

**GAS PIPELINES ACCESS (WESTERN AUSTRALIA) (REVIEWS) AMENDMENT BILL 2003**

*Declaration as Urgent*

On motion by Mr E.S. Ripper (Minister for Energy), resolved -

That the Gas Pipelines Access (Western Australia) (Reviews) Amendment Bill 2003 be considered an urgent Bill.

*Second Reading*

Resumed from 4 June.

**MR J.H.D. DAY** (Darling Range) [8.57 pm]: The Opposition supports this Bill. It seems to be non-contentious legislation, the purpose of which is to make amendments to the Gas Pipelines Access (Western Australia) Act 1998 and, in particular, to make some changes to the national third party access code for natural gas pipeline systems, which is incorporated within that Act. The code was put in place in 1998 following an agreement in 1997 by the Council of Australian Governments, which followed a previous in-principle decision in about 1994 to set up, on a national basis, a system of arrangements for access by third parties to transport gas in pipeline systems in Australia. The original legislation came into effect when the previous Government was in office. The Opposition supports the intention of the legislation and the changes proposed by this Bill. The changes to the code have been adequately outlined in the second reading speech and the explanatory memorandum. In brief, the Bill provides for the Code Registrar to be notified of recommendations or decisions on the classification of pipelines by the National Competition Council or ministers. That appears to be a sensible, modest change. Secondly, the Bill seeks to clarify the time in which an application for a review of the regulator's decision can be provided. It will be amended to 14 days after the decision is placed on the public register. There is also clarification about who can make submissions about draft access arrangement decisions by the regulator. The Bill also provides that the regulator can use all necessary powers to obtain information and documents that he requires to undertake his duties and responsibilities under the Bill. The Opposition supports the Bill, which has the effect of clarifying some of the previous intentions of the gas pipelines access legislation.

Probably the main gas access issue in recent times has been the discussions about access to and tariff arrangements for the Dampier to Bunbury natural gas pipeline. That matter has been the subject of quite a lot of debate in this House over the past 12 months or so and quite a lot of media discussion. The regulator's final decision was brought down about four weeks ago. The final decision was less clear initially than was the previous draft decision. However, it put in place more satisfactory arrangements for the operator of the pipeline, Epic Energy. I am not sure whether Epic Energy has reached a final position at this stage. It may be that it will appeal the regulator's decision, or it may be that following an extensive analysis of that decision it has decided to accept it. The minister may like to comment on what he considers to be the current situation.

Mr E.S. Ripper: Do you think it would be wise of me to accept that invitation?

Mr J.H.D. DAY: Absolutely. This is the Parliament. An informed comment from the minister responsible for the issue, the Deputy Premier and Treasurer of the State and Minister for Energy, would be a very sensible move. I am not saying the minister necessarily needs to say something that he might regret later, but it would be appropriate for the minister to make some informed comment about what he thinks are the implications of the decision.

Mr J.L. Bradshaw: He should have a position on it.

Mr J.H.D. DAY: Absolutely. The minister or the Government should have some knowledge and expectation of the impacts of the decision, whether they be good, bad or otherwise. I make the comment also that subsequent to his final decision, the regulator advised that although the tariff that would be able to be charged would in the end be determined within particular parameters by Epic Energy, he expected that the average tariff for the transport of gas from Dampier to the Perth-Bunbury region would be 95c per gigajoule as at 1 January 2000 and \$1.01 per gigajoule as at 1 January 2003. That is less than Epic Energy was seeking, but it is substantially more than Epic Energy was advised in the regulator's draft decision in 2001 it would be able to charge. I am interested to know what the Minister for Energy makes of the final decision. As I said, it appears that Epic Energy's situation has been much improved by the regulator's final decision, which is still open to some discussion and debate, of course. I would like to know what the Minister for Energy has to say on that issue.

It would also be desirable for the Minister for Energy to make some comment on another related issue, which is the implications for the expansion of the Dampier to Bunbury natural gas pipeline. A comment was made in the business pages of *The West Australian* last Saturday by the business editor, Paul Armstrong, with regard to the proposed Cockburn B power plant -

Western Power has also been unable to sign-off on Cockburn because it cannot secure the gas supplies needed to fuel it.

This is due to the fact that the Dampier-to-Bunbury gas pipeline is operating at full capacity and owner Epic Energy is refusing to expand it until the gas regulator allows it to charge a higher tariff.

The lack of capacity is also threatening to make the tender process for a major baseload power station, worth up to \$700 million, into a farce because any gas-fired proposal will depend on Epic agreeing to expand the line.

This is a very important issue for the future provision of power supplies in the south west of Western Australia to allow industry to expand and to provide secure and reliable power supplies. There is supposed to be a competitive tendering process in which a number of different private sector organisations submit proposals to establish a new base load power station of around 300 or 330 megawatts, as well as other mid-merit power generation capacity that is intended to be installed. It would be desirable for the Minister for Energy to make some comment in his response on whether he agrees or disagrees with the statements in that article. It may be that he disagrees with them and has good reasons for doing so, but if that is the case he should explain why he disagrees. Although this issue is not related specifically to the Bill, it is a very important issue for the provision of gas supplies to the south west of the State and for the future generation of electricity in Western Australia, as well as the expansion of industry. I encourage the minister to make some comments on these issues in his response. The Opposition supports the Bill, as I indicated at the outset.

**MR R.N. SWEETMAN** (Ningaloo) [9.06 pm]: I wish to make some comments on the Gas Pipelines Access (Western Australia) (Reviews) Amendment Bill to complement what the opposition spokesperson on energy has stated. The debate on this Bill gives members the opportunity to comment on matters that are directly linked to this legislation. I am on record in this place previously as saying that I am uncomfortable with this form of regulation. Perhaps this debate will also give the Treasurer the opportunity to explain to the Parliament or perhaps come clean on the appointment of the Independent Gas Pipelines Access Regulator for a further five years. It is interesting that in either late April or early May an article in *The Australian Financial Review* by Mark Drummond said that the Government had renewed the contract of the regulator for another five years. To my knowledge there was no media release or public statement from the minister on that matter. Coincidentally at about the same time the regulator stopped signing his letters as acting regulator and started signing them as regulator, so I assume that the minister and the regulator either went up in the same lift or ate in the same cafeteria or drank at the same bar on a Friday night and some sort of deal was done -

Mr E.S. Ripper: I can confirm that the regulator has been appointed.

Mr R.N. SWEETMAN: Okay. The Treasurer has provided that information by way of interjection, and it is very handy that the Parliament now knows that. The Economic Regulation Authority Bill is now in the upper House, and it looks as though it may have hit heavy weather and it may be some time before it sees the light of day.

Mr E.S. Ripper: What attitude will the Liberal Party be taking to the ERA legislation? If the Liberal Party will support the ERA legislation we can put it through tomorrow.

Mr R.N. SWEETMAN: I made the point when that legislation was in this House that I did not agree with it. I exercised my right to vote against it on the voices, but to give my party some comfort I said I would not cross the floor on that issue. However, I am not comfortable with that form of legislation.

Mr E.S. Ripper: We should have called for a division!

Mr R.N. SWEETMAN: We cannot divide on one voice, particularly if we have already voted for the second reading.

Although I had concerns about the ERA Bill when it passed through the Assembly, subsequently that the ruling on Epic Energy by Dr Ken Michael, the Independent Gas Pipelines Access Regulator, has heightened my concerns and the concerns of a lot of other reasonable and fair-minded people in the Western Australian community about what the Office of Gas Access Regulation represents. I know this Bill is only housekeeping legislation and an extension of the intergovernmental agreement. South Australia's legislation has been passed and there was a time frame for other jurisdictions to get their legislation in order. I understand that is the intention of this legislation. However, this presents members with an opportunity to make some points about the extended regulation and the rationale or the very dry, prescriptive economic formula used by Dr Ken Michael and the Office of Gas Access Regulation supporting him. That must be reconsidered to the point at which an item should be listed for discussion at a Council of Australian Governments meeting, when the heads of government can meet and work out whether this is in the spirit of the original competition principles agreement, which everybody signed off on.

Mr E.S. Ripper: The jurisdictions have agreed that there ought to be an independent review of the gas access code and it has been agreed that that will be conducted by the Commonwealth's Productivity Commission.

Mr R.N. SWEETMAN: I understand that taxation issues are a priority at the moment. I think that review is scheduled to occur in nine or 10 months, or is that when the Productivity Commission is due to make a ruling?

Mr E.S. Ripper: I imagine that the review will get under way soon but it is a matter for the Commonwealth Treasurer. Basically, there is agreement that the Commonwealth's Productivity Commission should conduct a review on all aspects related to the code, not just taxation matters.

Mr R.N. SWEETMAN: We hope that the Productivity Commission's review brings about a more reasonable and light-handed form of regulation, which we believed would be the case when this legislation came through the Parliament with regard to AlintaGas, but particularly with regard to the gas access Bill that set up the Office of Gas Access Regulation and the appointment of a regulator. Given the circumstances in this State, it was envisaged then that we would have a light-handed form of regulation. That is necessary with an immature market in a State that still needs an enormous amount of investment capital. We have now ended up with something that is closer to the Australian Competition and Consumer Commission model. I have consistently said that I do not think that Epic Energy could have done worse under a ruling by Professor Allan Fels compared with what ultimately happened under Dr Ken Michael, even though Epic disputes that. Epic thinks it has done slightly better than it might have done under Allan Fels. I do not know what rationale applies to that -

Mr E.S. Ripper: Fels would have made an assessment based on the same code, so you would hope that his decision would have been close to the decision made by the WA regulator because they are supposed to reach similar decisions.

Mr R.N. SWEETMAN: I do not want to go into those rulings but I agree with a lot of Paul Armstrong's comments about the regulator's ruling. It is certainly of a bizarre nature, in that the draft ruling came in at 75c and 85c -

Mr E.S. Ripper: I have been worried about where Paul Armstrong has been getting his ideas from.

Mr R.N. SWEETMAN: Just as I am worried about where Mark Drummond is getting his information from. That is quid pro quo; one for the minister. I have been hearing snide comments in the corridors about Mark Drummond's information, perhaps from the minister, his office or the Office of Gas Access Regulation.

Mr E.S. Ripper: He is a fine journalist.

Mr J.H.D. Day: What about Mr Armstrong.

Mr E.S. Ripper: He is not as good in my view.

Mr C.J. Barnett: He might be editor of *The West Australian* soon so we had better be careful.

Mr R.N. SWEETMAN: We can only hope.

Not only are Western Australians making a point about problems that need to be overcome with the Office of Gas Access Regulation. I have spoken to Dennis O'Neill, Chief Executive Officer of the Australian Council for Infrastructure Development, who said that the council advocates a price monitoring situation rather than regulation. That would be an office of gas access regulation acting in a monitoring capacity rather than in the heavy-handed and brutal way in which the ACCC and the Western Australian Office of Gas Access Regulation have been functioning to date. I am not sure that that is the ideal model, but we need a better model than that we have at the moment.

I have been provided with the opportunity to make further comments about Dr Ken Michael and the Office of Gas Access Regulation and the Epic ruling. I know that this deviates from the legislation before the House. However, as an opposition member I support the changes to the legislation but with some reservations because, again, we are dealing with regulation. We were told that this will provide more impediments and perhaps more uncertainty to investors who wish to take part in the investment opportunities that still exist, despite this Labor Government in the State of Western Australia.

**MR J.L. BRADSHAW** (Murray-Wellington) [9.16 pm]: I will also draw a longbow in debate on this legislation because some of the issues with the gas pipeline affect my electorate of Murray-Wellington.

One problem that has arisen in recent times relates to the widening of the corridor for the gas pipeline from Dampier to Bunbury. When the legislation went through a few years ago - I think it went through when we were in Government - I reluctantly supported it but I could not work out why, in such a short time, the corridor had to be expanded from 30 to 100 metres. Anyway, that happened, but we were under the impression that the pipeline would go along the same corridor. Now, lo and behold, a few weeks ago people in the shires of Waroona and Harvey received a letter stating that there would be a deviation of the corridor. It said that a new corridor was

being created and that it would not run from north of Waroona to Kemerton along the old route. The minister should be aware of this because it is disgraceful. As the minister knows, over the past 20 to 50 years the construction of powerlines and the laying of water pipelines and gas pipelines have been disruptive to many farms. Now that a new gas pipeline will be passing through a different area, the minister should seriously consider why there will be a deviation from the old corridor running from north of Waroona to the south, because it will be destructive to farms. It will divide them and create problems if a farmer wants to do certain things on his property. It will also lower the value of the property. I know farmers will get some compensation but it is not the same thing. I would like the minister to make sure that the old corridor plan is used. Even though wetlands are involved under the old plan, I do not believe the gas pipeline will destroy them. If I thought it would, I would have a different opinion. Apparently that is the reason for putting in a new corridor through the shires of Waroona and Harvey. This is an important issue.

The other issue is settling down the price for the use of the pipeline. Proposals are only at an embryonic stage at the moment, but they will work out the costs etc of building a gas fired power station at Kemerton. If there is no gas available or no capacity in the current pipeline to carry the gas, then that development will be in jeopardy. Somebody said there was talk about a gas fired power station at Kwinana, but if there is no capacity that station will not be built either. It is important that the minister ensure that this price is settled. What staggers me is the time frame it has taken to come up with a price and the uncertainty of those poor people who own the gas pipeline. It is unfair and I expected the Government to push the regulator a little harder to make sure that things were put into place much sooner. If he cannot do the job, kick him out and put someone else in that can do it. It is quite disgraceful to now be told that his contract has been renewed for five years. He was given the job of setting a price about two or three years ago. I find it difficult to understand why it has taken that long for him to come up with an access price to that gas pipeline, and now his contract has been renewed for another five years! That is very strange. The current price is unsatisfactory. My information after the price was released, and according to the way I read the Epic memo, was that Epic did not know what price it would be paid for access to that pipeline. If the company does not understand what it will be paid, how can it work on putting in more infrastructure to increase the amount of gas brought from the north west? It is a pity the minister is not taking any notice, because I would like some answers on this issue. The minister is holding up the chance of new infrastructure being provided in Western Australia, and he does not seem to be worried about the time the regulator is taking to put things in place, and that the regulator has come up with a price arrangement under which Epic Energy does not even know what it will be paid.

**MR E.S. RIPPER** (Belmont - Minister for Energy) [9.20 pm]: I thank members of the Opposition for their comments and support of this legislation. There was not much debate on the nature of the legislation, which is not surprising, since it puts into place nationally agreed changes to the gas pipelines law. In other States that is done by the South Australian Parliament passing the relevant legislation, which is then applied in a template fashion by the other States to pre-existing laws. In this State, because of the way in which the previous coalition Government approached this issue, there is a separate Western Australian law, which needs to be amended every time there is a national change, so that our law is consistent with national law, pursuant to the national agreement we have reached.

Mr C.J. Barnett: One of the reasons the separate legislation is so important does not relate to States' rights. Gas pipelines are linked to major resource developments in this State, and if the Government does not retain some control here it will not be able to negotiate major projects in the future. Another layer of federal Government agencies will become involved, which will apply to LNG, gas processing and mineral processing projects. That is one reason that, when I was minister, it was kept as a state administration.

Mr E.S. RIPPER: I am dealing with some similar issues now. When I go to meetings of the Ministerial Council on Energy, there is a grave risk that the entire meeting will be taken up with matters relating to the national electricity market. Although I find those matters of interest, it is only academic interest. There is a big push from the Commonwealth in the ministerial council for a national energy regulator, because there are at present 16 different regulators in the national electricity market, and it is believed that perceptions of regulatory confusion and risk are hampering billions of dollars worth of investment in that national electricity market.

Mr C.J. Barnett: There is an argument for the national grid regulator.

Mr E.S. RIPPER: I can see an argument for the national electricity market having a national regulator, and I am quite happy to cooperate with other jurisdictions in their establishment of a national energy regulator. I am concerned that, once there is a national energy regulator, people will want it to regulate Western Australian energy markets.

Mr C.J. Barnett: It does not have to be a national regulator. It can be a single regulator for the integrated grid on the east coast. That is all, because there will be stand-alone energy issues on the east coast that should not necessarily come under a national regulator.

Mr E.S. RIPPER: It can be seen how it would make sense, but the Commonwealth calls it a national energy regulator, and then starts talking about when the Northern Territory and Western Australia will become involved. My current position is that that will happen when we are connected to the national grid, which might mean never, although one can imagine gas connection within half a dozen years, depending on the private sector.

I will return to the legislation before the House. Various members have asked me to comment on the decision of the gas access regulator about the Dampier to Bunbury natural gas pipeline. I believe the regulator has offered briefings to members of Parliament. Can members confirm whether they have been offered such briefings?

Mr J.H.D. Day: I am not aware of any specific offer, but on the other hand I have not sought a briefing. I expect that if it were sought, it would probably be provided, but if he would like to come and proactively provide a briefing it would be wonderful.

Mr E.S. RIPPER: It would be useful if the gas access regulator gave a briefing to any interested member of Parliament on his decision, answering questions in such a way that would help members to understand his decision.

Mr J.L. Bradshaw: He should provide such a briefing to Epic Energy as well, because the company cannot understand the decision.

Mr E.S. RIPPER: We have not heard too many comments to that effect from Epic Energy in recent weeks. Epic Energy is due to respond to the regulator's final decision next month. Perhaps the Parliament should reserve its judgment on Epic's position on this matter until we see the formal response to the regulator next month.

Mr J.L. Bradshaw: I did see Epic's response, because it wrote to me, and every other member of Parliament, saying that it could not understand what the regulator was doing.

Mr E.S. RIPPER: That was the sort of comment Epic Energy was making in the first week after the regulator's decision. I have not seen any comments like that from Epic in recent weeks. Next month Epic will put a formal response in to the regulator and at that stage its position will be clearer, and we can all be better placed to make judgments on the impact of the regulator's decision.

Mr J.H.D. Day: There is no doubt that the more recent decision is much better from Epic's point of view. The question is whether it is sufficiently close to what the company was seeking for the situation to be viable in the long term. The minister must have had an assessment done, and must be able to make some informed comment about how he sees the situation.

Mr E.S. RIPPER: I have had advice on this matter from the Office of Energy. I do not have that advice here with me. I have discussed with the Leader of the House the possibility of my making a ministerial statement later in the week on the regulator's decision, perhaps longer than a four-minute statement. This would give members the opportunity of having the benefit of the advice I have received. Would that satisfy the member's request?

Mr R.N. Sweetman: Partially. However, the minister cannot be happy with the fact that, on the day a 168-page ruling was issued, the regulator issued a one-and-a-half-page summary of his decision. It was just weird for someone in that position to stoop to that, saying that a page and a half gave the key facets of a decision.

Mr E.S. RIPPER: Regulators have regulatory expertise. They are not necessarily experts on communication strategies or public relation matters. I have said publicly that, had a politician been managing this matter, the regulator's decision would not have been released at 5.00 pm on a Friday. When financial information is released at that time, it tends to send the wrong signal to financial journalists.

Mr C.J. Barnett: Did your office not have the decision at noon?

Mr E.S. RIPPER: The regulator provided an embargoed copy of the decision to my office and to Epic Energy three hours before he released his decision. It was to have been provided to my office at noon, but in fact it was not provided until after 2.00 pm. Three hours later the decision was released. Epic Energy and my officer were treated in the same way. We were given an embargoed copy, on condition that we did not discuss it outside of a small circle of advisers.

Mr J.L. Bradshaw: The new corridor that will pass through my electorate, swinging away from the old corridor, is very important to farmers in my electorate, because putting a pipeline through a farm has a devastating effect. I do not believe it is necessary; they should be able to go down the old corridor. I know some wetlands are involved.

Mr E.S. RIPPER: That issue can be raised in a number of other ways. I do not have advice on it at the moment. The member can place a question on notice, or raise a grievance, or simply talk to me privately. He should write me a letter and I will get him some advice on that matter.

Although it is interesting for me as Minister for Energy to stand and answer questions on any energy-related matter in my portfolio, the Leader of the House wants me to get on with the legislative program. There is nothing in the comments made by various speakers, or in this legislation, that requires further debate. I thank the Opposition for its support of this set of national amendments to the gas pipelines law.

Question put and passed.

Bill read a second time, proceeded through remaining stages without debate, and passed.