



**REPORT OF THE
STANDING COMMITTEE ON ESTIMATES AND FINANCIAL
OPERATIONS**

IN RELATION TO THE

**SUMMONS TO PRODUCE DOCUMENTS
ISSUED PURSUANT TO SECTION 5 OF THE
*PARLIAMENTARY PRIVILEGES ACT 1891***

Presented by the Hon Mark Nevill (Chairman)

STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

The Standing Committee was established on December 21 1989 with the following terms of reference:

1. There is hereby appointed a Standing Committee to be known as the *Estimates and Financial Operations Committee*.
2. The committee consists of 5 members.
3. The functions of the Committee are to consider and report on:
 - (a) the estimates of expenditure laid before the Council each year; and
 - (b) any matter relating to the financial administration of the State.
4. The Committee shall report on the estimates referred under clause 3 by or within one sitting day of the day on which the second reading of the *Appropriation (Consolidated Revenue Fund) Bill* is moved.
5. For the purposes of clause 3(a), the House may appoint not more than 6 members at any stage of its examination.
6. A reference in clause 3 to "estimates of expenditure" includes continuing appropriations, however expressed, that do not require annual appropriations.
7. The Committee may initiate investigations under clause 3(b) without prejudice to the right of the Council to refer any such matter.

Members of the Committee:

Hon Mark Nevill MLC (Chairman)
Hon Muriel Patterson MLC (Deputy Chair)
Hon Edmund Dermer MLC
Hon Simon O'Brien MLC
Hon Bob Thomas MLC

Staff of the Committee:

Mr Michael Smyth (Advisory/Research Officer)
Mr Jason Agar (Committee Clerk)

Address:

Parliament House, Perth WA 6000, Telephone 222 7222

ISBN 0 7309 8907 0

Report of the Legislative Council

Estimates and Financial Operations Committee

in relation to the

Summons to produce documents issued pursuant to section 5 of the *Parliamentary Privileges Act 1891*

1. Introduction

- 1.1 The Standing Committee on Estimates and Financial Operations (“**Committee**”) was first appointed on 21 December 1989. Under its Terms of Reference, the Committee is required, *inter alia*, to consider and report on any matter relating to the financial administration of the State.
- 1.2 At its meeting on 12 November 1997, the Committee resolved to commence an inquiry into whether the Goldfields Gas Pipeline Tariffs, as determined by the *Goldfields Gas Pipeline Agreement Act 1994* are “fair and reasonable”.
- 1.3 The *Goldfields Gas Pipeline Agreement Act 1994* relevantly provides as follows:

“Tariffs

- 22(1) Contracts for transmission of natural gas and associated services negotiated by the Joint Venturers with Third Parties **must incorporate tariffs that are fair and reasonable and consistent with the tariff setting principles approved by the Minister** under this Agreement.” (emphasis added)

“Accounting principles

- 23(1) The Joint Venturers shall maintain such records (including a separate set of accounts in accordance with accounting procedures to be agreed between the Minister and the Joint Venturers) in respect of the establishment, operation and use of the Pipeline **as may be required to show to the Minister’s reasonable satisfaction that transmission of gas through the Pipeline is available on a non-discriminatory basis at fair and reasonable prices.** The records shall include, *inter alia* -
- (a) information as to the nature and ownership of gas transmitted through the Pipeline; and
- (b) costs of and revenue from the transmission of gas through the Pipeline.” (Emphasis added)

- 1.4 At its meeting on 26 November 1997, the Committee resolved to:
- (a) write to the Minister for Energy requesting:
 - (i) a copy of the published tariffs;
 - (ii) the basis of the initial tariff setting principles that apply to Third Parties and any changes to those principles;
 - (iii) the final construction cost of the Goldfields Gas Pipeline;
 - (iv) the expected life of the Goldfields Gas Transmission Pipeline; and
 - (v) any relevant information required to calculate tariffs;
 - (b) place an advertisement in the *West Australian* and *Kalgoorlie Miner* newspapers respectively, informing the public of the inquiry and inviting public submissions; and
 - (c) write to the Goldfields Gas Transmission and potential users of the Pipeline (including AlintaGas, ICI, Western Power etc), informing them of the inquiry and enclosing a copy of the advertisement.

2. Sequence of Events

- 2.1 On 27 February 1998 the Committee invited Dr Peter Murphy, Director North and Inland Division, Department of Resources Development to appear before the Committee to give evidence in relation to the Goldfields Gas Transmission Tariffs inquiry.
- 2.2 On Wednesday 4 March 1998 Dr Peter Murphy gave evidence to the Committee. An extract from the transcript of evidence being exchanges between the Chairman and Dr Murphy follows:

“The CHAIRMAN: Which consultants are the department using?

Dr MURPHY: We are using Bird Cameron on the capital cost issue, and McLennan Magasanik to advise on the tariff setting principles and the fairness and reasonableness of the tariffs.” (At page 31 of the transcript of evidence);

“The CHAIRMAN: Was a review of the tariffs conducted to determine whether they were fair and reasonable, as required by the Act?

Dr MURPHY: There has been no review up to now to determine whether the tariffs are fair and reasonable or whether they comply with tariff setting principles. We have initiated a review as of now. Therefore, at this stage, we could not comment on it one way or the other.” (At pages 31-32 of the transcript of evidence);

“The CHAIRMAN: What information has GGT provided to your department to ensure the proposed new tariffs are in accordance with the GGT Act?”

Dr MURPHY: At this time they have provided information on their accounting procedures under clause 23 of the Act. We also expect to see some information about the modelling that lies behind the existing discount tariff. When we receive that information that will be passed to our consultant, who will review it to determine consistency with the tariff setting principles.” (At page 35 of the transcript of evidence)

“The CHAIRMAN: Could you provide the Committee with all the evidence that you have been pressing the pipeline owners to expedite the review of their tariffs? You say that you have been doing that. Could you present that information to the Committee?”

Dr MURPHY: We can certainly indicate what written information we have had with them. The pressure has been through verbal and telephone calls as well; we have not recorded all of those but we can give you written evidence.” (At page 36 of the transcript of evidence)

- 2.3 At its meeting on Wednesday 26 August 1998 the Committee resolved to write to Dr Peter Murphy at the Department of Resources Development requesting any outstanding documents which had been requested but not provided to the Committee, including the *Bird Cameron* and *McLennan Magasanik* reports. The Committee gave consideration to issuing a summons should Dr Murphy fail to provide the reports requested. Attached and marked Annexure "A" is a copy of an extract from the minutes of the Committee's meeting of Wednesday 26 August 1998.
- 2.4 On 1 September 1998 the Committee wrote to Dr Peter Murphy at the Department of Resources Development requesting copies of the reports prepared by the consultants advising the Department in relation to capital costs and tariff setting principles and seeking a reply by 15 September 1998. Dr Peter Murphy stated in his evidence to the Committee on 4 March 1998 that the consultants advising the Department on capital costs and tariff setting principles are *Bird Cameron* and *McLennan Magasanik* respectively. Attached and marked Annexure "B" is a copy of the letter from the Committee to Dr Peter Murphy dated 1 September 1998.
- 2.5 On 9 September 1998, Mr Peter Kioses from the Department of Resources Development responded to the Committee's letter of 1 September 1998 in which the Committee requests copies of the *Bird Cameron* and *McLennan Magasanik* reports. On behalf of the Department, Mr Kioses sought a 10 day extension of time until 25 September 1998 in which to reply to the Committee's request to enable the contents of the requested documents to be reviewed for confidentiality in conjunction with the seeking of advice from the Crown Solicitor's Office. Attached and marked Annexure "C" is a copy of the facsimile dated 9 September 1998 from Mr Peter Kioses to the Committee.

- 2.6 The Chairman of the Committee orally agreed to the 10 day extension of time sought by the Department and at its meeting on Wednesday 9 September 1998 the Committee ratified the decision of the Chairman allowing the extension of time. The Committee resolved that the Chairman be authorised to issue a summons to Dr Murphy to produce to the *Bird Cameron* and *McLennan Magasanik* reports should the Department of Resource Development decline to provide the reports by 25 September 1998. Attached and marked Annexure "D" is a copy of an extract from the minutes of the Committee's meeting of Wednesday 9 September 1998.
- 2.7 On Friday 25 September 1998 at 5.07pm the Committee received a facsimile from Dr Peter Murphy of the Department of Resources Development in which Dr Peter Murphy acting in his capacity as Director - North and Inland Division of the Department, declines to provide a copy of the *Bird Cameron* report and requests the Committee not to require production of the *McLennan Magasanik Report* until after completion of the impending tariff negotiations with Joint Venturers. Attached and marked Annexure "E" is a copy of the facsimile dated 25 September 1998 from Dr Peter Murphy to the Committee.
- 2.8 On Tuesday 29 September 1998 the Committee in accordance with its resolution on 9 September 1998 and through its Chairman, authorized the Clerk of the Legislative Council to issue a summons to produce documents pursuant to section 5 of the *Parliamentary Privileges Act 1891*. The summons was issued to Dr Peter Murphy, Director - North and Inland Division of the Department of Resources Development and served on Dr Murphy by Mr Jason Agar, Committee Clerk on the morning of Tuesday 29 September 1998. The summons required Dr Murphy to produce to the Clerk of the Legislative Council by not later than 4.30pm on 29 September 1998 the documents described as the *Bird Cameron* report and *McLennan Magasanik* report. Attached and marked Annexure "F" is a copy of the Summons to Produce Documents dated 29 September 1998.
- 2.9 On Tuesday 29 September 1998 at 5.39pm the Clerk of the Legislative Council received a facsimile from the Principal Policy Advisor to the Minister for Resources Development and Energy which enclosed a copy of a letter dated 29 September 1998 from the Minister of Resources Development to Dr Peter Murphy referring to the "Summons to Produce Documents" served on Dr Murphy and directing Dr Murphy and all officers of the Department of Resources Development not to release the *Bird Cameron* report and *McLennan Magasanik* report to the Committee. Attached and marked Annexure "G" is a copy of the facsimile and enclosed letter received by the Clerk of the Legislative Council on 29 September 1998.
- 2.10 On Thursday 8 October 1998 the Clerk of the Legislative Council received a facsimile from Dr Peter Murphy, Director - North and Inland Division, Department of Resources Development in response to the Summons to Produce Documents to which is attached a copy of the abovementioned letter from the Minister of Resource Development dated 29 September 1998. In the facsimile Dr Murphy states that:

"I now formally indicate in response to the Summons to Produce Documents that I have received a direction from the Minister of Resources Development instructing me not to release the documents in question."

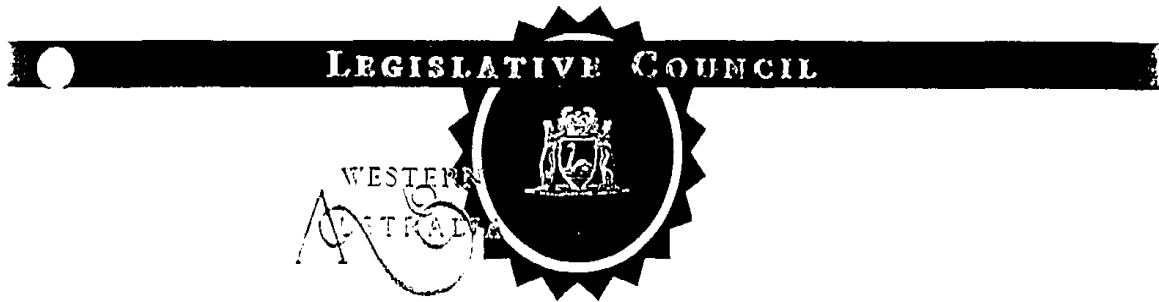
Attached and marked Annexure "H" is a copy of the facsimile dated 8 October 1998 and its attachment.

2.11 The Committee reports this matter to the Legislative Council.

**HON MARK NEVILL MLC
(CHAIRMAN)**

14 OCTOBER 1998

"Annexure A"



**STANDING COMMITTEE ON ESTIMATES
AND FINANCIAL OPERATIONS**

**MINUTES OF THE MEETING HELD ON WEDNESDAY, 26 AUGUST 1998 AT
9:10AM IN COMMITTEE ROOM 3, LEGISLATIVE COUNCIL
COMMITTEE OFFICE**

Present: Hons Mark Nevill, Ed Dermer, Muriel Patterson,
Bob Thomas and Simon O'Brien MLCs

Staff: Ms Penny Griffiths, Advisory/Research Officer (ARO)
Mr Jason Agar, Committee Clerk (CC)

In Attendance: Mr Michael Smyth (ARO)

8. GOLDFIELDS GAS PIPELINE TARIFFS

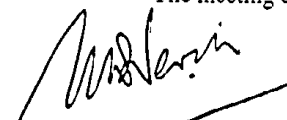
Mr Nevill moved that the Committee write to Dr Peter Murphy, Department of Resources Development, and ask for any outstanding documents which had not been previously provided to the Committee. Mr Nevill said that two consultants had written reports on the issue and if Dr Murphy did not provide them then the Committee will need to consider issuing a summons.

CARRIED

9. NEXT MEETING

The next meeting to be held on Wednesday, 9 September 1998 at 9:00am

The meeting closed at 12:50pm.


CHAIRMAN


COMMITTEE CLERK

"Annexure B"

LEGISLATIVE COUNCIL



STANDING COMMITTEE ON ESTIMATES AND FINANCIAL
OPERATIONS

To facsimile: 9327 5500

1 September 1998

Dr Peter Murphy
Manager Northern and Inland Region
Department of Regional Development
170 St George's Terrace
PERTH WA 6000



Dear Dr Murphy

Goldfields Gas Transmission Tariffs

I refer to previous correspondence.

In your evidence to the Committee on 4 March 1998, you mentioned that *Bird Cameron* and *McLennan Magasanik* are advising the Department on capital costs and tariff setting principles respectively. In this regard, the Committee requests the reports which have been provided to the Department by the two consultant groups.

The Committee looks forward to your reply no later than 15 September 1998.

If you have any queries, please telephone me on 9222 7409 or the Chairman, Hon Mark Nevill, on mobile 041 990 3424.

Yours sincerely

A handwritten signature in black ink, appearing to read "Penny Griffiths".

Penny Griffiths
Advisory/Research Officer

"Annexure C"



DEPARTMENT OF
RESOURCES
DEVELOPMENT

FACSIMILE MESSAGE

169-170 St Georges Terrace
Perth, Western Australia

Postal Address
PO Box 7606, Cloisters Square
Perth, Western Australia 6850

Telephone (08) 9327 5555
Fax (08) 9327 5500

To: PENNY GRIFFITHS
ADVISORY/RESEARCH OFFICER

Company: STANDING COMMITTEE ON ESTIMATES AND FINANCIAL
OPERATIONS

Fax: 9222 78045

From: PETER KIOSES
Title: MANAGER PROJECTS
Fax: 61 8 9327 5500
DRD File No: R0003/98v3
Pages: 1 (including this sheet)
Subject: GOLDFIELDS GAS TARIFFS

Dear Ms Griffiths

I refer to your facsimile of 1 September 1998 advising that the Standing Committee has requested copies of the Bird Cameron and McLennan Magazanik reports.

Your request has been noted and we are presently reviewing the documents that you have sought. This review has required, careful consideration of their contents as some of the information has been provided confidentially to DRD by the Goldfields Gas Pipeline Joint Venture.

This review will need to be undertaken in conjunction with the seeking of advice from the Crown Solicitor's Office, since the information is being sought while the formal negotiations under the Goldfields Gas Pipeline Agreement Act (1994) are being undertaken.

It would be appreciated, therefore, if the Committee could allow a ten day extension to 25 September 1998 to enable a reply to its request.

If you have any queries, could you please contact me on 9327 5564.


PETER KIOSES
MANAGER PROJECTS

cc Judy Eckert - Crown Solicitors Office
9 September 1998 (PEK10829.DOC)

"Annexure D"

LEGISLATIVE COUNCIL



**STANDING COMMITTEE ON ESTIMATES
AND FINANCIAL OPERATIONS**

**MINUTES OF THE MEETING HELD ON WEDNESDAY, 9 SEPTEMBER 1998 AT
9:10AM IN COMMITTEE ROOM 3, LEGISLATIVE COUNCIL
COMMITTEE OFFICE**

Present: Hons Mark Nevill, Ed Dermer, Muriel Patterson,
Bob Thomas and Simon O'Brien MLCs

Staff: Ms Penny Griffiths, Advisory/Research Officer (ARO)
Mr Jason Agar, Committee Clerk (CC)

In Attendance: Mr Michael Smyth (ARO)

5. GOLDFIELDS GAS PIPELINE TARIFFS

Mr Nevill moved that if Dr Murphy, Department of Resources Development, declined to provide two independent reports (prepared by two separate consultants) then the Committee is to summons the documents.

CARRIED

8. NEXT MEETING

The next meeting to be held on Wednesday, 16 September 1998 at 9:00am

The meeting closed at 12:50pm.

A handwritten signature in black ink, appearing to be 'Mark Nevill'.

CHAIRMAN

A handwritten signature in black ink, appearing to be 'Jason Agar'.

COMMITTEE CLERK

"Annexure E"

**DEPARTMENT OF
RESOURCES
DEVELOPMENT**162-170 St Georges Terrace
Perth, Western AustraliaPostal Address
PO Box 7606, Cloisters Square,
Perth, Western Australia 6850Telephone (08) 9327 5555
Fax (08) 9327 5500**FACSIMILE MESSAGE**

To: MR MICHAEL SMYTH
ADVISORY/RESEARCH OFFICER

Company: LEGISLATIVE COUNCIL STANDING
COMMITTEE ON ESTIMATES
AND FINANCIAL OPERATIONS

Fax: 9222 ~~7409~~
7835

From: PETER MURPHY
Title: DIRECTOR - NORTH AND INLAND DIVISION
Fax: 61 8 9327 5500

Pages: 3 (including this sheet)
Subject: GOLDFIELDS GAS TRANSMISSION TARIFFS INQUIRY

Dear Michael

I refer to the facsimile request by Ms Penny Griffiths on 1 September 1998 that I provide to the Committee the two reports which I mentioned in my evidence to the Committee on 4 March 1998. I also advised that Bird Cameron and McLennan Magasanik "will review and advise on the tariffs" in the supplementary information that I provided on 31 March.

The Bird Cameron Report

Clause 23(4) of the Goldfields Gas Pipeline Agreement, which was ratified by the *Goldfields Gas Pipeline Agreement Act 1994*, restrains the Minister from using information provided by the Joint Venturers under that Clause, "other than for the purpose of determining or assisting in the exercise of the Minister's rights and the performance of his obligations hereunder". The Bird Cameron Report was commissioned for the purpose of auditing capital costs to set benchmarks to enable the Minister to determine tariffs under the Agreement. The information provided by the Joint Venturers and which is contained in the report was provided specifically to assist the Minister in the exercise of his rights and obligations under the Agreement. It is therefore information to which Clause 23(4) applies, and as Clause 23(4) constitutes a statutory requirement not to use the information other than for those specified purposes, I am unable to release the Bird Cameron Report to the Committee.

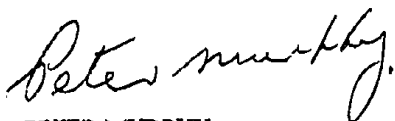
McLennan Magasanik Report

At this stage McLennan Magasanki have not finalised a report for the Minister. In any event, the final report will contain information which is crucial to the State's position in the impending tariff negotiations with the Joint Venturers. It is expected that those negotiations will commence within four to six weeks time. So that there is no possibility of prejudicing the State's negotiating position, I request that the Committee not require production of a final McLennan Magasanik Report until after completion of the negotiations.

In addition, there is confidential and commercially sensitive material in the reports, which was provided to the Minister (and the Department) on a confidential basis.

Whilst I wish to assist the Committee in its Inquiry in every way possible, you will appreciate that I am also obliged to ensure that the State's negotiating position with the Joint Venturers is not compromised and that State is not exposed to litigation for failing to honour its contractual obligations to the Joint Venturers.

Yours sincerely

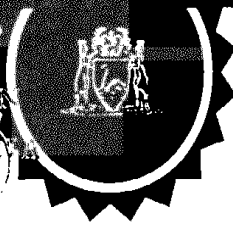


PETER MURPHY
DIRECTOR - NORTH AND INLAND DIVISION
25 September 1998 (PEKI0867.DOC)

"Annexure F"

LEGISLATIVE COUNCIL

WESTERN
AUSTRALIA



SUMMONS TO PRODUCE DOCUMENTS

Parliamentary Privileges Act 1891 s 5

To:
Peter Murphy
Director - North and Inland Division
Department of Resources Development
168-170 S George's Tce
Perth WA 6000

Pursuant to a resolution of the *Committee on Estimates and Financial Operations* passed on Wednesday September 9 1998 you, Peter Murphy, are now ordered to produce not later than 4.30 pm today, September 29 1998, to the Clerk of the Legislative Council at Parliament House, Perth the documents described as —

- *Bird Cameron* report
- *McLennan Magazanik* report,

each of which relates to the Goldfields Gas Pipeline Joint Venture and which have been requested previously by the Committee.

Issued by the Clerk of the Legislative Council —

A handwritten signature in black ink, appearing to read 'L B Marquet', written over a circular stamp.

L B Marquet
September 29 1998

Authorized —

A handwritten signature in black ink, appearing to read 'Mark Nevill', written in a cursive style.

Hon Mark Nevill MLC
Chairman of the Committee

"Annexure G"

facsimile
TRANSMITTAL

to: Mr I.B Marquet
fax nr.: 9222 7809
re: Summons to Produce Documents
date: 29 September, 1998
pages: 2, including this cover sheet.

Following for your information is a copy of a memorandum from the Minister for Resources Development to Dr Peter Murphy at the Department of Resources Development relating to the above.

From the desk of...

Richard Ellis
Principal Policy Adviser
Minister for Resources Development
and Energy

(08) 9222 8688
Fax: (08) 9481 0223



**MINISTER FOR RESOURCES DEVELOPMENT; ENERGY;
LEADER OF THE HOUSE IN THE LEGISLATIVE ASSEMBLY**

19th Floor, 197 St George's Terrace Perth Western Australia 6000
Telephone: +618 9222 9699 Fax: +618 9481 0223

Our Ref: 119780

Dr Peter Murphy
Director North and Inland Division
Department of Resources Development
168-170 St George's Terrace
PERTH WA 6000

GOLDFIELDS GAS TRANSMISSION TARIFFS

I refer to the "Summons to Produce Documents" served on you by the Legislative Council Standing Committee on Estimates and Financial Operations. That summons requested that you produce by 4.30 pm on 29 September 1998 documents described as the "Bird Cameron Report" and the McLennan Magazanik Report" relating to the Goldfields Gas Pipeline Joint Venture.

I hereby direct you not to release those documents to the Committee. This direction applies to all officers of the Department of Resources Development.

A handwritten signature in black ink, appearing to read 'Col Barnett'.

**COLIN J. BARNETT
MINISTER FOR RESOURCES DEVELOPMENT**

29 September 1998

cc. Dr Des Kelly
Chief Executive Officer
Department of Resources Development
168-170 St George's Terrace
PERTH WA 6000

"Annexure H"


**DEPARTMENT OF
RESOURCES
DEVELOPMENT**

 168-170 St Georges Terrace
Perth, Western Australia

 Postal Address
PO Box 7606, Cloisters Square,
Perth, Western Australia 6850

 Telephone (08) 9327 5555
Fax (08) 9327 5500

FACSIMILE MESSAGE

To: MR L MARQUET
Company: PARLIAMENT HOUSE
Fax: 9222 7809

From: PETER MURPHY
Title: DIRECTOR - NORTH AND INLAND DIVISION
Fax: 08 9327 5500
Pages: 1 (including this sheet)
Subject: RESPONSE TO SUMMONS TO PRODUCE DOCUMENTS

Dear Mr Marquet

I refer to the Summons to Produce Documents which was delivered to me on Tuesday 29 September 1998 ordering me to produce by no later than 4.30 pm that day the documents described as the Bird Cameron report and the McLennan Magazanik report.

I apologise for not responding myself on the day but there was some confusion in our office caused by computer malfunctions and the fact that the Minister for Resources Development decided to direct me not to provide the documents.

We did make contact with Mr Michael Smyth the next day to confirm that a copy of the direction had been received by the Committee late on Tuesday 29 September. We received confirmation from Mr Michael Smyth on Friday 2 October that the copy had been received as thought.

It has been drawn to my attention that perhaps I should have provided a direct response to the Committee. This has been an oversight and certainly no disrespect was meant to the Committee.

To rectify matters I now formally indicate in response to the Summons to Produce Documents that I have received a direction from the Minister for Resources Development instructing me not to release the documents in question. A copy of that direction is attached and the original can be made available for inspection if required.

Please accept my apologies for the oversight.

PETER MURPHY
DIRECTOR - NORTH AND INLAND DIVISION
8 October 1998 (PEMU1373.DOC)

334588

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MINISTER FOR RESOURCES DEVELOPMENT; ENERGY; 30 SEP 1998
LEADER OF THE HOUSE IN THE LEGISLATIVE ASSEMBLY

19th Floor, 197 St George's Terrace Perth Western Australia 6000
Telephone: +618 9222 9699 Fax: +618 9481 0223

Resources Development
30 SEP 1998
RECEIVED
File No. R0003/a83
Action:
1. P. Murphy
2. P. Kiosses
3.
4.

Our Ref: 119780

Dr Peter Murphy
Director North and Inland Division
Department of Resources Development
168-170 St George's Terrace
PERTH WA 6000

GOLDFIELDS GAS TRANSMISSION TARIFFS

I refer to the "Summons to Produce Documents" served on you by the Legislative Council Standing Committee on Estimates and Financial Operations. That summons requested that you produce by 4.30 pm on 29 September 1998 documents described as the "Bird Cameron Report" and the McLennan Magazanik Report" relating to the Goldfields Gas Pipeline Joint Venture.

I hereby direct you not to release those documents to the Committee. This direction applies to all officers of the Department of Resources Development.

COLIN J. BARNETT
MINISTER FOR RESOURCES DEVELOPMENT
29 September 1998

cc. Dr Des Kelly
Chief Executive Officer
Department of Resources Development
168-170 St George's Terrace
PERTH WA 6000