



**Response to ACCC Issues Paper
Sun Retail Pty Ltd**

**Roma to Brisbane Pipeline
Proposed Revised Access Arrangements**

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APPENDIX 1 – CONFIDENTIAL

1. INTRODUCTION

This submission is in response to the ACCC Issues Paper – Revisions by APT Petroleum Pipelines Ltd for the Roma to Brisbane Pipeline Access Arrangement released on 18 April 2006.

Sun Retail Pty Ltd (ENERGEX), through its acquisition of Allgas Energy Pty Ltd (Allgas Energy) in 1999 has had involvement with the Roma to Brisbane Pipeline (RBP) since it was commissioned in 1969. The first Gas Transportation Agreement (GTA) executed in 1967 with the original owners of the RBP established Allgas Energy as a foundation users of the pipeline.

In 2006, ENERGEX forecasts that it will transport more than 10 PJ of gas through the RBP, with the majority of that gas delivered under a bundled contract with the South West Queensland Producers.

Since commissioning in 1969, the RBP has experienced periods of substantial growth and expansion. This expansion has come in the form of compression and looping in various stages, to the point where it is understood that the main line from Wallumbilla to the outskirts of Brisbane now operates as two separate pipelines, operating at different pressures independent of each other. Historically, users have been asked to fund those pipeline expansions and ENERGEX has made quite significant contributions to the RBP over the past 36 years as the capacity of the pipeline has developed.

ENERGEX believes that it is important that the RBP Access Arrangement is developed further to properly reflect changes in the Queensland gas market and the physical changes to the pipeline itself. As an example, ENERGEX welcomes the inclusion of the Peat/Scotia lateral pipeline into the broader definition of the RBP, such that transportation on this lateral pipeline is able to be included in a reference service, at the reference tariff. One of the most significant changes to the Queensland gas market and to the RBP over the past year is the development of the Coal Seam Gas (CSG) industry near the middle point of the RBP. Over the course of the next Access Arrangement period, ENERGEX believes that a significant amount of gas will enter at various points along the length of the pipeline, which means that users will more likely require other services, such as backhaul, on the RBP.

In this submission, ENERGEX has made references to this and other experiences. As a major user of the RBP, ENERGEX considers an effective and transparent Access Arrangement will be a good outcome for the gas market supporting fair and reasonable tariffs going forward for gas transportation in South East Queensland.

2. REVISED ROMA TO BRISBANE PIPELINE ACCESS ARRANGEMENTS

In addressing the revised Roma to Brisbane Pipeline Access Arrangements, ENERGEX has utilised the information presented in the ACCC Issues Paper, however concentrates upon three areas to address its key concerns with the Access Arrangements. These are the Extensions and Expansions Policy, Services Policy and Initial Capital Base.

2.1. Extension and Expansions Policy

As noted in the Issues Paper, Section 3.16 of the National Third Party Access Code for Natural Gas Pipeline Systems (Gas Code) requires the extensions and expansions policy of an Access Arrangement to set out the method used to determine whether extensions and expansions will be treated as part of the Covered Pipeline and, if covered, how they will affect reference tariffs.

The proposed Access Arrangement has the reference service only applying to existing capacity, and the extensions/expansion policy:

- ♦ excludes the reference service tariffs and terms of the Access Arrangement for any expansion or extension that is part of the Covered Pipeline; and
- ♦ proposes that all services for the expansion/extension of the Covered Pipeline are negotiable services.

ENERGEX considers the expansions and extensions to the RBP where elected as part of the "Covered Pipeline" must automatically fall within the approved Access Arrangement. Further, to approve the expansions policy where a negotiated service for future capacity will have no reference to the Access Arrangement is in conflict with the purpose of the Gas Code.

Existing Capacity

The Access Arrangement is expressed to apply to Existing Capacity – defined as "the capacity of the Pipeline as it is configured at 31 January 2006". In practical terms, as all existing capacity is fully contracted, the price and terms for the life of the Access Arrangements only act as a guide to assist prospective users with the future negotiations for services on the RBP. By excluding "new" capacity, prospective users will not have the benefit of a regulated tariff to assist with these negotiations.

New Capacity

ENERGEX does not support the underlying position to exclude expanded capacity from application of the reference tariffs in the event the expansion is "covered". ENERGEX submits that despite the exercise to establish an appropriate initial capital base and reference tariffs, the future negotiated tariffs will have no reference to this process, hence this will not assist the market in removing any monopoly profits that may have existed in the past. In failing to address this, third parties will be denied an appropriate benchmark or workable platform to enter negotiations for future capacity.

The purpose of an approved Access Arrangement is to propose terms and conditions, including price for third party access, essentially providing certainty and benchmark tariffs for fair and informed negotiation. A proposal to have only a negotiated service for the expanded capacity will not satisfy the purpose of the Gas Code and provide no applicable Access Arrangement for that aspect of the Covered Pipeline.

ENERGEX further contends the proposed expansions policy of APTPPL does not satisfy the requirements of Section 3.16 of the Gas Code by failing to apply the proposed Access Arrangements to expanded capacity. Nor does it meet the objectives of Section 2 of the Gas Code where a service provider is required to establish an Access Arrangement to the satisfaction of the relevant regulator for that Covered Pipeline.

Furthermore, Section 1.4 of the Gas Code clearly states,

‘the extension to, or expansion of the Capacity of, a Covered Pipeline shall be treated as part of the Covered Pipeline for all purposes under the Code if the Extensions Policyprovides for the extension or expansion to be treated as part of the Covered Pipeline.’

In this case, if APT elects to have the expansion form part of the Covered Pipeline, then the Access Arrangements applying to that Covered Pipeline should equally apply to the expansion. This follows the logic of Section 1.4 of the Gas Code.

The Gas Code goes further to support this position by providing for new investment facilities and/or surcharges over and above the reference tariff. In other words, there are sufficient mechanisms available in the Gas Code for APT to recover its prudent capital spend for any expansion. ENERGEX is sympathetic with the need for certainty of recovering costs associated with the expansion/extension and this is adequately provided for in the Gas Code. To further add certainty for prospective users the expansions policy could more comprehensively address these issues, without having to put forward the exact capital costs associated with the expansion.

To satisfy the requirements of the Gas Code, the extensions/expansion policy must properly refer to the applicable reference tariff or make reference to lodging revisions to the Access Arrangement. An example from ACCC approved Access Arrangements:

“12.3. If an expansion of the pipeline becomes part of the Covered Pipeline, the expansion will not affect the Reference Tariff.....”

12.4 If an extension of the pipeline becomes part of the Covered Pipeline, the extension will not affect the Reference Tariff without [service provider] first lodging revision to the Access Arrangement.

12.5 Subject to clauses 12.3, 12.4 of this Access Arrangement, [service provider] may from time to time seek Surcharges or Capital Contributions from Prospective Users in respect of New Facilities Investment.”

In summary, ENERGEX argues by excluding additional capacity this is an attempt to avoid the Gas Code requirements. At the very least, the reference services and tariffs applying to the existing capacity, (whether absolute or not) should apply to the expanded capacity whilst it is part of the Covered Pipeline. If the service provider wishes to recover additional capital costs, mechanisms are available to either amend the applicable reference tariffs or terms of the Access Arrangement as necessary.

ENERGEX has further concerns with the lack of transparency with the approach of a negotiated service for future capacity. This may affect the gas market by the imposition of monopoly prices not linked to an efficient price, and ultimately may not encourage an efficient gas transmission industry to transport gas at competitive prices. It is well recognised in negotiations for a monopoly based service there is generally an information disparity between the parties which allows the asset owner to exert monopoly power. The regulatory processes, such as implementation of

Access Arrangement, should address information asymmetry to allow more even negotiations. ENERGEX has concerns if the proposed expansions policy is accepted by the ACCC, this anomaly will frustrate the purpose of the Gas Code.

To stimulate growth and meet the demand forecast expected by APT, it is suggested a tariff for the pipeline (ie through the DORC methodology) can be determined that assumes full utilisation of the expanded capacity that will be equally relevant to transport of existing capacity as well as available capacity through future expansions in the future.

ENERGEX has provided practical examples of the issues it has faced in negotiating services in Appendix 1 (A).

Firm haulage contracts in place prior to proceeding with pipeline expansions

The demand forecast used to estimate the optimised replacement cost supports the need for capacity to be expanded within a few years. If this assumption is relied upon, then there is sufficient basis to justify expansion without firm contracts. APT may wish to have certainty with regard to contracting expanded capacity however, by excluding future capacity from the Access Arrangement does not support third party access or a transparent negotiation process.

2.2. Services Policy

ENERGEX strongly supports the inclusion of other reference services in the Access Arrangement for the RBP during the next Access Arrangement period.

To date, the majority of users have sought only one reference service, however due to the constrained nature of the pipeline it has been difficult for parties to utilise capacity on the RBP according to commercial needs. ENERGEX strongly suggests that the consideration of previous market conditions is not appropriate and the nature of services required should be considered based upon the future expectations of the gas market.

Specifically, the RBP has evolved since its commissioning and the location of gas sources has changed with a significant portion of the gas sources e.g. coal seam gas (CSG), wishing to enter along the length of the pipeline in the next 5 years. This will increase the demand for backhaul services.

ENERGEX believes a back haul service to allow the delivery of gas from the CSG producers for delivery at Wallumbilla or for delivery to a power station connected to the RBP near Condamine would be utilised by users if it were available at a competitive tariff. ENERGEX does not see any impediments to providing such a service given the minimal cost to backhaul services which do not restrict the availability of forward haul services.

ENERGEX considers other services such as:

- interruptible services both forward and backhaul;
- park and loan services; and
- storage services;

will be greatly desired by prospective users in the near future and having these designated as reference services can only increase their usage and increase the effectiveness of the gas market.

ENERGEX is cognisant of the difficulty in forecasting these services and is supportive of having income from these services fall outside the revenue calculation for the Access Arrangement.

2.3. Initial Capital Base

The initial capital base is one of the most important elements in an access review due to the reliance on the capital base to determine authorised revenue for the pipeline system which in turn forms the base for future access reviews. ENERGEX considers the initial capital base for the RBP is crucial for future investment decisions for the gas market as to date there has been no ability of participants to understand the returns made by the operator of the RBP. Given the RBP has not had regulated tariffs since it was built in the 1960's, the methodology used in assessing the initial capital base will form the base from which any additional capital spend can be added in a transparent manner for the benefit of all future users. ENERGEX has several concerns with the methodology used for calculating the RBP's initial capital base (ICB).

First, the use of the Hypothetical New Entrant (HNE) DORC methodology was utilised for the Moomba to Sydney Pipeline and affirmed by Australian Competition Tribunal in their Reasons for Decision on the Application by EAPL¹. However, ENERGEX would highlight that the Tribunal stated that:

"Indeed, it does not follow from this decision that DORC will always be the appropriate method of valuing a used gas pipeline for ICB purposes. So much follows from cl 8.10 of the Gas Code. Furthermore, this decision does not preclude a proper consideration of DORC based upon the incumbent rather than an HNE in another case."

ENERGEX therefore, believes that the APT cannot simply rely on the Tribunal decision to justify their usage of the HNE DORC on this occasion. ENERGEX queries the use of the HNE DORC given that APT appears to be establishing an ICB based on current capacity and required future expansions but then neglects to include any of the expanded capacity in the Services offered by its Access Arrangement. This appears to be inconsistent and contradictory.

As stated earlier, ENERGEX would like APT to include any planned expansion within its Access Arrangement and if this was the situation then ENERGEX would be comfortable with its use of the HNE DORC valuation.

A further issue with the ICB methodology that warrants consideration by the ACCC, is APT's apparent disregard for parts of Section 8.10 of the Gas Code. Specifically, sections 8.10(a) and 8.10(f) of the Gas Code which state that when establishing the ICB certain factors must be considered:

- (a) *the value that would result from taking the actual capital cost of the Covered Pipeline and subtracting the accumulated depreciation for those assets charged to Users (or thought to have been charged to Users) prior to the commencement of the Code;*
- (f) *the basis on which Tariffs have been (or appear to have been) set in the past, the economic depreciation of the Covered Pipeline, and the historical returns to the Service Provider from the Covered Pipeline.*

The claim by APT that:

¹ ACT: Application by East Australian Pipeline Limited [2005] ACompT 1

“It is not possible to make any meaningful calculation of the amount of economic depreciation recovered from Users over the life of the RBP”²,

is unsatisfactory.

ENERGEX, as a long term user of the pipeline, has provided confidential information to the ACCC on payments made over the history of the pipeline. These additional payments in conjunction with:

- APT’s confirmation that no capital contributions or surcharges have applied;
- a benchmarked rate of return; and
- benchmarked non-capital costs,

strongly suggest that APT has accrued substantial amounts of economic depreciation of the assets prior to the establishment of the ICB.

Therefore, ENERGEX firmly believes the ACCC should analyse the available information and ensure sections 8.10(a) and (f) of the Gas Code are appropriately considered by APT.

² APT Petroleum Pipelines Limited Access Arrangements Information for Roma to Brisbane Pipeline, lodged with ACCC on 31 January 2006, p9

3. QUESTIONS RAISED WITHIN ISSUES PAPER

3.1. Demand Forecast

The demand forecast is a difficult issue to make an accurate assessment for various reasons. Historically the RBP transportation tariffs have been high, the pipeline capacity has been constrained leaving no avenue for participants to gain access to transport services. With no avenue for parties to obtain access it is difficult to calculate what effect this has had on the market.

Essentially, growth in the South East Queensland market has been stifled and lack of access has prevented numerous projects getting off the ground. Additionally, the high transportation tariffs on the RBP have affected the viability of a number of power generation opportunities (of various sizes) that have arisen recently in South East Queensland. For these reasons, the historical picture of demand growth forecast is not an ideal indicator for future growth as it bears no comparison to a market that has been free to develop. There is also unutilised existing generation capacity caused by the lack of access to gas sources via the RBP. When capacity becomes available this will create further opportunities to recommence running assets which are not currently utilised.

ENERGEX takes the view if the RBP had spare capacity available and the cost of gas transportation was lower, it is likely growth in SEQ will be stimulated. The proposed forecast load growth, particularly in the area of power generation, has been conservative and anticipated growth will depend on reasonable tariffs for transportation on the pipeline. This refers to tariffs for both existing capacity and expanded capacity.

ENERGEX agrees that with reasonable tariffs, the forecast for the RBP can be significantly higher than present usage levels.

3.2. Reference Tariffs

ENERGEX agrees that the development of CSG along the length of the RBP (around the middle) has and will significantly change the nature of the operation of the pipeline. ENERGEX believes the nature of the services required for prospective user's has changed as well as the operation of the pipeline.

A further consequence of this change is that the argument for using a postage stamped tariff may not be relevant where many users will not wish to transport gas the entire length of the pipeline.

In addition, it is more likely (due to the amount of CSG expected to be injected into the middle of the pipeline) that users will wish to use both forward haul and back haul services regularly on the RBP. For this reason, ENERGEX believes it is appropriate to implement a zone based tariff structure which will better reflect future demand rather than a postage stamp structure.

Furthermore, ENERGEX is surprised the reference tariff price path is escalated annually by CPI. Considering that:

- there is no significant growth or expansion costs for the pipeline included in the Access Arrangement;
- non-capital costs are decreasing in real terms; and
- forecast existing capacity is increasing.

ENERGEX questions the basis for having no significant real tariff reductions over the period of the Access Arrangement.

3.3. Queuing Policy

ENERGEX notes the queuing policy as proposed is identical to that used in the current Access Arrangement. ENERGEX has no issues with the manner in which the present queuing policy operates in accordance with the “existing capacity” and in fact considers it to be a fair and reasonable manner to determine priority issues. At this stage, ENERGEX has no experience in arbitration or dispute resolution of priority disputes on the RBP.

Having said this, ENERGEX would seek clarification from APT about the proposed queuing policy applying to negotiated capacity. Where services are based on a negotiated outcome, the queuing policy may be superfluous, given APT will be in a position to manage the interests of parties and negotiate the best outcome regardless of a party’s status in the queue.

There appears to be no incentive for APT, with no reference service in force, to negotiate a fair price with prospective users. The market will require an assurance of timing for development post the service provider “offer” to take up new capacity. The knowledge of being within the queue does not place any “user” in an enviable bargaining position with APT. To proceed on this basis, is in ENERGEX’s view allowing APT to wield a degree of market power which may not be pro-competitive and in the interest of gas market development. This is of particular concern for the smaller players who may have no opportunity to compete where capacity demands or market share is relatively small.

In addition to this, a period of 30 days for a prospective user to accept an offer provides little opportunity for the user to negotiate before potentially losing priority in the queue. APT has the ability to extend the timing for negotiation; however the incentive to allow such an extension is limited where there are remaining parties in the queue. A user can raise a dispute without losing priority; however a dispute may prolong negotiations and cause delays in resolving access and perhaps in turn causing delays for the availability of additional capacity to other users.

Additionally, ENERGEX seeks clarification on the operation of the queuing policy for contracted capacity prior to the expiry of a long term contract. How will APT deal with the available capacity? ENERGEX is concerned that one of the following situations will occur:

- ◆ the contracted party has the ability to recontract at negotiated prices, not in terms of the reference tariff with the potential threat of losing priority to the capacity; or
- ◆ the contracted party will lose priority to the capacity and it will be offered to the next party within the queue.

The issues paper asks whether the queue accurately reflects demand for additional capacity. At present, as it is commonly suggested that there is no firm capacity available on the RBP, the queue may not reflect the demand given the time delays with providing expanded capacity. Past experiences suggest the queuing arrangements do not assist in facilitating expansions.

3.4. Trading policy

A trading policy should be useful for two situations. The trade of long term capacity and short term trades. In this context, it is the availability of short term trades which are more time critical that may not be adequately covered in the policy.

ENERGEX has concerns with the long response time (14 business days) as being inconsistent with business needs where trading requests are made for a substituted transfer or change a receipt or delivery point. In situations where a trade is possible, timely responses and consent is essential to an effective trading policy.

ENERGEX is not aware of the availability of a register providing for information about available capacity e.g. storing information about contracted but unutilised capacity. ENEREX believes to date the reason for difficulty in arranging deals through the transfer policy has been limited to the lack of incentive for APT to act upon the user requests in particular where no additional revenue will be obtained via the transfer process. Additionally, the apparent broadness of the meaning of reasonable commercial grounds will not assist with transparency or clarity when consent for a transfer request is not given. To resolve this problem, the addition of a definition of "reasonable commercial grounds" may be helpful for users to understand the parameters for denying a transfer request on commercial grounds.

ENERGEX has provided further examples of its experiences with trading in Appendix 1 (B).

ENERGEX submits the 14 business day turnaround is too long to meet commercial demands. ENEREX recommends the inclusion of an urgent request turnaround within a 48 hour time period to better facilitate trading on the system.

3.5. Capital contributions

ENERGEX has made significant financial contributions towards the establishment and expansion of the RBP over the past 36 years.

These include compression and looping surcharges, for the services provided through the expansions. A summary and a table showing these payments over time is included as confidential information in Appendix 1 (C).

ENERGEX understands that APT does not consider any previous contributions from users to be Capital Contributions under the definition provided by the Gas Code. This may be arguable, however ENEREX believes that the contributions provided by users to the APT to obtain additional capacity need recognition in a transparent manner in the revised Access Arrangement. This may require defining these payments as either:

- capital contributions;
- surcharges; or
- accumulated depreciation.

For APT and the ACCC to do otherwise is to ignore the intention of the Gas Code.

3.6. Weighted average cost of capital (WACC)

ENERGEX is supportive of the "ranges approach" used by APT and has chosen not to make substantial comment on the individual parameters and estimation of the

WACC preferring to rely upon the ACCC expertise to ensure the validity and suitability of the respective parameters.

However, ENERGEX would highlight that if the ACCC accepts APT's current proposal that the Access Arrangement only apply to current capacity then it should elect to use a low equity beta in response.

An equity beta measures systematic or market risk reflecting the variations in earnings or cash flows in line with movements in overall market or macroeconomic factors. These are risks that cannot be eliminated through diversification.

The APT proposal is that any expansions to the capacity of the pipeline will only occur once it is contracted and financially supported by Users. Given the current capacity is also fully supported by contracts, this drastically reduces APT's exposure to risk.

Some major risks usually faced by gas transmission pipelines are the risks of changes to:

- demand;
- competition; and
- market development.

APT, as a gas transmission pipeline contracted to full capacity that is proposing to contract out all risk of new capital investments, faces none of these. Consequently, if the Access Arrangement stands, ENERGEX believes that the equity beta used for APT should be at the low end of their range proposal.

3.7. Forecast non-capital costs

ENERGEX is not in a position to make significant comment on the reasonableness or prudence of the forecast non-capital costs. However, ENERGEX would raise several concerns that it would like the ACCC to pursue in their analysis of the non-capital costs within the APT Access Arrangement. These are:

- transparent identification of the productivity and efficiency gains built into the forecast non-capital costs. The forecast costs are decreasing over the period despite nominated escalation of many of the cost inputs at CPI or above. Are these reductions indicative of efficiency gains?
- if planned pipeline expansions remain excluded from the Access Arrangement then the forecast non-capital costs must take account of this. Many of the non-capital costs are fixed in nature and some part of these costs should be allocated to the additional expansion rather than be included within the Access Arrangement costs; and
- is there a margin included in the cost for services provided by Agility? ENERGEX is supportive of a margin for service providers but would advocate that this is regulated and transparent within the Access Arrangement Information.

3.8. Forecast capital costs

As stated previously, ENERGEX believes the future expansions should be directly included in the Access Arrangement including calculation of the revenue and reference tariffs based on the cost of these expansions.

3.9. System use gas

The provision is consistent with the previous Access Arrangement for the RBP. Such provisions are present in the Access Arrangements for Central Ranges Pipeline and the Moomba to Sydney Pipeline; given this ENERGEX considers the provision is fair and reasonable.

As the RBP is a highly compressed pipeline, the quantity of system use gas is important to the efficient operation of the pipeline. The cost associated with system use gas is generally borne by the users of the pipeline, however as the pipeline has significant compression to expand the capacity it may be questionable whether it is, in fact, equitable for all users to pay for system use gas in proportion to the total throughput of all users. Historical users of the pipeline must pay for system gas as capacity is added and the system use gas increases relative to increases in demand with the addition of compressors on the pipeline. Although, this may not appear equitable it is difficult to suggest an alternative means of allocating system use gas.

ENERGEX would prefer to continue to provide the system use gas as a user, this provides cost certainty as individual users can source the gas required according to their commercial capability. It is arguable where the service provider is responsible for supply of system use gas there is an opportunity for efficiency, however this is at the potential risk of a reduction in security of supply.

3.10. Incentive mechanism

ENERGEX is supportive of transparent incentive mechanisms that encourage the pipeline owner to increase efficiencies and reward any increased service. However, it appears the revised Access Arrangement only contains the transparent incentive for the pipeline operator to reduce their costs given it is focussed on current contracted capacity with no variability on demand. There may be inherent incentives for non-regulated services but these are not transparent to Users.

ENERGEX's proposal for inclusion of the expansion capacity within the Access Arrangement would not appear to reduce APT's incentives but would certainly increase the transparency of the mechanisms.

ENERGEX has also highlighted the inclusion of additional Reference Services within the Access Arrangement. ENERGEX can see merit in not including the revenue obtained from these additional services in the revenue determination of the Access Arrangement. This would provide a clear incentive for the pipeline to facilitate services such as interruptible and backhaul when requested.

3.11. Arbitration arrangements

Given the existing capacity in the pipeline is expected to be fully contracted for the entire period of the proposed Access Arrangements, the types of issues referred to arbitration would include either:

- a. interruptible capacity if available; or
- b. developable capacity.

Developable capacity falls outside the Access Arrangements as proposed, as “existing capacity” is only subject to the Access Arrangements. This will affect the manner in which the AER/ACCC is able to exercise its decision-making power within the terms of the Gas Code.

Section 6.15 provides *“the Arbitrator must apply the provisions of the Access Arrangement for the Covered Pipeline concerned.”* If the Access Arrangement does not apply to additional capacity, there will be no guiding provisions for the arbitrator to assess the application.

ENERGEX is concerned without a guiding Access Arrangement for the future capacity, and given all services are negotiated services this leaves a prospective user open to negotiations that are not representative of the fair and reasonable terms principles applied in the Gas Code. ENERGEX would be reluctant to go through an exhaustive arbitration process where so many uncertainties exist with respect to the arbitrated outcome for service, price and terms and conditions of supply.

In the Issues Paper, the ACCC has requested information regarding experience of a prospective user in taking matters to arbitration. ENERGEX has never taken a matter relating to the RBP to arbitration however, has been offered services that were not commercially acceptable. In these instances, ENERGEX did not take up arbitration because costs, timing and the uncertainties surrounding a commercial outcome.

ENERGEX’s has the view that for arbitration to have an effective outcome, some benchmarks need to exist to enable the prospective user to weigh up the costs and benefits associated with the arbitration and not obtaining a service at all or upon more acceptable commercially realistic terms.