



Economic Regulation Authority

Western Australia

Further Final Decision and Final Approval on the Proposed Access Arrangement for the Goldfields Gas Pipeline

Submitted by

GOLDFIELDS GAS TRANSMISSION PTY LTD

ECONOMIC REGULATION AUTHORITY

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INTRODUCTION AND BACKGROUND

1. On 15 December 1999, Goldfields Gas Transmission Pty Limited (“**GGT**”) submitted a proposed Access Arrangement for the Goldfields Gas Pipeline (“**GGP**”) to the Western Australian Independent Gas Pipelines Access Regulator (“**Regulator**”) for approval under the National Third Party Access Code for Natural Gas Pipeline Systems (“**Code**”).
2. On 10 April 2001, the Regulator issued a Draft Decision on the proposed Access Arrangement for the GGP. The Draft Decision of the Regulator was to not approve the proposed Access Arrangement and the Regulator indicated 49 amendments to the proposed Access Arrangement that would have to be made before the proposed Access Arrangement would be approved.
3. On 1 January 2004, the function of approval of the proposed Access Arrangement moved to the Economic Regulation Authority (“**Authority**”). The Authority is the “Relevant Regulator”, under the *Gas Pipelines Access (Western Australia) Law* (“**Law**”), for approval of the proposed Access Arrangement for the GGP.
4. On 29 July 2004, the Authority issued an Amended Draft Decision, prepared in light of the decision of the Full Court of the Supreme Court of Western Australia in proceedings brought in respect of the Regulator’s Draft Decision on the proposed Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline (“**Epic Decision**”).¹
5. On 19 November 2004, GGT submitted to the Authority a revised Access Arrangement, pursuant to section 2.15A of the Code.² Section 2.15A of the Code permits a Service Provider to resubmit the proposed Access Arrangement, revised so as to incorporate or substantially incorporate the amendments specified by the Relevant Regulator in its Draft Decision, or revised to otherwise address the matters the Relevant Regulator identified in its Draft Decision as being the reasons for requiring the amendments specified in its Draft Decision.
6. The effect of section 2.16A of the Code is that the Authority may approve the revised Access Arrangement only if the Authority is satisfied that the revised Access Arrangement:
 - incorporates or substantially incorporates the amendments specified by the Authority in its Amended Draft Decision; or
 - otherwise addresses to the Authority’s satisfaction the matters the Authority identified in its Amended Draft Decision as being the reasons for requiring the amendments specified in the Amended Draft Decision.

¹ *Re Dr Ken Michael AM; Ex Parte Epic Energy (WA) Nominees Pty Ltd & Anor* (2002) 25 WAR 511.

² Goldfields Gas Transmission, 17 November 2004, Goldfields Gas Pipeline Revised Access Arrangement.

7. On 17 May 2005, pursuant to section 2.16(b)(ii) of the Code, the Authority issued a Final Decision on the revised Access Arrangement submitted by GGT for the GGP. The Final Decision of the Authority was to not approve the revised Access Arrangement and the Authority stated 26 amendments that would have to be made to the revised Access Arrangement in order for the Authority to approve it. The Authority required GGT to submit a revised Access Arrangement to it by 4:00pm on Tuesday 14 June 2005. At the request of GGT, the Authority extended the deadline for the submission of a revised Access Arrangement to 4:00pm on Friday 17 June 2005. The extension of time was granted on condition that GGT lodge a submission on its proposed revisions to non-tariff matters of the Access Arrangement by 4:00pm on 14 June 2005.
8. GGT submitted its proposed revisions to non-tariff matters of the Access Arrangement to the Authority on 14 June 2005 and submitted its revised Access Arrangement to the Authority on 17 June 2005 (**“Revised Proposed Access Arrangement”**).
9. On 7 July 2005 GGT provided the Authority with a copy of the Revised Proposed Access Arrangement with a number of typographical and formatting errors corrected. There were no material changes to the Revised Proposed Access Arrangement.
10. The Authority has decided to treat this as a late submission and, pursuant to section 2.15 of the Code, has exercised its discretion to accept it. The Authority agrees that the errors identified in GGT’s submission should be corrected in the manner identified in the submission. Accordingly, the references in this decision to the Revised Proposed Access Arrangement are to the Revised Proposed Access Arrangement as corrected.
11. Section 2.19 of the Code sets out the requirements for the Authority’s consideration of the Revised Proposed Access Arrangement submitted to the Authority by GGT on 17 June 2005:
 - 2.19 If the Service Provider submits a revised Access Arrangement by the date specified by the Relevant Regulator under section 2.16(a)(ii) or (b)(ii) then the Relevant Regulator must issue a further final decision that:
 - (a) if the Relevant Regulator is satisfied that the revised Access Arrangement incorporates the amendments specified by the Relevant Regulator in its final decision under Section 2.16(a)(ii) or (b)(ii), approves the revised Access Arrangement; or
 - (b) if the Relevant Regulator is satisfied that the revised Access Arrangement either substantially incorporates the amendments specified by the Relevant Regulator or otherwise addresses to the Relevant Regulator’s satisfaction the matters the Relevant Regulator identified in its final decision as being the reasons for requiring the amendments specified in its final decision under section 2.16(a)(ii) or (b)(ii), either approves or does not approve the revised Access Arrangement (in the Relevant Regulator’s discretion); or
 - (c) in any other case, does not approve the revised Access Arrangement.

FURTHER FINAL DECISION

12. Pursuant to section 2.19 of the Code, the Authority's Further Final Decision is to approve the Revised Proposed Access Arrangement. The Authority is satisfied that GGT has incorporated the amendments required by the Final Decision or has otherwise addressed the Authority's reasons for requiring the amendments. The detailed reasons for the Authority's Further Final Decision are set out in this document.
13. The Access Arrangement will commence on 1 August 2005, being a date which is not less than 14 days after the date of this decision.³ For the purpose of clause 3.1 of the Access Arrangement, 1 August 2005 is the "Effective Date".

REASONS

SERVICES POLICY

14. In its Final Decision, the Authority indicated concern that the Services Policy makes no explicit provision for receipt of gas into the GGP at locations other than the existing Inlet Point at Yarraloola and required the following amendment to the Services Policy

The Services Policy of the revised Access Arrangement should be amended to make explicit provision for a Non Reference Service for gas transmission with gas received into the GGP at Inlet Points other than at Yarraloola. (Final Decision Amendment 1)

15. GGT has revised clause 4.2 of the Access Arrangement as follows.

4.2 Negotiated Services

- (a) Should any User or Prospective User have requirements which cannot be satisfied through a Reference Service, including for gas transportation from Inlet Points other than Yarraloola, GGT will consider the development of Negotiated Services to meet that person's specific requirements. Negotiated Services will be provided on the terms and conditions negotiated between GGT and the User.
- (b) No provision of this Access Arrangement necessarily limits or circumscribes the terms and conditions which may be negotiated for the provision of one or more Negotiated Services.

16. The Authority is satisfied that this revision incorporates Final Decision Amendment 1.

17. GGT has also revised the Services Policy to include a new clause 4.3, as follows.

4.3 Variation of General Terms and Conditions

- (a) A Prospective User may seek variations of the General Terms and Conditions applicable to the Reference Service.
- (b) Such variations constitute a request for a service which differs from the standard service provided for by the Reference Service and hence will be treated as a request for a Negotiated

³ Section 2.26 of the Code.

Service for the purposes of this Access Arrangement. GGT will negotiate the tariffs and other terms and conditions for such a Negotiated Service with the Prospective User in good faith.

18. The revision of the Services Policy to include this new clause is not responsive to an amendment required under the Authority's Final Decision. The Authority does not, however, consider the new clause 4.3 to be other than declaratory of rights of GGT and Users to negotiate terms and conditions for Services that differ from terms and conditions for the Reference Service. As such, the Authority does not consider the revision of the Services Policy to include the new clause 4.3 to be material and hence the Authority does not oppose the inclusion of this clause in the Revised Proposed Access Arrangement.

REFERENCE TARIFF AND REFERENCE TARIFF POLICY

Reference Tariff Policy

19. The revised Access Arrangement submitted by GGT subsequent to the Authority's Amended Draft Decision included a substantially revised Reference Tariff Policy, including a number of provisions that go beyond the relevant principles and provisions of the Code and seek to incorporate into the Access Arrangement a number of matters that would add to the principles and provisions of the Code relating to particular cost parameters in determination of Total Revenue and the Reference Tariff. In particular, in the revised Access Arrangement submitted subsequent to the Amended Draft Decision GGT sought to incorporate provisions into the Access Arrangement to provide for:
- the Rate of Return to reflect principles of the *Goldfields Gas Pipeline Agreement Act 1994* ("**State Agreement**") (clause 5.2(b) of the revised Access Arrangement);
 - the Initial Capital Base to reflect the economic depreciated value of the GGP at the time the Code was first applied to the establishment of tariffs for the pipeline (clause 5.2(c));
 - the Non Capital Costs for the pipeline to include "reasonable costs of ownership of the pipeline" (clause 5.2(e)).
20. The Authority determined in its Final Decision that these additional principles and provisions are contrary, or are potentially contrary, to the requirements of the Code, in particular for:
- the Rate of Return to be determined in accordance with the requirements of sections 8.30 and 8.31 of the Code;
 - the Initial Capital Base to be determined after consideration of a range of factors in section 8.10 and as guided by sections 8.11, 8.1 and 2.24 of the Code; and
 - a forecast of Non Capital Costs to meet the requirements of section 8.37 of the Code.

21. GGT also included provisions in the Reference Tariff Policy in relation to determination of the value of the Capital Base at the beginning of the next Access Arrangement Period, indicating that:
 - the Capital Base at the commencement of the next Access Arrangement Period will be determined by the “Cost of Service Methodology” (clause 5.2(i) of the revised Access Arrangement submitted subsequent to the Amended Draft Decision); and
 - where actual New Facilities Investment differs from the forecast New Facilities Investment, that such New Facilities Investment will be included in the Capital Base at the actual cost to GGT (clause 5.2(j)).
22. In its Final Decision, the Authority expressed concerns that these additional clauses unnecessarily and inaccurately re-state provisions of the Code:
 - the Cost of Service methodology for determination of Total Revenue as described in section 8.4 of the Code is not a methodology for determination of a value of the Capital Base, although section 8.9 describes how the Capital Base is valued where a Cost of Service methodology is used to determine the value of Total Revenue;
 - the provisions of clause 5.2(j) of the Reference Tariff Policy fails to indicate that the addition of New Facilities Investment to the Capital Base is contingent upon the New Facilities Investment meeting the requirements of section 8.16 of the Code.
23. For reasons reflecting these considerations, the Authority required the following amendment.

The revised Access Arrangement should be amended to remove clauses 5.2(b), (c), (e), (i) and (j) from the Reference Tariff Policy. (Final Decision Amendment 2)
24. In its Revised Proposed Access Arrangement, GGT has revised clause 5.2 of the Reference Tariff Policy as follows.

5.2 Reference Tariff Policy

 - (a) The following principles apply to the development of the Reference Tariff under this Access Arrangement:
 - (1) the Reference Tariff is derived through a price path approach under which Reference Tariffs are determined for the whole Access Arrangement Period to follow a path forecast to deliver a Total Revenue ;
 - (2) the Total Revenue is calculated according to the Cost of Service methodology ;
 - (3) the Total Revenue is designed to permit GGT to recover the efficient costs of the Pipeline over the expected life of the assets used in the provision of Services, including recovery of a rate of return commensurate with conditions in the market for funds for development of the Pipeline and provision of Services; and
 - (4) the Initial Capital Base is established in accordance with sections 8.1, 8.10 and 8.11 of the Code.
 - ~~(b) The rate of return used in setting the Reference Tariffs is commensurate with the business risks expected to be taken by the owners over the life of the Pipeline investment. The rate of~~

~~return used also reflects the principles of the GGP Agreement entered into at the time of development of the Pipeline and which underpinned the development of the Pipeline.~~

- ~~(e)~~ The Initial Capital Base is set to reflect the economic depreciated value of the Pipeline at the time the Code first applied to the establishment of tariffs for the Pipeline. In particular, the Initial Capital Base reflects the capital costs incurred in the development and construction of the pipeline, the rate of return applicable under the GGP Agreement prior to the Code, and amounts reasonably regarded as having been paid by Users of the Pipeline prior to the commencement of the Code. The Initial Capital Base also includes an allowance for linepack provided by the owners and for working capital.
- ~~(d)~~(b) The Initial Capital Base is set at 1 January 2000, and is then depreciated on a straight line basis from that date over a remaining economic life of 64.5 years
- ~~(e)~~ An amount reflecting the reasonable costs of the ownership of the Pipeline, as well as the day to day management, operation and maintenance of the Pipeline, are included in the non-capital costs for the Pipeline.
- ~~(f)~~(c) The Reference Tariff for the Reference Service is designed to recover Total Revenue from the Users of the Reference Service and is structured in three parts:
 - Toll Charge (capacity based) as described in clause 9.4(a) of the General Terms and Conditions;
 - Capacity Reservation Charge (capacity and distance based) as described in clause 9.4(b) of the General Terms and Conditions; and
 - Throughput Charge (throughput and distance based) as described in clause 9.4(c) of the General Terms and Conditions.
- ~~(g)~~(d) The Reference Tariff is designed to ensure that no User pays a tariff which is more than the stand alone cost of provision of the Service and no User pays a tariff which is less than the marginal cost of the provision of the Service.
- ~~(h)~~(e) The Incentive Mechanism adopted in calculation of the Reference Tariff is as follows:
 - (1) the Reference Tariff will apply during each Year of the Access Arrangement Period regardless of whether the forecasts on which the Reference Tariff was determined are realised;
 - (2) the prospect of retaining improved returns for the period to 31 December 2009 provides an incentive to GGT to increase the volume of sales and to minimise the overall cost of providing Services; and
 - (3) in determining Reference Tariffs after 31 December 2009, Users will benefit from increased efficiencies achieved by GGT up to that date through the recovery through the subsequent Access Arrangement Period of non-capital costs reflecting the efficiencies gained during this Access Arrangement Period.
- ~~(i)~~ The Capital Base at the commencement of the subsequent Access Arrangement Period will be determined by application of the Cost of Service Methodology, adjusted to account for New Facilities Investment and Depreciation.
- ~~(j)~~ For the purposes of calculating the Capital Base at the commencement of the subsequent Access Arrangement Period, where the actual cost of New Facilities differs from the forecast new Facilities Investment on which the Capital Base was determined, such new Facilities Investment will be included at the actual cost to GGT of undertaking such New Facilities.
- ~~(k)~~(f) GGT may undertake New Facilities Investments that do not satisfy the requirements of Section 8.16 of the Code and may include in the Capital Base that part of the New Facilities Investment which does satisfy Section 8.16 of the Code.
- ~~(l)~~(g) An amount in respect of the balance after deducting the Recoverable Portion of New Facilities Investment may subsequently be added to the Capital Base if at any time the type and volume of Services attributable to the New Facility change such that any part of the Speculative

Investment Fund would then satisfy the requirements of the Code for inclusion in the Capital Base.

25. GGT has deleted provisions from the Reference Tariff Policy in accordance with the requirements of Amendment 2 of the Final Decision. As such, the Authority is satisfied that the Revised Proposed Access Arrangement submitted subsequent to the Final Decision incorporates Final Decision Amendment 2.

Reference Tariff

26. In its Final Decision, the Authority determined that the Reference Tariff should be revised:

Final Decision Amendment 3

The Reference Tariff should be revised to be as follows:

Toll Charge (\$/GJ MDQ)	Capacity Charge (\$/GJ MDQ/km)	Throughput Charge (\$/GJ throughput/km)
\$ nominal at 1 January 2000		
0.200143	0.001143	0.000298
\$ nominal at 1 January 2005		
0.229573	0.001311	0.000342

and reflecting the following:

Initial Capital Base	\$500 million at 31 December 1999, including a value of linepack and working capital of \$2.58 million.									
Working Capital	45 days of average daily value of New Facilities Investment and Non Capital Costs in each quarterly period									
New Facilities Investment	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
	3.64	8.39	1.12	10.14	6.14	1.58	5.26	5.43	1.61	1.72
Nominal pre-tax Rate of Return	10.2%									
Depreciation	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
	10.01	10.22	10.43	10.60	10.91	11.12	11.29	11.55	11.78	11.35
Non Capital Costs	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
	11.10	12.24	14.04	16.37	14.35	14.87	15.82	16.22	16.76	17.07

27. GGT's response to this required amendment has been to propose a different Reference Tariff to that required under the Final Decision, based on different cost parameters. The revised Reference Tariff proposed by GGT and the associated cost parameters are as follows.

Toll Charge (\$/GJ MDQ)	Capacity Charge (\$/GJ MDQ/km)	Throughput Charge (\$/GJ throughput/km)
\$ nominal at 1 January 2000		
0.211860	0.001210	0.000315
\$ nominal at 1 January 2005		
0.243012	0.001388	0.000361

reflecting the following cost parameters:

Initial Capital Base	\$513.7 million at 31 December 1999, including a value of linepack and working capital of \$2.58 million.									
Working Capital	45 days of average daily value of New Facilities Investment and Non Capital Costs in each quarterly period									
New Facilities Investment	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
	3.64	8.39	1.12	10.14	6.14	1.58	5.26	5.43	1.61	1.72
Nominal pre-tax Rate of Return	10.60%									
Depreciation	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
	10.36	10.57	10.77	10.94	11.24	11.44	11.62	11.87	12.10	11.63
Non Capital Costs	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
	11.10	12.24	14.04	16.37	14.35	17.91	16.89	16.76	18.86	20.35

28. GGT has submitted that the changes to the Initial Capital Base, Working Capital, Rate of Return, Depreciation and Non Capital Costs address the matters identified in the Final Decision as the reasons for the required amendment.
29. GGT's proposed Reference Tariff is considered below in terms of the cost parameters applied by GGT in its determination of the revised Total Revenue and Reference Tariff.⁴

Initial Capital Base

30. GGT's revised Access Arrangement submitted subsequent to the Amended Draft Decision included a Reference Tariff reflecting an Initial Capital Base of \$672 million at 31 December 1999. GGT sought to justify this value by giving consideration to a calculation of residual value of the GGP reflecting the setting of third-party tariffs prior to 31 December 1999 and the extent of capital recovery arising from those tariffs.
31. In making its Final Decision, the Authority considered submissions from GGT that the value of the Initial Capital Base should be determined on the basis of a residual

⁴ Calculated values presented in this document (including the Reference Tariff, revenue, asset values etc) may vary from that presented in the tariff model as a consequence of the ICB, New Facilities Investment and Non Capital Costs used in the tariff model having a higher degree accuracy than shown in this document.

capital value of the GGP taking into account recovery of capital investment over the life of the pipeline assets. The Authority was not, however, satisfied that the value of the Initial Capital Base proposed by GGT met the requirements of the Code.

32. In making its determination on the Initial Capital Base, the Authority gave consideration to the range of factors required to be considered under the Code, including:
 - a Depreciated Actual Cost (“DAC”) value under section 8.10(a) of the Code of \$484 million;
 - a range of reasonable estimates of a Depreciated Optimised Replacement Cost (“DORC”) value for the GGP extending to values in the order of \$500 million in dollar values of 31 December 1999;
 - a value determined under sections 8.10(f) and 8.10(g) of the Code of \$501.5 million at 31 December 1999, taking into account the economic depreciation of the pipeline in the context of the regime under which third-party tariffs were set prior to the commencement of the Code;
33. Taking these values into account, the Authority determined that the value of the Initial Capital Base should be \$500 million at 31 December 1999, including a value of linepack and working capital of \$2.58 million.
34. GGT has submitted that:

[GGT] ... agrees with the fundamental basis of the Authority's approach in determining the ICB, particularly in relation to:

 - protecting the legitimate business interests of the owners of the GGP in retaining benefits to which they are entitled under the State Agreement regime; and
 - avoiding the significant sovereign risk consequences associated with 'clawing back' any benefits gained through the legitimate implementation of tariffs under that regime.
35. With apparent reference to the Authority's determination of an Initial Capital Base (\$500 million) close to the value determined by the Authority under section 8.10(f) of the Code (\$501.5 million), GGT has further submitted that:

[GGT] ... accepts that the value which best satisfies the objective of avoiding sovereign risk is the economic depreciated value determined having regard to section 8.10(f)
36. GGT's Revised Proposed Access Arrangement includes a Reference Tariff derived from an Initial Capital Base of \$513.7 million. GGT has indicated that this value was derived by the same methodology as applied by the Authority in determining a value for the GGP under section 8.10(f) and 8.10(g) of the Code, with the exception of different assumptions as to revenues assumed to have been obtained from the original owners of the pipeline.
37. For the purposes of its Final Decision, the Authority determined a value of the GGP under section 8.10(f) and 8.10(g) of the Code at \$501.5 million. This value was derived by use of a calculation of capital recovery that took into account:
 - calculation of capital recovery in real (rather than nominal) terms;

- notional values of revenue from the initial owners of the GGP, calculated as if the original owners had been paying the relevant-third party tariff, and with contracted capacity for the original owners assumed to be equal to the initial committed capacity for the original owners, as established in accordance with the State Agreement;
 - benchmark rates of return evident from financial models associated with the determination of third party tariffs under the State Agreement for the periods 1994 to December 1997 and January 1998 to December 1999, respectively;
 - capital costs as reported by GGT;
 - operating costs as reported by GGT; and
 - costs of working capital as reported by GGT.
38. GGT has submitted that its proposed Initial Capital Base of \$513.7 million was derived on a basis consistent with the calculation undertaken by the Authority under sections 8.10(f) and 8.10(g) of the Code, with the exception that revenues from the original owners subsequent to their sale of interests in the pipeline should have been assumed as the values of actual revenues received rather than being determined as notional revenues based on third party tariffs.
39. In its Final Decision, the Authority considered GGT's proposed methodology of quantifying revenues from the original owners of the GGP in the Authority's determination of a DAC value under section 8.10(a) of the Code. The Authority determined that this methodology was appropriate for determination of a value under section 8.10(a), but considered that GGT had provided insufficient information on actual revenues for these to be taken into account. In regard to consideration of values under sections 8.10(f) and (g) of the Code, the Authority took the view that these sections require consideration of notional revenues from regulated tariffs, assessed in the context of the Tariff Setting Principles established under the State Agreement. Principle 2 of the Tariff Setting Principles requires that in consideration of the recovery of pipeline costs, the "Owners" will be ascribed a notional tariff based on third-party tariffs.⁵
40. GGT has submitted that:
- There is nothing in section 8.10(f) or (g) which requires the Authority to continue to assess capital recovery based on notional revenues after the date of sale by the original owners. The second paragraph of [Tariff Setting Principle] 2 is only relevant to the time during which the original joint venturers owned the GGP. After that time the new owners had no other interest in the GGP other than as pipeline owners, and the calculation of capital recovery should therefore be assessed based on actual revenues received.⁶
41. In light of the submission from GGT, the Authority has reconsidered principle 2 of the Tariff Setting Principles, which reads as follows.

⁵ Final Decision paragraph 130.

⁶ Goldfields Gas Transmission, 23 June 2005, Confidential Submission in Support of the Further Revised Access Arrangement p 16.

2. Tariffs will be set to provide a commercial rate of return on all project capital, including all Owners' costs, reasonably incurred in the construction and operation of the Pipeline and to recover all reasonable Pipeline operating, maintenance and administration costs. The commercial rate of return shall be commensurate with the business risk associated with the project.

For 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.

42. For the purpose of the Tariff Setting Principles, "Owners" means "the Goldfields Gas Transmission Joint Venture consisting of Southern Cross Pipelines Australia Pty Ltd (ACN 084 521 997), Southern Cross Pipelines (NPL) Australia Pty Ltd (ACN 085 991 948) [and] Duke Energy WA Power Pty Ltd (ACN 058 070 689)".
43. The Authority accepts GGT's submission that the second part of principle 2 of the Tariff Setting Principles lends itself to different interpretations, being either consideration of actual capital recovery (on the basis of a consideration of actual revenues received) or notional capital recovery (on the basis of a consideration of notional revenues from the pipeline owners).
44. GGT has provided the Authority with further information on the actual revenues received in respect of the use of the GGP by the original owners in the periods subsequent to the sale of the original owners' interests in the pipeline. The Authority is satisfied that this information is accurate, and that the value of the Initial Capital Base of \$513.7 million proposed by GGT is consistent with the determination of capital recovery taking into this information into account. The Authority therefore accepts that the value of \$513.7 million is an appropriate value under section 8.10(f) and (g) of the Code. Taking into account this adjusted value under s.8.10(f) and (g) of the Code, as well as an adjusted DAC value of \$495 million under section 8.10(a) and the DORC value determined under section 8.10 (b) of the Code, and applying the reasoning set out in its Final Decision the Authority is of the view that a value of the Initial Capital Base of \$512 million will recognise past regulation of tariffs under the State Agreement and best meet the competing objectives of sections 8.1 and 2.24 of the Code.
45. However, in considering GGT's proposed Initial Capital Base of \$513.7 million, the Authority is satisfied that the difference between the value determined by the Authority and that proposed by GGT is not of material significance in the context of determination of the Reference Tariff and is therefore prepared to accept that the value of \$513.7 million proposed by GGT otherwise addresses the Authority's reasons for the required amendment to the Initial Capital Base.

Working Capital

46. In its Final Decision, the Authority accepted that the Total Revenue and Reference Tariff for the GGP reflect an allowance for working capital. For the purposes of the Final Decision, the Authority determined a value of working capital in each quarterly period of the Access Arrangement Period as the value of 45 days of average daily New Facilities Investment and Non Capital Costs in each quarterly period, broadly consistent with the methodology applied by GGT. This determination was broadly consistent with the methodology applied by GGT.

47. In its Revised Proposed Access Arrangement submitted subsequent to the Final Decision, GGT has derived the Reference Tariff reflecting a value of working capital determined by application of the same methodology as applied by the Authority for the purposes of its Final Decision. Different values have, however, been derived as a result of differences in values of Non Capital Costs, as described below (paragraph 56 and following). Taking into account the differences in values of Non Capital Costs, the Authority is satisfied that the values of Working Capital applied by GGT address the Authority's reasons for requiring revision of the Reference Tariff.

New Facilities Investment

48. The Authority indicated in its Final Decision that it was not satisfied that GGT's forecast of New Facilities Investment is consistent with the requirements of section 8.16 of the Code. The Authority therefore required the Reference Tariff to be revised to reflect the revised forecast of New Facilities Investment.
49. GGT's revised Access Arrangement submitted subsequent to the Final Decision includes a Reference Tariff calculated on the basis of, *inter alia*, the forecast of New Facilities Investment as required by the Authority under Amendment 3 of the Final Decision. As such, the Authority is satisfied that the revised Access Arrangement incorporates this element of Amendment 3.

Rate of Return

50. For its revised Access Arrangement, GGT applied a nominal pre-tax Rate of Return of 13.5 percent pre-tax nominal in determining Total Revenue. In its Final Decision, the Authority determined that this value lies outside of the range of values of the Rate of Return that different minds, acting reasonably, would attribute to the Rate of Return for the GGP. Accordingly, the Authority took the view that the Rate of Return proposed by GGT does not meet the requirements of the Code.
51. In its Final Decision, the Authority determined that the range of values of the Rate of Return that would comply with the Code is 8.4 percent to 10.6 percent, pre-tax nominal. Taking into account that the various Rates of Return proposed by GGT in its proposed Access Arrangement and various submissions to the Authority prior to the Final Decision lay outside of this range, the Authority was required to determine a Reference Tariff that reflected a Rate of Return within the range that would comply with the Code (10.2 percent).
52. GGT's Revised Proposed Access Arrangement includes a Reference Tariff calculated on the basis of, *inter alia*, a Rate of Return of 10.6 percent pre-tax nominal. GGT indicates that it has addressed the matters the Authority identified in its Final Decision as being the reasons for requiring an amendment to the proposed Rate of Return by proposing a Rate of Return of 10.6 percent in the revised Access Arrangement, as this Rate of Return is within the range that the Authority considers would comply with the Code.
53. The Authority notes that the Rate of Return now proposed by GGT is higher than that determined by the Authority in the Final Decision. The Authority accepts, however, that in revising the Reference Tariff to reflect a Rate of Return of 10.6 percent pre-tax

nominal, GGT has adopted a Rate of Return that the Authority considers is within a range of values that would comply with the Code and the Authority is therefore satisfied that, in applying a Rate of Return of 10.6 percent, GGT has addressed the reasons of the Authority for requiring the Reference Tariff to be revised to reflect a Rate of Return that complies with the requirements of the Code.

Depreciation

54. In its Final Decision, the Authority accepted a proposal by GGT to determine the Depreciation Schedule by application of an historical cost, straight-line methodology over an assumed asset life of 64.5 years from 1 January 2000.
55. For its Revised Proposed Access Arrangement, GGT has maintained this methodology for determination of the Depreciation Schedule. While the values of Depreciation applied in determination of the Reference Tariff differ from those applied by the Authority for the purposes of the Final Decision, the differences reflect revised values of the Initial Capital Base and New Facilities Investment rather than a change in the methodology used to determine the Depreciation Schedule. As indicated above, the Authority is satisfied that the revised values of the Initial Capital Base and New Facilities Investment address the reasons of the Authority for its requirement to revise the Reference Tariff. Accordingly, the Authority is also satisfied that the Depreciation Schedule applied by GGT in its determination of the Reference Tariff included in the Revised Proposed Access Arrangement addresses the reasons of the Authority for revision of the Reference Tariff.

Non Capital Costs

56. In its Final Decision, the Authority indicated that it was not able to be satisfied that the Non Capital Costs applied by GGT in its determination of Total Revenue and the Reference Tariff were consistent with the requirements of section 8.37 of the Code. In particular, the Authority determined that:
- costs included by GGT in Non Capital Costs and relating to challenges by GGT to the application of the Code are not consistent with the requirements of section 8.37 of the Code;
 - GGT had not provided sufficient justification for the Authority to accept the inclusion in Non Capital Costs of notional costs claimed by GGT in respect of asymmetric risk in forecasts of demand for pipeline services;
 - a number of costs included by GGT in Non Capital Costs are more appropriately treated as being in the nature of capital costs and hence should be included in New Facilities Investment rather than Non Capital Costs; and
 - GGT had not provided sufficient information for the Authority to be satisfied that the forecast of Non Capital Costs for the period 2005 to 2009 is consistent with the requirements of section 8.37 of the Code
57. In its Final Decision, the Authority determined a Total Revenue and Reference Tariff reflecting Non Capital Costs revised to take into account these considerations.

58. For its Revised Proposed Access Arrangement, GGT has revised the Reference Tariff to reflect revised Non Capital Costs that differ from the Non Capital Costs applied by the Authority in its Final Decision for the years 2005 to 2009. In support of its revised Non Capital Costs, GGT has provided the Authority with further information on cost forecasts for the period 2005 to 2009, including further information on a range of cost line items and information on the processes used by GGT to derive cost forecasts.
59. The Authority has considered the information submitted by GGT in support of its revised Non Capital Costs for the period 2005 to 2009 and relating to a range of cost line items and the processes used by GGT to derive cost forecasts. On the basis of this information, the Authority is satisfied that the Non Capital Costs applied by GGT in deriving the Total Revenue and Reference Tariff included in the Revised Proposed Access Arrangement submitted subsequent to the Final Decision meet the requirements of section 8.37 of the Code. The Authority is also satisfied that, in providing this information, GGT has addressed the reasons expressed in the Authority's Final Decision for requiring revision of the Reference Tariff to reflect different values of Non Capital Costs.

Total Revenue

60. For the reasons as described in the Final Decision in relation to the Initial Capital Base, New Facilities Investment, Rate of Return and Non Capital Costs, the Authority took the view that GGT had not incorporated the required amendments to the Reference Tariff in the revised Access Arrangement submitted after the Amended Draft Decision. The Authority accordingly re-determined Total Revenue on the basis of the Initial Capital Base, forecast New Facilities Investment, Rate of Return and Non Capital Costs determined by it, and represented in a Cost of Service calculation as follows.

Authority's Final Decision determination of Total Revenue
(cost of service calculation, nominal \$million, nominal pre-tax discount rate of 10.2 percent)

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Return on Assets	48.95	48.56	48.07	47.57	47.34	46.64	45.86	45.29	44.50	43.50
Depreciation	10.01	10.22	10.43	10.60	10.91	11.12	11.29	11.55	11.78	11.35
Non Capital Costs	11.10	12.24	14.04	16.37	14.35	14.87	15.82	16.22	16.76	17.07
Total	70.07	71.02	72.54	74.54	72.60	72.63	72.97	73.06	73.04	71.92
Present Value	456.82									

61. In its Revised Proposed Access Arrangement, GGT has included a Reference Tariff determined from revised cost parameters as described above and corresponding to a determination of Total Revenue as follows.

**Total Revenue reflected in GGT's revised Reference Tariff
(cost of service calculation, nominal \$million, nominal pre-tax discount rate of 10.6 percent)**

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Return on Assets	52.18	51.73	51.19	50.64	50.37	49.64	48.79	48.15	47.32	46.26
Depreciation	10.36	10.57	10.77	10.95	11.24	11.44	11.62	11.87	12.10	11.64
Non Capital Costs	11.11	12.24	14.04	16.37	14.35	17.91	16.89	16.76	18.86	20.35
Total	73.64	74.54	76.01	77.95	75.96	78.98	77.30	76.78	78.28	78.24
Present Value	475.33									

62. Taking into account its determinations in respect of GGT's proposed revisions to the cost parameters in the derivation of Total Revenue, the Authority is satisfied that this revised Total Revenue addressed the reasons of the Authority in its requirement for revision of the Reference Tariff.

Cost/Revenue Allocation and the Reference Tariff

63. In its Final Decision, the Authority accepted the tariff structure proposed by GGT and comprising three separate charges determined on the basis of the Total Revenue and forecasts of demand in terms of contracted capacity and throughput for particular delivery locations (corresponding generally to different Users).
64. The Authority did not, however, accept the forecasts of demand for reason of an inconsistency between an assumed average load factor used by GGT to determine forecasts with the average load factor evident from historical use of the pipeline. The Authority calculated a throughput forecast for the period 2005 to 2009 using the average historical load factor for each User in determining a throughput forecast, based on the MDQ forecasts of GGT for each User. For three projected new Users of the GGP, GGT's assumed load factor of 85 percent was adopted by the Authority in deriving forecasts for these Users. The forecasts thus derived by the Authority were as follows.

Actual and forecast contracted capacity and throughput as revised by Authority for the purposes of the Final Decision

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
	Actual					Forecast				
Total Contracted Capacity (MDQ, TJ/day)	90.5	91.3	94.6	93.5	97.0	105.6	108.4	110.1	109.9	107.9
Total Throughput (TJ/day)	81.4	83.0	82.2	83.3	86.1	93.7	96.4	97.7	97.3	95.7
Implied average load factor (%)	90	91	87	89	89	89	89	89	89	89

65. For its Revised Proposed Access Arrangement, GGT has revised the Reference Tariff as follows, reflecting GGT's revisions to cost parameters and Total Revenue as described above, and the demand forecast applied by the Authority in the Final Decision.

**Reference Tariff proposed by GGT in its Revised Proposed Access Arrangement
(excluding GST)**

Toll Charge (\$/GJ MDQ)	Capacity Charge (\$/GJ MDQ/km)	Throughput Charge (\$/GJ throughput/km)	Indicative Tariff at Kalgoorlie (\$/GJ, 1378 km, 85% load factor)
\$ nominal at 1 January 2000			
0.211860	0.001210	0.000315	2.64
\$ nominal at 1 January 2005			
0.243012	0.001388	0.000361	3.03

66. In accordance with the Authority's determinations in respect of each of the cost parameters applied in the derivation of Total Revenue, and GGT's application of the demand forecast consistent with the Authority's Final Decision, the Authority is satisfied that this revised Reference Tariff addresses the reasons of the Authority for requiring revision of the Reference Tariff.

Reference Tariff Variation and Incentive Mechanisms

67. In its Final Decision, the Authority accepted provision in the Reference Tariff Policy (clause 5.3) and the General Terms and Conditions (clause 9.8) for the Reference Tariff to be escalated quarterly at the rate of inflation. The Authority indicated that it is satisfied as to the appropriateness of quarterly escalation, subject to determination of the Reference Tariff Charges taking into account that charges will be escalated quarterly. The Authority required, however, specification of the Reference Tariff at 1 January 2000; the formula for escalation of the tariff charges be amended to provide for escalation from 1 January 2000; and the formula for escalation to include a correction for the inflationary effect of introduction of the goods and services tax in 2000:

Final Decision Amendment 4

Clause 9.8 of the General Terms and Conditions should be amended to indicate that the component charges of the Reference Tariff in the Quarter beginning 1 April 2000 and in each subsequent Quarter are to be determined as follows.

$$C_t = C_{t-1} \times \left[\frac{CPI_{t-2}}{CPI_{t-3}} - X \right]$$

where

C_t is the relevant charge in the Quarter t in which the Billing Period occurs;

C_{t-1} is the relevant charge in the immediately preceding Quarter;

CPI_{t-2} is the CPI for the Quarter ended three months prior to the commencement of Quarter t ;

CPI_{t-3} is the CPI for the Quarter ended six months prior to the commencement of Quarter t ; and

X is 0.0275 when t is the Quarter beginning 1 January 2001 and is zero otherwise.

68. In its Revised Proposed Access Arrangement, GGT has incorporated revisions to clause 9.8 of the General Terms and Conditions as follows.

9.8 Tariffs and Charges Adjustment for Inflation

For the purpose of this clause, the ~~component charges applicable in any Billing Period shall be the charge specified in the Order Form adjusted by~~ of the Reference Tariff in the Quarter beginning 1 April 2000 and in each subsequent Quarter are to be determined as follows:

~~any changes in CPI calculated as follows:~~

$$C_t = C_b \times \frac{CPI_{t-2}}{CPI_b}$$

$$C_t = C_{t-1} \times \left[\frac{CPI_{t-2}}{CPI_{t-3}} - X \right]$$

Where:

C_t is the relevant charge in the Quarter t in which the Billing Period occurs;

C_{t-1} is the relevant charge in the immediately preceding Quarter;

CPI_{t-2} is the CPI for the Quarter ended three months prior to the commencement of Quarter t ; ~~and~~

CPI_{t-3} is the CPI for the Quarter ended six months prior to the commencement of Quarter t ; ~~and~~

CPI_b ~~is the base CPI, and is 144.8 as at the quarter ending 20 June 2004.~~

X is 0.0275 when t is the Quarter beginning 1 January 2001 and is zero otherwise.

69. The Authority is satisfied that the revisions made to clause 9.8 of the General Terms and Conditions incorporate Amendment 4 of the Final Decision.

TERMS AND CONDITIONS

General Matters

70. In its Amended Draft Decision, the Authority required an amendment to clause 8.2(b) of the proposed Access Arrangement, which provided for additional terms and conditions to be determined for the Reference Service (Amendment 5 of the Amended Draft Decision). The Authority required the amendment because, in its view, section 3.6 of the Code requires the terms and conditions for the provision of a Reference Service to be stated in the Access Arrangement and not be a matter for future determination. Further, the reasonableness or otherwise of those conditions is a matter for the Authority to assess, not the Service Provider. Accordingly, in the Amended Draft Decision, the Authority determined that clause 8.2(b) of the proposed Access Arrangement was inconsistent with the requirements of the Code and required the following amendment:

Clause 8.2(b) of the proposed Access Arrangement should be amended to remove GGT's discretionary power to attach additional conditions to a Service Agreement for provision of Reference Services, other than those conditions stated in the Access Arrangement, including in Appendix 3 of the Access Arrangement. (Amended Draft Decision Amendment 5)

71. In the revised Access Arrangement submitted subsequent to the Amended Draft Decision, GGT revised clause 8 of the proposed Access Arrangement. However, GGT did not incorporate the required amendment into its revised Access Arrangement or otherwise address the reasons for the Authority's amendment. For the purposes of the Final Decision, the Authority reworded the required amendment to establish a more explicit requirement:

Clause 8.1 of the revised Access Arrangement should be amended to indicate that the terms and conditions on which the Reference Service is to be provided by GGT to a Prospective User are those contained in the General Terms and Conditions. Clause 8.3 of the revised Access Arrangement should be amended to be expressed in certain terms and indicate that GGT may, prior to entering into a Service Agreement with a Prospective User, require that Prospective User to satisfy reasonable requirements of GGT in respect of:

- (1) the occurrence of a defined event including installation and commissioning of Developable Capacity or third-party equipment, processing facilities or infrastructure;
- (2) a Performance Security being provided by the Prospective User, any of its Related Corporations or any other person on terms acceptable to GGT in order to satisfy the requirements of the request for Service; and
- (3) copies of insurance policies or other evidence reasonably required by GGT being provided, which provide reasonable indication to GGT that the Prospective User has insurance policies sufficient to satisfy the indemnities which the Prospective User will be required to provide under the proposed Service Agreement. (Final Decision Amendment 5)

72. In its Revised Proposed Access Arrangement, GGT has revised clause 8.1 as follows.

8.1 Terms of Reference Service

The terms and conditions on which the Reference Service ~~is to~~ will be provided by GGT to a Prospective User are those contained in:

- (a) the Order Form executed by the Prospective User and accepted by GGT; and
~~any Conditions that may apply; and~~
- (b) the General Terms and Conditions.

73. The effect of these revisions is that the terms and conditions on which the Reference Service will be provided are those contained in:

- (a) the Order Form; and
- (b) the General Terms and Conditions.

74. The Order Form is defined as the form provided in Appendix 2.2 of the Access Arrangement. Accordingly, the reference to the terms and conditions contained in the Order Form does not give scope for the imposition of additional Terms and Conditions.

75. In the Authority's view, this is consistent with the required amendment in as much as additional terms and conditions cannot be imposed on a Prospective User through amendments to the Order Form. Accordingly, the Authority is satisfied that GGT has otherwise addressed the reasons for the Authority requiring Final Decision Amendment 5.

76. The Revised Proposed Access Arrangement includes revisions to clause 8.3 as follows.

8.3 Conditions

- (a) GGT may notify a Prospective User that GGT is prepared to make available a Service subject to specified Conditions being satisfied as conditions precedent. ~~or observed as conditions subsequent.~~
- (b) The Conditions may relate to ~~any matter reasonably required by GGT to protect or secure its position under any proposed Service Agreement, including:~~ GGT's reasonable requirements in respect of:
 - (1) the occurrence of a defined event including installation and commissioning of Developable Capacity or third party equipment, processing facilities or infrastructure;
 - (2) a Performance Security being provided by the Prospective User, any of its Related Corporations or any other person on terms acceptable to GGT in order to satisfy the requirements of the request for Service; and
 - (3) copies of insurance policies or other evidence reasonably required by GGT being provided, which provide a reasonable indication to GGT that the Prospective User has insurance policies sufficient to satisfy the indemnities which the Prospective User will be required to provide under the proposed Service Agreement .
- (c) Unless the Prospective User notifies GGT to the contrary within 7 Business Days of receiving notice of the Conditions, the Prospective User is deemed to have accepted and agreed to be bound by the Conditions notified by GGT, which will form part of the Service Agreement.

77. The Authority is satisfied that these revisions to clauses 8.1 and 8.3 incorporate Final Decision Amendment 5.

Term of Agreement

78. Clause 3 of the General Terms and Conditions sets out the period of a Service Agreement between GGT and a User for the provision of a Reference Service. It also provides for related matters, including the effect of the timing of additions or enhancements of the pipeline on the commencement of the Service, and termination of the Service Agreement in the event of a User failing to lodge a bond.

79. In the Final Decision, the Authority took the view that the provision under clause 3.2(d) of the General Terms and Conditions for GGT to unilaterally terminate the Service Agreement is not reasonable. The following amendment was required:

Clause 3.2(d) of the General Terms and Conditions should be amended to the effect that if the parties to the Service Agreement are unable to agree in accordance with either clause 3.2(a), (b) or (c), then either party may refer the matter for dispute resolution as provided for in clause 22 of the General Terms and Conditions, and in the event that neither party has referred the matter for dispute resolution within 30 days after the date of expiry of the period of 12 Months, the Service Agreement may be terminated by written notice by either party without penalty or cost to either party. (Final Decision Amendment 6)

80. GGT has revised clause 3.2(d) of the General Terms and Conditions as follows.

3.2 Enhancements not Operational

If any additions or enhancements to the Pipeline which are required to provide the Service are not operational following the expiry of 12 Months from the Commencement Date the parties may:

- (a) agree to defer the date for commencement of that Service to another date; or
- (b) agree to the provision of a reduced scope of the Service which is feasible with the available Capacity; and
- (c) if either clause 3.2(a) or 3.2(b) applies, agree the charges that will apply to reflect the new date for commencement or the reduced scope for the Service;~~or~~

~~(d) and if the parties are unable to agree in accordance with either clause 3.2(a), (b) or (c), then either party may refer the matter for dispute resolution as provided for in clause 22 of the General Terms and Conditions. In the event that neither party has referred the matter for dispute resolution within 30 days after the date of expiry of the period of 12 Months, either:~~

- ~~(1) the Service Agreement may be terminated by written notice by either party without penalty or cost to either party; or~~

~~(2) a party may refer the matter for dispute resolution as provided for in clause 22.~~

- 81. The Authority is satisfied that GGT has incorporated Final Decision Amendment 6 in the Revised Proposed Access Arrangement.

Forecasts and nomination procedure

- 82. In the Final Decision, the Authority noted that, in the revised Access Arrangement submitted subsequent to the Amended Draft Decision, GGT had removed provisions relating to imbalances (including the obligation of GGT to advise Users of accumulated imbalance quantities and the rights of Users to trade imbalances). The Authority required revision of the revised Access Arrangement to re-insert these provisions.

Clause 5.3 of the General Terms and Conditions should be amended to restore clauses 5.3(a) to (c) of the General Terms and Conditions of the originally proposed Access Arrangement (and relating to Notification of Imbalances). (Final Decision Amendment 7)

- 83. GGT has re-inserted the relevant provisions as clause 5.4 of the Revised Proposed Access Arrangement. The Authority is satisfied that this revision incorporates Final Decision Amendment 7.
- 84. The Authority also noted in the Final Decision that clause 5.3 of the General Terms and Conditions provided as part of the revised Access Arrangement contained an inconsistency between the heading of the clause (Notification of Imbalances) and the clause itself (which referred to variances from nominations).
- 85. GGT has appropriately revised the heading to clause 5.3, which is now titled "Variance Notice".

Connection, Inlet Point and Outlet Points

- 86. In the revised Access Arrangement submitted subsequent to the Authority's Amended Draft Decision, GGT revised clause 6 of the General Terms and Conditions to preclude third parties or Users from ownership of Outlet Facilities and requiring all Outlet Facilities to be owned by GGT. These revisions were not required by the

Amended Draft Decision, nor did they otherwise address the reasons for the amendments required by the Amended Draft Decision. Rather, the revisions implemented a different approach to the ownership of Outlet Facilities. Taking into account that existing Outlet Facilities are owned by Users, the Authority determined in the Final Decision not to accept GGT's revisions to clause 6 of the General Terms and Conditions and maintained the requirement that clause 6 be amended to expressly provide for Users to own Outlet Facilities:

Clauses 6.4 and 6.6 and the Second Schedule of the General Terms and Conditions should be amended to restore provisions of the General Terms and Conditions under the originally proposed Access Arrangement to allow third parties to own, operate and maintain Outlet Facilities, and to explicitly allow Users, as well as third parties, to own, operate and maintain their own Outlet Points. (Final Decision Amendment 8)

87. In the Revised Proposed Access Arrangement, GGT has revised clause 6.4 of the General Terms and Conditions so that a User may elect to:
 - (a) own, operate and maintain the Outlet Facilities themselves (clause 6.4(c));
 - (b) have a third party own, operate and maintain the Outlet Facilities (clause 6.4(d));
 - (c) have GGT own, operate and maintain the Outlet Facilities (clause 6.4(e)); or
 - (d) have GGT own and the User or a third party operate and maintain the Outlet Facilities (clause 6.4(f)).
88. These amendments permit a range of options for the ownership, operation and maintenance of Outlet Facilities. The only variants not allowed for are:
 - (a) the ownership of Outlet Facilities by third parties, which are maintained by GGT or a User; or
 - (b) the operation and maintenance by GGT of Outlet Facilities owned by a third party.
89. As a consequence of the amendments to allow third parties to own, operate and maintain Outlet Facilities, GGT has restored the previous clause 6.4(b)(1) and applied it to third parties as well as Users. Accordingly, where a User elects:
 - (a) to own, operate and maintain the Outlet Facilities;
 - (b) for a third party to own, operate and maintain the Outlet Facilities; or
 - (c) for GGT to own the Outlet Facilities but a third party operate and maintain the Outlet Facilities,

then the User shall “[provide] such access to the Outlet Point and the Outlet Facilities as GGT may reasonably request for the purposes of the Service Agreement, including, without limitation, for it to audit compliance to its satisfaction of the Outlet Facilities with the Second and Third Schedules”.

90. GGT has also restored part of the previous clause 6.4(b)(3) in the General Terms and Conditions. Accordingly, where a User elects:

- (a) for a third party to own, operate and maintain the Outlet Facilities; or
- (b) for GGT to own the Outlet Facilities but a third party to operate and maintain the Outlet Facilities,

then the User must ensure that the third party procures and maintains risk property damage insurance to indemnify the third party against damage, loss or destruction of its plant and equipment for the Outlet Point.

91. The Authority considers that these revisions are reasonable measures to protect GGT against risk and to ensure the safe and reliable operation of the GGP. Accordingly, the Authority considers that GGT has incorporated Final Decision Amendment 8 into the Revised Proposed Access Arrangement and that related revisions to the proposed Access Arrangement address the reasons of the Authority for requiring Amendment 8.

92. The Authority required further amendments to the General Terms and Conditions in relation to Outlet Points. Clause 6.4 of the General Terms and Conditions and the Second Schedule to the General Terms and Conditions required that a User must provide GGT with such spare parts and components as GGT from time to time considers necessary for the effective maintenance of the Outlet Facilities. The Authority considered this requirement to be reasonable only where the Outlet Facilities were owned by the User and required the following amendment.

The Second Schedule of the General Terms and Conditions should be amended to restore the requirement for Users to supply spare parts for Outlet Facilities and to alter this requirement so that it applies only where the Outlet Facilities are owned by Users but operated by GGT. (Final Decision Amendment 9)

93. GGT has not revised the Second Schedule of the General Terms and Conditions. Rather, GGT has revised clause 6.4 of the General Terms and Conditions to provide that where an Outlet Point was owned by a User or by a third party, or an Outlet Point was owned by GGT but operated and maintained by a User or by a third party, the User will “be responsible for all costs associated with owning, operating and maintaining the Outlet Facilities (as the case may be) “including all spare parts and components necessary for the safe and reliable operation and maintenance of the Outlet Facilities in accordance with the Second Schedule”. Further, where the User elects that GGT should own, operate and maintain the Outlet Facilities the User must pay “all reasonable costs incurred by GGT in connection with the purchase and installation of the Outlet Facilities and operation and maintenance of the Outlet Facilities (including all spare parts and components as GGT considers necessary for the safe and reliable operation and maintenance of the Outlet Facilities)”.

94. The Authority is satisfied that the effect of these revisions is that a User will only be required to provide spare parts and components to Outlet Points it owns. Accordingly, the Authority is satisfied that GGT has otherwise addressed the reasons for requiring Amendment 9.

Quantity Variations and Charges

95. Clause 7 of the General Terms and Conditions relates to “quantity variations” and establishes limits on gas imbalances, daily overrun, hourly overrun and variation from nominations. Clause 7 also makes provision, where the limits are exceeded, for Users to incur “Quantity Variation Charges” that are in addition to the Reference Tariff. The Quantity Variation Charges are specified in clause 5 of the Sixth Schedule to the General Terms and Conditions and comprise:

- (a) an Accumulated Imbalance Charge;
- (c) a Daily Overrun Charge;
- (d) an Hourly Overrun Charge; and
- (e) a Variance Charge.

96. Under the Access Arrangement as proposed by GGT, the Quantity Variation Charges could be applied or waived solely at GGT’s discretion. In the Final Decision, the Authority took the view that the charges would be reasonable only if their application was limited to circumstances where actual pecuniary loss or damage occurs, or there is a significant risk to the integrity of the pipeline:

The revised Access Arrangement and General Terms and Conditions should be amended to provide that the Accumulated Imbalance Charge, Daily Overrun Charge, Hourly Overrun Charge and Variation Charge may be imposed only where:

- (a) the conduct contemplated by those charges causes actual pecuniary loss or damage; or
- (b) in the reasonable opinion of the pipeline operator the conduct contemplated by those charges exposes the pipeline to a significant risk (whether or not that risk becomes manifest) that threatens the integrity of the pipeline. (Final Decision Amendment 10)

97. GGT has revised clause 9.6 of the General Terms and Conditions as follows.

9.6 Quantity Variation Charges

- (a) Quantity Variation Charges are intended to maximise the safe and efficient utilisation of the Pipeline and to constitute a potential disincentive to Users which do not utilise the Pipeline in the manner intended. Operational disturbances caused by such Users may risk the integrity of the Pipeline or may potentially cause commercial disadvantage or loss to GGT or all other Pipeline Users.
- (b) GGT may impose Quantity Variation Charges relating to the imbalance or overrun where, in the reasonable opinion of GGT acting as a reasonable and prudent pipeline operator, the conduct contemplated by those charges:
 - (1) Causes GGT or any User of the Pipeline loss or damage; or
 - (2) exposes the pipeline to significant risk whether or not that risk becomes manifest) that threatens the integrity of the pipeline.
- (b)(c) Subject to clause 9.6(b), the Quantity Variation Charges as defined in the Sixth Schedule may be applied or waived solely at GGT’s discretion. Waiver of the application of any such charges at any time does not constitute any precedent for waiver of the application of such charges at any time in the future.

~~(e)(d)~~ Notwithstanding clause 9.6(b), GGT will waive a User's liability for an Accumulated Imbalance Charge and a Variance Charge where the liabilities are incurred during a period of interruption or reduction of Services that is the direct responsibility of GGT.

~~(e)~~ GGT will rebate 95 percent of Quantity Variation Charges as defined in the Sixth Schedule in excess of GGT's direct costs and expenses associated with and arising from the User's acts or omissions which cause the overruns or imbalances to occur:

(1) to any other User of the Reference Service not having caused the particular Quantity Variation Charges to occur; and

(2) which rebate will be paid to the non-offending Users, where relevant, at the end of each calendar year.

For the avoidance of doubt, where there is no other User of the Reference Service at the time at which the overruns or imbalances occur then this rebate mechanism will not be activated.

98. Clause 9.6(b)(1) provides a slightly wider scope for GGT to impose Quantity Variation Charges that is contemplated under Final Decision Amendment 10. The Authority recognises that the purpose of a Quantity Variation Charge is to provide an incentive for a User to modify behaviour which would detrimentally affect other Users or the integrity of the GGP. GGT has stated that it may be difficult to prove actual pecuniary loss in circumstances where a User's behaviour detrimentally affected the GGP or another User but the pecuniary loss is not readily calculable.

99. In the Authority's view, although GGT's revision provides a slightly wider scope for the imposition of Quantity Variation Charges than contemplated by Final Decision Amendment 10, there is still sufficient restriction on the ability to impose Quantity Variation Charges and a sufficient connection between the charge and the harm caused by the conduct that these charges would not be construed as penalties by a Court.

100. The Authority is therefore satisfied that the revisions made to the terms and conditions in relation to Amendment 10 addresses the reasons for the required amendment.

101. In regard to the disposition of revenue gained from Quantity Variation Charges, the Authority required GGT to incorporate a rebate mechanism into the proposed Access Arrangement and required the following amendment:

The Revised Access Arrangement should be amended so that 95 percent of revenue generated from the application of Quantity Variation Charges is rebatable as if these charges are in relation to rebatable Services within the meaning of the Code. (Final Decision Amendment 11)

102. GGT has added a new clause 9.6(e) to the General Terms and Conditions which states:

GGT will rebate 95 percent of Quantity Variation Charges as defined in the Sixth Schedule in excess of GGT's direct costs and expenses associated with and arising from the User's acts or omissions which cause the overruns or imbalances to occur:

(1) to any other User of the Reference Service not having caused the particular Quantity Variation Charges to occur; and

(2) which rebate will be paid to the non-offending Users, where relevant, at the end of each calendar year.

For the avoidance of doubt, where there is no other User of the Reference Service at the time at which the overruns or imbalances occur then this rebate mechanism will not be activated.

103. Under the revision made by GGT, revenue will be rebated only after the deduction of “direct costs and expenses associated with and arising from the User’s acts or omissions”. GGT will also retain five percent of revenue from Quantity Variation Charges.
104. The Authority noted in its Final Decision that:
The Authority accepts that if the circumstances in which the Quantity Variation Charges may be imposed is limited to situations in which a cost or risk is borne by GGT, then there is some case for the revenue from the charges being retained by the Service Provider as a means of compensating for the cost or risk incurred.⁷
105. The Authority also specifically contemplated in the Final Decision that rebates would only occur to non-offending Users.⁸
106. Taking this reasoning into account, the Authority is satisfied that the revisions to the terms and conditions made by GGT in respect of Amendment 11 address the reasons for this required amendment.
107. Final Decision Amendment 12 stated:
Clause 5 of the Sixth Schedule to the General Terms and Conditions should be amended to remove provision for GGT to change the rates of Quantity Variation Charges. (Final Decision Amendment 12)
108. GGT has revised clause 5 of the Sixth Schedule to remove provision for GGT to vary the rates of Quantity Variation Charges. The Authority is therefore satisfied that the Revised Proposed Access Arrangement incorporates Amendment 12.
109. Final Decision Amendment 13 stated:
Clause 7.2(d) of the General Terms and Conditions should be amended to read “If at the end of any Gas Day the absolute value of the Accumulated Imbalance is greater than the Accumulated Imbalance Tolerance, GGT may at its discretion, require the User to pay to GGT an Accumulated Imbalance Charge on the difference between the absolute value of the Accumulated Imbalance and the Accumulated Imbalance Tolerance.” (Final Decision Amendment 13)
110. GGT has revised clause 7.2(d) of the General Terms and Conditions in accordance with the requirement of Amendment 13 and the Authority is therefore satisfied that the Revised Proposed Access Arrangement incorporates this required amendment.
111. Final Decision Amendment 14 stated:
Clauses 7.3 and 7.4 of the General Terms and Conditions and clause 5 of the Sixth Schedule to the General Terms and Conditions should be amended so that the Daily Overrun Charge and Hourly Overrun Charge applies only in respect of overrun at Outlet Points. (Final Decision Amendment 14)

⁷ Final Decision paragraph 562.

⁸ Final Decision paragraph 562.

112. GGT has revised clauses 7.3(b) and 7.4(b) of the General Terms and Conditions so that the Daily Overrun Charge and Hourly Overrun Charge apply only in respect of overrun at Outlet Points.
113. GGT has revised clauses 5(c) and (d) of the Sixth Schedule to the General Terms and Conditions to explicitly state that GGT is not able to require a User to pay a Daily Overrun Charge or an Hourly Overrun Charge in respect of overrun at Inlet Points.
114. The Authority is satisfied that the effect of these amendments is that the Daily Overrun Charge and the Hourly Overrun Charge apply only in respect of overrun at Outlet Points and consequently is satisfied that the Revised Proposed Access Arrangement incorporates Amendment 14.
115. Final Decision Amendment 15 stated:
Clause 7.3(d) of the General Terms and Conditions or the revised Access Arrangement should be deleted. (Final Decision Amendment 15)
116. Clause 7.3(d) has been revised to state:
If for a period of 30 Gas Days the Daily Overrun Quantity at the Outlet Point for each of those Days is positive then GGT may give a notice to the User ("Overrun Notice"). If on any Gas Day after the expiry of 7 Gas Days from the receipt of the Overrun Notice, the User's Daily Overrun Quantity at the Outlet Point is positive then with effect from the next Gas Day the User's Maximum Daily Quantity will be increased by the average of the Daily Overrun Quantity at the Outlet Point for a period of 12 Months and the Service Agreement will be deemed to be amended accordingly.
117. GGT has added a new clause 7.3(e) which states:
If for a period of 5 consecutive Gas Days, the Daily Overrun Quantity at the Outlet Point for each of those Days is positive then GGT may in its sole discretion, acting as a reasonable and prudent pipeline operator, without any liability to GGT and until such time that the User ceases to have overruns, restrict the User's gas take to the User's MDQ.
118. Final Decision Amendment 15 required the deletion of clause 7.3(d) of the General Terms and Conditions. In the Final Decision, the Authority required Amendment 15 for reason that this clause was added to the General Terms and Conditions subsequent to the Authority's Amended Draft Decision. Further, the clause was a substantial change to the terms and conditions that was, in the Authority's view, materially contrary to the interests of Users and Prospective Users and therefore was not accepted.
119. Clause 7.3(e) is a new clause and is not the subject of an amendment required by the Final Decision.
120. GGT has submitted that the inclusion of clauses 7.3(d) and 7.3(e) in the General Terms and Conditions is a consequence to revisions made to clause 9.6(b) of the General Terms and Conditions to otherwise address the reasons for Final Decision Amendment 10. GGT has submitted that these revisions prevent GGT from having recourse or recompense against a User who persistently overruns, but whose conduct does not fall within clause 9.6(b).
121. In the Authority's view, clauses 7.3(d) and 7.3(e) do not penalise a User but allow GGT two mechanisms to ensure that a User's gas take is consistent with their

Maximum Daily Quantity. The Authority notes that GGT may only give an Overrun Notice to a User pursuant to clause 7.3(d) where for a period of 30 Gas Days the Daily Overrun Quantity at the Outlet Point for each of those Days is positive. In the Authority's view, for a User to have a positive Daily Overrun Quantity for 30 Gas Days indicates that the User is persistently failing to act within its contractual entitlements.

122. The Authority also notes that clause 7.3(e) only provides GGT with the power to restrict a User's gas take to its Maximum Daily Quantity.
123. Taking these matters into account, the Authority is satisfied that the reasons for requiring the Final Decision Amendment 15 have been addressed in the Revised Proposed Access Arrangement.

Interruption of Service

124. Final Decision Amendment 16 stated:

Clause 8.2 of the General Terms and Conditions of the revised Access Arrangement should be amended such that GGT's rights to interrupt or reduce a Service without penalty are subject to the whole of clause 8.3. (Final Decision Amendment 16)

125. GGT has revised clause 8.2 as follows.

8.2 Interruption for Maintenance

~~It is~~ Subject to clause 8.3, in addition to the rights of the Owners or GGT otherwise provided for in the Service Agreement, GGT may without penalty or cost interrupt or reduce the Service either totally or partially for any period which, in its opinion as a reasonable and prudent pipeline operator, is necessary for the purposes of testing, adding to, altering, repairing, replacing, cleaning, upgrading or maintaining any part of the Pipeline (including without limitation, pipelines, compressors, valves and monitoring equipment) or for any other purpose which in GGT's opinion as a reasonable and prudent operator requires interruption or reduction of the Service.

126. The Authority is satisfied that this revision incorporates Final Decision Amendment 16.

127. Final Decision Amendment 17 stated:

Clause 8.3(b) of the General Terms and Conditions of the revised Access Arrangement should be amended to specify that GGT will give the User at least 30 days notice when activities listed in clause 8.2 are planned in advance of the activity being undertaken and are likely to interrupt or reduce the transportation service for the User, and to specify that GGT will use reasonable endeavours to provide 30 days notice where the activities are undertaken for unplanned or emergency reasons. (Final Decision Amendment 17)

128. GGT has revised clause 8.3(b) of the General Terms and Conditions to state.

GGT shall

...

- (b) use all reasonable endeavours to give the User notice when any of the activities in clause 8.2 are likely to interrupt or reduce the Service which shall be:

- (1) in the case of planned activities, then the User will be given at least 30 days notice; and
 - (2) in the case of unplanned or emergency activities, then the User will be given notice as early as reasonably practicable, consistent with the standard of a reasonable and prudent pipeline operator;
129. Clause 8.3(b) provides that in the case of planned activities GGT must provide at least 30 days notice to a User, consistent with the requirements of Final Decision Amendment 17. In the case of unplanned or emergency activities, GGT has not made provision to use reasonable endeavours to provide 30 days notice, but instead has made provision for Users to be given notices as early as reasonably practical, consistent with the standard of a reasonable and prudent pipeline operator". In this regard, the objective of Final Decision Amendment 17 was to ensure that Users receive early notice of unplanned interruptions where possible. The Authority is satisfied that GGT's obligation to provide notice to Users "as early as reasonably practicable" will achieve the same outcome and therefore addresses the reasons for Final Decision Amendment 17.
130. The Authority is therefore satisfied that the revisions to clause 8.3(b) incorporate or otherwise address the reasons for, Amendment 17.

Transportation Tariff and Charges

131. Final Decision Amendment 18 stated:
- Clause 9.5 of the General Terms and Conditions of the revised Access Arrangement should be amended such that the value of a Connection Charge is limited to the value of costs reasonably incurred by GGT in establishing each new Outlet Point. (Final Decision Amendment 18)
132. GGT has revised clause 9.5(b) of the General Terms and Conditions as follows.
- 9.5 Other Charges
- In addition the User shall pay the charges set out below (and as further described in the Sixth Schedule) as specified in the relevant Order Form:
- ...
- (b) a Connection Charge
- for the commencement of a Firm Service, a once-only Connection Charge, payable on the Date of Service Agreement, for each new Outlet Point and, a once-only Connection Charge for each additional Outlet Point nominated or provided during the Service Period, being the costs reasonably incurred by GGT in establishing the new Outlet Point(s);
133. The Authority is satisfied that this revision incorporates Final Decision Amendment 18.
134. Final Decision Amendment 19 stated:
- Clause 9.12 of the General Terms and Conditions included in the revised Access Arrangement should either be deleted or made subject to clauses 9.3 and 9.6 of the General Terms and Conditions. (Final Decision Amendment 19)

135. GGT has revised clause 9.12 to make this clause subject to clauses 9.3 and 9.6 of the General Terms and Conditions. The Authority is therefore satisfied that GGT has incorporated Final Decision Amendment 19 into the Revised Proposed Access Arrangement.

136. Final Decision Amendment 20 stated:

Clause 9.13 of the General Terms and Conditions of the revised Access Arrangement should be amended to specify that GGT will act reasonably in determining the value of a bond, deposit or other surety. Clause 9.13 should also be amended to provide for the value of a bond, deposit or other surety to be decreased where there is a decrease in the User's MDQ, on a basis similar to that for determining increases in the value where there is an increase in the User's MDQ. (Final Decision Amendment 20)

137. GGT has revised clause 9.13 as follows.

9.13 Bond/Deposit

- (a) Prior to the Commencement Date, or such other date as may be agreed by the parties, the User shall pay a deposit to GGT or arrange a bank or other person reasonably acceptable to GGT ~~acting reasonably~~ **(Surety)** to post a bond, deposit or other security for an amount reasonably determined by GGT having regard to;
 - (1) the nature and extent of the User's obligations under the Service Agreement;
 - (2) the financial position of the User and the User's parent company (where applicable);
 - (3) the riskiness of the User's project in regard to which the Service is required; and
 - (4) whether provision of the Service to the User requires expenditure of additional capital.
- (b) In the event that at the end of any Year during the Term of the Agreement:
 - (1) the User increases its MDQ or other obligations in respect of charges, GGT may require (and the User hereby agrees) that the amount of the bond, deposit or other security shall be correspondingly increased from the beginning of the next Year; and
 - (2) the User decreases its MDQ or other obligations in respect of charges, GGT must allow (and GGT hereby agrees) that the amount of the bond, deposit or other security shall be correspondingly decreased from the beginning of the next Year.
- (c) If a deposit is paid then GGT shall deposit the amount in an interest bearing account maintained with a reputable financial institution to be held pending the complete performance by the User of its obligations under the Service Agreement or any default by the User under clause 16.1. If the User defaults under clause 16.1 then in addition to its remedies thereunder GGT may operate the account and apply all principal and interest therein towards remedying the default, if it is capable of remedy. Upon the expiry of 6 months from the completion of all of the User's obligations GGT will pay to the User the balance of the account less any charges or Taxes but including any accrued interest balance.
- (d) The bond shall be in the form of the performance bond attached as the Fifth Schedule and the User shall be responsible for all costs and expenses and stamp duty incurred in the preparation and delivery of a duly executed and stamped bond in this form. If the User defaults under clause 16.1 then in addition to its remedies thereunder, GGT may enforce the bond in accordance with its terms towards remedying the default. Upon the expiry of 6 Months from the completion of the User's obligations under the

Service Agreement, GGT must discharge and release the Surety from its obligations under the bond.

138. The Authority is satisfied that these revisions incorporate Final Decision Amendment 20 into the Revised Proposed Access Arrangement.

Termination

139. Final Decision Amendment 21 stated:

Clause 16.1 of the General Terms and Conditions of the revised Access Arrangement should be amended so that the circumstances in which GGT may terminate a Service Agreement are limited to default in the performance of material obligations imposed upon the User by the Service Agreement. (Final Decision Amendment 21)

140. GGT has revised clause 16.1(a) of the General Terms and Conditions as follows.

16.1 Default by the User

(a) If the User:

- (1) defaults in payment of any moneys payable under the Service Agreement for a period of 7 days following receipt of a notice of demand from GGT; or
- (2) defaults in the performance of any ~~of the other~~ material obligations imposed upon it by the Service Agreement and, where such default is capable of remedy, fails to remedy or remove the cause or causes of default within a period of 30 days from the receipt of a notice from GGT to remedy or remove the default; or
- (3) suffers an Insolvency Event to occur,

then GGT may take action under clause 16.1(b).

141. The Authority is satisfied that these revisions incorporate Final Decision Amendment 21 into the Revised Proposed Access Arrangement.

Liability

142. Clause 18 of the General Terms and Conditions specifies the liability of a party under, or affected by, the Service Agreement. The Authority required clause 18 to be amended so that the indemnity was related to fault:

Clause 18.3 of the General Terms and Conditions of the revised Access Arrangement should be amended so that the clause does not require a User to indemnify:

- (a) the Owners;
 - (b) GGT;
 - (c) any related entity to the Owners or GGT; or
 - (d) the employees, agents or servants of the parties listed in (a), (b) and (c) above,
- from and against liabilities that are unrelated to any fault or action on the part of the User. (Final Decision Amendment 22)

143. GGT has amended clause 18.3(a), which provided the indemnity by the User, to be subject to clause 18.3(b). Clause 18.3(b) is a new clause which states:

Clause 18.3(a) does not operate to require the User to indemnify:

- (1) the Owners;
- (2) GGT;
- (3) any entity related to the Owners or GGT; or
- (4) the employees, agents or servants of the persons listed in paragraphs (1) to (3) above

From and against any liabilities to the extent that those liabilities are unrelated to any fault, action or omission on the part of the User or persons under the direction or control of the User.

144. Amendment 22 required clause 18.3 of the General Terms and Conditions to be amended so that the User was not required to indemnify the Owners, GGT, any entity related to the Owners or GGT or the employees, agents or servants of the Owners, GGT or a related entity from and against liabilities that are unrelated to any fault or action on the part of the User.
145. In its revisions to clause 18.3, GGT has added the word “omission” to the exception. However, the Authority does not consider this to be material. GGT has also added that the indemnity does not extend to liabilities that are unrelated to any fault or action on the part of persons under the direction or control of the User. In the Authority’s view, this revised wording clarifies the scope of the exception to the indemnity and may actually operate to make the exception wider. The Authority is therefore satisfied that the revisions made to clause 18.3 incorporate, or otherwise address the reasons for, Final Decision Amendment 22.

TRADING POLICY

146. GGT provided a Trading Policy in clause 9 of the proposed Access Arrangement by reference to clause 20 of the General Terms and Conditions. The Authority took the view in the Final Decision that the cross-reference to the General Terms and Conditions created ambiguity as to whether the provisions of the Trading Policy provide generally for transfer of contracted capacity between Users, or whether the provisions have application only to contracted capacity for the Reference Service. The Authority required amendment of the Access Arrangement to remove this ambiguity:

Clause 9 of the revised Access Arrangement should be amended so that provisions for the trading of capacity, as currently set out in clause 20 of the General Terms and Conditions, apply generally to all Services provided by the GGP. (Final Decision Amendment 23)

147. Clause 9 of the Revised Proposed Access Arrangement includes revisions as follows.

9.1 Rights to Transfer or Assign

Subject to any pre-existing contractual rights affecting the transfer or assignment by GGT or any other party of rights in relation to capacity, including under the GGP Agreement and the GGTJV Agreement, any User of a Service may ~~A User's rights to transfer or assign all or part of its rights under a Service Agreement as contemplated by clause 20 are set out in clause 20~~ of the General Terms and Conditions.

148. Clause 9 of the Revised Proposed Access Arrangement allows a User of a Service to transfer all or part of its rights to capacity as contemplated by clause 20 of the General Terms and Conditions (Assignment and Transfers of Capacity). The clause is subject to pre-existing rights, in particular, but not exclusively, the GGP Agreement and the GGTJV Agreement.
149. The Authority notes that section 2.25 of the Code prevents the Authority from approving an Access Arrangement any provision of which would, if applied, deprive any person of a contractual right in existence prior to the date the proposed Access Arrangement was submitted (or required to be submitted), other than an Exclusivity Right which arose on or after 30 March 1995. The Authority considers that the qualification in applicability of the Trading Policy is consistent with the requirements of section 2.25 of the Code and as such the Authority is satisfied that GGT has incorporated, or otherwise addressed the reasons for Final Decision Amendment 23.

EXTENSIONS/EXPANSIONS POLICY

150. Final Decision Amendment 24 stated:
- Clause 10.4 of the revised Access Arrangement should be amended to make it clear that, in the circumstances contemplated by sub-clause 10.4(a), a change in the Reference Tariff may only occur by revisions to the Access Arrangement under the process set out in section 2 of the Code. (Final Decision Amendment 24)
151. The Revised Proposed Access Arrangement includes a revision to clause 10.4(a) as follows.
- 10.4 Pipeline Extension/Expansion and Tariffs
- (a) Pipeline extension or expansions will result in no change to the Reference ~~Service~~-Tariff applied to a User when those extensions or expansions have been fully funded by that User's capital contributions except to contribute to GGT's non-capital costs in connection with those extensions and expansions. Any change to Reference Tariffs may occur only pursuant to the process in section 2 of the Code for revisions to Reference Tariffs.
152. The Authority is satisfied that this revision incorporates Final Decision Amendment 24.

REVIEW AND EXPIRY OF THE ACCESS ARRANGEMENT

153. Clause 3 of the Revised Proposed Access Arrangement sets out the term and the dates for review of the Access Arrangement. In the Further Final Decision, the Authority took the view that the Access Arrangement should make provision for a nine month period between the Revision Submission Date and the Revision Commencement Date to allow for assessment and approval of proposed revisions:
- Clauses 3.1 and 3.2 of the revised Access Arrangement should be amended to provide for a Revisions Submission Date of 1 April 2009 and a Revisions Commencement Date of 1 January 2010. (Final Decision Amendment 25)
154. GGT has revised clause 3 of the Access Arrangement as follows:

3 TERM AND REVIEW

3.1 Term

This Access Arrangement Period comes into effect on ~~the later of 1 January 2005 and the~~ Effective Date. The Access Arrangement Period or term of the Access Arrangement will expire on the Revisions Commencement Date ~~the later of:~~

(a) ~~five years after the Effective Date; or~~

(b) ~~the Revisions Commencement Date.~~

3.2 Review of Access Arrangement

In accordance with of clause 3.17 of the Code:

(a) the Revisions Submission Date is ~~four and one half years after the Effective Date~~ 1 April 2009; and

(b) the Revisions Commencement Date is the later of ~~five years after the Effective Date or when~~ 1 January 2010 and the date a revised Access Arrangement approved by the Regulator takes effect.

155. The Authority notes that the commencement of a revised Access Arrangement is contingent upon the approval of the revisions by the Authority. Consequently the Authority considers that it is appropriate that this is recognised clause 3.1 of the Revised Proposed Access Arrangement. The Authority is therefore satisfied that GGT has incorporated Final Decision Amendment 25 into the Revised Proposed Access Arrangement.

MATTERS UNRELATED TO SECTIONS 3.1 TO 3.20 OF THE CODE

156. In its Final Decision, the Authority gave consideration to Clause 6 of the proposed Access Arrangement, which contains provisions relating to applications for a Service. The Authority determined that it is not appropriate for the Access Arrangement to address matters relating to applications for Services, which the Code expressly contemplates will be dealt with in the Information Package under section 5 of the Code. The Authority consequently required the following Amendment.

157. Final Decision Amendment 26 stated:

The revised Access Arrangement should be amended to remove clause 6 relating to applications for Services. (Final Decision Amendment 26)

158. GGT has revised the Proposed Access Arrangement to delete the substantive provisions of clause 6 such that this clause now reads in its entirety as follows:

6 APPLICATION FOR SERVICE

A Prospective User that wishes to apply for a Service must observe the process outlined in the GGT Information Package.

159. GGT has also made consequential changes to other parts of the Access Arrangement (including the Queuing Policy under clause 7) such that references to provisions of clause 6 are changed to references to the Information Package.

160. The Authority is satisfied that these revisions incorporate Final Decision Amendment 26.