Public Submission
By BHP Billiton

In response to the revised access arrangement submitted by Goldfields Gas Transmission Pty Ltd

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1 Overview

BHP Billiton (**BHPB**) welcomes the opportunity to comment on the revised access arrangement for the 2015-19 regulatory period (**Revised Access Arrangement**) submitted by Goldfields Gas Transmission Pty Ltd (**GGT**).

This submission focusses predominantly on the new issue of interval of delay, which was only raised as a potential issue by GGT in its submission accompanying the Revised Access Arrangement. In brief, BHPB agrees with the approach (to the interval of delay) taken by the ERA in the Draft Decision:

- there was an interval of delay because the 'revision commencement date' in the current access arrangement has passed without revisions to the access arrangement actually commencing. The fact that the current access arrangement is preserved to ensure the continued regulation of a monopoly asset during this period is not relevant to the factual assessment of whether an interval of delay has occurred; and
- the additional revenue earned by GGT during the period 1 January 2015 to 30 June 2016 (or the date on which the new tariffs commence) should be taken into account in fixing the reference tariffs for the new access arrangement period. The National Gas Rules (**NGR**) are clear on this issue, including in relation to there being no requirement which limits the ERA to only making CPI adjustments for the next access arrangement period.

The interval of delay will be 18 months, assuming that the new tariffs commence on 1 July 2016. This lengthy delay in moving to the new tariffs is having a significant impact on the cash flow of BHP Billiton Nickel West Pty Ltd (**Nickel West**), a BHPB business that uses the Goldfields Gas Pipeline (**GGP**). BHPB looks forward to the new tariffs commencing as soon as possible.

In relation to the other issues on which BHPB has previously commented, BHPB agrees with the approach taken by the ERA in its Draft Decision and takes this opportunity to briefly restate its position.

Following the recent decision by the Australian Competition Tribunal (**Tribunal**) in relation to the electricity distribution network service providers in New South Wales (**Networks NSW**), BHPB also comments on the return on debt. BHPB notes that it generally supports the use of a full trailing average, provided that it is implemented in a fair manner.

Finally, BHPB supports the ERA in allocating a share of the joint costs of the uncovered pipeline for the purposes of calculating the reference tariffs for the covered pipeline. This cost allocation method ensures that costs are distributed efficiently and in accordance with the National Gas Objective (**NGO**) and revenue pricing principles. This submission provides further material in support of the ERA's position on cost allocation.

2 About BHPB

2.1 BHPB

BHPB is a leading global resources company. BHPB is among the world's top producers of major commodities including iron ore, metallurgical and energy coal, conventional and unconventional oil and gas, copper, uranium and nickel.

BHPB extracts and processes minerals, oil and gas from production operations located primarily in Australia and the Americas.

In Australia, BHPB is a leading gas producer and a major user of gas and gas pipelines, and is a significant shipper on the GGP through its subsidiaries including Nickel West. As a result, BHPB has a keen interest in the regulation of gas transportation services in Western Australia in general and in the Revised Access Arrangement in particular.

2.2 Nickel West

Nickel West is a fully integrated nickel business, comprising mines, concentrators, a smelter and a refinery all located in Western Australia. Nickel West ships gas on the GGP for the purpose of its nickel production business and for the generation of electricity used by the nickel business. Nickel West also on-supplies electricity generated from gas, shipped on the GGP, to third parties.

Nickel West has the capacity to produce around 100,000 tonnes of nickel each year. It directly engages more than 2,000 employees and contractors, and provides significant indirect employment and other benefits to the Western Australian economy and to the communities in which it operates.

3 New issue - interval of delay

3.1 An interval of delay has occurred

The key rule in respect of the interval of delay issue is rule 92(3) of the NGR. This is a new provision which was introduced into the NGR to allow regulators to adjust reference tariffs where the completion of a new access arrangement is delayed.[1] Prior to its introduction, the Gas Code was silent on this issue and, as a result, revenue associated with a delay was not to be taken into account in determining the revenue applicable to the next access arrangement period.[2]

Relevantly, an 'interval of delay' is defined in rule 92(3) to be the period:

- 'between a revision commencement date stated in a full access arrangement and the date on which revisions to the access arrangement actually commence'.

The current access arrangement provides in clause 3.2(b) that the:

- 'Revisions Commencement Date is 1 January 2015'.

It is clear that 1 January 2015 has passed without any revisions actually commencing. As a result, there has been an 'interval of delay' (as defined in the NGR).

It is therefore appropriate for the ERA to take that delay into account 'in fixing reference tariffs for the new access arrangement period', as expressly permitted by rule 92(3)(b).

3.2 The ERA has a broad power to adjust reference tariffs

The ordinary meaning of rule 92(3)(b) is clear from the text. It provides that, in the event of an interval of delay, the ERA is permitted to take into account the continued application of the tariffs from the previous access arrangement period when fixing the reference tariffs for the new access arrangement period.

[1] Ministerial Council on Energy's Standing Committee of Officials' 'SCO Responses to Stakeholder Consultations on the National Gas Rules', 1 May 2008, 37.

[2] Western Australian Electricity Board, Applications Nos. 1 and 2 of 2010, Decision, 22 November 2011, 89 [250].

GGT attempts, by reference to extrinsic material, to read a restriction (not express in the rule) into the ordinary meaning of rule 92(3)(b). That is, GGT contends that the ERA is somehow limited to adjusting the reference tariffs only by a CPI factor.

This is not necessary or appropriate. The law provides that, when interpreting the NGR, consideration may only be given to extrinsic material if the rule is ambiguous or obscure, if the ordinary meaning of the rule leads to a result that is manifestly absurd or unreasonable, or to confirm the interpretation conveyed by the ordinary meaning of the rule.[3] Here, it is evident that:

- the words are not ambiguous or obscure;
- the approach adopted by the ERA does not lead to a manifestly absurd or unreasonable result. GGT will effectively be in the same position, from an NPV perspective, that it would have been in absent the interval of delay; and
- GGT is seeking to use extrinsic material to read words into the text to give a new meaning, rather than to confirm the ordinary meaning of the rule.

If the legislature had wanted to limit the ERA's ability to take into account an interval of delay, it could easily have included a reference to CPI in the text of rule 92(3)(b). But it did not. Moreover, the NGR does, in other rules, provide explicit limitations on the power to make adjustments. For example, rule 89 sets out the principles for the design of the depreciation schedule and specifically refers to the starting capital value of an asset being 'adjusted, if the accounting method approved by the ERA permits, for inflation'.

Not only is this approach correct based on a plain reading of the NGR, it is also consistent with the approach adopted by the Australian Energy Regulator (**AER**) in the electricity context. That is, the AER regularly adjusts (upward or downward) a network service provider's allowable revenue if there is a delay following a review by the Australian Competition Tribunal under the National Electricity Law.

Therefore, it is not necessary or appropriate to seek to read into rule 92(3)(b) a restriction on the ERA's ability to take an interval of delay into account in fixing reference tariffs for the new access arrangement period to limit it to only a CPI adjustment.

4 Other issues previously addressed

4.1 Building blocks

BHPB supports the ERA's Draft Decision in:

- considering that GGT's approach to estimating the rate of return, in the absence of an adequate explanation, does not comply with the ERA's Rate of Return Guidelines;
- reducing the:
  - equity beta on the basis that SFG's approach to its calculation was econometrically unsound and resulted in an implausibly high factor;
  - the market risk premium based on the ERA's assessment of the forward looking indicators relative to their historic range; and
  - the term of the risk free rate to 5 years to accord with the term of the access arrangement and the Rate of Return Guidelines;

[3] *National Gas Access (WA) Act 2009* (WA) Sch 2, cl 8(3).

- calculating the Tax Asset Base based on the value of the assets (for tax purposes) as at 1 October 1996, being the date the GGP first came into operation and reflecting the date GGT would have been first subject to tax; and
- reducing the operating expenditure and capital expenditure to accord with the requirements of rules 74, 79 and 91 of the NGR.

Tribunal decision: Return on debt

The Tribunal recently considered the approach to calculating the return on debt in the Networks NSW decision. In light of this decision, the ERA should consider applying a trailing average to the full return of debt (full trailing average).

BHPB supports a full trailing average for the return on debt. This approach brings tangible benefits to customers in terms of greater tariff stability as well as benefits to regulated businesses in terms of enhanced risk management options in the long term. That is, BHPB supports the framework that GGT has proposed and prefers this to the hybrid trailing average.

However, BHPB's support for a move to a full trailing average for the return on debt is critically dependent upon the trailing average being implemented in a fair manner. In particular, the implementation should ensure that neither customers nor the regulated business are better or worse off simply as a result of the change to the full trailing average (although both customers and regulated businesses may be better off over time as the benefits from the move to a trailing average are realised).

Under the approach that GGT proposes, GGT will be unambiguously better off as a result of a move to the trailing average and customers will be unambiguously worse off. Moving to a trailing average on these terms will not advance the NGO. If this transition is the only option for adopting the full trailing average, the current method for setting the regulatory allowance should be maintained.

While the Tribunal rejected the AER's reasons for its proposed transitional arrangements, the Tribunal did not simply require the AER to implement the trailing average for the return on debt as proposed by Networks NSW (which is essentially identical to what GGT has proposed). Rather, the Tribunal required the AER to remake its decision. In this regard, the Tribunal emphasised that whether there may be 'windfalls' is something that the AER should consider and make alterations for (see the Tribunal's decision, paras. 939-941). BHBP submits that the ERA should similarly adopt a transition to the full trailing average that avoids windfall gains or losses to regulated businesses or customers.

4.2 Extensions / expansions policy

BHPB supports the ERA's Draft Decision on extensions/expansions. In particular, BHPB takes this opportunity to reiterate that a more efficient and certain approach to extensions / expansions is required in order to provide greater certainty to users when negotiating for capacity. BHPB supports the ERA's proposed regime of providing for automatic coverage, unless GGT can demonstrate that such coverage would be inconsistent with the national gas objective (**NGO**).

BHPB considers GGT to be better placed than users to make the initial arguments as to whether automatic coverage is consistent with the NGO. Moreover, a regime that provides for automatic access is consistent with the access arrangements for the Dampier to Bunbury Natural Gas Pipeline and Mid-West and South-West Gas Distribution System.

4.3 Gas specification

BHPB supports the ERA's rejection of GGT's proposed amendments to the gas specification as they are not consistent with the *Gas Supply (Gas Quality Specifications) Act 2009* (**GS Act**).

Moreover, BHPB is concerned about GGT's proposal to reduce the covered capacity of the GGP. BHPB considers that GGT has not provided sufficient evidence to support its contention that maintaining the HHV at 35.5 MJ/m^3 (which is consistent with the current access arrangement and the GS Act), leads to a reduction in the covered capacity of the GGP from 109 TJ/d to 102.5 TJ/d.

GGT has a clear incentive to understate the covered capacity of the GGP as it forces shippers to use the higher-priced uncovered capacity. As a result, the ERA should carefully consider whether it is appropriate to accept GGT's proposed reduction of the covered capacity of the GGP.

4.4 Reference services terms and conditions

BHPB supports the ERA's rejection of the proposed increase of the minimum term from 1 year to 5 years. This increase would force users who require shorter terms to acquire higher priced negotiated services. This is likely to discourage use of the GGP and does not contribute to the achievement of the NGO.

BHPB also supports the ERA's rejection of the proposed changes to the gas title regime. BHPB considers that it is inappropriate for users to bear this risk during gas transportation where the users have no visibility or control over its transportation.

Furthermore, BHPB submits that it is not acceptable for GGT to vary the terms and conditions just to align with other APA pipelines in Australia. The proposed terms and conditions would significantly erode the rights of users as compared with the terms and conditions of the current access arrangement. GGT has provided no compelling rationale for these changes and, as a result, the existing terms and conditions should remain.

5 Cost allocation

BHPB agrees with the ERA's approach to cost allocation. As noted in BHPB's previous submissions, there is no basis to read in the wording suggested by GGT. If the legislature had intended the definition of 'pipeline service' to be limited to covered pipelines, it would have expressly provided for this in the text of rule 93, as it has elsewhere in the NGR.

BHPB provides the following additional information in support of the ERA's approach and, in particular, notes the significant challenges facing the nickel market, the impact of raising tariffs on nickel producers and the weakness of GGT's arguments about the GGP users' willingness to pay.

5.1 The nickel industry is facing real challenges

Global nickel prices have experienced a sustained deterioration since a high of US$13.20/lb in February 2011. This deterioration has significant negative implications for the profitability of the nickel industry globally, with UBS commenting in October 2015 that "for nickel, around 50% is loss making at spot of US$4.60/lb, which is among the most

extreme across mined commodities".[4] This price deterioration has continued into 2016 with the nickel spot price reaching US$3.43/lb on 11 February 2016 (representing a74% deterioration from the February 2011 position).

Nickel West is not immune from macroeconomic pricing. In the financial years ending 30 June 2014, 30 June 2015 and the half-year ending 31 December 2015, Nickel West reported EBIT losses of US$208m, US$74m and US$142m despite realising a significant reduction in its cost base since 2012. Also notable is the energy intensity of Nickel West's operations with energy costs exceeding 12% of its total cost base in each of these reporting periods, inclusive of gas transportation costs.

Similar cost pressures and the weak macroeconomic outlook have resulted in the suspension and/or closure of nickel operations worldwide, including Mincor and Panoramic Resources' operations in the Kambalda region of Western Australia.[5]

5.2 Tariffs are an important aspect of demand for pipeline services

It is incorrect to claim, as GGT does, that there is no loss of economic activity associated with use of the pipeline if reference tariffs are held high (and equivalently, that a benefit to efficiency would not be expected if reference tariffs are lowered).

BHPB does not agree with CEG's and GGT's contention that, because the GGP capacity is almost fully contracted for an extended period under fixed commitment contracts, a reduction in tariffs would not result in greater utilisation of the GGP. This argument does not take into account any rights that shippers may have to relinquish contracted capacity. BHPB understands that relinquishment rights are common in gas transportation agreements in Australia and, if there are such rights on the GGP, the exercise of such rights could have a substantial impact on the contracted capacity of the covered pipeline. As a result, the ERA should carefully consider the potential impact of any relinquishment rights before giving any weight to this argument.

In this respect, GGT has previously noted that the demand for pipeline services provided using the covered pipeline is dependent on conditions in international commodity markets, and the ERA has noted that raising reference tariffs on a 'willingness to pay' basis would disadvantage nickel producers.

Furthermore, BHPB maintains that it is not correct to contend, as GGT does, that the demand for the GGP between the covered capacity and the uncovered capacity is fungible such that any reduction in the use of the covered capacity can be assumed to be taken up as uncovered capacity.

The use of the uncovered capacity relates only to delivery points located along the first half of the GGP. That portion of the GGP predominantly services iron ore producers. Conversely, a substantial portion of the covered capacity services nickel and gold producers located along the second half of the GGP. BHPB notes that nickel producers comprise greater than 50% of the covered capacity of the GGP. As a result, the continued efficient use of the second half of the pipeline is dependent upon the continued viability of the nickel sector, which is energy intensive and faces a relatively high proportion of gas transportation costs.

[4] Daniel Morgan and Lachlan Shaw, 'Global Commodities. Zinc: Big shuts announced. Nickel next?', UBS Securities Australia Pty Ltd, 9 October 2015.

[5] Fraser Beattie, 'Panoramic, Mincor to halt operations', Business News, 27 January 2016, https://www.businessnews.com.au/article/Panoramic-Mincor-to-halt-operations.

5.3 GGT has no ability or incentive to offer discounts

BHPB does not agree with CEG's contention that offering prudent discounts to users who are at risk of closure addresses the concern about high tariffs reducing the economic activity associated with the pipeline.

In order for selective discounting to eliminate any risk to efficiency it would be necessary for GGT to have an unrealistic degree of omniscience about the mining activities associated with the GGP. In particular, GGT would not only need to offer a discount for current activities, but also need to offer discounts for future activities to ensure that prospective future projects continue to be developed. BHPB submits that it is not reasonable to assume that GGT would have all of the information required to offer such discounts in advance, especially in an industry that makes investment decisions many years in advance and constantly reviews those decisions based on (often very confidential) information about resources and projects.

GGT would also need to quarantine the discount to only those shippers that require the discount to remain on the GGP. This is necessary because, if the discount were to apply too widely, the cost (in terms of the revenue loss) from attempting to keep the target shipper on the GGP is increased, and so the likelihood of GGT offering that discount is reduced. BHPB submits that it is unlikely that GGT could quarantine any discount offered having regard to:

- the fact that it is common in the Australian gas industry for transportation agreements to contain 'most favoured nation' clauses , which have the effect of requiring that a discount provided to one user is also provided to other users – the ERA should carefully consider the potential impact of any such most favoured nation clauses before giving any weight to GGT's argument; and
- the fact Nickel West uses the GGP gas to generate and sell electricity to other third party mines. Accordingly, it is not possible for GGT to directly provide a selective discount to the mines that Nickel West sells electricity to (even if it were efficient to do so) without also providing a discount to BHPB.

5.4 The uncovered service can accommodate its share of costs

BHPB supports the ERA's position in the Draft Decision that whether cost allocation will impact the commerciality of efficient uncovered projects is an empirical question.

BHPB notes that GGT did not provide any empirical evidence that the ERA's proposed allocation of costs would result in a reasonable return not being achieved on the two tranches of uncovered service that have already been installed, or that a new augmentation project to create a new tranche of uncovered capacity would be made uncommercial.

Indeed, the ERA's analysis during the previous review demonstrated that the first of the uncovered augmentations (the second occurred after that review) would generate a substantial surplus over its incremental cost even assuming that only the reference tariff was applied to that project. The available surplus would be even greater in light of the evidence on the public record that the prices for the uncovered services are materially higher than the reference tariff.

In these circumstances, the ERA was clearly correct in forming the view that the uncovered service can bear its proportionate share of common costs in the absence of evidence to the contrary.

BHPB notes that CEG questions the feasibility of the cost allocation methodology varying according to the economics of the particular tranche of uncovered capacity. As augmentations tend to be large and infrequent projects, it is feasible and logical to allow the standard method of allocating costs to be varied for a new tranche of uncovered

capacity, if the evidence shows that the new tranche would not be commercially viable under the standard cost allocation method.

The only formal decision the ERA would need to make about such a variation to the standard cost allocation method is when reference tariffs are next reviewed, as this is the only time when the cost allocation method is applied. However, the ERA has the authority to consult and provide informal guidance in advance as to how it plans to allocate costs in relation to a particular project to facilitate timely investment. This is the same cost allocation flexibility that CEG highlights as a positive feature of the method employed by the New Zealand Commerce Commission (discussed further below at 5.5).

5.5 Regulatory precedents support cost allocation

BHPB disagrees with the assertion that the other regulatory precedents summarised in the expert evidence advanced by BHPB relate to matters that are sufficiently different to render them uninformative to the ERA.

The regulatory precedents referenced support the ERA's position that, where certain assets are used to provide regulated and unregulated services in common, it is appropriate for a share of those common costs to be allocated to the unregulated services.

Furthermore, BHPB notes that no reference has been made to regulatory precedents to the contrary (i.e. where the regulator decided that all of the cost should only be recovered from the regulated service).[6]

BHPB also considers some of the comments made by CEG in relation to the regulatory precedents selective and, in some places, incorrect.

Telecommunications

In relation to the regulation of telecommunications fixed line services, CEG asserts that the ACCC's decision (and approach to cost allocation) related only to the sharing of the cost of the copper lines between Telstra's exchanges and customers, where the service provided to the final customer is identical, and therefore is not analogous to the GGP.

BHPB disagrees as, in both instances, the:

- asset provides a service for a price that the regulator determines, and also provides services for which the regulator is not required to set a price;
- revenue received from the asset is a function of the value generated from both the sales under the regulated price and the revenue from other uses; and
- price for the regulated service appropriately acknowledges the revenue earned from the other activities.

In any event, BHPB submits that CEG's assertion rests on an error of fact. The assets Telstra uses to provide the regulated fixed line services extend well beyond the copper lines (and switching equipment), and include the use of space in local exchanges and upstream assets like inter exchange cables and transmission equipment. These upstream assets are used for a range of unregulated services (including for mobile telephony) and the costs of these assets are allocated between the different uses applying the same cost allocation principle, being utilisation.

[6] While some form of materiality threshold is common, the extent of unregulated revenue from the GGP would pass (and pass easily) all of the thresholds that have been identified.

Airports

CEG asserts that airports differ as the prices for airport services are not determined by the regulator but are negotiated, with the negotiated cost allocation not being disclosed (this flows from the fact that the regulatory regime for the major Australian airports is one of price monitoring rather than price control). However:

- the price monitoring regime is intended to provide a 'moral suasion' over the regulated airport prices that are negotiated;
- an important element of this 'moral suasion' is the publication of an achieved rate of return for the regulated airport services; and
- a key element in the calculation of this achieved rate of return is the manner in which costs are allocated between the regulated and unregulated activities.

Additionally, it is asserted that airports are different because expansions to regulated assets typically also generate a complementary revenue stream (i.e. the additional passengers that flow through the terminal typically generate additional unregulated retail sales). However, BHPB submits that this is precisely what occurs in relation to the GGP, as GGT has been able to install additional compressors, which generate a complementary unregulated revenue stream.

New Zealand Commerce Commission (NZCC)

In relation to the NZCC's cost allocation method, CEG emphasises the importance of note "unduly deterring" unregulated activities. In reaching this conclusion, regard is had to:

- the threshold for materiality, which is 20% of unregulated revenue (and said to be about $100 million for one business, although the true figure for the current year is closer to $80 million);[7]
- the ability for the allocation of costs to the unregulated activity to be reduced if the standard allocation would "unduly deter" unregulated activities; and
- the role that directors of the entity have in identifying where an unregulated activity may be "unduly deterred" by the standard cost allocation.

While BHPB considers the NZCC's approach to cost allocation to be a mainstream approach to the issue and one that is relevant to the ERA, BHPB notes that the fact that a materiality threshold is applied is not unusual, although the threshold of 20% of revenue is significantly higher than the threshold of 1% applied by the AER under the National Electricity Rules. Irrespective, the GGP's unregulated services clearly exceed both of these thresholds.

Of particular relevance to the ERA, is the NZCC's flexible approach to cost allocation in allowing adjustments to the cost allocation for specific services (to avoid 'unduly deterring' the unregulated service). Directors of the company are required to certify that the exception is required in order not to unduly deter the relevant unregulated service in order for it to qualify for an adjustment. BHBP considers that such an approach ensures that costs are not allocated when it is not efficient to do so.

BHPB considers that this flexible approach should be applied to the GPP so that where GGT is concerned that the application of the ERA's proposed cost allocation method will

[7] GGT refer to the application of the materiality threshold to the largest electricity distributor in New Zealand, Vector. Vector's annual revenue requirement for 1 April 2015 to 31 March 2016 was $395 million (NZCC, 2014, Electricity Distribution Services Default Price-Quality Path Determination 2015, November, p.22), implying that the 20 per cent materiality threshold translates into an absolute value of $79 million. Equally relevant is the application of the materiality threshold to the smallest price controlled entity, Nelson Electricity Limited, whose annual revenue requirement for the same year was just under $7 million, implying that an absolute materiality threshold of just over $1 million per annum applied.

impact the viability of an efficient uncovered project, GGT can approach the ERA for a variation to the cost allocation.

5.6 Flaws in CEG's alleged competitive market outcome

CEG appears to conclude that the ERA's proposal to allocate a share of common costs to the uncovered business is not consistent with the outcomes of a competitive market (or the version of a competitive market that CEG considers to be most consistent with the circumstances of the GGP).

CEG reaches this conclusion by first noting that, in an analogous situation (where there are common costs that are incurred for an initial set of users and are then used to serve new users), the prices that users would face in a competitive market would reflect an allocation of common costs to new users. However, CEG then suggests that there is a further choice, namely whether the allocation of common costs should reflect:

- the actual additional use of the GGP (i.e. after it had materialised); or
- the additional use of the GGP that was anticipated at the time that the initial contracts were struck.

The distinction between these outcomes is where the 'risk' associated with the anticipated future use of the GGP is allocated. CEG argues that as all but one of the contracts for the covered capacity on the GGP have fixed prices, the price is not affected by increases in demand. As a result, CEG contend that the allocation of common cost should not be reflective of the actual additional use of the GGP, but rather the additional use of the GGP that was anticipated at the time the initial contracts were struck.

CEG's conclusion implies that the ERA's proposed method of cost allocation is inconsistent with this version of the outcome of a competitive market. BHPB does not agree with this conclusion and submits that there are several flaws with GGT's argument:

1 **CEG's own proposal is not consistent with a competitive market outcome**

As noted above, CEG conceded that a competitive market would result in an allocation of costs to new customers, the only question was the extent of the risk of future demand utilisation and where it should reside. However, CEG contend that there should be no allocation of common costs to the new users. Therefore, CEG's proposal is not consistent with either of the outcomes that CEG's contend could be expected in a competitive market.

2 **Uncertain significance of there only being one contract with a fixed price**

The CEG report notes that it has been instructed that, with the exception of one contract pursuant to which the tariffs payable are linked to the reference tariff, none of the contracts for the GGP alter the tariff payable in the event of new customers using the pipeline. However, CEG does not disclose any details about this contract, including the capacity provided under this contract. As a result, it is not clear whether this contract is significant in the context of the GGP or supportive of the argument that new customers are not required to pay a share of common costs. The ERA should carefully consider whether or not this contract is significant before giving any weight to CEG's argument.

3 **CEG's 'competitive market outcome' is not consistent with the GGP's history**

Under CEG's preferred competitive market outcome, the prices that GGT would charge would have it bearing a substantial risk as to whether the expected growth in demand emerges. As a result, GGT might not recover its costs if the forecast demand does not emerge. However, this is not consistent with how the GGP was actually developed.

As the ERA is aware, the GGP was constructed with a tariff model in place,[8] in which that tariff was determined to generate an NPV = 0 over the life of the GGP.[9] Under this tariff model, the tariffs were to be adjusted over time to reflect past actual demand and updated forecasts of demand. There was no long term volume risk under this approach to pricing. Therefore, the ERA's proposed method of cost allocation, where the allocation of common costs to new users (and so the price benefit to existing users) depends on the actual utilisation of the GGP, is the version of CEG's two 'competitive market outcomes' that is more consistent with the historical facts surrounding the GGP.

4 **Not practicable to perform the task that CEG's model requires**

If CEG's preferred outcome of a competitive market was to be applied, then it would be necessary for the ERA to form a view as to the level of use of the GGP today that was expected when the GGP was constructed. While it was clear that substantial demand growth was expected at the time the GGP was constructed (reflected in the substantial developable capacity that was installed), attempting to quantify this is not a task that BHPB considers to be practicable.

[8] The pipeline was constructed by the major customers (of which BHPB was one), but who were assumed to pay the calculated tariff for the purpose of the tariff calculation.

[9] It is noted that one of the factors the ERA's predecessor gave weight when setting the initial capital base for the GGT was the implied residual value generated by this tariff model.