regulator at the time it made the Further Final Decision, including but not limited to the material listed in Part 3 of the Attachment to this Application for Review.

PAYMENT TERMS

15. One of the terms and conditions of the Applicant's Access Arrangement provides for the Applicant to invoice retailers in advance of the provision of the Reference Services.

Decision Reviewed

16. Those parts of the Further Final Decision the subject of the review on this ground are:
 - 16.1. The decision in section 2.7.4.1 on page 32 of the Further Final Decision not to approve the Applicant's amended revisions to the Access Arrangement and Access Arrangement Information in relation to the calculation of Total Revenue and to instead approve the Regulator's own amendments to the Access Arrangement and the Access Arrangement Explanatory Information reducing the Applicant's Total Revenue by approximately \$1.8 million each year to account for the benefit allegedly received by reason of the Applicant's payment terms.
 - 16.2. The decision in section 2.9.3.1 on page 57 of the Further Final Decision not to approve the Applicant's amended revisions to the Access Arrangement Information relating to Total Revenue and to instead approve the Regulator's own amendments to the Access Arrangement Explanatory Information in respect of Total Revenue insofar as this

reflects the consequential impact on Total Revenue of the Regulator's decision in paragraph 16.1 above.

- 16.3. The consequential decision in section 2.10.2.1 on page 58 of the Further Final Decision not to approve the Applicant's re-submitted Reference Tariff schedules and to instead approve the Regulator's own Reference Tariff schedules in the revised Access Arrangement insofar as this reflects the consequential impact on Reference Tariffs of the Regulator's decision in paragraph 16.1 above.
- 16.4. The consequential decision in section 2.10.6.1 on page 59 of the Further Final Decision not to approve the Applicant's amended revisions to the Access Arrangement in relation to the X factor and to instead approve the Regulator's own X factor in the revised Access Arrangement insofar as this reflects the consequential impact on the X factor of the Regulator's decision in paragraphs 16.1 above.
- 16.5. The consequential decision in section 2.10.7.1 on page 60 of the Further Final Decision not to approve the Applicant's amended revisions to the Access Arrangement Information in relation to the X factor and to instead approve the Regulator's own amendments to the Access Arrangement Explanatory Information in relation to the applicable X factor insofar as this reflects the consequential impact on the X factor of the Regulator's decision in paragraphs 16.1 above.

Grounds of Appeal

17. No Regulator acting reasonably could have reduced the Total Revenue allowed to the Applicant by \$1.8 million each year to offset the alleged benefit received by the Applicant due to it invoicing in advance for the Reference Services for the following reasons:

~~17.1. The Regulator incorrectly found that the Applicant receives a current benefit from invoicing for Reference Services in advance relative to invoicing in arrears.~~

~~17.2. 17.1. The Regulator incorrectly assessed the benefit received by the Applicant from invoicing for Reference Services in advance relative to invoicing in arrears as reduced the Applicant's Total Revenue by approximately \$1.8 million each year and erred in reducing the Applicant's Total Revenue by that amount to remove the Regulator's estimate of the benefit referred to in paragraph 17.1 in circumstances where the only evidence was that no such benefit exists.~~

PARTICULARS

~~The Applicant demonstrated that any additional cash flow arising from the Applicant's practice of billing in advance was received in 1997 when the Applicant was established and is long since exhausted and that there is no ongoing benefit to the Applicant by reason of its payment terms.~~

17.2. ~~The Regulator erred in calculating the period over which any such benefit is received as being 60 days.~~

PARTICULARS

Any such benefit would only be received during the period from the time the Applicant receives payment to the time the Applicant begins incurring the costs of providing the services, being a period of 27 days.

~~17.3. The Regulator had no discretion under the Code to remove a perceived benefit from Total Revenue when any such benefit (which is denied) could only have been obtained by the Applicant when the Applicant was established prior to the commencement of the revised Access Arrangement and has no application in the forthcoming Access Arrangement period.~~

17.2.17.3. ~~The Regulator gave insufficient weight to section 2.46 of the Code and has incorrectly applied the factors in section 2.24 of the Code.~~

17.3.17.4. ~~By reducing the Applicant's Total Revenue in the manner described in paragraph 17.12, the Regulator failed to provide the Applicant with the ability to earn a stream of revenue that recovers the efficient costs of delivering the Reference Service over the life of the assets contrary to section 8.1(a) of the Code.~~

17.4.17.5. ~~By reducing the Applicant's Total Revenue in the manner described in paragraph 17.12, the Regulator failed to adequately give consideration to the legitimate business interests of the Applicant as required by section 2.24(a) of the Code.~~

PARTICULARS

The Regulator effect of the Regulator's decision to reduced Total Revenue by approximately \$1.8 million per year based on an estimated benefit of 60 days, whereas the Regulator should have reduced Total Revenue by \$0.8 million per year, based on an estimated benefit of 27 days, is to penalise and impose a loss on the Applicant for a cash flow it received when it was established.

~~17.7. The Regulator gave undue weight to the incorrect advice of its consultant, the Allen Consulting Group, including that the Applicant's costs of providing the Reference Services over the forthcoming Access Arrangement period are overstated by the amount of the savings in financing costs in circumstances where any such savings (which are denied) would have been obtained when the Applicant was established and are not obtained in the forthcoming Access Arrangement period.~~

~~17.8.17.6.~~ The Regulator failed to consider that its reduction to Total Revenue results in the Applicant receiving less revenue over the forthcoming Access Arrangement period than an identical firm with the same costs of providing the Reference Services who bills in arrears rather than advance.

~~17.8. The Regulator applied the incorrect test in considering the Applicant's Total Revenue by placing undue weight on the impact of the Applicant's billing terms on the cost structure of retailers.~~

~~17.9. In the alternative if, which is denied, the Applicant does receive an ongoing benefit as a result of it invoicing in advance, the Regulator erred in calculating the period over which any such benefit is received as being 60 days.~~

PARTICULARS

~~Any such benefit (which is denied) would only be received during the period from the time the Applicant receives payment to the time the Applicant begins incurring the costs of providing the services, being a period of 27 days.~~

Correct Decision

18. The correct decision pursuant to the Code is to:

~~18.1. Approve the Applicant's amended revisions to the Access Arrangement and the Access Arrangement Information insofar as they incorporate, reflect or give effect to a Total Revenue which does not include a decrement for any purported benefit received by the Applicant invoicing in advance relative to invoicing in arrears.~~

~~18.2.18.1. In the alternative, estimate the benefit to the Applicant of billing in advance relative to billing in arrears using a period of 27 days, resulting in a reduction to the Applicant's Total Revenue of \$0.8 million per year.~~

PARTICULARS

The Applicant relies on all the material which was before the Regulator at the time it made the Further Final Decision including but not limited to the material listed in Part 4 of the Attachment to this Application for Review.

SITE REMEDIATION

Decision Reviewed

19. Those parts of the Further Final Decision the subject of the review on this ground are:
- 19.1. The decision referred to in section 2.8.1.1(B) on page 43 of the Further Final Decision requiring the Applicant to remove forecast environmental management costs and to remove references to environmental management costs from the Access Arrangement and Access Arrangement Information (~~which revisions the Applicant made following the Final Decision but which the Applicant maintains should not have been required~~).
 - 19.2. The decision in section 2.8.1.1(b) on page 33 of the Further Final Decision not to accept the inclusion of the proposed environmental management costs in the Applicant's Non-Capital Costs.
 - 19.3. The decision in section 2.8.1.1(B) on page 44 of the Further Final Decision not to approve the Specified Event for a trigger mechanism in relation to "statutory orders" requiring the clean up of contamination.
 - ~~19.4. The decision in section 2.8.1.1(B) on page 43 of the Further Final Decision not to accept the inclusion of the Osborne lease costs in the Applicant's Non-Capital Costs.~~
 - ~~19.5.~~ 19.4. The consequential decision in section 2.8.1 on page 33 of the Further Final Decision requiring the incorporation of the Non-Capital Costs determined by the Regulator and set out in Table 10.9 of the Further Final Decision.
 - ~~19.6.~~ 19.5. The consequential decision in section 2.8.2 on page 47 of the Further Final Decision to amend the Access Arrangement Information to reflect the Non-Capital Costs determined by the Regulator and to remove from it references to environmental management costs.
 - ~~19.7.~~ 19.6. The consequential decision in section 2.9.3.1 on page 57 of the Further Final Decision not to approve the Applicant's amended revisions to the Access Arrangement Information relating to Total Revenue and to instead approve the Regulator's own amendments to the Access Arrangement Explanatory Information in respect of Total

Revenue insofar as this reflects the consequential impact on Total Revenue of the Regulator's decisions in paragraph 19.1 to 19.54 above.

~~19.8.19.7.~~ The consequential decision in section 2.10.2.1 on page 58 of the Further Final Decision not to approve the Reference Tariff Schedules included in the Applicant's amended revisions to the Access Arrangement and instead to approve the Reference Tariff Schedules included in the Regulator's revised Access Arrangement, insofar as this reflects the consequential impact on Reference Tariffs of the Regulator's decisions in paragraph 19.1 to 19.45 above.

~~19.9.19.8.~~ The consequential decision in section 2.10.6.1 on page 59 of the Further Final Decision not to approve the Applicant's amended revisions to the Access Arrangement in relation to the X factor and to instead approve the Regulator's own X factor in the revised Access Arrangement insofar as this reflects the consequential impact on the X factor of the Regulator's decisions in paragraph 19.1 to 19.45 above.

~~19.10.19.9.~~ The consequential decision in section 2.10.7.1 on page 60 of the Further Final Decision not to approve the Applicant's amended revisions to the Access Arrangement Information in relation to the X factor and to instead approve the Regulator's own amendments to the Access Arrangement Explanatory Information in relation to the applicable X factor insofar as this reflects the consequential impact on the X factor of the Regulator's decisions in paragraph 19.1 to 19.45 above.

Grounds of Review

20. The Regulator in excluding the proposed environmental management costs from the Applicant's Non-Capital Costs and removing references to environmental management costs in the Access Arrangement and Access Arrangement Information made errors of fact and/or exercised its discretion incorrectly or unreasonably having regard to all of the circumstances for the following reasons:
 - 20.1. The Regulator misconstrued the definition of Non-Capital Costs under sections 8.36 and 8.37 of the Code by excluding the proposed environmental management costs and its discretion thereby miscarried.
 - 20.2. The Regulator incorrectly concluded that environmental management costs are costs of or related to gas production and not related to the provision of the Reference Services.

- 20.3. The Regulator failed to afford adequate weight to section 2.46 of the Code and failed to properly carry out the balancing of the factors contained in section 2.24 and section 8.1 of the Code by not taking into account the fact that environmental monitoring costs were allowed pursuant to the previous Access Arrangement.
- 20.4. The Regulator erred in concluding that in 1993 the purchaser of SAGASCO would have factored possible environmental liabilities under future environmental legislation into their bid price.
- 20.5. The Regulator failed to take into account, and/or placed insufficient weight on, the public interest in monitoring and remediating contaminated sites.
- 20.6. The Regulator incorrectly construed the effect of the proposed amendments to the *Environment Protection Act 1993*, ~~(set out in the *Environment Protection (Site Contamination) Amendment Bill 2005*).~~
21. The Regulator made errors of fact and/or exercised its discretion incorrectly or unreasonably having regard to all of the circumstances in not approving the Specified Event for a trigger mechanism in relation to "statutory orders" requiring the clean up of contamination.

~~22. The Regulator made errors of fact and/or exercised its discretion incorrectly or unreasonably having regard to all of the circumstances in not approving the Osborne lease costs as part of the Applicant's Non-Capital Costs.~~

Correct Decision

~~23.22.~~ The correct decision pursuant to the Code is to:

~~23.1.22.1.~~ To allow the recovery of environmental management costs related to site monitoring the Port Pirie and Brompton sites as a Non-Capital Cost.

~~23.2.~~ To allow the recovery of environmental management costs related to site remediation as a Non-Capital Cost.

~~23.3.22.2.~~ Or, in the alternative to clause ~~22.2~~, To incorporate into the Access Arrangement a Specified Event for a trigger mechanism in relation to "statutory orders" requiring the clean up of contamination related to the delivery of the Reference Services, allowing for the recovery of environmental management costs in respect of site remediation.

~~23.4. In respect of the Osborne lease costs, the correct decision pursuant to the Code is to allow the recovery of that cost as a Non Capital Cost if costs of early termination and/or remediation of the Osborne lease are not allowed.~~

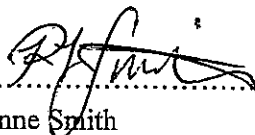
PARTICULARS

The Applicant relies on all of the material which was before the Regulator at the time it made its Further Final Decision, including but not limited to the material listed in Part 5 of the Attachment to this Application for Review.

ORDERS SOUGHT ON THIS APPLICATION FOR REVIEW

The Applicant seeks the following orders:

1. That the application for review be allowed.
2. That the appeals body exercise the power conferred upon it by section 38(9) of Schedule 1 to the Act to vary the Further Final Decision and the Regulator's Access Arrangement and Access Arrangement Explanatory Information published on 27 October 2006 to the extent necessary to give effect to the appeals body's decision in relation to each part of the Further Final Decision the subject of the review herein.
3. That the Regulator pay the Applicant's costs of the application for review.
4. Any other order the appeals body deems fit.


.....
Roxanne Smith
Johnson Winter & Slattery
Solicitors for the Applicant