DAMPIER TO BUNBURY NATURAL GAS PIPELINE

Motion

MR J.H.D. DAY (Darling Range) [4.11 pm]: I move -

That this House supports -

(a) a speedy completion of the consideration of access arrangements by the gas access regulator in relation to the Dampier to Bunbury natural gas pipeline; and

(b) higher tariffs being established than those indicated in the draft decision of the regulator so as to ensure the commercial viability of the pipeline and adequate opportunities for further investment in the development of Western Australia.

For the purpose of timing, I must advise that I am not the lead speaker on this motion. The member for Ningaloo wishes to make some comments. The time is available to him.

The DEPUTY SPEAKER: Under standing orders, the motion belongs to the member for Darling Range. Therefore, he is the lead speaker.

Mr R.N. Sweetman: It was worth a shot.

The DEPUTY SPEAKER: Nice try.

Mr J.H.D. DAY: This is a major issue for the economy and commercial sector of Western Australia. It is also a major issue for Epic Energy. It has been a matter of great concern to Epic Energy, particularly over the past two years. I will return to that point in a moment. It is not the role of the Opposition to take up the case for any particular commercial organisation. However, it is very much its responsibility to take up issues on behalf of the State of Western Australia as it sees them. The Dampier to Bunbury natural gas pipeline was sold in 1997 for the significant sum of $2.407 billion. That was achieved during the time of the previous State Government. The money has been very much put to the benefit of Western Australians and the State. Most of the funds have been used to retire debt. However, $100 million was made available for the provision of computers in schools throughout Western Australia; $100 million was made available to assist with the development of the convention centre, which is now well advanced in its construction in the CBD; and $20 million was made available for the provision of community sport and recreation facilities throughout Western Australia. As I said, a very large amount of debt was retired. In addition, the tariff on the transport of gas from Dampier to the metropolitan area and other parts of the south west was reduced. At the time of the sale, the tariff was $1.27 a gigajoule. As part of the agreement surrounding the sale of the pipeline, the tariff was reduced to $1 a gigajoule for transport to Perth and $1.08 a gigajoule for transport to areas south of Perth. That applied from the beginning of 2001 and is still in effect.

Following the reduction that occurred as part of the agreement, the Independent Gas Pipelines Access Regulator now has responsibility for approving tariffs. In mid 2001 the gas access regulator released a draft decision that the tariff should be 75c a gigajoule for transport from Dampier to Perth, and 85c a gigajoule for transport to areas south of Perth. Essentially, the determination about the tariff levels depends on how the pipeline is valued. The pipeline can be valued at the full replacement cost, at a fully depreciated cost, at the cost paid by the buyer of the pipeline or according to the depreciated optimised replacement cost method, otherwise known as DORC. That was the method the regulator used in at least his first determination. Epic Energy objected to both the figures contained in the draft decision and the process used to arrive at the tariff figures. As is its right, Epic Energy made further submissions to the regulator to seek a revision of the determination, and took its case to the Supreme Court. It argued that other factors over and above those taken into account by the gas access regulator should be considered. Epic Energy's submission to the Supreme Court was upheld. According to information provided by Epic Energy in a letter that I presume was also sent to other members of Parliament, Justice Parker said in his judgment -

> Economic theory aside, this investment has social, political and public interest dimensions and it is not a surprising circumstance that the Act and the Code should seek to accommodate them.

Justice Parker was referring to the National Third Party Access Code for Natural Gas Pipeline Systems, to which Western Australia is a signatory. In government, we made a deliberate decision to not have the Australian Competition and Consumer Commission fulfil the responsibility of regulating access to pipelines under the gas access code but to set up our own Office of Gas Access Regulation. That is an independent office within Western Australia that it is currently occupied by Dr Ken Michael.

As a result of the Supreme Court decision, the gas access regulator is reconsidering his draft decision. The Opposition has two concerns about the issues in relation to this determination. Firstly, as expressed in the motion, this process needs to be concluded as speedily as possible. From the perspective of Epic Energy and the broader perspective of current and potential customers of the pipeline and the community in Western Australia, there is a need for certainty. I am not aware of all the details of why the process has taken as long as it has. I would need to be fully briefed, including by the gas access regulator, to be able to make an informed comment on that. Of course, the issue went to the Supreme Court. It was very much Epic Energy's right to do that; however, it resulted in the final determination being delayed. Last week I wrote to Dr Michael, the Acting Independent Gas Pipelines Access Regulator, his current title, seeking information about when a final decision would be made available, given that there had been an extension to 15 April, I think. I am pleased to say that Dr Michael responded to me on Monday of this week, and he said in part -

> While I expect to issue my Final Decision for this pipeline before the end of April, there is a need for me to further extend the period of assessment by a period of two months. This extension of time is necessary for Epic Energy to address any matters that may be raised in the Final Decision prior to final approval of the proposed Access Arrangement.

The most important aspect is that, as advised by Dr Michael, a final decision will be delivered before the end of this month - which means within the next two weeks. It is pleasing that that is the case. I believe it is also important that this time commitment be adhered to, because, as I said, there needs to be certainty for a range of people, not the least of whom are the employees of Epic Energy.

The second issue of concern is the level of tariff. As I explained to some extent, a process was put in place by the previous Government to set up the Office of Gas Access Regulation in this State. That was under the National Third Party Access Code for Natural Gas Pipeline Systems. It is the responsibility of the regulator to make the final determination about access arrangements, including tariff levels. We do not seek to interfere in that process, but, as an Opposition, we have made submissions to the gas access regulator, as it has been open to anybody else in Western Australia to do. In essence, the economic viability of the pipeline and the future economic viability of Epic Energy are needed, although it is not our role to take up the case of any particular commercial organisation. However, it is important for future investment in Western Australia that an outcome be arrived at that will be sustainable in the long term, but will also be able to play its part in delivering competitive energy prices to Western Australia, given the cost of gas transport, which of course is one of the inputs into final energy costs in Western Australia. Certainty must also be provided to the employees of Epic Energy. I know that the employees have concerns at the moment, and they have written to members of Parliament in the past day or so expressing their concerns about the current situation, the draft decision and the need, from their perspective, for a realistic tariff to be arrived at.

On behalf of the Opposition, I made a submission to the gas access regulator on 31 July 2001. I will quote from part of my letter, which states -

> Whilst recognizing that it is the responsibility of the Regulator to make the determination, the Opposition also recognizes that the final outcome should result in a situation which is both sustainable in the long term and allows for expansion of the pipeline in the future. I note in particular the stated intention of Epic Energy at the time of acquiring the pipeline to spend in excess of $800 million on future expansion.
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> Taking into account the overall public interest, the Opposition would therefore be supportive of higher tariffs being established than those indicated in the draft decision, with the precise levels being determined by you as Regulator.

The Leader of the Opposition and former Minister for Energy made a longer submission dated 21 September 2001 to the gas access regulator. I certainly will not read all of that, but I will quote parts of it. The Leader of the Opposition wrote -

> It is my considered opinion that the draft determination by the Office of Gas Access Regulation . . . in relation to the Dampier to Bunbury Natural Gas Pipeline . . . as owned and operated by Epic Energy, is so low as to be unsustainable.

The Leader of the Opposition went on to give an explanation of the debate about there being some sort of agreement on the sale of the pipeline and maintaining the tariff at $1 a gigajoule for transport between Dampier and Perth. He explained that there was no agreement as such, but there was an expectation in the business community and in the community of Western Australia generally that the final tariff would be somewhere in that vicinity. However, there is certainly no suggestion that a firm agreement or any regulatory compact was arrived at at the time of the sale of the pipeline. It is important to note also that the Auditor General, in reviewing the

sale, made the observation that no guarantees were issued when the sale occurred. The Leader of the Opposition concluded his letter by saying -

> In conclusion, I sympathise with the position Epic Energy now finds itself in. The regulated tariff is so far below industry expectations as to be a source of uncertainty to all - both pipeline operator and pipeline customer. It is a tariff outside market expectations and one which will not allow for a smooth process of expansion in pipeline capacity. It will, at the same time, limit the scope for a competitive pipeline to be established, with the result that future gas consuming projects may be jeopardised or at least put at a competitive disadvantage when compared to existing projects.

Those comments outline the position of the Opposition. We are of the view that a tariff higher than that arrived at in the draft decision should be determined. We do not see it as our role to put a precise figure on the amount of that tariff. That is exactly why the gas access regulator has been put in place. He has the responsibility to go through all the figures, consider all the submissions that have been received on this matter and take into account all the factors that he needs to consider under the relevant legislation and as a result of the Supreme Court decision. However, we have made it very clear, both in the submissions that we have made and in this debate today, that we believe a tariff should be arrived at that is higher and more sustainable than that initially suggested. It is incumbent on the Government to indicate where it stands on this issue. I do not expect the Government to give a specific figure, but we need to know whether the Government agrees with the Opposition's stance on this issue or whether it has a different perspective.

With those comments, I commend the motion to the House. It is a very important issue for the economy of Western Australia, and the issues that have been taken up by the Opposition are very significant.

MR R.N. SWEETMAN (Ningaloo) [4.26 pm]: I support the motion moved by the opposition spokesperson for energy. At the outset, there will be few more important issues than this matter that require intervention - I use that word cautiously in this debate - during the minister's term in government. This matter has required considerable searching to ensure that I have been able to get across most of the issues that have come into play in this matter. It has required reading literally hundreds of pages of *Hansard* to ensure an accurate reconstruction of the circumstances that led to the privatisation of the Dampier to Bunbury natural gas pipeline in the first place. I have reviewed the current situation and the previous circumstances, and it has been a bit like the work of a crash investigator; albeit, by the grace of God, we have not crashed yet.

There is an opportunity for the Minister for Energy and the Premier to take some leadership in this matter and to achieve a result that is in the best interests of the people of Western Australia. That is paramount in this case. It is not a member of Parliament simply standing and championing the cause of big business or a particular company. People have been too quick to say that they cannot get involved in a commercial matter. That is where people went wrong in the 1980s. In the event that an administrator is appointed, I presume that there will be protracted litigation that might take many years to totally resolve. My basic computations of the consequences of that will make the losses that the Labor Government incurred during the 1980s look like petty cash in real terms to this State. Although the amount of money that was lost during the 1980s can be more easily quantified, people in the Western Australian community - the average Joe - as well as the commercial and industrial operations in this State, will be extremely disappointed in the event that an administrator or receiver is appointed to deliver the last rights and disburse the assets of Epic Energy.

[Quorum formed.]

Mr R.N. SWEETMAN: My comments are directed to you, Madam Deputy Speaker, as much as to the Minister for Energy. It is pleasing to see, if only for a moment, that the Premier has also stepped back into the Chamber because this matter will require his input for it to be successfully resolved. When investigating all the matters involved, one can be quick to judge the Office of Gas Access Regulation and the way the regulator has handled the matter. When his position and that of the Office of Gas Access Regulation is scrutinised, it seems that he was delivered a poisoned chalice with regard to this issue. I have met Dr Ken Michael only once - about 11 or 12 years ago when he was the Acting Commissioner of Main Roads. Back then I found him to be a very pleasant and knowledgeable person. Since then I have had no reason to question his abilities. However, I note that in this particular matter he is an acting or a part-time regulator. Information is available from the Office of Gas Access Regulation's web site about all the other things in which Dr Ken Michael is involved. I do not necessarily have a problem with that, and I am sure he is very capable in all the positions that he occupies. However, I draw the Minister for Energy's attention to the answer he provided to a question last week in which he clearly said that the regulator was independent and at arm's length from the Government. The minister said that it was not right that he impose his will on or offer instruction to the regulator. Is the regulator really at arm's length from the Government if he has taken remuneration in addition to the $115 000 he is paid to be the part-time gas access regulator? He was appointed by Hon A.J. MacTiernan, the Minister for Planning and

Infrastructure, to review the Main Roads Western Australia term network contracts. One could argue that he had to undertake a highly political review. However, I can understand why the minister would appoint someone like Ken Michael - an eminent person in the Western Australia community - with his experience and the capacity to review those term network contracts. He was appointed about 12 July 2001. Coincidentally, that was not long after he had made his draft ruling in relation to Epic Energy's access arrangement. He completed that review of the term network contracts and delivered his report and recommendations to the Government.

Last week I received information from Main Roads that Ken Michael Consulting had received $32 288 for its part in the review of those term network contracts. I do not want that to become an issue. However, prima facie at least, the regulator is not at arm's length from the Government. I can remember the arguments that the minister raised during various debates about distribution, retailing and ring-fencing. The Minister for Energy's concern in the break up of various sections of the AlintaGas organisation was that one person would talk to another person over drinks at the pub on a Friday night and there would be a free flow of information that would not be contained by the ring-fencing provisions of the legislation for the privatisation of AlintaGas. In answer to a question without notice from me, the minister, in part, said -

> I will not succumb to suggestions that we should go to the regulator with a nudge-nudge, wink-wink approach in a sleazy, behind-the-scenes political deal with a word between the minister and Epic and then a word between the minister and the regulator. That is the cowboy approach of members opposite.

I was offended by that answer, as I am sure all my colleagues were. That was not a fair statement. I turn it back on the minister and ask whether he can respond to my questions as passionately as he did in that answer on Wednesday last week. Clearly if the Independent Gas Pipelines Access Regulator has done additional work and received remuneration from the Government, it would be difficult for the minister to claim that the regulator is, in fact, at arm's length and totally independent from the Government. If a report in last Friday's *The Australian Financial Review* is correct, Mr Michael has been appointed for another five years; that is, I presume, as an acting regulator for gas access, rail and issues covered by the Economic Regulation Authority Bill 2002 when it eventually passes from the other House.

I do not want to spend a lot of time looking back on this issue because I do not have a lot of time to look back. The references I make to the past, therefore, are to set the circumstances of the contributions to previous debates made by the Minister for Energy and the Premier when they were Deputy Leader of the Opposition and Leader of the Opposition respectively. The Minister for Energy and the Premier were clearly of the opinion then that some sort of deal had been done as part of the sales process of the Dampier to Bunbury gas pipeline. I believe the minister referred to the sales process directly, and indirectly by way of interjection, as a regulatory compact. The minister clearly appeared to position himself in opposition as someone who believed the State Government had clear responsibilities and obligations to see the process through and to make sure that a satisfactory conclusion to the dispute was arrived at between Epic Energy and the regulator. It is interesting to note that on 14 June 2000, the Minister for Energy and the Premier are on record on this issue as saying that, even though it would be 12 months before the regulator would make his draft ruling.

The impact of this issue on the State will occur in many ways. I understand that two or three employees of Epic Energy delivered a petition to the Premier the other day, or to an officer in the Premier's electorate office in Victoria Park. The petition basically spelt out from the employees of Epic the effect that the dispute was having on them. They are clearly upset, perhaps even distraught, about what might happen to their employment in the future if an administrator is appointed to Epic Energy. Towards the end of my speech I will refer to other implications for state development.

I will now refer to the difference in the treatment of Epic Energy and AlintaGas. From what I have read, from inquiries I have made and from what I have heard in this Chamber as a member on the backbench of the former Government at the time the Dampier to Bunbury gas pipeline was privatised, it is fair to say that there was a belief that the pipeline would make good profits into the future. On the other hand, for various reasons - not the least of which were the Australian Competition and Consumer Commission, the national competition policy and decisions made by the ACCC over east - AlintaGas was expected to struggle after it was privatised. It is interesting to compare the two companies. There is enough in the sale of the Dampier to Bunbury gas pipeline and in the sale of AlintaGas to make a miniseries, which would probably be called "A Tale of Two Companies". Comparing the way in which each company was treated is fascinating. That can be due only to an assumption that one company would struggle while the other would do very well. The Government seemed very willing to ensure that AlintaGas was given every opportunity to succeed. It is easy to see the current circumstances, and the base value the regulator is apportioning to the Dampier to Bunbury gas pipeline. He is obviously working on a model that suggests that the real value of the pipeline is somewhere around $1.1 billion, and may be as much as $1.234 billion. I understand that also takes into account the $125 million Epic Energy has already spent expanding the capacity of the line. Compared with what the company paid for it, the regulator is saying that it is

really worth only $1.1 billion. I understand that AlintaGas has argued in its submissions - I have seen some of the text of those submissions - that the value of the pipeline is $1 billion or less. Therefore, an asset that was bought for $2.4 billion is now apparently worth about $1.1 billion, pending a different tariff ruling by the regulator.

It is interesting to see just how successful AlintaGas had been since its privatisation on 17 October 2000. It is marvellous that a Western Australian company has been successful. However, to what extent has it been successful as a consequence of the conditions of sale? Agreements and policy matters were imposed over the sale to ensure that AlintaGas had every chance of success. Ultimately, that ended up including protection from competition until 17 October 2003 - that is, three years of clear protection. However, a media statement on 11 September last year indicated that an agreement had been made with the Western Australian Government to defer Western Power's entry into the Western Australian residential gas market until there was practical competition in the residential electricity market. That competition rule is there until 2007, providing that customers consuming one terajoule or less each year will not be able to be contested. That is very interesting, because while the Government says that it should not be involved in a commercial matter, it is clearly involved in a commercial matter that has advantaged AlintaGas enormously.

I return to comparing the two companies. The Australian Stock Exchange Ltd all-ordinaries index, at the time AlintaGas listed on 17 October 2000, stood at 3 216. Last Friday, it was about 2 904.

Mr J.L. BRADSHAW: I draw the attention of the Deputy Speaker to the state of the House.

The DEPUTY SPEAKER: It is too early, member for Murray-Wellington - close, but too early.

[Leave granted for the member's time to be extended.]

Mr R.N. SWEETMAN: When AlintaGas was privatised, the mum and dad investors - the small investors - were issued shares at $2.25. Institutions were issued shares at $2.45, and the cornerstone investors, United Energy Ltd and UtiliCorp Australasia Pty Ltd, paid $4.38 for their shares. It is very interesting to look at the success of AlintaGas. Its share price on Friday was $4.50, so mum and dad investors have received a 100 per cent capital appreciation in two and a half years.

Mr E.S. Ripper: That money could have gone to taxpayers if the coalition Government had not discounted the price.

Mr R.N. SWEETMAN: There are other reasons for the company's success. Left in the hands of government, it is unlikely it would have returned the sorts of profits it is now enjoying. The mum and dad investors have received at least a 20 per cent, fully franked return by way of two lots of dividends for the two completed financial years since privatisation. I understand some tax effectiveness relating to the share price delivers further benefits to shareholders. There are no ifs and buts about its success.

With AlintaGas' success, why has the Government still seemingly nursed it through every situation? The Government featherbedded the sale, extensions have been granted since the sale, and concessions have been made concerning consumer price index increases imposed on customers. At the same time that the company received benefits at point of sale and further concessions from government, AlintaGas flogged the daylights out of Epic Energy. It was a coincidence to start with as it jockeyed for position for a better deal in relation to gas prices and such matters. However, all of a sudden, the company saw an opportunity, as Wesfarmers, Origin Energy Australia and AGL Energy Sales and Marketing Ltd now have done - I am sure these companies are looking over the fence and pondering what they might do if administrators are appointed to sort out Epic's problems.

I will make some comparisons, minister, regarding how the regulator handled both matters. AlintaGas was a government trading enterprise when its access arrangements were filed with the regulators. It is an interesting case. I understand that a reason for the quick determination was that AlintaGas filed for a lower tariff than it was receiving for its distribution network. The access arrangement was filed on 30 June 1999, and it was concluded on 18 July 2000. This was approximately three months before the privatisation of AlintaGas. On the other hand, look at the circumstances of Epic Energy. It filed its access arrangement in December 1999 for five years - namely, from January 2000 to December 2004. The regulator made his draft decision in June 2001. Epic took the regulator to the Supreme Court in November 2001, and the Supreme Court delivered its ruling in August 2002. In December, further definition was given to the ruling to assist the regulator to revisit the formula used to arrive at the original tariff. Interestingly, by the end of March 2004, Epic is expected to file its revised access arrangement to apply from January 2005 for the following five years. Nearly three and a half years have elapsed since filing the access arrangement. As an Epic worker said on Liam Bartlett's show yesterday, for goodness' sake; it took only four years to build the gas pipeline! Three and a half years after it filed the access arrangement, no determination has been made on the tariff, although it appears to be imminent

Mr J.L. BRADSHAW: I draw your attention to the state of the House, Madam Deputy Speaker.

The DEPUTY SPEAKER: You are too early, member for Murray-Wellington. Standing Order No 21 states that 15 minutes must elapse before calling again for a quorum. The 15 minutes starts from the last call; therefore, the member will need to note the time now if he intends to call again.

Mr R.N. SWEETMAN: Thank you, Madam Deputy Speaker. I appreciate that my colleague is very keen to ensure that I have an audience for this most important matter.

I referred to the approximately 50 staff of Epic Energy who feel vulnerable in this situation. I know it is not fashionable to be an advocate for business, but I will be. Two of the five shareholders in Epic are Dominion Pty Ltd and El Paso Pty Ltd, which own 66 per cent of the company between them. El Paso has problems in America because of its exposure to Enron Pty Ltd. Putting that aside, the other three investors who hold a third of Epic between them - they hold 11 per cent each - are AMP Henderson Holdings Ltd, Deutsche Associates Ltd and Hastings (WA) Pty Ltd. That means that between them they contributed about $200 million. It is beholden on the minister to get information on who is exposed. It would be interesting to know whether AMP, Deutsche and Hastings or individual superannuation policyholders are exposed.

Recently when I was getting further information on that matter, I received a call from a chap in Carnarvon who had just got a statement from Westpac Financial Services Ltd. That statement showed a 6.5 per cent reduction in his investment for the preceding 12 months. He was not happy, to say the least. It is not hard to imagine how that happens when the companies I have mentioned act as fund managers on behalf of superannuation clients and take hits like this. Twenty-nine banks are involved in the project, four of which are Australian. Again, it is not fashionable to defend the banks. However, the banks have invested individual investors' money in this project. If they take a hit, they will have to make good on that, which will impact on lending margins and securities policies etc.

When I went into business in the early 1980s, it was easy to borrow money from the banks. One needed only a little capital to borrow money to start up a business. However, that has completely changed. Like me, people took advantage of the fact that the banks would lend them money. However, after some businesses fell on bad times, the banks were blamed. It was argued that it was irresponsible of them to lend so much money because some clients could not service their debts. The banks changed their policies and imposed much more stringent guidelines on lending money.

Four of the 29 banks involved in the project are Australian banks. They are the National Australia Bank, the Commonwealth Bank, Australia and New Zealand Banking Group Ltd and Westpac. They have Australian investors' money tied up. It damages Australia's reputation if, as well as the shareholders in Epic, the banks also take a hit, which is likely in the current circumstances. Let it not be said that this is just an argument about obtaining the $1 to $1.08 energy tariff to support the $2.4 billion that Epic paid. This is not just about the price paid; that is one element in the deal. This whole argument is about the tariff and the volumes, as well as the price paid. The volumes are an important argument in this matter. Epic willingly threw up its hands and said that it got it wrong. It and the Government of the day anticipated that the State would grow faster than it did and that its prospects were better than they were. Who knows, they may well have been. It could have been the uncertainty that developed after the sale that helped slow the pace, if not halt it.

I will quickly explain to members what was involved in the deal. What did Epic give to the State of Western Australia in its asset sales agreement, particularly as contained in schedule 39? The opposition spokesperson on energy has already explained how some of the money was used to improve the circumstances of most Western Australians one way or another, whether it was through the convention centre that is currently being built, computers in schools or retiring state debt. That was all done for the benefit of Western Australians. Epic paid the State that money and I will tell members basically what it expected in return.

Epic Energy believed that it and the other bidders were to bid on $1 and $1.08. They bid on $1 to Perth and $1.08 south of Perth. They realise that tariffs have been as high as $1.45 a gigajoule previously for gas transported down the Dampier to Bunbury pipeline. The price was about $1.27 a gigajoule into Perth as privatisation was taking place. Epic Energy said it would pay $2.4 billion; it would get the $1 and $1.08 tariff; it would shift its office to Perth; it would spend $870 million expanding the capacity of the pipeline in the first 10 years of ownership; and it would reduce the tariff to $1 and $1.08 by the year 2000, with the undertaking that the tariff would not rise by more than 67 per cent of the consumer price index in the years going forward. One of the most underestimated aspects of the Epic bid - I expect others put in similar bids - was that it would not have a differential price going forward. In other words, it did not want a scenario in which one customer could be enjoying a $1 tariff while, because of the extra investment - the $870 million for expanding the capacity of the line - expanding businesses and new customers would have to be charged a differential. That was considered an

unacceptable situation. It is to the company's credit that it was able to file a tariff of $1 and $1.08, to pay $2.4 billion, to reduce the cost of gas in real terms, to spend $870 million expanding the capacity of the line, and at the same time to agree that there would be a "one size fits all" tariff. That is a very good situation for existing business, and it provides the opportunity for existing business to expand and for new business to start up.

I could say much more in my remaining four minutes, but I want to suggest to the minister how we might be able to settle this matter in the interests of all parties. I agree with the minister, as I have said during this debate previously, about the constant fight he has with the Commonwealth regarding this State's grants. This State is a very nice business for the Commonwealth Government. The State does not receive sufficient recognition or remuneration via the grants system for the cost of sharing infrastructure to encourage and foster business investment in this State. We do not get a fair deal; we get about a 10 per cent bonus for all the additional royalties that go to Canberra. The rest is simply a net deduction from our grant moneys, and that is not fair. In the future we are likely to offer the Government bipartisan support for what is happening with the Gorgon venture, which is outside the state boundary. I understand we are unable to collect royalties at this stage, but perhaps we can make a submission to the Commonwealth Government that we receive a reasonable share of the proceeds from that venture.

This issue has got under the guard of a lot of people, not the least of whom is the executive director of the Office of Gas Access Regulation and the wise men from the east involved in the Allen Consulting Group. We should go back to the agreement by the Council of Australian Governments. It is my understanding from the limited research I have been able to do that when the States, the ministers and the federal Government were all negotiating to arrive at this agreement, a document was compiled containing the competition principles - it was named the competition principles agreement. From the intent of clauses 6(4) and 2(24) it is clear that there was to be a balance in the access arrangements and that economic theory was not the only point around which access revolved. I think Epic understands how difficult it is for this Government to punch up the regulator and impose its will on him. If there were a will to do so, I believe there would be a way to do it. Perhaps the point made by the Leader of the Opposition about extending the tariff until this matter is resolved - in other words, making a decision to extend the agreement for Epic until this matter is satisfactorily resolved at a higher level - is a reasonable thing to do. In the interim, the minister must work with other State ministers and the federal Government to revisit the clauses in the competition principles agreement, because that will give the regulator a clear opportunity to balance the argument of the economic theorists who seem to be controlling the agenda at this time.

MR M.W. TRENORDEN (Avon - Leader of the National Party) [5.01 pm]: I am keen to become involved in this debate. I thank the member for Darling Range for moving this motion. The Minister for Energy has a clear responsibility to hold a view on the operation and administration of the Gas Pipelines Access (Western Australia) Act 1998. The operations of the Independent Gas Pipelines Access Regulator specified in that statute fall squarely within the ministerial responsibility of the Minister for Energy. The intent of having the Office of Gas Access Regulation was to provide flexibility in dealing with the specific circumstances in Western Australia that may have been overlooked if the Australian Competition and Consumer Commission had remained the regulatory body. As the member for Ningaloo stated, there seems to be concern about the attitude of the ACCC in the mind of the regulator. That is not something I can pick.

The intent of the Bill that established the regulator was to provide an open and transparent process to facilitate third party access to natural gas transmission and distribution pipelines; facilitate the efficient development and operation of a national market for gas and to safeguard against the abuse of monopoly power in the transmission and distribution of natural gas; promote a competitive market for gas in which customers were able to choose the producer, retailer or trader to supply their gas; provide a right of access to transmission and distribution networks on fair and reasonable terms and conditions, with a right to a binding dispute-resolution mechanism; and to encourage the development of an integrated pipeline network. The National Party is keen about that final point. The achievement of these principles is very much the responsibility of the Minister for Energy and his Government. The Government does not have the right to pick and choose the responsibilities it will accept. It is clear that the lack of resolution of the Dampier to Bunbury natural gas pipeline tariff issue will not deliver the last principle of the Act; that is, the development of a pipeline network. Although that is a serious matter for Western Australia, it is not as serious for the other States because their pipeline systems are further developed. We want that pipeline developed. When asked about the regulator making a decision on the tariff for the Dampier to Bunbury natural gas pipeline during question time in Parliament on 23 November 2000, the Treasurer stated -

> The gas access regulator is an independent person, so it is not up to me to dictate when he will make the decision.

The answer continues -

> I do not think the delay will have a great impact on development.

Mr E.S. Ripper: Who said that?

Mr M.W. TRENORDEN: You did. The answer continues -

> It is one pipeline, and the tariff applies to all pipeline users, but I hope that transmission prices will be as low as possible. The key to even lower prices is the development of higher gas volumes through the pipeline. The Government is keen to extend south west gas pipelines, and to get new power generation infrastructure in place.

Minister, that is a fantastic statement. I would like the minister to sit down some time, read the statement and then try to tell me what it means. The ignorance and naivety of these comments from the Minister for Energy, who is the State's Treasurer, is absolutely stunning. There is conflict all the way through that one paragraph. The Minister for Energy obviously has no idea about the real business world. Rather than carrying out his sworn duty to serve the State, he is more interested in political point scoring against the Leader of the Opposition and his perceived problems in the historical part played by him in this deal. It is his sworn duty. The regulator's procrastination and less-than-impressive handling of this decision will have had a significant impact on business confidence. Three-plus years for a decision is appalling. Why would a pipeline operator seek to invest in Western Australia and expand the current network to the south west when the major pipeline operator in Western Australia has been hamstrung by the Government of the day - not just the regulator? The implications of Epic Energy's walking away from investment in Western Australia will be substantial. The Minister for Energy clearly does not understand the flow-on effects of the Bill. The investment climate in Western Australia is uncertain due to the protracted negotiations of this decision. Companies looking to invest in Western Australia need certainty and stability, which they currently do not have. Epic Energy has 26 banks and millions of dollars involved in this investment. The investment community is waiting and watching to see whether the Western Australian Government will bring all of that undone.

At the beginning of Epic Energy's proceedings with the regulator, the National Party was the only party that made a case for a fair and reasonable tariff to facilitate development. I attended a public forum with the regulator on 2 August 2001 and argued for a tariff to be set at a level that would facilitate investment in regional Western Australia. I also argued strongly that if a new infrastructure were to be built in regional Western Australia this process had to be open and accountable and conducted within a short time frame. What date is it now? No other political parties were involved at the beginning of the process. I was alone in August 2001. A submission to the regulator on 22 August 2002, of which I have a copy in my hand, clearly specified the intent of establishing the criteria that the regulator should use in making his determination. The Supreme Court upheld our argument that this decision had social, political and public interest dimensions. This debate also goes to the core of the National Party's concern about the Economic Regulation Authority Bill. The National Party is pleased to see that the upper House has referred it to the Standing Committee on Legislation. How transparent and accountable is it for industry to pay for the regulator to fight a participant of that industry in the courts? Epic Energy, which has been invoiced for the legal fees and charges for the regulator, will incur approximately 49 per cent of those costs calculated on a pro rata basis on pipelines in this State. Effectively, Epic Energy is funding its opposition's case. It is obvious why the National Party strongly believes that the Economic Regulation Authority should be funded through consolidated revenue. Industry funding of regulations in a monopoly industry just does not work.

Mr E.S. Ripper: Do people in Northam have gas?

Mr M.W. TRENORDEN: No.

Mr E.S. Ripper: Should they fund the cost of gas access?

Mr M.W. TRENORDEN: All Western Australians should fund gas access.

Mr E.S. Ripper: Does that include the people of Northam, who do not get the benefits of it?

Mr M.W. TRENORDEN: I hope that in a few weeks the minister will talk to some people about piping gas to Northam, unless he has no interest in that.

Mr E.S. Ripper: I would like to get gas to Northam.

Mr M.W. TRENORDEN: So would I. I would like the price of delivering gas through the Dampier to Bunbury pipeline to be at a rate that will encourage industry to invest in the rest of the State. That is clearly the position of the National Party. On 13 March, the Minister for Energy told this House that the single economic regulator could provide useful information, which could impact on government policies and improve economic outcomes for particular industries. The minister went on to say that the Government has the capacity to either implement

or reject recommendations from the regulator. My recommendation to the minister is to carry out his responsibility as a minister in this Government and support this motion.

MR E.S. RIPPER (Belmont - Minister for Energy) [5.10 pm]: The first thing that the House should do is to start with the law that was endorsed by this House in 1998 pursuant to agreements reached with every other Government in the country. I refer to the Gas Pipelines Access (Western Australia) Act 1998, section 37 of which reads -

> (1) Except as provided in subsection (2), the Regulator, is independent of direction or control by the Crown or any Minister or officer of the Crown in the performance of the Regulator's functions.
>
> (2) The Minister may give directions in writing to the Regulator to the extent allowed by subsection (3), and the Regulator is to give effect to any such direction.
>
> (3) Directions under subsection (2) -
>
> (a) may relate only to general policies to be followed by the Regulator in matters of administration, including financial administration; and
>
> (b) cannot constrain the Regulator with respect to the performance of any function referred to in section 36(1).

That is a very important section. I am sure that members would be more informed if I also quoted section 36(1), which deals with the functions on which the gas access regulator cannot be directed. It reads -

> (1) The Regulator has -
>
> (a) the functions conferred on the local Regulator under the Gas Pipelines Access (Western Australia) Law; and
>
> (b) the functions conferred on the local Regulator under the National Gas Agreement.

The law endorsed by this Parliament implemented an agreement reached with every other Government in the country to regulate access to monopoly infrastructure, such as gas access pipelines, through independent regulation. It was not a law passed by this Parliament while Labor was in power but was introduced to the Parliament by the coalition. It was introduced by the party that has moved this motion today.

Mr R.N. Sweetman: There is no conflict between the motion and the agreement.

The ACTING SPEAKER (Mr A.J. Dean): Order!

Mr E.S. RIPPER: The second reading speech of the then Minister for Energy, who is now the Leader of the Opposition, makes it clear that the then Minister for Energy fully understood what he was doing. He fully understood that tariffs on pipelines in Western Australia would be determined independently of ministerial direction.

Mr R.N. Sweetman: He also said that the role of the regulator was not set policy.

Mr E.S. RIPPER: What policy is the regulator bound to follow? The regulator is bound to follow the National Third Party Access Code for Natural Gas Pipeline Systems. Section 2.24 of the code reads -

> In assessing a proposed Access Arrangement, the Relevant Regulator must take the following into account:
>
> (a) the Service Provider's legitimate business interests and investment in the Covered Pipeline;
>
> (b) firm and binding contractual obligations of the Service Provider or other persons (or both) already using the Covered Pipeline;
>
> (c) the operational and technical requirements necessary for the safe and reliable operation of the Covered Pipeline;
>
> (d) the economically efficient operation of the Covered Pipeline;
>
> (e) the public interest, including the public interest in having competition in markets (whether or not in Australia);
>
> (f) the interests of Users and Prospective Users;
>
> (g) any other matters that the Relevant Regulator considers are relevant.

Other principles in the access code also have some bearing. For example, section 8.1 of the code, titled "General Principles", reads -

> A Reference Tariff and Reference Tariff Policy should be designed with a view to achieving the following objectives:
>
> (a) providing the Service Provider with the opportunity to earn a stream of revenue that recovers the efficient cost of delivering the Reference Service over the expected life of the assets used in delivering that Service;
>
> (b) replicating the outcome of a competitive market;
>
> (c) ensuring the safe and reliable operation of the Pipeline;
>
> (d) not distorting investment decisions in Pipeline transportation systems or in upstream and downstream industries,
>
> (e) efficiency in the level and structure of the Reference Tariff; and
>
> (f) providing an incentive to the Service Provider to reduce costs and to develop the market for Reference and other Services.
>
> To the extent that any of these objectives conflict in their application to a particular Reference Tariff determination, the Relevant Regulator may determine the manner in which they can best be reconciled or which of them should prevail.

I have taken the trouble of reading out those sections of principles that are in the code so that members can see that many of the points that they have raised are referred to in the code and are matters that the regulator has to take account of under the code. The regulator might not necessarily reach the conclusion that individual members opposite think he should. However, under the law passed by this Parliament - not under a Labor Government but under a coalition Government - it is up to the regulator independently to balance those factors and to resolve any tensions or conflicts that might exist between those factors and to make decisions about which of those factors should prevail. Members should reflect carefully on the history of this matter before they ask the Parliament to make a judgment on the tariff levels that should apply on the pipeline. In my view the regulator should be independent and the Parliament should not make a judgment on the tariffs that should apply on the pipeline. The Parliament has passed a law saying that is a matter on which the regulator should make a judgment independently.

I heard by way of interjection some reference to the sale process. All of the documents that the regulator might want to access with regard to the sale process are available for him to assess. Secondly, the Government has had approaches from parties to the sale process asking whether the Government is prepared to lift the confidentiality on the sale process documents. The Government is prepared to lift the confidentiality on those documents, provided that third parties whose interests and confidentiality might also be affected are prepared to agree, and provided also that the party that wants the confidentiality lifted is prepared to extend the same consideration to the State. I had those approaches quite some time ago, and the answer that I gave to the people who approached me is the same as the answer that I have just outlined to the House. I do not believe that we have received a response on those confidentiality questions. However, the Government's position is clear. All of the sale process documents that the regulator wants to see he can see. We are prepared, subject to resolution of possible objections from third parties, to lift the confidentiality of the sale process documents so long as there is a reciprocal agreement from the parties seeking that concession from us that the confidentiality that applies to us will also be lifted. The regulator can consider anything that he wants to consider about the sale process according to the principles in the third party access code.

Another comment on the sale process is that an information memorandum was given to bidders for the Dampier to Bunbury natural gas pipeline. The people handling the sale for the then Government included in that information memorandum their estimate of the initial capital base of the pipeline, which was about $1.1 billion. That information went to all potential bidders for the pipeline before they put in their bids. In other words, they were told that, in the view of the people handling the sale for the then Government, the initial capital base of this pipeline would be $1.1 billion. They were also told that the tariffs on the pipeline would be set by independent regulation. That is what I have been advised by the public servants who dealt with that matter under the previous Government. However, that matter is capable of independent assessment by the gas access regulator, who can access any document associated with the sale process. In principle, the Government is prepared to have that matter assessed by any member of the public if the confidentiality provisions relating to third parties are resolved. The Government does not have any desire to keep that stuff secret or confidential. It does, however,

want to respect the continuing confidentiality demands of those people who thought that their documents would be confidential in that process and who want that confidentiality to be maintained.

Any member of Parliament who has a view on this issue is entitled to put in a submission to the gas access regulator. I understand from the speech of the member for Darling Range that both he and the Leader of the Opposition have put in submissions. The State made a submission on 18 September 2001. That submission was signed by Les Farrant, the Coordinator of Energy of the Office of Energy, and John Langoulant, the Under Treasurer, and is with the regulator. If members want to see that submission, they need only go to the web site of the gas -

Mr M.W. Trenorden: Table it now.

Mr E.S. RIPPER: Wait a minute.

The ACTING SPEAKER (Mr A.J. Dean): Order, members!

Mr E.S. RIPPER: If members want to see that submission, they need only go to the web site of the gas access regulator. It has been on that web site since late 2001. It has been available to anyone who has an interest in this matter. If members do not want to go to the web site - perhaps they are not quite up with Internet technology - I will make it easy for them; I will table the submission for the technologically backward.

Mr D.A. Templeman: Technologically challenged.

Mr E.S. RIPPER: I will table it for the technologically challenged among us, which, given the demographic of this House, is probably almost all of us, except perhaps the member for Swan Hills.

Mr D.A. Templeman interjected.

Mr E.S. RIPPER: The member for Mandurah disputes that point. He has his laptop computer open on his desk. The member for Mandurah is clearly up to speed with these modern information-gathering devices. Mr J.H.D. Day: Was it a public service submission?

Mr E.S. RIPPER: It was a submission from the State signed by the Coordinator of Energy and the Under Treasurer. It was submitted to the gas access regulator with an accompanying letter from me, which stated -

> The State has reviewed the draft decision and I am pleased to provide the State's submission on this matter.
>
> Yours sincerely
>
> Eric Ripper

I intend to table the submission so that members who have not seen it on the web site can look at it. Members have asked me whether I will summarise the submission. If they want me to quote from it, I will hang on to it for now. The submission begins -

> The Western Australian Government recognises the importance to the State's economy of independent and transparent infrastructure access regulation. With a large share of Australia's oil and gas reserves, the State is well positioned to realise the benefits that will flow from increased economic activity underpinned by the efficient use of these resources and facilities.
>
> Naturally, access providers will argue for higher access prices just as informed access seekers will argue for lower prices. The Regulator has the difficult task of balancing the shorter-term stimulus to the economy of lower access prices with maintaining appropriate incentives for investment in infrastructure. The mitigation of monopoly power is fundamentally at odds with the desire of an investor to maximise profits. However, it must be consistent with allowing the investor to earn a reasonable return on their investment.

Those are the opening two paragraphs of the submission. I will leave it to members to examine the rest of it. If members have been following this debate I am surprised that they have not already read the submission by the State and the earlier submission by the Coordinator of Energy and the Under Treasurer.

There has been some concern about the timeliness of the regulator's consideration of this matter. I will run through the sequence of dates for the benefit of members. On 13 December 1999, Epic Energy submitted its proposed access arrangement for the Dampier to Bunbury natural gas pipeline - DBNGP - to the Independent Gas Pipelines Access Regulator. On 17 December 1999, the regulator called for public submissions on the proposed DBNGP access arrangement. The final closing date for submissions on the proposed DBNGP access arrangement was established as 17 March 2000. On 20 April 2000, the regulator called for further public submissions on matters raised in four submissions to the first consultation process. He established 12 May 2000 as the final closing date for further public submissions. On 21 June 2001, the regulator released his draft

decision on the proposed access arrangement. On 1 August 2001, Epic Energy issued a formal notice of legal action against the regulator challenging his draft decision. On 28 November 2001, the court case concluded with the Supreme Court reserving its decision. On 23 August 2002, the Supreme Court finally handed down its decision, including draft orders that will clarify issues of interpretation of the code and guide the regulator in his ongoing assessment of the proposed access arrangement. On 2 September 2002, the regulator released an information paper inviting interested parties to provide written submissions that have regard to the reasons for the court decision and their effects on matters identified in the draft decision as being the reasons for requiring amendment to the draft decision. The regulator established 8 November 2002 as the closing date for submissions. On 20 December 2002, the Supreme Court handed down final orders. It has been a time-consuming process that has involved extensive consultation and consideration of the issues. The legal action initiated by Epic Energy has contributed to the length of the process. It took the Supreme Court from 1 August 2001, when Epic issued its notice of legal action, until 20 December 2002 to hand down its final orders on that matter. The period of August 2001 to December 2002 was spent waiting for the final outcome of the legal action. The Government understands, as does the member for Darling Range, that the regulator's decision is expected at the end of this month. However, that may not be the absolute conclusion of the matter. Epic may be required to amend its proposed access arrangement in accordance with the final decision of the regulator, and to submit that amended proposal for the regulator's consideration. Alternatively, Epic may challenge the regulator's final decision and refuse to amend its proposed access arrangement, in which case the regulator may impose a revised access arrangement that conceivably could be further challenged by Epic. It is important that we have an early resolution of this matter. It is not a positive reflection on the State of Western Australia and regulation in general that we are so far into an access regime without having had a final resolution of that regime by the independent regulatory process. However, I think it is unfair to be critical of the regulator in that matter, particularly given the extensive delay that has occurred as a result of legal action over which the regulator had no control. Nevertheless, I think we can all agree - I am sure the regulator would also agree, although that is for him to say - that the earlier this matter is resolved, the better.

Amendment to Motion

Mr E.S. RIPPER: I move -

> Paragraph (a) - To insert after "speedy" the words "and fully independent".
>
> Paragraph (b) - To delete the paragraph.

If my amendment were carried, the motion would read -

> That this House supports a speedy and fully independent completion of the consideration of access arrangements by the gas access regulator in relation to the Dampier to Bunbury natural gas pipeline.

I do not want anyone to draw a conclusion about my views on the matter referred to in the paragraph I have sought to delete, which would have the House support the establishment of tariffs higher than those indicated in the draft decision of the regulator to ensure the commercial viability of the pipeline and adequate opportunities for further investment in the development of Western Australia. I will not express a view in support of or in opposition to that proposition. My argument is that that is a matter to be determined by the independent gas access regulator. It is a matter that is fundamental to his consideration of at least some of the factors in the third party access code, which I have already outlined. I do not believe that this House should compromise or seek to compromise in any way its legislated independence for the Independent Gas Pipelines Access Regulator by expressing a political view or by seeking to have the Minister for Energy express a political view on the nature of the tariffs that should apply on the pipeline. I do not want the Parliament and the Government to be in a position of voting for or against the proposition of higher tariffs on the pipeline. That is a matter for the gas access regulator to determine according to the principles in the National Third Party Access Code for Natural Gas Pipeline Systems, which has been endorsed by legislation by this Parliament pursuant to a national agreement with all Governments in the country.

The State has made a submission to the gas access regulator. That submission is on the public record. I will not, in effect, be party to the State making an additional submission by way of *Hansard*. The State's submission has been made, and this debate should in no way be taken as subtracting from, adding to or modifying the State's submission to the gas access regulator. We are having a political debate in this place that I do not believe will be of any interest to the gas access regulator. People can, if they wish, take the opportunity to make formal submissions to him through the processes that he has established.

Nevertheless, it is not a bad thing for the Opposition to have raised this issue in the Parliament today. I say that because the Dampier to Bunbury natural gas pipeline is a very important part of the State's infrastructure. A very large investment has been made in that pipeline by a major foreign investor. We are interested in continuity of supply of gas to the south of the State, future gas supplies coming along the pipeline in the quantities required

and a fair go for users of gas. It is important that those matters be handled properly, in a serious way and according to our law. The whole debate gives me an opportunity to not only acknowledge the importance of the issue but also restate that the best interests of this State require us to ensure that due process is followed, that our law is obeyed, and that we send a signal to people that they can be certain, when they deal with this State, that the processes laid down in our law will be followed. We would not want to send the opposite signal, which is that somehow this State is not transparent in the way in which it deals with these matters; that some sort of informal process applies, which is different from the written law.

I urge members of this House to reinforce the earlier endorsement of this House in 1998 of independent regulation for monopoly gas infrastructure by supporting the amended motion that I have moved. I table the State's submission on the regulator's draft decision.

[See paper No 1050.]

MR C.J. BARNETT (Cottesloe - Leader of the Opposition) [5.38 pm]: I will make a few brief comments on this matter. I made a submission to the regulator in September 2001 concerning the draft decision he had brought down. I will table that a little later. I do not need to go through it; it is a public document. It reflects my understanding and recollection of the events surrounding the privatisation of the Dampier to Bunbury natural gas pipeline, the subsequent public debate and the decision of the regulator. However, this motion is really about the failure of this Government to act.

The Minister for Energy might like to think there is a pure world out there; however, there is not. I have argued before, and I will argue again, that the sale process for the Dampier to Bunbury natural gas pipeline and for AlintaGas was absolutely impeccable. As the minister, I took a very hands-on role in that privatisation. In both cases I set the parameters for the privatisation. For the Dampier to Bunbury natural gas pipeline, it was to set a schedule of declining tariffs of about 20 per cent to require a proposal for further expansion and then to have the bidders bid against that. In the case of the AlintaGas privatisation, I took a very strong policy position - against some of the advice - that we would have a broadly based domestic shareholding. Some 100 000 shareholders, predominantly Western Australians, bought shares in that company and have retained those shares and have done very well.

There are issues of a public interest nature. In the case of the Dampier to Bunbury pipeline, it was not simply an auction for the highest bidder. The public interest was to lower the tariff, have a schedule for development, retain the easement in public ownership as the true monopoly element and expand the easement so that the operator and other operators in the future would have an access corridor. They were the public interest issues. In case backbench members opposite ever get to be ministers, I will give them some good advice: the role of a minister is to look at the public benefit and the public interest issues, not to be in there wheeling and dealing and negotiating over price or anything else. Members may disagree, but, if I may say so, I did that very well for the privatisation of both AlintaGas and the Dampier to Bunbury pipeline.

It is not a perfect world and things go wrong. In this case the regulator made a decision that was way out of whack; it was way out of the ballpark and beyond everyone's analysis and expectation. It stunned me. If it had come in at 88c, 90c or even $1.05, it probably would have been in the ballpark. It is so far out of whack that the Government cannot let the issue stand. It must act. I know what the Minister for Energy is saying. He feels uncomfortable about it. Sure, anyone would feel uncomfortable about it. However, he must act. My criticism of the Government since the election is that it has not acted. There is a basic conflict between regulation and development. People seem to have the naive view that those two issues are different. If the Government goes down the path of regulation, it compromises development; if it goes down the path of all development, it compromises independent regulation. There is a trade-off. It is the policymaker's role to assess that trade-off.

Mr E.S. Ripper: You made that assessment and you plumped for independent regulation when you put the law through the Parliament.

Mr C.J. BARNETT: I did, and when the independent regulator comes down with a regulatory decision that is so far beyond everyone's expectation, including mine, the minister must do something about it, reluctantly, but he must do something.

Mr E.S. Ripper: What courses of action do you suggest are open?

Mr C.J. BARNETT: I would be reluctant to say that in the Parliament because that could place the State in a difficult position. I will make a few comments. I think Epic Energy made some commercial mistakes in its bid. The estimate at the time of sale was that the bids would be around $1.8 billion - maybe a bit more, maybe a bit less. Its bid was substantially above that. It made a courageous punt on the basis that it presumed various projects would take place; it banked on that happening. Commercially, that was an excessively robust point of view to take with its funds. However, it did that. That was its commercial assessment. At the time of

purchasing it, Epic Energy was very happy with its buy because it saw the upside. It accused the State of sovereign risk. It was misguided in that. What it did experience later was a regulatory risk. As I said in the debate on a Bill not so long ago, people often presume that moving to an independent regulator will ensure a more certain, more timely and less costly process. That is not borne out by history, and it certainly is not borne out in this case. Sometimes there must be a qualitative aspect to the approach, which is the job of the minister. A good minister will judge when and how much is required. I am not telling the minister how to do his job; he must make that call himself. However, if I were the minister I would have acted to resolve this dispute. I would not have let it go on this long.

As a minister, I had to deal with issues in the resources industry and energy sector. At times a minister must move to resolve disputes. The most classic example - not a particularly good analogy - was when the previous Liberal Government came to power in 1993. It had to deal with the unresolved issue of the Collie power station - something that the previous Labor Government had agonised over during its several years in government. Now this Government has inherited the unresolved issue with the Dampier to Bunbury pipeline. I did not sit down and just let the Collie power station go into dispute -

Mr E.S. Ripper: What cost per megawatt of capacity did you end up paying?

Mr C.J. BARNETT: The minister can argue about the merits of that and I will cop it on the chin. However, the point is that I made the decision to resolve the matter. It was up in the air and the State was facing potential litigation and all the rest of it. Therefore, I got involved and resolved the matter. I did not feel all that comfortable getting directly involved in a commercial issue but I acted. If this particular matter is not resolved satisfactorily over the next couple of weeks, I seriously recommend that the minister think about how he might resolve it. If the minister wants my opinion - he probably does not - I will give it to him in private. He can ignore it if he likes but he must act. He cannot allow the situation to go on any longer. Obviously, the minister will wait until a decision is handed down, which will hopefully be in the next couple of weeks. If that decision is still out of whack, he must act. That will be the minister's call but he must act. There are other examples. I had to face the situation of Shell Australia Ltd trying to takeover Woodside, and BHP and Rio Tinto wanting to merge their operations. Issues arise, and the minister cannot sit back and say, "I am as pure as driven snow." He cannot be; he is the minister. He must judge to what extent he gets involved in the public interest. That is the minister's job. He is not there to count the money or to do the deal but to consider the public interest.

Can I do what the Minister for Energy just did and lay on the Table the submission I made to the regulator?

Leave granted.

[The paper was tabled for the information of members.]

MR R.N. SWEETMAN (Ningaloo) [5.47 pm]: I do not agree with the proposed amended motion. The minister failed to comprehend some of the more important issues. Now that I have a little more time, I can afford to mention some of the points I had to leave out of my previous speech.

Mr E.S. Ripper: It was good of me to move the amendment and give you the second opportunity to speak.

Mr R.N. SWEETMAN: I am very grateful to the minister for that.

I assume that the minister has read today's copy of *The Australian Financial Review*. The article written by Mark Drummond and titled, "WA power play loses Hongkong" reads -

> The Hongkong Electric International Group controlled by billionaire Li Ka-shing has revealed the WA government's move to disaggregate its $4 billion Western Power electricity utility forced it to abandon plans to participate in the state's $850 million power procurement process.
>
> Western Power confirmed yesterday that Hongkong Electric and Ric Stowe's Griffin Energy had withdrawn from the bidding to build a new peaking plant of up to 260 megawatts, leaving three rival consortia competing for the long-term contract to provide -

Mr E.S. Ripper: Yes, I have read the article.

Mr R.N. SWEETMAN: Yes, but reference is made in the next section of the article to political risk. It is perhaps a consequence of the ongoing dispute between the regulator's office and the new regulatory regime that is being imposed on important issues such as the Dampier to Bunbury gas pipeline, and has the prospects of imposing itself on many other issues downstream.

The Leader of the National Party, in his address to the Parliament, made the point that he and many of his constituents and commercial people within the Northam area are keen to get access to gas. Whether it is via a private pipeline that accesses the Dampier to Bunbury gas pipeline or an extension of AlintaGas's distribution

network, who knows. The sticking point will be that they cannot do it today and expect to get a reasonable return on capital while such a regulatory regime is still in place. Nobody would take the chance and do that. It is interesting to note how things are developing. The member for Vasse said to me only last week that a couple of communities in his electorate want reticulated gas. Busselton has reticulated gas and a couple of adjoining communities desperately want it. I understand that approaches have been made to AlintaGas to see when, how and if that might happen. AlintaGas has said that it is not commercially viable, and it would need a community service obligation or a subsidy from the Government or the local shire to extend the gas to provide those services. The whole thing is starting to implode and turn in on itself.

I have read several articles in the past three to four months by Brett Clegg, Mark Drummond and others about some of the corporate ploys that are going on. It is very interesting and the Minister for Energy must surely be following what AlintaGas is doing. We were proud of the fact that we legislated to privatise AlintaGas; that it would be a Western Australian-based public company; that it would continue to service our needs; and that it would go forth and multiply and solve all our energy problems.

It is very interesting to see what is happening in the energy industry in Victoria. If the articles I have read are correct - I have no reason to believe they are not - I suspect that announcements have not been forthcoming, particularly from within the energy industry, due to some of the corporate problems that AMP Ltd has at the moment. The minister will know that AMP's retail shopping trust is under threat of a takeover in a hostile bid by Centro Pty Ltd. The takeover bid is currently before a takeover panel for a ruling on whether a poison pill was included in the structure of AMP to enable AMP Life Ltd to subsume the five shopping centres that Centro tried to take over. The centres were transferred from AMP Henderson to AMP Life, thereby preventing Centro from being able to acquire those shopping assets. Except for that and some ructions in the AMP board, I am pretty sure that AlintaGas for all intents and purposes is on the way to becoming a Victorian company later this year or certainly by next year.

I will tell the House roughly how the deals will work, if the articles I read are close to correct. Members should bear in mind that AlintaGas is a company that has a great degree of protection in this State. It has 440 000 individual gas customers, none of whose requirements can be contested prior to 17 October this year. It is very convenient for AlintaGas that customers using less than one terrajoule cannot be contested before 2007. I am sure that the basis for the rise in January or February of the share price of AlintaGas to $4.60, was rumour of its taking over Utilicorp, which, with United Energy Ltd, is a cornerstone investor in AlintaGas. Utilicorp became Aquila Pty Ltd and Aquila is considering exiting Australia and going back to the United States. In a fairly elaborate deal, AMP and AlintaGas intend to take over United Energy Ltd and the assets of Aquila. Ultimately AlintaGas will be the operator of the distribution business. It will on-sell two-thirds of the entire distribution business in Western Australia and Victoria to AMP, which will then go into a regulated energy investment trust to become known as the AMP defender fund and which will be floated by way of an initial public offering in a year or two from now.

Putting that to one side, the interesting aspect about this whole transaction is that AlintaGas, through the acquisitions of Aquila and United Energy and their related companies, is taking over about 660 000 gas customers and about 550 000 electricity customers in Victoria. Members should compare that with what AlintaGas has in Western Australia. It looks to me as though the entire focus of its business will be in Victoria when this deal is completed. I do not believe AlintaGas can look forward to a business environment as easy, laid back and relaxed as it currently enjoys in Western Australia. As I said, it has 440 000 customers in Western Australia and will have effectively 1.1 million gas customers from the day the acquisition goes through. It is disappointing to realise that money will be generated in a semi-protected environment, if we consider that retail customers cannot be contested before 2007. Income will come from those customers and others. Instead of putting a pipeline out to places like Avon or extending the pipeline out to communities in the electorate of the member for Vasse, they will be more consumed with watching their tails in the Victorian energy market, which is open to far more competition, and where the loads can be contested at every level. For the first time, they will know how harsh an environment the energy business can be in this country. A very significant energy player, Hongkong Electric, has pulled out, as I said, and only three bidders are left in the process. I wonder how sharp the bids might be. I would be anxious about that.

I turn now to the 330-megawatt base load power station that is referred to further on in this *Australian Financial Review* article. It is clearly indicated that Mitsui and Rick Stowe's company Griffin Holdings will go ahead with their bid, as one of 13 bidders. I wonder how convenient current circumstances are for the coal bidders. Wesfarmers and J-Power are linking up to put in a coal-based bid for this power station. I understand it will be based on new coal technology that is still to be commercially applied. That will be interesting, and I hope it works out. Nobody is saying that we favour gas or coal particularly in this argument. We want business to be able to expand, but we want businesses to be able to compete with each other on an even basis and a level

playing field for both energy sources. At the moment, which of those 13 bidders would be submitting a bid based on gas? My understanding is that a 330-megawatt power station will require about 60 terajoules of gas a day. At full capacity the Dampier to Bunbury pipeline is capable of 600 terajoules a day. One single power station, coming on line in approximately 2007, will require an additional 10 per cent volume coming down that pipeline. At the moment Epic Energy is unable to commit to further expansion of the gas pipeline until this matter is totally resolved to its satisfaction. If there is no further investment in the pipeline, how will any of the bidders be able to furnish bids based on gas? It is certainly an advantage to the coal industry. I wonder whether this will deliver an advantage to the minister.

I am sure he and the Government would hate to be put in the position of making a political decision of favouring coal over gas. It is likely to be seen as a political decision regardless of how it is arrived at. Is it not convenient that, at the moment, the gas option is effectively out of the play?

Mr C.J. Barnett: I will bet that that debate starts again.

Mr R.N. SWEETMAN: I bet it will too. *Hansard* in 1994 has several references to the Labor Party's natural affection for coal as a source of energy. That message has come through on several occasions.

Mr E.S. Ripper: The member will notice that the amendment I have moved supports the speedy resolution of this matter. I do not accept the member's argument about any ulterior motivation on the Government's part.

Mr R.N. SWEETMAN: I was just saying that it was convenient; I did not question the motivation of the minister. I said it was convenient because the Government will not be faced with that very difficult circumstance. There has been considerable media coverage recently on this matter, and I am sure the minister has read most of that. It must be disturbing that it has unfolded this way. The opinion of the journalists writing on this issue seems to have turned in the past 12 or so months. They and I are now saying that this company is not trying to vary the way it has bid, and it remains committed to that. The point about Epic Energy being given an opportunity to get its money back is reference to lost equity in the business, which can be apportioned to the company's getting the pipeline volumes wrong - what the company refers to as volumetric risk. The company has faced three forms of risk - political risk, regulatory risk and volumetric risk - and all three have swung violently against it.

Sitting suspended from 6.00 to 7.00 pm

Mr R.N. SWEETMAN: Can I seek an extension of 10 minutes to be taken when my remaining seven minutes run out?

The SPEAKER: No.

Mr R.N. SWEETMAN: Epic is not trying to change the conditions of sale as completed in the asset sales agreement, including schedule 39 of the agreement. I state simply that Epic got the volumes wrong. The company expects in time that it will get out of the pipeline the amount originally anticipated at the time of the sale or at the time of the due diligence process. It may be that when the asset is fully depreciated, the company may be short on its original projections. It may conclude then that it was an imprudent investment. Until then, Epic should be given the opportunity to conduct its business and be entitled to the quiet enjoyment normally associated with any business transaction. It is like the Telstra 2 shareholders being forced to close out their position today with the share price at $4 when they paid nearly $8. They would have diminished returns and a reduction of almost 100 per cent in the value of the shares in the four or five years of holding those shares. Epic asks the Government to take into account the conditions that applied at the time of sale.

I now read a couple of excerpts. I initially refer to comments of the then Minister for Energy. He was clear that certain advantages were to be achieved in setting up a state-based regulator. This view is explicit in the minister's speech during the passage of the Gas Pipelines Access (Western Australia) Bill; he stated -

> The code is about the rules of the game . . . The regulator, whether it be the Australian Competition and Consumer Commission or anyone else, must administer the rules of the game to resolve disputes, help set tariffs, if that be the case, and make sure the system is open and fair. The role of the regulator is not to set policy. That is the difference.
>
> What I fear will happen with the ACCC, and certainly given its prior conduct I have some justification for this, is that it will effectively become the energy policy maker of Australia. That perhaps does not matter so much for the other States because they have mature grids and pipeline systems . . . If the ACCC were made regulator, I might as well hand in the portfolio of Energy now and the member opposite might as well wipe it off his shadow portfolio list because we would never again have an effective Minister for Energy. We are not about to do that because we have too much to do in the Energy portfolio.

The minister was very clear in his understanding of what setting up the regulator would represent.

Mr E.S. Ripper: Which minister said that?

Mr R.N. SWEETMAN: The Minister for Energy in the previous Government, Hon Colin Barnett. I said that earlier. I quoted him but the Minister for Energy was engaged in discussion. It is the job of the Government of the day to prosecute a case and it is the Opposition's job to be the contradictor. However, some of the comments made by the then opposition members are quite incredible. Hon Bill Thomas, the former member for Cockburn, provided me with the best and the most eerily accurate statement on this matter. On 16 September 1998 he stated -

> Consider the importance of the job of the regulator. It is a quasi-legislative role in the sense that it is creating rights - not interpreting them - for the people who are party to access arrangements. It can make or break companies. It can make decisions that impact upon the returns that people receive on their investments. Obviously that is an important matter to the proprietors of those assets.

He was correct. Members also commented on the Gas Pipelines Access (Western Australia) Bill, the Dampier to Bunbury Pipeline Bill and the gas corporatisation privatisation Bill. The then Leader of the Opposition and the members for Eyre and Cockburn made incredibly accurate predictions, although there has not been quite as much litigation as was originally anticipated. The Minister for Energy of the day, Hon Colin Barnett, laid out what he thought would be the rules that would apply to the regulator's position. On 14 June 2000, Hon Colin Barnett said -

> No, policy does not form part of the sale agreement; it formed part of the sale process. As I explained, a number of policy matters during the sale process were reflected by the sale steering committee. The major policy matter was the decline in tariffs, which was subsequently regulated from $1.20 to $1. In its requirements on bidders, the sale steering committee, through its information memorandum and whatever other documentation was involved, also required that people provide indications on such issues as tariff, expansion capacities and the like. The reason for that was to check the veracity and the robustness, if one likes, of the bid. The Government would not accept a bid which could not be sustained. Therefore, it would have to know what that bid implied, and the bidders would have to demonstrate a proposed scenario of tariffs which would stack up and demonstrate to the sales committee that such a scenario of tariffs would give a return which would enable the money, the $2 407m, to be serviced. In other words, the Government was not about setting up the gas industry in this State for a shock. On gas tariffs, it wanted to be satisfied that the bidders' scenario was compatible with the price. It also wanted to be satisfied about capacity. I wanted to satisfy the bidders about access. They also raised issues. They wanted to be satisfied about their ability to expand on the easement . . .

That is the clearest insight that a commitment on tariffs was given at the time of the tender. The Minister for Energy must take that into account in his further consideration on this particular matter.

MR J.H.D. DAY (Darling Range) [7.08 pm]: I am surprised that the Acting Speaker is in the Chair at the Clerks' table.

The ACTING SPEAKER (Mr A.D. McRae): One of the few liberties I have is to chose in which chair I sit.

Mr J.H.D. DAY: Is that right? How things have changed under this Government.

Mr J.C. Kobelke: For the better.

Mr J.H.D. DAY: I am not sure about that.

The Opposition does not support the amendment moved by the Minister for Energy. In particular, we do not support the minister's attempt to remove the second part of the motion, which calls for higher tariffs to be established.

Mr E.S. Ripper: If you wanted, you could support the insertion of the words "fully independent", because I think the Acting Speaker might put the amendment in two parts.

The ACTING SPEAKER (Mr A.D. McRae): The question before the Chair is that the words to be inserted be inserted.

Mr J.H.D. Day: Not to be deleted first? We do not have a problem supporting that aspect. We could deal with that and move on to the other amendment.

The ACTING SPEAKER: The question is that the words to be inserted be inserted.

Mr J.H.D. Day: Will the Acting Speaker clarify what the words are?

The ACTING SPEAKER: For clarification, I have in the name of the Deputy Premier and Minister for Energy a proposed amendment to the motion -

> In paragraph (a) after the word "speedy" to insert the words "and fully independent".

Amendment put and passed.

The ACTING SPEAKER: The second part of the amendment is to delete paragraph (b).

Mr J.H.D. DAY: The Opposition does not support the amendment to delete paragraph (b) of the original motion. I accept that the gas access code needs to be complied with and that appropriate procedure needs to be followed, but nothing in this motion conflicts with the aims expressed in the gas access code or interferes with the role of the regulator. As outlined earlier, the Opposition has made a submission to the regulator setting out the reasons for higher tariffs, without specifying what they should be. The Leader of the Opposition and former Minister for Energy has expressed the view that the tariffs proposed in the draft decision are so low as to be unsustainable. That appears to be the case. We would not suggest for one moment that we, either as an Opposition, a Government or a Parliament, determine precisely what those tariffs should be, but it appears there needs to be a change. Part (b) of the amendment calls for higher tariffs to be established so that the pipeline will be commercially viable in future and adequate opportunities will be available for further investment in the development of Western Australia. That is an appropriate aim, and we are of the view that this Parliament could support that without unduly interfering with the role of the regulator. After all, this Parliament is the highest policy-making body in the State, and it is appropriate that it express its intent in general terms as specified in this motion. Therefore, we do not support the amendment.

MR R.N. SWEETMAN (Ningaloo) [7.09 pm]: I want to complete the remarks I was making before the amendment was put. I was quoting the Minister for Energy in the previous Government during a debate that took place on 14 June 2000. The reference was to the effect that the sales steering committee had to be sure that the tariffs submitted effectively matched the price, and that the successful company would be able to service the debt with the tariff that was submitted. That required a policy initiative - the setting of regulation. That decision was taken by the minister and the Government of the day. It does not appear that the policy of the Government was formally imposed or attached to the sales steering committee documentation provided to bidders. From past experience, it is my understanding that it is not necessary to have a written contract for a contract to be in place. This is the thrust that the legal argument will take in future. The court will ultimately have to determine whether the contract was explicit or implicit.

Mr E.S. Ripper: The Supreme Court did not find there was a regulatory compact, nor did it quash the draft decision of the regulator; it clarified the law.

Mr R.N. SWEETMAN: I thank the minister for the interjection. It is interesting to hear the minister say that. The Supreme Court did not quash the decision. I will read out the reason for that. Submissions were put to the court by Epic Energy. It was anxious about the inordinate amount of time this decision was taking. As the opposition spokesperson quoted earlier, Justice Parker said -

> Economic theory aside, this investment has social, political and public interest dimensions and it is not a surprising circumstance that the Act and the Code should seek to accommodate them.

It gives further explanation later, although it does not quote Justice Parker again. It states -

> *The Draft Decision was not quashed because* Justice Parker said even though there was enough reason to quash the decision significant time had already passed and to ensure that the process was not held up any further the Supreme Court believed the Regulator was given enough guidance to go away and make the necessary adjustments to the Draft Decision to reach his Final Decision.

The court clearly found that he had erred significantly, sufficient to quash his decision and say that it was so off the planet that he should go away and start again. The court did not do that because it was cognisant of the time that had elapsed and that it was a matter of immense political, social and public interest. Accordingly, the judges found in favour of Epic Energy. It was not appropriate for the minister to say what he said in this instance.

I understand that all bidders provided non-conforming bids. The bids should be considered in context. Much has been made of the fact that there was approximately a half-a-billion-dollar difference between the three tenders. Some have said that the difference between the successful bidder and the second bidder was $600 000. I understand that the third bid was about half a billion dollars lower than Epic Energy's bid, and the next bid was around $2 billion, which made it about $400 million lower than Epic's bid. I also understand that all three bidders made non-conforming bids on the basis that they submitted not only a lower tariff but also a lower price for the pipeline. I am sure that in the event not all the information to which the minister referred earlier is made

available to whomever requested it, an administrator will have ready access to it regardless of whether third parties comply with that process. He will have the right to secure the information in the interests of returning the maximum amount to the creditors of the pipeline.

I encourage the minister to do whatever he can to resolve this matter. It is a matter of enormous public significance that will doubtless impact on companies' decisions to invest or expand their business in this State. It will have particular consequences for international investors. We must send a clear message to those people that Western Australia is still a safe and good place in which to invest.

After tonight I will do some work on what the State Government's position could be in an emergency situation if Epic were to go into administration and an administrator were appointed, and what the State could do to expand capacity or guarantee supplies. My advice is that the minister should get his mind around that potential issue that he and his Government must confront. Based on my observations today, the minister will need some very good advice. On the face of it at least, the minister will need much better advice than he has been given to date on this very important matter.

The ACTING SPEAKER (Mr A.D. McRae): The question is that the words to be deleted be deleted. Those of that opinion say aye; to the contrary no. I think the ayes have it.

Several members interjected.

The ACTING SPEAKER: Member for Dawesville, on some particular points of debate in the past couple of days it has been made very clear that openly canvassing the Speaker's ruling will not be accepted. If in the call of a vote a member is not sure whether the Speaker has it right, of course the member has the right to call for a division. I gave that opportunity on two occasions and did not hear that call, so I called the vote in the way that I believed it was being read by the House.

Amendment thus passed.

Point of Order

Mr A.D. MARSHALL: Can I raise a point of order?

The ACTING SPEAKER: There is no point of order.

Mr A.D. MARSHALL: Can I make an observation on a point of protocol?

The ACTING SPEAKER: Yes, member for Dawesville.

Mr A.D. MARSHALL: As a former sporting commentator on television, we were always taught never to think, because once people think there is a discrepancy. People should either say yes, no or they know. That is why I was a little concerned about the word "think".

The ACTING SPEAKER: I am sure the member has been in this place longer than I. It is standard practice for the Speaker to say "I believe" or "I think" the ayes have it, indicating which way the Speaker intends to call the matter. It then gives members the opportunity to call for a division. There is no point of order.

Motion, as Amended

Question put and passed.