

# **RESPONSE TO THE PRODUCTIVITY COMMISSION'S DRAFT REPORT ON ITS REVIEW OF THE GAS ACCESS REGIME**

Prepared by



March 2004

# RESPONSE TO THE PRODUCTIVITY COMMISSION'S DRAFT REPORT ON ITS REVIEW OF THE GAS ACCESS REGIME

## CONTENTS

|       |  |    |
|-------|--|----|
| 1.    | BACKGROUND .....   | 3  |
| 2.    | THIRD PARTY ACCESS .....                                       | 3  |
| 2.1   | WHAT IS A THIRD PARTY .....                                    | 4  |
| 2.2   | COMPETITION IN UPSTREAM AND DOWNSTREAM MARKETS.....            | 6  |
| 2.3   | THE FOCUS ON FOUNDATION SHIPPERS AND FOUNDATION CONTRACTS..... | 7  |
| 2.3.1 | The Productivity Commission's Draft Review .....               | 8  |
| 3.    | AN ALTERNATIVE APPROACH TO THIRD PARTY ACCESS.....             | 9  |
| 4.    | THE DRAFT REVIEW .....   | 12 |

## RESPONSE TO THE PRODUCTIVITY COMMISSION'S DRAFT REPORT ON ITS REVIEW OF THE GAS ACCESS REGIME

### 1. BACKGROUND

On 13 June 2003 the Federal Treasurer asked the Productivity Commission (the “Commission”) to undertake an enquiry into the National Third Party Access Regime for Natural Gas Pipeline Systems and related legislation (the “Gas Access Regime”). On 15 December 2004 the Commission released its draft Review of the Gas Access Regime (the “Draft Review”) and invited public comment. We welcome the opportunity to comment on the Draft Review.

The purpose of this submission is limited to questioning the preoccupation of the Commission with the arrangements entered into between service providers and the counterparties to foundation contracts (“foundation shippers” and “foundation contracts” respectively). This preoccupation has led the Commission to misconstrue the third party access problem and to fall short in its consideration of the Gas Access Regime.

In essence the Draft Review runs the risk of overlooking the interests of third parties in its consideration of third party access. Such an outcome would be inconsistent with the position of the Minister for Industry, Tourism and Resources that:

*“(T)he primary purpose of regulated access (coverage) is to promote third party access to services provided by means of a natural gas pipeline so as to remove potential barriers to entry for uncontracted capacity and to promote competition in upstream and downstream markets”.<sup>1</sup>*

### 2. THIRD PARTY ACCESS

The background to third party access regulation is outlined in the Draft Review from the commencement of the current round of gas industry reforms in 1991. In reality, however, some gas users had been seeking and negotiating access to new and existing gas pipelines long before 1991. In many jurisdictions government ownership and control of gas transportation and delivery infrastructure frustrated prospective third party access seekers by forcing them to become retail or contract customers of government controlled trading enterprises. In all jurisdictions, however, the third party access dilemma was readily apparent. In essence, that dilemma crystallised as a denial of access

---

<sup>1</sup> Minister for Industry, Tourism and Resources, *Applications for Revocation of Coverage of Certain Portions of the Moomba to Sydney Gas Pipeline System – Statement of Reasons*, 19 November 2003, paragraph 99

in the absence of agreement to terms largely dictated by the owners of existing infrastructure. There was little room for negotiation in most instances because the third party access seeker lacked effective leverage.

The gas transmission industry reforms which gathered pace in the early 1990s:

- ❑ were driven, in the first instance, by governments concerned about the security of gas supplies in their respective jurisdictions;
- ❑ gathered pace as the NSW Gas Act reforms failed to deliver results and the prices at which pipeline infrastructure started to change hands gave rise to government concerns regarding future tariff levels; and
- ❑ shifted gear significantly as the competition policy reform agenda gathered momentum

By the mid 1990s gas consumers began to take a much more active and dominant role in the gas industry reform process. Predominant among these consumers were those who had been forced to deal with government controlled monopolies and who saw the gas reform process as a means of redressing past practices. However, missing from the process were all those third parties who had tried and failed to secure access to gas infrastructure in the past and parties who might, at some time in the future, seek to secure third party access to gas transportation and delivery infrastructure.

The deceptively simple label, “third party access seeker”, actually describes a complex basket of entities. Some of these entities have successfully sought and negotiated access to gas transportation and delivery infrastructure in the past, some may be aggrieved by their treatment in such negotiations, some have walked away from business opportunities because they were unsuccessful in such negotiations and some are yet to seek access to gas transmission infrastructure. Some third party access seekers may be more concerned with addressing the sins of the past whilst others will be primarily concerned with ensuring access on fair and reasonable terms to future infrastructure developments.

## 2.1 What is a Third Party

The characteristics of a third party user of, and a third party access contract for, gas transmission services can most easily be defined in contrast to a foundation shipper and a foundation shipper contract. A foundation shipper will normally have a significant demand for gas transmission services, have a bankable credit standing and have a relatively stable long term gas demand. A foundation contract will:

- ❑ be used by the service provider to underwrite pipeline capacity development;
- ❑ be put in place before the relevant pipeline capacity is built;

- ❑ be for sufficient quantities of pipeline services to be material to the project cash flows and the underwriting of the capacity development;
- ❑ be for a long term supply relative to the tenor of project debt;
- ❑ deliver a bankable cash flow with high levels of certainty to the service provider;
- ❑ provide any credit enhancement required by financial markets to secure those cash flows;
- ❑ surrender normal contract and payment flexibility to satisfy the needs of financial markets regarding the security of the contract cash flow; and
- ❑ be put in place at a point in time when the service provider can exploit the contract cash flows to secure project funding.

By contrast, third party users of gas transmission services represent a wide range of gas consumers, from:

- ❑ foundation shippers whose foundation contracts have terminated;
- ❑ shippers who would qualify as foundation shippers except for the fact that their contract for gas transmission services is written at a time, or under conditions, when the concessions made in foundation contracts are of little or limited value to the service provider; to
- ❑ a pot-pourri of shippers looking to contract for relatively small quantities of a flexible gas transmission service.

A third party shipper and third party gas transmission service contract:

- ❑ is not needed by the service provider to underwrite pipeline capacity development;
- ❑ will be put in place after the relevant pipeline capacity is committed to, or built;
- ❑ may be for large or small quantities of pipeline services;
- ❑ may be of short or long duration;
- ❑ will deliver less secure cash flows to the service provider than those found in foundation contracts;
- ❑ will strive to limit the provision of credit enhancement by the shipper;
- ❑ will seek contract and payment flexibility; and
- ❑ cannot generally be used, at the time they are put in place, to secure project funding.

A third party is generally a party seeking to contract pipeline capacity which is not subject to a foundation contract after the capacity is installed. A hybrid case exists where, in order to satisfy the needs of a third party, the service provider will need to augment spare capacity with a capacity expansion. Where the capacity expansion needed in these instances is modest, the character of negotiations in this hybrid context

is more akin to a third party contract negotiation than a foundation contract negotiation. The nature of these hybrid negotiations tends to be dictated by whether the service provider needs to approach financial markets to fund the necessary capacity.

A third party is typically an entity confronted with a business opportunity, where access to gas transmission pipeline capacity, or a substitute for that service, is needed in order to participate in the business opportunity. The nature of this opportunity will vary depending on the specific circumstances. The range of situations includes:

- ❑ the foundation shipper coming to the end of a foundation contract who must decide whether to continue in business, renew product sale contracts and arrangements, replace obsolete plant, contest product tenders, expand its production facilities etc; and
- ❑ an entity considering a tender as a means of entry into an upstream or downstream market (for example, as a generator in the electricity market).

Historically, when such entities were confronted with a need for pipeline services they would open a negotiation with the relevant service provider(s) with the object of agreeing whether access was available, the timing of that access and the terms and conditions, including price, on which that access would be made available.

The pressures on, and the opportunities facing, prospective third party access seekers obviously vary enormously. If an assurance of access were not forthcoming, or if sufficient capacity were not available in the necessary timeframe or on suitable terms and conditions, then the negotiations closed and the parties went their respective ways. Obviously, those shippers facing the end of a foundation contract have more at stake in resolving ongoing terms of access than a third party considering a tender opportunity and the associated new investments. In all such negotiations, in the absence of regulatory supervision, third parties are at risk of being forced to yield any economic rent earned in upstream or downstream markets to the gas transmission service provider, negating any market signals emanating from those upstream or downstream markets that might result in competition and efficient investment.

## **2.2 Competition in Upstream and Downstream Markets**

The above focus on the nature of the third party access dilemma highlights three matters that third party access regulation must address if it is to increase competition in upstream and downstream markets. First, third party access regulation must ensure that third party access seekers have an absolute right to access the services of gas transmission pipelines.

Second, whilst third parties do not need prescribed tariffs and access terms, they need to be assured that, where they are dealing with a service provider that has monopoly power, there is provision for regulatory supervision of the behaviour of that service provider.

Finally, regulatory models that require a third party to instigate a process for regulatory supervision when the need for access to transmission services arises must be able to deliver regulatory supervision and intervention in a very short time frame. Regulatory models which require months to be given effect are of use to only a small sub set of third party access seekers, namely those with existing operations and investments and, or, the time to wait for consideration of whether regulation will apply. The opportunities which give rise to a need for third party access come and go and the decision on whether to regulate or not to regulate is being made on behalf of third party access seekers who may not exist or know they have a need for access at the time the decision is made. Where a party is confronted with a tender or other business opportunity which requires access to gas transmission services, and that access is not assured, or will take months or years to resolve or would be expensive to put in place, there is every chance that the tender or opportunity will simply lapse. As a rule there is little incentive for such parties to invest in pursuing access after the opportunity has lapsed.

Competition in upstream and downstream markets will be enhanced if prospective participants in those markets are empowered to participate in those markets as and when the opportunities arise. This situation is recognised by the Minister for Industry, Tourism and Resources when he observes that:

*“(T)o promote competition in these downstream markets, southern gas suppliers need some certainty that they can secure uncontracted capacity on competitive terms via the Interconnect and the MSP Mainline from Young to Sydney (and to other NSW regional centres – see below). To avoid a possibility of monopoly control and to ameliorate the potential to exercise market power through monopoly pricing, it is therefore necessary to maintain access to the services provided by means of the MSP Mainline to Interconnect gas”.<sup>2</sup>*

## **2.3 The Focus on Foundation Shippers and Foundation Contracts**

Many of the weaknesses in the application of the Gas Access Regime can be attributed to the fact that the focus of the regime on third party rights has not been properly recognised in the application of the Gas Access Regime. Thus, the focus of third party access regulation to date has been upon defining access terms analogous to those in foundation shipper contracts. This tendency has not necessarily been complemented by a recognition that these foundation shipper terms carry with them credit enhancement, contract volume, contract duration and contract rigidities which give a unique character to foundation contract cash flows. Regulation to date has therefore represented a struggle between regulators, on the one hand, intent on conducting an ex-post calculation of the tariffs applicable to foundation shipper contracts, and service providers, on the other hand, striving to at least secure contracts which are compatible with those tariffs.

---

<sup>2</sup> Minister for Industry, Tourism and Resources *ibidem*, 19 November 2003, paragraph 138

Perhaps it should not be surprising that a number of foundation shippers have cried foul in this process, pointing out that the proposed third party tariffs are actually below the foundation shipper tariffs that underwrote the development of facilities and that the Gas Access Regime has failed to deliver the hoped for negotiated outcomes.

### *2.3.1 The Productivity Commission's Draft Review*

Unfortunately, at times the Commission perpetuates this tendency to address third party access issues by focusing on foundation shippers and foundation contracts. Without trying to provide a compendium of instances where the Draft Review adopts a foundation shipper focus, it is worth focusing on sections 2.3 and 7.2 of the Draft Review. In section 2.3 of the Draft Review the Commission correctly points out that the competition to build new pipeline infrastructure can be intense and that the foundation contract terms which result are often the outcome of a competitive process. The section goes on to consider the number and relative market power of foundation shippers and the competitive tender process under the Gas Access Regime. Whilst there is little to criticise in the analysis reported upon in section 2.3 of the Draft Review, there is every reason to question the relevance of this focus on foundation contracts and shippers in the consideration of third party access.

In section 7.2 of the Draft Review the Commission notes that there might be potential for regulators to use foundation contract prices, or a weighted average of foundation contract prices, as a benchmark or price cap for third party access contracts.

To be fair, the Commission does:

- note that:

*“it might be inappropriate for third party users’ prices to be set equal to foundation prices” ( page 213)<sup>3</sup>; and*

- conclude, in section 4.3, that:

*“The potential benefits of regulating pipelines with foundation customers, where these customers had countervailing power in negotiating their contracts (such as when pipeline development is contestable), are likely to be lower than the benefits for other pipelines. The market power of service providers with foundation customers is likely to be constrained ... , so the potential benefits of regulating pipeline access might relate only to future customers using any spare capacity on that pipeline. ( page 82)<sup>4</sup>”*

---

<sup>3</sup> Productivity Commission 2003, *Review of the Gas Access Regime*, Draft Report, Canberra, page 213

<sup>4</sup> Productivity Commission 2003, *Ibidem*, page 213



However, in both these examples, having brought its consideration of the Gas Access Regime to the point where it is about to consider the question of third party access, from the perspective of third party access seekers, the Commission appears to abandon the thought.

### **3. AN ALTERNATIVE APPROACH TO THIRD PARTY ACCESS**

In its Draft Review the Commission correctly identifies a number of problems with the Gas Access Regime as it is currently administered. The solution adopted in the Draft Review to address these shortcomings appears to be to:

- ❑ make coverage more difficult to secure;
- ❑ allow a soft form of regulatory supervision where coverage is not granted but where monopoly power might have a less than substantial/material impact on markets; and
- ❑ when coverage is granted, perpetuate the current highly intrusive regulatory model with an emphasis on importing foundation contract terms into third party contracts.

This approach to addressing the problems with the current Gas Access Regime will either:

- ❑ be to the severe detriment of third party access seekers because it will move the majority of gas pipelines from active regulatory supervision, thus removing any presumed right of third party access created by regulation and making regulatory supervision of access disputes irrelevant to many third party access seekers; or
- ❑ have no substantive impact on the number of pipelines subject to coverage and simply perpetuate the problems identified with the current regime.

There is, however, an alternative and light-handed approach to addressing the problems with the current Gas Access Regime. That approach contemplates leaving the coverage mechanisms under the Gas Access Regime unchanged and focusing regulatory oversight of third party access on defining the terms and tariffs applicable to third party access.

There are three precedents which might be considered as useful models when contemplating this alternative approach. The first two precedents are drawn from public tenders for gas supply infrastructure in Victoria in 1997/1998, namely tenders for gas supply infrastructure in East Gippsland and in Mildura and its environs. In these tenders the tenderers were asked to quote tariffs and access terms for what might reasonably be described as retail gas consumers supplied by the proposed new gas delivery infrastructure. Typically, these third party customers sign contracts that are casual or of short duration, are evergreen and are relatively flexible as to offtake and contract terms. These customers, typically, provide the service provider with only limited cash flow security. The tenderers based their tariff on an 8.8% real pre-tax rate of return in the case of East Gippsland and on a 9% real pre-tax rate of return in the case of Mildura. In both cases, risk was mitigated because tariffs could be revised based upon actual capital

expenditure. That is to say, gas consumers bore a significant, albeit capped, cost overrun risk in these projects. The detail of these arrangements were ratified by the then Office of the Regulator General, Victoria and documented in approved access arrangements.

Importantly, whilst there were potential foundation or “anchor” customers for these projects, the arrangements for access negotiated with these commercially crucial gas consumers were not the focus for setting third party access terms.

Because the tariffs in these arrangements are determined by assuming that all shippers are third party shippers, project costs, other than the rate of return on capital, are shared equally across all shippers, third party shippers and foundation shippers alike.

The second example of an access offering which parallels the Victorian tenders can be found in various “Tariff Packages” issued by Goldfields Gas Transmissions Pty Ltd (“GGT”). From its inception, GGT has published a suite of access tariffs differentiated principally by the duration of the third party contract. Whilst these arrangements were settled between the Western Australian Government and GGT behind closed doors, it can be said that:

- the 1 to 5 year contract carries a 20% premium (the vast majority of which is attributable to the adoption of a differential rate of return on assets) over the 15 year “Benchmark Tariff”;
- the longer the duration of contracts, up to 16 years, the lower the premium over the Benchmark Tariff;
- these tariffs are also able to be reset to reflect actual project capital expenditure; and
- GGT can only seek to enhance contract cash flow security where it has a “*genuine concern regarding a Shipper’s credit worthiness*”<sup>5</sup>.

Again, the arrangements between the service provider and its foundation customers are not relevant to the calculation of GGT’s third party tariffs, except that GGT’s tariff principle ensures that project costs, other than return on capital, are shared equally by all third party and foundation shippers. In the case of GGT this is achieved by explicitly providing that:

*“(F)or the purpose of this Principle, the Owners will be ascribed a notional tariff based on third party tariffs for their utilisation of Pipeline capacity reserved to the Owners pursuant to clause 8(1) of the GGP Agreement”*.<sup>6</sup>

Both the GGT and Victorian examples quoted above represent arrangements which were agreed to by the parties to meet the needs of true third party access seekers. They were

<sup>5</sup> Goldfields Gas Transmission Pty Ltd, *Tariff Principles incorporated in various published Tariff Packages, Tariff Principle #5*

<sup>6</sup> Goldfields Gas Transmission Pty Ltd, *Ibidem, Tariff Principle #2*

not regulatory outcomes imposed after an expert re-determination of project costs and appropriate rates of return, but the result of arms length commercial settlements. The only transaction involving State Government was the GGT arrangement.

The important distinction between the arrangements described above and access arrangements approved under the Gas Access Regime is that the arrangements described above focus on a Reference Service of short duration for relatively small or variable volumes, are evergreen and include relatively flexible contract terms with limited cash flow security enhancement. The Reference Tariff, in these instances, has been designed to match these contract conditions. If this approach to third party access is adopted then third parties who are prepared to contract for large volumes of pipeline services for a long period and, or, are prepared to make concessions on contract flexibility, or to improve cash flow security, would be able to negotiate the value of these contract concessions.

If the parties cannot agree the value of these arrangements and, or, concessions, then the third party is at least offered evergreen access (short term, flexible) on the regulated third party terms and the service provider is entitled to a price reflecting those terms. This approach to third party access regulation is entirely deliverable under the current Gas Access Regime.

This alternative third party access model goes a long way towards resolving the current conflict between regulators and service providers because it removes the sensitivity attaching to extending foundation contract terms to third party users of gas pipelines, even when those foundation terms offer little or no value to either the user or the service provider. By adopting a light-handed approach, by reducing the rigidity of the Reference Service terms and buy moving the Reference Tariff away from the lower envelope of possible outcomes, this approach also offers a means of reducing the sensitivity and cost of coverage and restores the prospect for negotiated third party access outcomes.

As a form of light-handed regulation, this alternative third party access approach requires minimal modification to the Gas Access Regime whilst ensuring that the needs of third party access seekers are met. Third parties, when confronted with an opportunity to contest an upstream or downstream market, can do so with an assurance that access to the relevant pipelines will be available, knowing the default terms for third party access and knowing that any variation to these default terms will either be agreed with the service provider or be subject to regulatory oversight. This situation will promote participation, competition and efficiency in upstream and downstream markets.

The Commission correctly points out that “*the likelihood of commercial negotiations resulting in the most efficient outcomes possible will depend on the market circumstances in which negotiations occur*” (page 261).<sup>7</sup> A model based upon

---

<sup>7</sup> Productivity Commission 2003, *Ibidem*, page 261

removing pipelines from coverage and subjecting service providers to a monitoring regime will act to strengthen the hand of pipeline service providers in the market. A model based upon equipping pipeline service providers with a set of approved access terms and access tariffs which deliver a relatively attractive return on investment and flexible third party contract terms (terms that the service provider may or may not otherwise find desirable) will tend to produce a proper valuation for the contract concessions and contract offerings made by third party access seekers. Such an outcome should promote negotiated outcomes and work to the benefit of all concerned with access to pipeline service and competition in upstream and downstream markets.

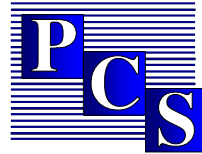
#### **4. THE DRAFT REVIEW**

The purpose of this submission is not to provide comment on each finding and recommendation set out in the Draft Review, nor is it intended to provide feedback on all of the matters regarding which the Commission has requested further information. Rather, the purpose of this submission is to emphasise the need to understand the dilemma of third parties who from time to time seek access to essential infrastructure. Review and reform of the Gas Access Regime is fraught with risk if the approach to this review and reform deviates significantly from the third party perspective.

Whilst at times the Commission has captured the perspective of the third party access seeker, these instances appear to be pregnant with opportunity and short on impact. In preparing its final report the Commission is urged, in the strongest possible terms, to examine its recommendations from the perspective of existing, future and prospective third party access seekers.

If this approach is adopted, the Commission's proposed recommendations regarding coverage and light-handed regulation would be seen as inappropriate and would not be supported, whilst the vast majority of the Commission's other recommendations (including those regarding the objectives of the Gas Access Regime) would win endorsement.

**Project  
Consultancy  
Services  
Pty Limited**



ABN 76 050 889 604

**COMMERCIAL EVALUATION  
AND PROJECT STRUCTURING  
ADVISORY SERVICE**

**November 2003**

*Address:* PO Box 700 Pymble NSW 2073  
*Telephone:* 61 2 9988 4670  
*Fax:* 61 2 9988 4671  
*Email:* [PCS@ProjectConsultancy.com.au](mailto:PCS@ProjectConsultancy.com.au)

## THE COMPANY

Project Consultancy Services Pty Limited ("PCS") was created in 1991 to offer an independent advisory service to companies contemplating major energy contracts or infrastructure investments. PCS assists in-house personnel to analyse these opportunities and provides an interface between technical and commercial specialists. The focus of PCS's activity is oil and gas transmission, natural gas processing, third party access regulation and power supply development.

The principal activities of the company are to promote major infrastructure projects and provide specialised services in regard to:

- ❑ project evaluation;
- ❑ technical and commercial strategy development;
- ❑ tariff and contract structuring;
- ❑ commercial structuring;
- ❑ economic regulation;
- ❑ financial structuring; and
- ❑ gas and electricity purchase and sale contract negotiation.

## CURRENT MAJOR MANDATES

### **Gasgo Pty Ltd ("Gasgo")**

**2000 to present**

PCS is mandated by Gasgo (a company owned by the Northern Territory Power and Water Authority and used as a vehicle to procure gas for the Authority) to assist in the implementation of a gas procurement strategy. The strategy involves gas procurement and integration with Gasgo's existing gas supply and delivery contracts.

Mike is assisting in the negotiation of gas purchase agreements for Timor Sea gas and Amadeus Basin gas. This role also includes detailed commercial evaluation of gas supply and contracting strategies and options for integrating new gas supplies with existing contracts.

### **Western Mining Pty Ltd ("WMC")**

**2001 to present**

PCS is mandated by WMC to assist in:

- ❑ resolving regulatory and contractual issues concerning the Goldfields Gas Pipeline;
- ❑ procuring gas for the Duchess Phosphate Project in North West Queensland; and
- ❑ the development of energy supply strategies for WMC operations, including the Olympic Dam Project in South Australia.

### **OMG Cawse Pty Ltd (“Cawse”)**

**2002 to Present**

Mike advises Cawse, an international nickel mining company, on its strategy regarding gas supply, gas transportation and energy procurement at its mining operations at Kalgoorlie, WA.

### **Australian Pipeline Industry Association (“APIA”)**

Mike is a past president of APIA and served on APIA’s Executive Committee from 1998 to 2002.

## **COMPLETED MAJOR MANDATES**

### **Ergon Energy Pty Ltd (“Ergon”)**

**1998 to 2002**

PCS was recently mandated by Ergon (the government owned electricity distributor and retailer in all of Queensland other than the south east corner) to develop and implement a gas industry entry strategy. The strategy involved gas procurement, gas marketing and integration with Ergon’s existing businesses.

Mike was project managing and leading the negotiations of gas purchase agreements for PNG gas, Timor Sea gas and indigenous coal seam methane gas resources and for the onsale of this gas to major Queensland industrial customers. This role also included detailed commercial evaluation of gas supply strategies, gas fired electricity generation and gas contracting options

### **Lionore**

**2002**

PCS advised Lionore, an international polymetallic mining company, regarding its fuel supply and power generation options for the Thunderbox Project in the Eastern Goldfields of Western Australia.

### **WMC**

**1997 to 1998**

Mike was WMC’s principal advisor regarding the regulatory environment and commercial/technical structuring of power purchase and other fundamental contracts which facilitated the successful sale of WMC’s interest in the Goldfields Gas Pipeline and its electricity generation, transmission and distribution assets in the Eastern and North Eastern Goldfields of Western Australia. PCS led the negotiation of the sale and the functional agreements underpinning the transaction.

### **BHP Access Procedures and Tariff Structuring**

**1995 to 1998**

PCS advised BHP regarding its obligations to provide third party access to certain energy and rail infrastructure. This role included the preparation of a procedures

manual to govern the company's response to requests from third parties for access and advice regarding the design, structure and setting of tariffs. This role included the provision of strategic advice regarding the management of threatened applications for declaration under part IVA of the Trade Practices Act and development of an industry based "effective access regime" for the Pilbara Rail Assets.

**Centaur Mining and Exploration Limited and  
Great Central Mines**

**1997 to 1998**

PCS was initially engaged to evaluate and implement a gas contracting strategy for the Cawse nickel mine and the Jundee goldmine in the Eastern Goldfields of Western Australia. PCS subsequently completed the sale of the Cawse Power Plant to an AGL subsidiary.

**East Gippsland Shire Council and  
Mildura Rural City Council Gas Supply**

**1997 to 1998**

Mike acted on behalf of the above councils with responsibility for preparing and managing the strategy to procure a reticulated gas supply for the respective regions. The focal point of these arrangements was the negotiation of a code-based Access Arrangement acceptable to the councils, the successful tenderers and the Victorian Regulator.

**Electricity Supply to Brocks Creek and  
Wiluna Gold Mines**

**1995 to 1998**

Mike advised Solomon Pacific Resources NL regarding the supply of electricity to its Brocks Creek gold mine in the Northern Territory, and Wiluna Mines Limited, in regard to the supply of gas and power generation facilities at its Wiluna Mine in Western Australia. His role in these mandates included design of the contract/tendering strategy, preparation and issue of the Invitation to Tender, tender evaluation and carriage of contract negotiation.

**Purchase of Dampier to Bunbury Gas Pipeline**

**1997 to 1998**

Mike assisted Epic Energy Pty Ltd to assess the risk associated with the acquisition of the Dampier to Bunbury Gas Pipeline and to develop a post-acquisition tariff structure that addressed diverse project and market exposures. PCS liaised extensively with Epic's financial advisors to identify and address a wide range of commercial and modelling matters.

**Gas Industry Reform in Victoria**

**1995 to 1997**

In the period 1995 to 1996, PCS continued its involvement in the application of third party access legislation by managing the development of an Open Access regime for



the Victorian Government's Gas Industry Reform Unit (more recently replaced by Energy Projects Division). This role involved:

- drafting of the Pipeline Access Code ("the Code"), in particular the drafting of the Pricing Principles;
- preparation of Access Arrangements and tariffs for the Gas Transmission Corporation and GASCOR (Victoria's gas distribution companies);
- valuation of the Gas Transmission Corporation and GASCOR company assets; and
- establishing the regulatory environment for the Gas Transmission Corporation and GASCOR companies.

### **Pegasus Gold Inc**

**1996 to 1997**

PCS negotiated gas purchase and gas transportation terms of access to the Amadeus Basin to Darwin Gas Pipeline for Pegasus Gold Inc. This role included the provision of strategic advice, managing relationships with both suppliers and government, and the development and implementation of selected power station options.

### **Kutubu Pipeline Access**

**1993 to 1996**

From 1993 to 1996 Mike assisted MIM Petroleum Exploration Limited to negotiate access to the Kutubu Oil Pipeline in PNG (involving the negotiation of the terms and conditions of access) and in regard to the supply of gas from south west Queensland to Mt Isa.

### **Electricity Contract Termination**

**1995**

PCS advised Dominion Mining Limited in regard to early termination of its take or pay contract for the supply of electricity to the Cosmo Howley Gold Mine. The role in this mandate was to develop a strategy for, and to negotiate, the minimisation of any early contract termination settlement. This mandate was successfully completed in the third quarter of 1995.

### **Goldfields Gas Pipeline**

**1994 to 1995**

With Macquarie Corporate Finance, Mike advised Western Mining Corporation and Goldfields Gas Transmission Joint Venture in regard to the Goldfields Gas Pipeline Project. Mike led a Macquarie-WMC project team located in Perth as Project Manager. The team was responsible for project analysis, negotiation of all project documents and the securing of project approvals. This task was successfully completed at the end of January 1995.

## **Gas and Fuel Corporation of Victoria**

**1994**

Mike advised, with Macquarie Corporate Finance, the Gas and Fuel Corporation of Victoria and West Coast Energy in regard to the purchase of the Moomba-Sydney natural gas pipeline. Mike was an integral member of the Macquarie Corporate Finance team providing modelling design direction, contract advice and strategic gas industry advice.

## **Hydro-Electric Commission, Tasmania**

**1989 to 1990**

*(Undertaken by Mike Lauer as a director of Capel Court Investment Bank)*

In his position as Associate Director of Capel Court Investment Bank, Mike led the team (including J P Kenny Pty Ltd) which advised the Tasmanian Natural Gas Steering Committee regarding options for the supply of natural gas to Tasmania. Together with advice on potential sources of gas, the study covered such matters as project facilities and cost estimates, project viability and project risk and strategy issues.

## **Expert Witness/Arbitration Expert**

Mike has acted as an expert witness and as a contract dispute mediator on a number of occasions.

## **PROFILE - MICHAEL (MIKE) LAUER**

Mike Lauer is the Managing Director of PCS and, in an energy sector career spanning twenty years, has held the positions of Executive Officer to the Northern Territory Pipeline Executive, Director of Energy in the Northern Territory, Business Development Group Manager in PAWA, Executive Director and Board member of Capel Court (Investment Bank) Corporation Limited and Chairman and CEO of Saipem Australia Limited. Mike holds a first class honours degree in economics. A summary of his career and principal engagements is provided below.

After teaching economics at the University of New South Wales for some 10 years Mike took up the position of Mineral Economist with the Northern Territory Department of Mines and Energy in 1982. In this role he became involved in a wide range of matters encompassing resource policy, land acquisition and access, the mineral market, royalty structures and project development matters.

From 1982 to the end of 1984 Mike was heavily involved in the Territory/Federal Government funding process through his role as a member of the Territory's Treasury Task Force on the 1984 Relativities Review. He also had a major involvement in Aboriginal land issues through his day-to-day involvement in land rights matters and his authorship of the Territory's mining submission to Mr Justice Toohey's 1985 review of the operation of the Northern Territory Land Rights Act, "Seven Years On". Mike was

an expert witness before Justice Toohey and before the Aboriginal Land Rights Commission.

From December 1984 Mike became involved in the evaluation, definition, structuring, contracting and execution of the Amadeus Basin to Darwin Gas Pipeline project ("Darwin Pipeline") as executive officer to the Northern Territory Pipeline Executive. In this role Mike relocated to Sydney for the duration of the project negotiation and was part of a two-person team responsible for the detailed structuring and documentation for the project. At the conclusion of the negotiation Mike returned to Darwin to manage the Territory's interests and exposure in the project as Company Secretary to the Territory's project companies, Darnor Pty Limited ("Darnor") and Gasgo Pty Limited ("Gasgo"). The Darwin Pipeline was completed both ahead of schedule and under budget in December 1986.

Following the completion of the Darwin Pipeline Mike, while continuing as Executive Officer of the Pipeline Executive and secretary to Darnor and Gasgo, was appointed to the statutory position of Director of Energy in the Department of Mines and Energy. In this role Mike was responsible for administration and policy formulation in regard to all hydrocarbon exploration, development, promotion and utilisation in the Northern Territory and the administration and provision of advice concerning adjacent Federal waters and the Ashmore Cartier Islands. This combined responsibility for the administration and promotion of the Territory's energy resources and contract supervision of the Territory's purchase of Amadeus Basin gas saw the emergence of an integrated approach to Territory energy-based economic development through the synthesis of the two functions.

This synthesis ultimately saw Mike leave the role of Director of Energy to take on the newly created role of Business Development Group Manager in the Power and Water Authority ("PAWA"). In this role Mike was responsible for the evaluation and implementation of new electricity supply arrangements, gas reticulation systems and transmission line developments.

Mike left the Northern Territory in 1988 to take up a post with the investment banking house Capel Court Corporation Limited ("Capel Court"). Roles for which Mike was responsible while with Capel Court included the:

- provision of advice to Mount Isa Mines Limited in regard to gas supply to Mt Isa, power supply at Mt Isa and the purchase and redevelopment of the Collinsville Power Station;
- provision of advice to Nabalco Limited in regard to its natural gas and energy supply options at Nhulunbuy on the Gove Peninsula;
- evaluating a number of oil and gas acreage opportunities;

- ❑ evaluating the acquisition of a number of exploration, production and transportation companies;
- ❑ provision of advice to PAWA regarding the HV transmission line from Darwin to Katherine;
- ❑ provision of advice to the RTA of NSW on the structuring of proposed toll road projects;
- ❑ provision of advice and support to Novacorp of Canada in regard to the acquisition of the Moomba to Sydney natural gas pipeline;
- ❑ provision of advice to Pan Pacific Petroleum Limited in regard to the development of a sodium cyanide facility, and later in regard to the sale of natural gas, from its Tubridgi gas field;
- ❑ formulation and evaluation of natural gas supply options for the Government of Tasmania; and
- ❑ development and refining of a number of pipeline, power station and infrastructure proposals.

In 1991 Mike took up the post of Chairman and Chief Executive Officer of Saipem Australia Pty Limited, the Australian subsidiary of a major international construction company, the ownership of which rests with the Government of Italy. Saipem Australia specialises in pipeline, power station and infrastructure developments. During Mike's term of office Saipem won the right to construct a major multi-products liquids pipeline in Thailand, led an Australian consortium in a BOO bid to build a 1200 MW coal fired power station in Pakistan and was successful in progressing a number of other South East Asian infrastructure projects.

Mike has operated as Managing Director of Project Consultancy Services Pty Ltd from 1993 to the Present and has been primarily responsible for the delivery of PCS's mandates in that time. Mike became Managing Director of Navigant Consulting in 1999 and had primary responsibility for developing Navigant's oil, gas and remote power supply business. Mike left Navigant Consulting in November 2000 to focus once again on developing Project Consultancy Services Pty Ltd.

## PUBLICATIONS

Publications and addresses by Mike Lauer include the following.

- ❑ Convergence, Contestability and Market Opportunities - Major Planned Pipeline Extensions, presented to the 2001 AGA Convention, November 2001.
- ❑ Pipelines - Yesterday, Today and Tomorrow, presented to the 2001 APIA Convention, October 2001.

- Establishing an Integrated Pipeline Network and the Value of an Integrated Network to Achieving a Competitive Natural Gas Market, presented to the Australian Gas Markets Conference (IBC Conferences), June 1997.
- Third Party Access to Natural Gas Distribution and Transmission Pipelines, presented to the Gas Industry Reform Conference (IBC Conferences), May 1996.
- Prospects and Options for Third Party Access to Gas Pipelines in Australia, presented to the Gas Industry Reform Conference (IBC Conferences), August, 1995.
- Is There Life After Regulation?- The Changing Face of the Australian Pipeline Industry, presented to the 1994 International Convention of the Australian Pipeline Industry Association.
- Build Own Operate (BOO) Projects - How to overcome the complexities and become involved, presented to Joint Ventures Conference, (IIR Conferences), March 1994.
- Australian Pipeline Projects: Those Elusive Dreams, presented to the 1993 International Convention of the Australian Pipeline Industry Association, published in the conference proceedings and in the US publication Pipeline & Utilities Construction.
- Natural Gas Contracting and Private Sector Involvement in Transmission and Distribution, presented to the 1991 Natural Gas Industry Conference and published in the conference proceedings.
- A number of papers and seminars on structured finance applied to infrastructure projects through 1988 to 1991.
- Aboriginal Land Rights and the Mining Industry in the Northern Territory (with Mr. I. Lewis) presented to the 1984 annual conference of the Australian Institute of Mining and Metallurgy and published in the conference proceedings.
- Regional Structure of Employment in the Australian Motor Vehicle Industry (with Mr. T. Parry), 1981.
- Economic Structure and Change in the Shires of Guyra, Severn, Tenterfield and Glen Innes 1961-1976, 1981.
- Compendium of Local Government Area Boundary Changes in Australia 1954-1976, 1980.