



DRAFT DECISION ACCESS ARRANGEMENT GOLDFIELDS GAS PIPELINE

Submitted by

GOLDFIELDS GAS TRANSMISSION PTY LTD

Part A

INDEPENDENT GAS PIPELINES ACCESS REGULATOR

WESTERN AUSTRALIA

10 April 2001



PREFACE

On 15 December 1999, Goldfields Gas Transmission Proprietary Limited (GGT) submitted a proposed Access Arrangement for the Goldfields Gas Pipeline (Pipeline Licence No WA: PL24) on behalf of the owners of the pipeline. The owners of the pipeline are an unincorporated joint venture comprising:

Southern Cross Pipelines Australia Pty Ltd	62.664%
Southern Cross Pipelines (NPL) Australia Pty Ltd	25.493%
Duke Energy International	11.843%

Ownership of the Southern Cross companies comprises CMS Gas Transmission of Australia (CMS) (45%), Australian Gas Light Company (AGL) (45%) and TransAlta Energy (Australia) Pty Ltd (TransAlta) (10%). In the time since the proposed Access Arrangement was submitted AGL has divested its interest in the Goldfields Gas Pipeline to Australian Pipeline Limited (APL).

GGT is the operator of the pipeline and acts on behalf of each of the owners.

The proposed Access Arrangement was submitted to the Western Australian Independent Gas Pipelines Access Regulator (the Regulator) for approval under the *National Third Party Access Code for Natural Gas Pipeline Systems* (the Code).

The Access Arrangement describes the terms and conditions under which GGT will make access to the Goldfields Gas Pipeline available to third parties.

The Regulator has assessed the proposed Access Arrangement against the requirements and principles of the *Gas Pipelines Access (WA) Act 1998*. This Act gives effect to the *Gas Pipelines Access (WA) Law*, which includes schedule 1 of the Act and the Code. The Regulator also considered issues that were raised in submissions made on the proposed Access Arrangement by interested parties.

This Draft Decision has been issued by the Regulator in accordance with the requirements of the Code. The Draft Decision is issued as two documents: Part A being the Draft Decision, and Part B being supporting information for the Draft Decision. Copies of both Parts A and B of the Draft Decision are available from the Office of Gas Access Regulation at a cost of \$25.00 (including GST) by contacting Mr Nick Parkhurst on telephone +61 8 9213 1933 or facsimile +61 8 9213 1999. Copies are also available from the Office of Gas Access Regulation (OffGAR) web site (<http://www.offgar.wa.gov.au/>) free of charge.

Submissions

Submissions are invited from interested parties on the Draft Decision.

In general, all submissions from interested parties will be treated as in the public domain and placed on the OffGAR web site. The receipt and publication of any submission lodged for the purposes of the Code shall not be taken as indicating that the Regulator has formed an opinion as to whether or not any particular submission contains any information of a confidential nature.

Where an interested party wishes to make a submission in confidence, it should clearly indicate the parts of the submission in respect of which confidentiality is claimed. Any claim of confidentiality will be considered in accordance with the provisions of section 7 of the Code.

Submissions must be delivered to the Office of Gas Access Regulation by close of business WST Thursday 31 May 2001, and should be addressed to:

Mr Nick Parkhurst
Office of Gas Access Regulation
6th Floor
197 St Georges Terrace
PERTH WA 6000

All submissions must be in writing and should be provided in both hard copy and electronic format.

**KEN MICHAEL
GAS ACCESS REGULATOR**

DRAFT DECISION

The Goldfields Gas Pipeline was officially opened on 4 October 1996. Its construction followed the calling of expressions of interest by the Western Australian Government in March 1993. In mid 1993, the Government awarded the right to build the pipeline to a joint venture of Wesminco Oil Pty Ltd (Western Mining Corporation Holdings Ltd), Normandy Pipelines Pty Ltd (Normandy Poseidon Ltd) and BHP Minerals Pty Ltd. A State Agreement was signed between the Government and these joint venturers in March 1994. Until 1 January 2000, this State Agreement Act governed access to capacity in the pipeline by third parties.

The Regulator assessed the proposed Access Arrangement against the requirements and principles of the Code and the *Gas Pipelines Access (WA) Law* as set out in the *Gas Pipelines Access (WA) Act 1998*. In assessing the proposed Access Arrangement, the Regulator considered issues raised in submissions from interested parties.

The Draft Decision of the Regulator is to not approve the Access Arrangement in its current form. The reasons for this decision are detailed in Part B of this Draft Decision.

In order for the Access Arrangement to be approved, the Regulator will require amendment of the proposed Access Arrangement and provision of further information in the Access Arrangement Information. These requirements of the Regulator are summarised below under the following categories.

- Non-tariff matters.
- Reference tariff.
- Fees and charges (other than the Reference Tariff)

NON-TARIFF MATTERS

Sections 3.1 to 3.20 of the Code require that an Access Arrangement address the following non-tariff matters:

- A **Services Policy**, describing services to be offered including Reference Services (section 3.1).
- **General Terms and Conditions** for the provision of reference services (section 3.6).
- A **Capacity Management Policy**, indicating whether the Covered Pipeline is to be administered as a Contract Carriage Pipeline or a Market Carriage Pipeline (section 3.7).
- A **Trading Policy**, addressing the transfer of contracted capacity between Users (section 3.9).
- A **Queuing Policy**, defining the priority that Prospective Users have to negotiate for specific capacity (section 3.12).
- An **Extensions/Expansions Policy**, setting out a method for determining whether an extension or expansion to the Covered Pipeline is or is not to be treated as part of the Covered Pipeline for the purposes of the Code (section 3.16).

- A **Review Date**, indicating a date on or by which revisions to the Access Arrangement must be submitted and a date on which the revised Access Arrangement is intended to commence (section 3.17).

If an Access Arrangement includes matters in addition to the above, the Regulator may refuse to approve the Access Arrangement should the inclusion of these matters be considered not reasonable.

The Regulator's assessment of the Access Arrangement in respect of non-tariff matters is summarised below together with statements of required amendments before the Access Arrangement will be approved by the Regulator.

Services Policy

The Services Policy is provided in clause 4 of the Access Arrangement. The only Reference Service offered is a firm service. This is on the basis that the only service sought by current users has been a firm service and GGT believes it is unlikely that this requirement will alter in the future.

Subject to sufficient Spare Capacity, GGT will make a firm service available to customers for the receipt of gas at the single Inlet Point, transmission through the pipeline and delivery to agreed Outlet Point(s). Gas quantities able to be received and delivered under a Service Agreement for the firm service are defined as upper limits in terms of Maximum Daily Quantity (MDQ) and Maximum Hourly Quantity (MHQ). Under clause 6.11 of the Access Arrangement, any variation to the terms and conditions will be treated as a negotiated service. Further details relating to the Reference Service are provided in clause 4 of the General Terms and Conditions.

GGT also offers negotiated services, for Users who desire a service other than the firm service. These are to be developed through a negotiation process to meet specific needs. GGT has given an undertaking in clause 6.11 of the Access Arrangement to negotiate in good faith.

Clause 4.2(a) of the Access Arrangement states that no provision of the Access Arrangement necessarily limits or circumscribes the terms or conditions which may be negotiated for negotiated services.

The Regulator has concerns in relation to a number of aspects of the Services Policy:

1. Although the Regulator considers the availability of an interruptible service to be essential for the GGP, the Regulator does not consider that there is a specific need for the Access Arrangement to be amended to include such a service as a Reference Service. However, the Regulator considers that an interruptible service should be available as a Non-Reference Service.
2. The proposed Access Arrangement, in its current form, envisages that Prospective Users can only deliver gas to the pipeline via the existing Inlet Point. The proposed Access Arrangement does not make provision for gas to be delivered into the pipeline via another Inlet Point should such a point be constructed during the Access Arrangement Period. The Regulator considers that the Access

Arrangement should not preclude access to the pipeline via other Inlet Points if and when such Inlet Points are established.

3. Clauses 8.1(b) and 8.2(b) of the Access Arrangement suggest that GGT may attach conditions to a Service Agreement for provision of a Reference Service in addition to those terms and conditions set out in the Access Arrangement including those in Appendix 3, which are the General Terms and Conditions applicable.

The discretionary power provided by clauses 8.1(b) and 8.2(b) of the proposed Access Arrangement for GGT to apply additional conditions are considered to be inconsistent with the requirements of the Code in respect of Reference Services.

The following amendments are required before the proposed Access Arrangement will be approved.

Amendment 1

The proposed Services Policy should be amended to include the provision of an interruptible service to be made available to Users and Prospective Users.

Amendment 2

The proposed Access Arrangement should be amended to make provision for the Reference Service to be capable of accommodating alternative and multiple Inlet Points in a single Service Agreement in the event that additional Inlet Points are established on the pipeline.

Amendment 3

Clause 8 of the proposed Access Arrangement should be amended to remove the discretionary power of GGT to attach conditions to Service Agreements for provision of Reference Services where such conditions are additional to those stated in the Access Arrangement, including Appendix 3 being the General Terms and Conditions.

General Terms and Conditions

Section 3.6 of the Code requires that an Access Arrangement include the General Terms and Conditions (GT&C) on which the Service Provider will supply each Reference Service. GGT has provided the GT&C in a single document as Appendix 3 of the Access Arrangement. The GT&C cover a wide range of generally contractual matters, which are important for the operation of the GGP.

Considerations arising in respect of the GT&C were addressed by the Regulator in relation to the criterion that the terms and conditions must, in the Regulator's opinion, be reasonable.

The following amendments are required before the proposed Access Arrangement will be approved.

Amendment 4

Clause 6.6 of the GT&C should be amended to allow Users, as well as third parties, to operate and maintain their own Outlet Points.

Amendment 5

Clause 12.1(m) of the GT&C should be amended so as to not prevent a User from guaranteeing a continuous supply of gas to another person.

Amendment 6

Clause 18.3 of the GT&C should be amended so that the clause does not require a User to indemnify the owners or GGT or its related parties for events that are not the fault of the User which occur in a proximate area.

Amendment 7

Clause 3.2(d) of the GT&C should be amended to the effect that if the parties to the Service Agreement are not able to agree on deferring the commencement date or reduction in the scope of the service, they may either terminate the Service Agreement by mutual consent or refer the matter for dispute resolution as provided for in clause 22 of the GT&C.

Amendment 8

Clause 8.2 (or 8.3(b)) of the GT&C should be amended to specify that GGT will consult Users and give them at least 30 days notice where planned maintenance is likely to interrupt their services.

Amendment 9

The GT&C should be amended to include an index of reliability to provide a degree of guarantee of supply with a corresponding reduction in fixed charges if the level of reliability is not met.

Amendment 10

Clause 9.12 of the GT&C should be amended so that fixed charges of the Reference Tariff are waived to the extent that the provision of the service is reduced where the Reference Service is interrupted or reduced by a failure of the GGT to carry out any of its obligations under a Service Agreement for reasons of force majeure or emergency.

Clauses 9.12 should also be amended to relieve the User from payment of Accumulated Imbalance and Variance Charges resulting from interruptions attributable to the GGT.

Amendment 11

Clause 9.13 of the GT&C should be amended to specify the basis on which a bond or surety is determined and clause 9.13(a) should be amended to provide that a bond or surety will decrease on a basis similar to that used for determining increases in the bond or surety.

Amendment 12

Clause 13.7 of the GT&C should be amended so that interest is accrued on underpayments or overpayments after a reasonable period has been given for a party to rectify the underpayment or overpayment, rather than from the actual date of underpayment or overpayment.

Amendment 13

Clause 13.5 of the GT&C should be amended to allow for the non-payment of disputed invoices, or the non-payment of the disputed portion of an invoice, in instances of a manifest error in the invoice.

Amendment 14

The GT&C should be amended so that provisions for termination of a Service Agreement are the same for both the User and the Service Provider and that a reasonable period of time is provided for either party to remedy or remove the cause or causes of default before an agreement can be terminated.

Amendment 15

Clause 18 of the GT&C should be amended so that any limits on liability or other conditions relating to liability should apply in the same way to both the Service Provider and User including as to proximate losses.

Amendment 16

Clause 18.5 of the GT&C should be amended to be consistent with the requirement for an index of reliability as specified in Amendment 9 above and that invoices be automatically adjusted if the minimum level of reliability is not met. In particular, the requirement for a User to make application for a refund or credit should be removed.

Amendment 17

The First and Second Schedules of the GT&C should be amended to recognise that the requirement for filters may be unnecessary in certain circumstances depending on the type of metering equipment installed.

Amendment 18

The Second Schedule of the GT&C should be amended to recognise that the requirement for Users to supply spare parts applies only where the outlet facilities are not owned by GGT.

Capacity Management Policy

Section 3.7 of the Code requires that an Access Arrangement include a statement (a Capacity Management Policy) that the Covered Pipeline is either:

- a Contract Carriage Pipeline; or
- a Market Carriage Pipeline.

In clause 11 of the Access Arrangement, GGT propose to manage the Goldfields Gas Pipeline as a Contract Carriage Pipeline. This proposal is considered to meet the requirements of the Code.

Trading Policy

Section 3.9 of the Code requires that an Access Arrangement for a Covered Pipeline, which is described in the Access Arrangement as a Contract Carriage Pipeline, must include a policy that explains the rights of a User to trade its right to obtain a Service to another person (a Trading Policy).

A Trading Policy is provided by GGT in clause 9 of the Access Arrangement and detailed in clauses 20.6 (Bare Transfer) and 20.7 (Transfer of Capacity other than Bare Transfer) of the GT&C.

The Regulator is of the opinion that the proposed Trading Policy generally meets the requirements of the Code, however, the Regulator has concerns in relation to two matters:

1. GGT has requested additional information in clause 20.6(b) of the GT&C in the case of a Bare Transfer and this additional information required by GGT is inconsistent with the Code.
2. The Trading Policy, as set out in clause 9 of the proposed Access Arrangement, confers a right for the transfer or assignment of all or part of a User's rights under a Service Agreement. The basis on which these rights may be transferred or assigned are detailed in clause 20 of the GT&C. A Service Agreement is defined in the proposed Access Arrangement as a "Reference Service Agreement". However, the Code does not constrain the Trading Policy to apply exclusively to Reference Services, but to all services provided in respect of the Covered Pipeline. Therefore, an amendment is required to the proposed Access Arrangement so that the Trading Policy applies to both Reference and Non-Reference Services.

The following amendments are required before the proposed Access Arrangement will be approved.

Amendment 19

Clause 20.6(b) of the GT&C should be amended so that the information required to be supplied by a User to the GGT in the case of a Bare Transfer is consistent with section 3.10 of the Code.

Amendment 20

The proposed Access Arrangement should be amended so that the Trading Policy, as required by the Code, will apply to both Reference and Non-Reference Services provided by the Covered Pipeline.

Queuing Policy

Section 3.12 of the Code requires that an Access Arrangement must include a policy for defining the priority that Prospective Users have to negotiate for specific Capacity (a Queuing Policy).

A Queuing Policy is provided by GGT in clause 7 of the Access Arrangement.

The Queuing Policy provides for spare capacity and developable capacity to be allocated on a first come first served basis with priority accorded on the basis of the date an order is received from Prospective Users by GGT for Spare Capacity and Developable Capacity.

The Regulator is of the opinion that the proposed Queuing Policy generally meets the requirements of the Code, however, the Regulator has concerns in relation to two matters:

1. Under the Queuing Policy described in clause 7 of the proposed Access Arrangement, where a User exercises an option to extend the term of an existing Service Agreement or gives notice to increase MDQ or extend the term of a

Service Agreement, the exercise of such an option or the giving of such notice is deemed to be a new application for Spare or Developable Capacity. Under the Code a new application for Spare or Developable Capacity, even by an existing User, would ordinarily be deemed to be an application by a Prospective User. The Queuing Policy is, therefore, unclear on whether the User in exercising an option or in giving notice under clause 7.1(e) is deemed to be a Prospective User. The Queuing Policy is also unclear on whether there is one queue for all Spare and Developable Capacity or whether there are two queues, one pertaining to Prospective Users and another for existing Users.

2. It is also unclear whether the proposed Access Arrangement contemplates extensions to the term of Service Agreements for Reference Services. The Regulator considers it reasonable that a Service Agreement for a Reference Service be capable of including an option to extend the term of the Service Agreement for the capacity contracted in that agreement. Such an option, if exercised by the User, should not require the reallocation of that capacity via the Queuing Policy.

The following amendments are required before the proposed Access Arrangement is approved.

Amendment 21

The proposed Access Arrangement should be amended to clarify whether a User, in exercising an option or in giving notice under clause 7.1(e), is deemed to be a Prospective User for the purposes of clause 7.1 of the Access Arrangement and whether the Queuing Policy contemplates one or more queues.

Amendment 22

The proposed Access Arrangement and/or GT&C should be amended to make provision for a Service Agreement to be capable of including an option to extend the term of the Service Agreement for the capacity contracted in that agreement without exercise of the option being subject to allocation of spare capacity in accordance with the Queuing Policy.

Extensions/Expansions Policy

Section 3.16 of the Code requires that an Access Arrangement include a policy (an Extensions/Expansions Policy) which sets out:

- the method to be applied to determine whether any extension to, or expansion of the Capacity of, the Covered Pipeline should or should not be treated as part of the Covered Pipeline for all purposes under the Code;
- how any extension or expansion, which is to be treated as part of the Covered Pipeline, will affect Reference Tariffs;
- if the Service Provider agrees to fund New Facilities if certain conditions are met, a description of those New Facilities and the conditions on which the Service Provider will fund the New Facilities.

An Extensions/Expansions Policy is provided by the GGT in clause 10 of the proposed Access Arrangement.

GGT states that it will use all reasonable endeavour to extend or expand the pipeline where the proposed extension or expansion:

- is technically feasible and economically viable;
- is consistent with the safe and reliable operation of the Pipeline;
- receives all relevant regulatory approvals; and
- has regard to good pipeline industry practice.

The proposed Access Arrangement also states that extensions and expansions of the pipeline will form part of the pipeline and hence be covered if GGT elects and with the Regulator's consent. If this requires an amendment to the then approved Access Arrangement, GGT will lodge the amendment with the Regulator and the amended Access Arrangement will take effect on the date of approval by the Regulator or on some other date elected by GGT and consented to by the Regulator.

In addition, if a User has fully funded an extension or expansion, then this will result in no changes to that User's tariffs. However, other Users will be liable for a surcharge and all Users may be liable for a surcharge for pipeline extensions funded by GGT. The surcharges proposed are those allowed for by section 8 of the Code.

The Regulator is of the opinion that the Expansions/Extensions Policy proposed generally meets the requirements of the Code, however, the Regulator has concerns on the following matters:

1. The proposed Access Arrangement provides that, if GGT so elects and with the Regulator's consent, a pipeline extension or expansion will be subject to the Access Arrangement as part of the Covered Pipeline. However, the proposed Access Arrangement makes no mention of the case where GGT does not elect an extension/expansion to become part of the Covered Pipeline. This could be remedied by amending clause 10.3 of the proposed Access Arrangement to include a clause indicating that GGT may elect for a pipeline extension or expansion to be not subject to the Access Arrangement, subject to providing written notice to the Regulator.
2. The circumstances in which Surcharges may be applied are quite complex. This is in part because of the way in which Surcharges are dealt with in the Code, which does not set out detailed formulae for their calculation, but makes reference to broad principles designed to facilitate a fair re-allocation of Capital Contributions from Incremental Users as the composition of Incremental Users changes over time.

Clause 10.4(b) of the proposed Access Arrangement, which provides for the Service Provider to apply a Surcharge on a User of Incremental Capacity where parties other than the Service Provider have funded that Incremental Capacity, does not explain how a Surcharge will be calculated in these circumstances.

The Regulator considers that clause 10.4(b) of the proposed Access Arrangement should be amended to clarify how a Surcharge will be calculated in circumstances where a Capital Contribution has been made by an existing User and to confirm that the application of a Surcharge is subject to the Service Provider notifying the Regulator as required by section 8.25 of the Code.

3. Clause 10.2(a) of the proposed Access Arrangement states that a Prospective User requesting an extension/expansion should pay for the investigations regarding the feasibility of the extension/expansion and should also make a commitment to an agreed contribution to the costs of installing developable capacity. This effectively requires a Prospective User to commit to making a contribution to Developable Capacity before investigations have been undertaken.

The Regulator considers that it is not in the reasonable interests of a Prospective User to be required to agree to make a contribution to the costs of installing Developable Capacity until after investigations have been completed.

The following amendments are required before the proposed Access Arrangement will be approved.

Amendment 23

Clause 10.3 of the proposed Access Arrangement should be amended to include a clause indicating that GGT may elect for a pipeline extension or expansion to be not subject to the Access Arrangement, subject to providing written notice to the Regulator.

Amendment 24

Clause 10.4(b) of the proposed Access Arrangement, which provides for the Service Provider to apply a Surcharge on a User of Incremental Capacity where parties other than the Service Provider have funded that Incremental Capacity, should be amended to clarify how a Surcharge will be calculated in these circumstances.

Clause 10.4 should also be amended to state that the application of any Surcharge is subject to the Service Provider notifying the Regulator as provided for under section 8.25 of the Code.

Amendment 25

That clause 10.2(a) of the proposed Access Arrangement be amended to remove the requirement for any commitment by a Prospective User to make a contribution to the costs of installing Developable Capacity prior to investigations as to the costs of installing developable capacity having been completed.

Review Date

Section 3.17 of the Code requires that an Access Arrangement include:

- a date upon which the Service Provider must submit revisions to the Access Arrangement (a Revisions Submission Date); and
- a date upon which the next revisions to the Access Arrangement are intended to commence (a Revisions Commencement Date).

Clause 3 of the proposed Access Arrangement states that the Access Arrangement will come into effect on the “Effective Date” (ie the date on which the Access Arrangement comes into effect, as specified by the Regulator) and will continue for approximately five years. The Revisions Submission Date is not specified in the proposed Access Arrangement, but is stated in clause 3.2 of the proposed Access Arrangement to be 4.5 years after the Effective Date. The Revisions Commencement Date (or start of the new Access Arrangement) is stated to be the later of 5 years after the Effective Date or when the revised Access Arrangement is approved by the Regulator.

The Regulator has the following concerns relating to the review date:

1. As the Access Arrangement Period is expected to extend beyond the date (31 December 2004) for which the Access Arrangement Information provides relevant data, additional information is required to be included in the Access Arrangement Information for all of the years covered by the Access Arrangement Period including those extending beyond 31 December 2004.
2. In view of regulatory experience throughout Australia, the Regulator is of the opinion that a six-month period for assessment of a proposed Access Arrangement is inadequate and will require that the Revisions Submission Date to be brought forward to allow a nine-month period for assessment.
3. Although the proposed Access Arrangement describes circumstances in which GGT may review the Access Arrangement during the Access Arrangement Period, it does not specify any events that may trigger a requirement on GGT to submit revisions of the Access Arrangement to the Regulator.

Section 3.17(b)(ii) of the Code empowers the Regulator to require that specific major events be defined that trigger an obligation on the Service Provider to submit revisions prior to the Revisions Submission Date. The Regulator is not otherwise able to require a review of the Access Arrangement prior to the Revisions Submission Date. The Regulator gave detailed consideration to the specification of trigger events to ensure that the net benefits of triggering a review outweigh its costs.

The following amendments are required before the proposed Access Arrangement will be approved.

Amendment 26

The Access Arrangement Information should be amended to include all relevant data for the years covered by the Access Arrangement Period including those extending beyond 31 December 2004.

Amendment 27

Clause 3.2 of the proposed Access Arrangement should be amended to provide for a Revisions Submission Date that is four years and three months after the Effective Date.

Amendment 28

Clause 3 of the proposed Access Arrangement (Term and Review) should be amended to specify that GGT will submit revisions of the Access Arrangement to the Regulator:

- by 31 March in any year of the Access Arrangement Period, if the quantity of gas delivered to all Users in the preceding calendar year exceeded the forecast delivered volume for that year by 25 percent or more.
- within three months of the day on which a change in regulation that arises from a change in law takes effect, or the day on which it becomes sufficiently certain that the change will take effect, whichever is earlier, that has the effect of reducing the costs that GGT is required to pay, or is likely to be required to pay, in the subsequent calendar year of the Access Arrangement Period in relation to its supply of one or more services by an amount of 5 percent or more of the Total Revenue for that calendar year; and
- within three months of a change in taxation that arises from a change in law takes effect, or the day on which it becomes sufficiently certain that the change will take effect, whichever is earlier, that has the effect of reducing the costs that GGT is required to pay, or is likely to be required to pay, in the subsequent calendar year of the Access Arrangement Period in relation to its supply of one or more services by an amount of 5 percent or more of the Total Revenue for that calendar year.

For the purposes of the trigger events relating to regulatory or taxation changes, the time at which it is sufficiently certain that a change will take effect is the time the change receives royal assent or otherwise has the force of law.

Pass On of Taxes and Other Government Charges

In clause 9.9 of the Access Arrangement GT&C, GGT proposes that all taxes, duties, imposts, levies or other charges (excluding income tax) imposed by Government together with any increases in these charges would be passed on to Users when such charges are incurred by GGT or the owners in respect of any service provided pursuant to the Service Agreement.

Clause 9.11 of the Access Arrangement GT&C addresses the issue of GST specifically. It states that any increases in charges due to GST (or changes in GST) will be passed on to Users. It also states that, should changes in the income tax regime associated with the GST result in lower costs for GGT, the benefits of these lower costs will also be passed on to Users proportionately.

On the basis of legal advice, the Regulator is of the view that the Code does not currently provide for changes to Reference Tariffs other than by a review of the Access Arrangement, or in accordance with provisions for change that may be included in the Reference Tariff Policy under section 8.3 of the Code.

The following amendment is required before the proposed Access Arrangement will be approved.

Amendment 29

Clauses 9.9 and 9.11 of the GT&C of the proposed Access Arrangement should be amended to require that if any taxes, duties, imposts, levies or other charges (excluding income tax) are imposed by Government or if there are any increases in such charges then these can only be passed on to Users in accordance with the provisions for review of an Access Arrangement as provided for by section 2 of the Code.

Other Matters

Section 2.24 of the Code requires that an Access Arrangement contain the elements and satisfy the principles set out in sections 3.1 to 3.20 of the Code. An Access Arrangement may, however, address matters or provide information beyond the requirements of sections 3.1 to 3.20 of the Code.

The proposed Access Arrangement addresses several matters outside the scope of sections 3.1 to 3.20 of the Code. These matters, which are addressed in clause 6 of the proposed Access Arrangement, relate to the requirements and procedures for the lodgement of Access Requests and entering into a Service Agreement.

The Regulator is concerned about one aspect of clause 6 relating to confidentiality of information. Clause 6.12 of the Access Arrangement states that GGT may require a Prospective User to keep confidential any information disclosed in the course of negotiations relating to an application form as a precondition to negotiations.

This requirement could potentially have implications for the necessary disclosure of information to an Arbitrator, Regulator or Court of Law. However, the Regulator is mindful of the need for certain information that is harmful to the legitimate business interests of a party to be kept confidential. Prospective Users may therefore be required by the GGT to keep certain information confidential, but the Access Arrangement should not restrict a Prospective User from making such information available to the Arbitrator, the Regulator or a Court of Law.

The following amendment is required before the proposed Access Arrangement will be approved.

Amendment 30

Clause 6.12 of the proposed Access Arrangement should be amended so that information disclosed by GGT to a Prospective User in the course of an application for a service may be disclosed by the Prospective User to the Arbitrator, the Regulator or a Court of Law.

Another matter relates to the inclusion of Key Performance Indicators. Category 6 of Attachment A to the Code requires the inclusion of Key Performance Indicators in an Access Arrangement Information for a Covered pipeline.

While work is still progressing in Australia toward the development of appropriate benchmarks for the gas pipeline and other regulated industries, the Regulator considers that the Access Arrangement Information for the Goldfields Gas Pipeline should be amended to include additional information on Performance Indicators.

The following amendment is required before the proposed Access Arrangement will be approved.

Amendment 31

The Access Arrangement Information should be amended to include the following Key Performance Indicators for the Access Arrangement Period.

1. Pipeline maintenance cost (\$ per km of pipeline);
2. Compression maintenance cost (\$ per MW installed);
3. Compression unit reliability (ratio of out of service hours to total hours);
4. Compressor unit utilisation (ratio of run hours to total hours)
5. Pipeline utilisation (ratio of average throughput to maximum capacity);
6. Capacity reservation utilisation (ratio of average throughput to capacity reservation);
7. Compressor fuel usage (ratio of compressor fuel to throughput);
8. Maintenance cost ratio (ratio of operation and maintenance cost to total operating expenditure excluding fuel);
9. Overhead cost ratio (ratio of overheads to total operating costs excluding fuel);
10. Delivery cost (ratio of total operating costs excluding fuel to total quantity delivered);
11. Gas unaccounted for (volume of gas unaccounted for as a percentage of total delivery); and
12. Delivery disruption (disrupted quantity as a percentage of total MDQ).

REFERENCE TARIFF

The Code requires that an Access Arrangement include a Reference Tariff for:

- at least one Service that is likely to be sought by a significant part of the market; and
- each Service that is likely to be sought by a significant part of the market and for which the Relevant Regulator considers a Reference Tariff should be included.

The principles used to determine Reference Tariffs are to be stated as a Reference Tariff Policy. Both the Reference Tariff Policy and Reference Tariffs should be designed with a view to achieving the objectives set out in section 8.1 of the Code.

GGT has proposed a Reference Tariff for the single Reference Service being provided which is referred to as the firm service. As provided for by section 8.3 of the Code, GGT has nominated a price path methodology for the determination of Reference Tariffs. This approach requires that the Reference Tariff be determined in advance for the Access Arrangement Period. The Reference Tariff follows a path that is forecast to deliver a revenue stream sufficient to cover projected costs of providing the service within the Access Arrangement Period.

The Code provides a general procedure for the application of the price path methodology to the determination of Reference Tariffs. The steps in this general procedure are:

- estimation of an Initial Capital Base;
- estimation of Capital Expenditure;
- estimation of Non-Capital Costs;
- estimation of an appropriate Rate of Return;
- specification of a Depreciation Schedule;
- determination of Total Revenue;
- determination of a cost/revenue allocation across services;
- determination of Reference Tariffs; and
- specification of Incentive Mechanisms.

The Regulator considered the Reference Tariff proposed by GGT in the light of each of these steps. The Regulator's conclusions and required amendments to the Access Arrangement in respect of each of these steps are indicated below.

Throughput Forecast

On an aggregated basis, the Goldfields Gas Pipeline projected future throughput for the duration of the proposed Access Arrangement is as follows:

YEAR	2000	2001	2002	2003	2004
Projected Pipeline Throughput TJ/d	71	71	74	72	69

GGT's forecast throughput for the Goldfields Gas Pipeline has been compared with another forecast by Australian Pipelines Limited (APL). The APL forecast was made public in a prospectus relating to the offering of units in the Australian Pipeline Trust, which included a share of the Goldfields Gas Pipeline assets. This prospectus was issued

on 5 May 2000 and indicates a substantially higher throughput forecast than that projected by GGT, particularly after the end of the proposed Access Arrangement Period.

The consequences of the longer term forecast is that it impacts on the derivation of the Initial Capital Base, depreciation, the residual value and the calculation of tariffs.

While the views expressed in submissions and the longer term throughput forecast by APL are inconsistent with the GGT forecast, the difference between the GGT and APL forecasts for the period of the Access Arrangement is less significant. For tariff calculation purposes the GGT forecast has been adopted for the period of the proposed Access Arrangement. Additional advice on the throughput forecast is likely to be required before the Regulator issues the Final Decision.

Initial Capital Base

Sections 8.10 and 8.11 of the Code state the principles for establishing the Initial Capital Base for an existing Covered Pipeline when a Reference Tariff is first proposed for a Reference Service. These principles apply to the Access Arrangement for the Goldfields Gas Pipeline.

GGT has proposed that the Initial Capital Base for the Goldfields Gas Pipeline should be based on a Depreciated Optimised Replacement Cost (DORC) valuation and be valued at \$452.6 million including other capital (\$3.8 million less \$0.4 depreciation) and working capital (\$2.6 million). Notwithstanding this, GGT did not estimate the DORC value by applying the conventional approach for this methodology, but used the Depreciated Adjusted Historical Cost approach to estimate DORC.

The methodology used by GGT to derive the Depreciated Adjusted Historical Cost was to adjust the actual construction cost of the pipeline by inflation, interest cost incurred during construction, foreign exchange variations and then depreciating the resulting value. The use of this approach was predicated on the view that the pipeline was constructed to industry best practice standards and that no significant technological change has occurred which could significantly vary pipeline construction costs since the time of actual construction.

A number of methods are available for valuing infrastructure assets. The valuation methodologies that are discussed in Part B of this Draft Decision include Depreciated Actual Cost, Depreciated Adjusted Historical Cost, Depreciated Replacement Cost and Depreciated Optimised Replacement Cost.

The different capital base values that have been estimated for the Goldfields Gas Pipeline are summarised in the Table below.

Value of the Goldfields Gas Pipeline Under Different Asset Valuation Methodologies
(31 December 1999 Dollars)

Asset Valuation Methodology	\$Million
GGT's Depreciated Adjusted Historical Cost* , units of production depreciation, GGT throughput forecast, asset life 42 years.	450.0
Regulator's Depreciated Actual Cost , straight line depreciation, asset life by category of asset class (weighted average about 65 years) based on actual cost of construction.	435.4
Regulator's Depreciated Replacement Cost of existing system , straight line depreciation, asset life by category of asset class (weighted average about 65 years).	425.0
Regulator's DORC , straight line depreciation, asset life by category of asset class (weighted average about 65 years), based on an optimisation of the existing system.	406.7

* The Depreciated Adjusted Historical Cost value is referred to by GGT as a DORC value in the Access Arrangement Information

In considering the factors to be taken into account in establishing the Initial Capital Base for the Goldfields Gas Pipeline and the issues raised in submissions, the Regulator concludes that a Depreciated Actual Cost valuation methodology is appropriate for the Goldfields Gas Pipeline. A Depreciated Actual Cost is preferred over other possible valuations for the following reasons.

- A valuation based on actual cost gives recognition to the constraints on pipeline design under the *Goldfields Gas Pipeline Agreement Act 1994*.
- Inflation has been low in the period since the construction of the Goldfields Gas Pipeline, which is consistent with the use of a Depreciated Actual Cost valuation methodology that assumes inflation to be zero.
- Independent advice by the technical consultant is that pipeline construction costs do not appear to have increased since the Goldfields Gas Pipeline was constructed, possibly due to the impact of technological improvement approximately offsetting the low level inflation recorded over the period.

In the absence of information on the actual amount of depreciation charged to Users, or thought to have been charged to Users, the Regulator made an assumption as to historical depreciation, estimating this depreciation by a straight line methodology. The resulting Depreciated Actual Cost value was estimated at \$435.4 million.

After adding \$2.6 million working capital to the Depreciated Actual Cost gives an Initial Capital Base value of \$438.0 million.

The Regulator recognises that this valuation is in excess of the DORC valuation of the pipeline (\$406.7 million), which in most circumstances is a reasonable upper limit on asset value. However, the Regulator considers the difference and hence any economy wide inefficiency implications of an Initial Capital Base in excess of the DORC value to be

outweighed by the reasonable interests of the Service Provider in having the design constraints of the *Goldfields Gas Pipeline Agreement Act 1994* recognised in the valuation of the Initial Capital Base.

The following amendment is required before the proposed Access Arrangement will be approved.

Amendment 32

The Access Arrangement Information should be amended to set the Initial Capital Base of the Goldfields Gas Pipeline at \$438.0 million as at 31 December 1999.

Capital Expenditure

Sections 8.15 to 8.26 of the Code deal with New Facilities Investment, Speculative Investment, forecast Capital Expenditure, Capital Contributions and surcharges to meet the costs of New Facilities Investment. These sections of the Code address issues including the circumstances in which forecast Capital Expenditure on a Covered Pipeline and associated regulated assets is incorporated into the Capital Base of the pipeline, and how forecast Capital Expenditure is considered in the determination of Reference Tariffs.

Capital Expenditure information is provided in section 4.3 of the Access Arrangement Information. GGT has projected future Capital Expenditure on the basis that there will be no expansion of the capacity of the pipeline over the Access Arrangement Period.

After additional information was provided by GGT on a confidential basis, the Regulator is satisfied that the proposed Capital Expenditure presented in the Access Arrangement Information meets the requirements of section 8.20 of the Code and that the proposed New Facilities Investment reasonably satisfies the requirements of section 8.16.

Non-Capital Costs

Section 8.36 of the Code defines Non-Capital Costs as the operating, maintenance and other costs incurred in the delivery of a Reference Service.

Section 5 of the Access Arrangement Information provides details of the Non-Capital Costs for the Goldfields Gas Pipeline over the Access Arrangement Period which is summarised below.

Goldfields Gas Pipeline Non-Capital Costs
(Nominal Dollars \$'000)

Year	2000	2001	2002	2003	2004
Pipeline Operating & Maintenance Costs	6,635	6,937	7,133	7,386	7,781
Management Costs	4,669	4,315	4,169	4,200	4,931
Total Costs	11,304	11,252	11,302	11,586	12,712

On the basis of the information provided by GGT, the Regulator was not satisfied that all the forecast components of the Non-Capital Costs proposed by GGT meet the requirements of section 8.37 of the Code, which requires that such costs would be those incurred by a prudent Service Provider, acting efficiently, in accordance with accepted and good industry practice, and to achieve the lowest sustainable cost of delivering the Reference Service.

In order for the Regulator to assess Non-Capital Costs, GGT provided details on a confidential basis of historical pipeline operating and maintenance costs and management costs for the pipeline. The Regulator considered that the proposed pipeline operating and maintenance costs are consistent with the level of historical expenditure and are justified. However the Regulator considered that the increase on historical costs proposed by GGT for management costs represented a significant increase of expenditure above the historical levels, not all of which were justified on the basis of the information provided by GGT. The Regulator therefore estimated Non-Capital Costs for the Access Arrangement Period as the sum of:

- pipeline operating and maintenance costs as projected by GGT;
- escalated historical management costs; and
- anticipated regulatory expenses.

The Regulator's estimated Non-Capital Costs as compared with those projected by GGT are presented in the table below.

Goldfields Gas Pipeline Non-Capital Costs
Estimated by the Regulator for Reference Tariff Purposes
(31 December 1999 Dollars \$'000)

Year	2000	2001	2002	2003	2004
Total as Projected by GGT	11,028	10,710	10,495	10,496	11,236
Total as Adjusted by the Regulator	9,860	9,501	9,534	9,634	10,333
Difference	-10.6%	-11.3%	-9.2%	-8.2%	-8.0%

In order for management costs, as proposed by GGT, to be included in the Access Arrangement, GGT will need to provide further justification of its proposed management costs in order to demonstrate that such costs would be those incurred by a prudent Service Provider. For the purposes of the Draft Decision, the Regulator has used the adjusted costs as shown above.

The following amendment is required before the proposed Access Arrangement will be approved.

Amendment 33

That Non-Capital Costs proposed in the Access Arrangement Information for the Goldfields Gas Pipeline be amended to the values as follows:

Year	2000	2001	2002	2003	2004
Total (31 December 1999 \$'000)	9,860	9,501	9,534	9,634	10,333

Rate of Return

Sections 8.30 and 8.31 of the Code state the principles for establishing the Rate of Return for an existing Covered Pipeline when a Reference Tariff is first proposed for a Reference Service.

GGT has chosen to use a Net Present Value (NPV) approach to determining Total Revenue and Reference Tariffs. This is provided for by section 8.4 of the Code and is described in section 7.2 of the Access Arrangement Information. The Rate of Return used as the discount rate in NPV calculations is the Weighted Average Cost of Capital (WACC). Information on the derivation of the WACC by GGT is contained in section 7.4 of the Access Arrangement Information.

The WACC proposed by GGT is a pre-tax real WACC of 12.2 percent. The Capital Asset Pricing Model (CAPM) was used to derive the after tax WACC, which was then converted to a pre-tax real WACC using the 'forward transformation' method.

The methodology and input variables for calculating the WACC for the Goldfields Gas Pipeline are comprehensively discussed in Part B of the Draft Decision. For comparison purposes, the table below summarises the input variables to the WACC calculation proposed by GGT and compares these with the variables determined by the Regulator.

Estimation of the Rate of Return

Parameter	Parameter symbol	Value proposed by GGT	Value proposed by the Regulator
Risk Free Rate (Nominal)	R_f	6.7%	5.35%
Risk Free Rate (Real)	R_f	4.10%	3.14%
Market Risk Premium		6.5%	6.0%
Equity Beta	b_e	1.40	1.33
Debt Beta	b_d	0.27*	0.20
Cost of Debt Margin		2.25%	1.20%
Corporate Tax Rate	T	36.0%	31.4%
Franking Credit Value	g	0.3	0.5
Debt to Total Assets Ratio	D/V	0.5	0.6
Equity to Total Assets Ratio	E/V	0.5	0.4
Expected Inflation	p_e	2.50%	2.14%

* The debt beta was not calculated by GGT. Rather, an implied debt beta of 0.27 has been imputed from the information provided by GGT.

The Regulator's real pre-tax WACC estimate for the Goldfields Gas Pipeline is 7.95 percent as shown in the table below.

A key factor in the calculation of the WACC relates to a requirement on GGT to set access tariffs that provide total revenue consistent with a rate of return which is commensurate with prevailing conditions in the market for funds and the risks involved in delivering the Reference Service.

It should be noted that the basis of this rate of return is not significantly different to that determined in the Final Decision for the Parmelia Pipeline and the Draft Decision for the Tubridgi Pipeline System.¹ Recent changes in interest rates and inflation expectations in

¹ Refer Final Decision, Parmelia Pipeline, October 2000 and Draft Decision, Tubridgi Pipeline System, August 2000.

the 20 day period to 28 February 2001 have had an observable impact on the WACC determined for the Goldfields Gas Pipeline.

WACC Estimates for the Goldfields Gas Pipeline

WACC	Nominal	Real
Post-Tax (Officer)	7.05%	4.80%
Pre-Tax (Forward Transformation)	10.25%	7.95%

Rates of return on equity equivalent to the WACC estimates are presented below.

Returns on Equity

Return on Equity	Nominal	Real
Post-Tax Return on Equity	13.30%	10.95%
Pre-Tax Return on Equity	15.80%	13.35%

It should be noted that since the Access Arrangement Period is expected to extend beyond 31 December 2004, the average rate of taxation will need to be adjusted in the WACC calculation once the exact period of the Access Arrangement is known and additional information is provided by GGT to allow the necessary financial calculations. This adjustment will impact on the rate of return determined in the Final Decision.

The following amendment is required before the proposed Access Arrangement will be approved.

Amendment 34

The proposed Access Arrangement and Access Arrangement Information should be amended to adopt a pre-tax real rate of return (WACC) of 7.95 percent.

Depreciation Schedule

The depreciation schedule relates to that depreciation during an Access Arrangement Period used to calculate Reference Tariffs and differs from historical depreciation, which forms part of the Initial Capital Base calculation.

Sections 8.32 to 8.35 of the Code are relevant to calculating depreciation for determining Reference Tariffs.

Asset depreciation for the Goldfields Gas Pipeline is discussed in sections 4.2 and 7.5.3.7 of the Access Arrangement Information.

Financial information on depreciation is not shown in the Access Arrangement Information, which is consistent with the Net Present Value approach for tariff determination chosen by GGT. Instead, GGT has presented cash flow information in section 7.5.3.7 of the Access Arrangement Information from which depreciation can be imputed. However, the cash flow information presented does not relate to GGT's proposed Reference Tariff, which is that tariff proposed for introduction on 1 January 2000. Instead, the information relates to another tariff, which is stated by GGT to be 22 percent higher than the intended Reference Tariff. Depreciation imputed from the cash flow information is therefore not directly relevant.

In relation to depreciation methodology, GGT has nominated the units of production method for the Goldfields Gas Pipeline, because it provides for capital to be recovered during the period that the majority of revenue is expected to be generated and allows tariffs to be determined on a levelised basis.

The derivation of tariffs on the basis of a units of production methodology places considerable importance on projections of future pipeline throughput. In effect, GGT seeks to recover the majority of the depreciation for the pipeline in the period to 2016. GGT considers that no certainty may be attached to transmission contracts extending beyond that point.

The Regulator is of the view that the use of accelerated depreciation has not been adequately justified and that the Depreciation Schedule for the Goldfields Gas Pipeline should be determined on the basis of a straight line depreciation methodology.

GGT also proposed that the economic life for the Goldfields Gas Pipeline be equal to a regulatory life of 40 years. This assumed life is based on a licencing period of 42 years less two years for pipeline design and construction, during which no revenue was derived from the transport of natural gas.

The Regulator is of the view that there is no reason to presume that the licence for the Goldfields Gas Pipeline would not be renewed at the end of the licence period. The Regulator is therefore of the view that the licence period is not a relevant consideration in making assumptions as to asset life for the purposes of depreciation and that the Access Arrangement and Access Arrangement Information should be amended to reflect a weighted average asset life of 65 years.

The following amendments are required before the proposed Access Arrangement will be approved.

Amendment 35

The Access Arrangement and Access Arrangement Information should be amended to reflect a depreciation schedule based on assumed asset lives as follows:

Asset Category	Assumed Asset Life
Pipelines and laterals	70
Scraper stations, mainline valves and maintenance bases	50
Compressor stations, receipt point and delivery point facilities	30
SCADA, communication and cathodic protection systems	15
Other assets	10

Amendment 36

The proposed Access Arrangement and Access Arrangement Information should be amended to reflect a Depreciation Schedule as follows:

Year:	2000	2001	2002	2003	2004
Depreciation (Real \$million at 31 December 1999):	8.3	8.4	8.5	8.7	8.8

Total Revenue

Sections 8.4 to 8.7 of the Code relate to the determination of Total Revenue.

Sections 8.4 and 8.5 provide that Total Revenue should be calculated according to one of the following methodologies:

1. Cost of Service;
2. Internal Rate of Return (IRR);
3. Net Present Value (NPV); or
4. Other methodologies provided these can be expressed in terms of one of those already stated.

Section 8.6 of the Code provides that the Regulator may have regard to any financial and operational performance indicators considered relevant.

Section 8.7 of the Code requires that, if the Regulator has considered financial and operational performance indicators, he must identify the indicators and provide an explanation of how they have been taken into account.

As already indicated above,² GGT has chosen the NPV methodology for determining Total Revenue. This is described in sections 7.2.1 and 7.2.2 of the Access Arrangement Information.

² Refer page 23 of this Part A of the Draft Decision.

As before, the Total Revenue information presented does not relate to GGT's proposed Reference Tariff, but to another tariff that is stated by GGT to be 22 percent higher than the intended Reference Tariff. Total Revenue presented in the Access Arrangement Information is therefore not directly relevant.

The Regulator has revised the Total Revenue calculation in accordance with revisions made to cost components described in this Draft Decision and this is summarised in the following table.

Regulator's Assessed Total Annual Revenues
(31 December 1999 Dollars, excluding GST)

	2000	2001	2002	2003	2004
	\$Million	\$Million	\$Million	\$Million	\$Million
Return on Capital	34.8	34.3	33.7	32.7	32.5
Return of Capital (Depreciation)	8.3	8.4	8.5	8.7	8.8
Non-Capital Expenditure	9.9	9.5	9.5	9.6	10.3
Total Revenue	53.0	52.2	51.7	51.4	51.6

The following amendment is required before the proposed Access Arrangement will be approved.

Amendment 37

The proposed Access Arrangement and Access Arrangement Information should be amended to reflect a Total Revenue stream as follows:

Year:	2000	2001	2002	2003	2004
Total Revenue (Excluding GST)					
(Real \$ million at 31 December 1999):	53.0	52.2	51.7	51.4	51.6

Cost/Revenue Allocation

As GGT has proposed that all relevant costs be allocated to the Reference Service and across all Users including the joint owners of the pipeline, the Regulator considers that this cost/revenue allocation methodology is consistent with the requirements of the Code.

Reference Tariff

The main requirement of the Code relating to the Reference Tariff is by way of a general objective included as section 8.1(e) of the Code, which requires that the Reference Tariff

should be designed with a view to achieving efficiency in the level and structure of the tariff.

Section 7.5 of the Access Arrangement Information describes the process of tariff determination.

GGT has proposed the following tariff structure for the Reference Service:

- An annual account management charge for each User;
- A toll component (expressed in \$/GJ of contracted MDQ);
- A reservation component (expressed in \$/GJ of contracted MDQ/km); and
- A throughput component (expressed in \$/GJ of throughput/km).

The toll, reservation and throughput components of the Reference Service Tariff are each offered on the basis of four contract periods with lower tariff rates as the duration of the contract period increases. The four contract terms are as follows:

- (1) 1 to 5 years;
- (2) 6 to 10 years;
- (3) 11 to 15 years; and
- (4) 16 to 20 years.

The proposed Reference Tariff has been structured such that the rates for a contract term in excess of 16 years are some 84 percent of the rates for a contract having a term of less than five years. The Regulator would welcome any additional comments from interested parties during the current public consultation period as to the appropriateness of the magnitude of this percentage involved.

Despite the derivation of a Total Revenue requirement using a Net Present Value approach, GGT proposed a Reference Tariff that is unrelated to this Total Revenue. Instead, GGT proposed a different Reference Tariff as a separate initiative.

Although the Regulator did not have access to the detailed operational information needed to determine the Reference Tariff, an analysis of available information indicates that the Reference Tariff proposed by GGT would need to be reduced by approximately 30 percent to generate the Total Revenue (excluding GST) determined by the Regulator.

GGT has proposed that the Reference Tariff should be adjusted by the full 10 percent GST.

The following amendment is required before the proposed Access Arrangement will be approved.

Amendment 38

The proposed Access Arrangement should be amended to reflect a Reference Tariff (exclusive of GST) that will generate Total Revenue having a present value of \$208.1 million as at 31 December 1999 using the WACC of 7.95 percent as the discount rate.

Based on the parameters used in determining Total Revenue, information will need to be provided to the Regulator to verify that the Reference Tariff will generate a Total Revenue having a present value of \$208.1 million.

The proposed Access Arrangement should also be amended to specify a GST inclusive Reference Tariff.

Reference Tariff Variation

The Code addresses variation in Reference Tariffs within an Access Arrangement Period in terms of two general matters:

- (a) variation in Reference Tariffs according to principles such as a predetermined price path or a realised cost and sales outcome for the Service Provider; and
- (b) variation in Reference Tariffs (within the scope of (a) above) according to principles of an Incentive Mechanism.

Section 8.3 of the Code provides for the Service Provider to have discretion as to the manner in which Reference Tariffs vary within an Access Arrangement Period.

GGT has proposed a “price path” approach to setting the Reference Tariff to be escalated by a formula described in clause 9.8 of the GT&C. In effect, GGT proposes that the Reference Tariff be escalated by 100 percent of CPI. In addition, GGT proposes that no additional incentive mechanism apply to the tariff setting process.

The price path approach proposed by GGT provides an incentive for the Service Provider to seek efficiency gains and cost reductions. The benefits of any cost savings achieved would initially accrue to GGT, but would be available to Users through lower tariffs in the subsequent Access Arrangement Period.

Australian regulators have typically not used a CPI-X mechanism as a means of creating incentives for service providers to seek efficiency gains in excess of any efficiency gains already forecast and factored into operating costs and Reference Tariffs. Rather, regulators have typically used a CPI-X mechanism for the purposes of tariff smoothing over an Access Arrangement Period.

As GGT has proposed a Levelised Tariff as the Reference Tariff for the Access Arrangement Period, the use of a CPI-X mechanism for tariff smoothing is unnecessary. The NPV approach used in levelising tariffs has the effect of “tariff smoothing” and hence application of a CPI-X tariff adjustment for this purpose is unnecessary.

The Regulator has concerns in relation to two aspects of the tariff variation mechanism proposed by GGT:

1. The definition of the component “ C_b ” of the inflation adjustment mechanism described in clause 9.8 of the GT&C needs to be amended to clearly indicate that this term refers to the tariff rates specified in the Reference Tariff expressed in dollars as at 1 October 1997.
2. As the revised Reference Tariff is expressed in dollar values at a date prior to 1 January 2001, the CPI adjustment mechanism specified in clause 9.8 of the GT&C needs to be amended such that the increase in the CPI for the quarter ending 30 September 2000 is reduced by 2.75 percentage points to account for the inflationary impact of the GST.

The following amendments are required before the proposed Access Arrangement will be approved.

Amendment 39

The definition of the component “ C_b ” of the inflation adjustment mechanism described in clause 9.8 of the General Terms and Conditions should be amended to clearly indicate that this term refers to the tariff rates specified in the Reference Tariff expressed in dollars as at 1 October 1997.

Amendment 40

As the revised Reference Tariff is expressed in dollar values at a date prior to 1 January 2001, the CPI adjustment mechanism specified in clause 9.8 of the General Terms and Conditions should be amended such that the increase in the CPI for the quarter ending 30 September 2000 is reduced by 2.75 percentage points to account for the inflationary impact of the GST.

OTHER FEES AND CHARGES

The proposed Access Arrangement for the Goldfields Gas Pipeline provides for GGT to levy a range of fees and charges on Users and Prospective Users in addition to the Reference Tariff.

The Code does not address the levying of fees and charges by a Service Provider on Users or Prospective Users other than through Reference Tariffs. However, to the extent that fees and charges comprise part of the Terms and Conditions for provision of Reference Services, such matters fall within the scope of section 3.6 of the Code that requires that the terms and conditions for provision of Reference Services must, in the Regulator’s opinion, be reasonable.

Fees and charges are addressed by clause 9 under “Transport Tariff and Charges” of the GT&C and are detailed in the Sixth Schedule of the GT&C. The fees and charges proposed by GGT, additional to the Reference Tariff,³ are listed as follows:

- Used Gas Charge;
- Supplementary Quantity Option Charge;
- Connection Charge;
- Account Establishment Charge; and
- Quantity Variation Charges comprising:
 - Accumulated Imbalance Charge;
 - Daily Overrun Charge;
 - Hourly Overrun Charge; and
 - Variance Charge.

General Issues Concerning Penalty Charges

GGT has proposed that the arrangements pertaining to penalty charges be flexible in that the application of the charges on any one occasion is to be at GGT’s discretion and that certain parameters used in calculating the charges may be modified by GGT giving written notice to all Users of the pipeline.

Currently, the Code does not make provision for the Service Provider to make amendments to an Access Arrangement otherwise than by a review of the Access Arrangement in accordance with the requirements of section 2 of the Code. Schedule 6 of the GT&C of the proposed Access Arrangement therefore needs to be amended to remove the provisions for GGT to vary the parameters used in the calculation of Quantity Variation Charges.

The following amendment is required before the proposed Access Arrangement will be approved.

Amendment 41

Schedule 6 of the GT&C of the proposed Access Arrangement should be amended to remove the provisions for GGT to vary the parameters used in the calculation of Quantity Variation Charges.

While the Regulator is satisfied that the level of penalty charges proposed by GGT, ranging from 105 to 300 percent, is consistent with penalty charges applicable in respect of other pipelines in Australia, the Regulator considers that penalty charges are not intended as a source of revenue and that therefore the majority of any revenue generated from the application of such penalty charges should be rebated to Users. The Regulator envisages

³ The structure of the Reference Tariff for the Reference Service is described on page 26 of this Part A of the Draft Decision.

that the costs of levying and collecting penalties would be small and that a reasonable proportion of penalty revenue to be rebated would be in the order of 95 percent.

The following amendment is required before the proposed Access Arrangement will be approved.

Amendment 42

The proposed Access Arrangement should be amended so that the 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.

Used Gas Charge

The Used Gas Charge is applied by GGT to recover the cost of System Use Gas comprising:

- physical losses of gas from the pipeline system;
- accumulated metering errors at inlet and outlet points;
- compressor fuel; and
- gas used by other equipment.

Gas use for these purposes is not specific to any particular User, although the amount of such gas use is controllable by GGT. GGT proposes to apportion the cost of System Use Gas across all Users on the basis of the gas delivered to each User. However, consistent with the practice of other gas pipeline systems, GGT should provide greater flexibility in managing System Use Gas.

The following amendment is required before the proposed Access Arrangement will be approved.

Amendment 43

The proposed Access Arrangement should be amended to provide Users with greater flexibility including the option of supplying their own portion of System Use Gas, and to oblige GGT to provide Users with information on the cost and quantity of System Use Gas.

Accumulated Imbalance Charge

Clauses 7.2(d) (Accumulated Imbalance Charge) of the GT&C states that these charges will be applied when the respective tolerance is exceeded. However, the quantity upon which this charges is levied includes the tolerance. In general, industry practice is that charges are levied only on quantities that exceed the tolerance. The Regulator considers that in view of general industry practice, charges should not be based on an amount that includes the amount of any tolerance.

The following amendment is required before the proposed Access Arrangement will be approved.

Amendment 44

Clause 7 and/or the Sixth Schedule of the GT&C should be amended so that the Accumulated Imbalance Charge does not apply in respect of the amount of the tolerance allowed.

Daily and Hourly Overrun Charges

The Daily and Hourly Overrun Charges provided for by clauses 7.3 and 7.4 of the GT&C apply to both inlet and outlet quantities. In general, other gas transmission pipeline operators only apply such overrun charges in respect of gas delivered at outlet points. The effect of applying these overrun charges to both inlet and outlet quantities is that the User may be charged twice for the same overrun. It is general industry practice for inlet quantities not to be subject to Daily and Hourly Overrun Charges.

The following amendments are required before the proposed Access Arrangement will be approved.

Amendment 45

Clauses 7.3 of the GT&C should be amended so that the Daily Overrun Charge only applies in respect of daily overrun outlet variations.

Amendment 46

Clauses 7.4 of the GT&C should be amended so that the Hourly Overrun Charge only applies in respect of hourly overrun outlet variations.

Variance Charge

The variance charge proposed by GGT has been assessed as commensurate with those of other pipelines. However, two issues are of concern:

- (1) Variance charges are intended to be applied as a last resort, to prevent persistent and inefficient patterns of behaviour by Users. While GGT has discretion not to apply penalty charges, it is considered that the proposed Access Arrangement should be amended to indicate that the variance charge will not apply in cases where the variance tolerance is exceeded unintentionally and infrequently.
- (2) Clause 7.5(c) (Variance Charge) of the GT&C states that this charge will be applied when the respective tolerance is exceeded. However, the quantity upon which this charge is levied includes the tolerance. In general, industry practice is that charges are levied only on quantities that exceed the tolerance. The Regulator considers that in view of general industry practice charges should not be based on an amount that includes the amount of any tolerance.

The following amendments are required before the proposed Access Arrangement will be approved.

Amendment 47

Clause 7.5 of the GT&C should be amended to indicate that the variance charge will not be applied in cases where the variance tolerance is exceeded unintentionally and infrequently.

Amendment 48

Clause 7 and/or the Sixth Schedule of the GT&C should be amended so that the Variance Charge does not apply in respect of the amount of the tolerance allowed.

Information on Pipeline Operations

The proposed Access Arrangement does not address the provision of information to Users pertaining to nominations, throughput, and variances on a sufficiently timely basis for Users to be able to respond and avoid penalty charges.

Existing technology offers efficient means of providing such information, which can be made sufficiently secure to ensure confidentiality. For example, information may be provided through an electronic bulletin board, updated on a continuous basis, which Users can access to monitor their own user specific information on an as needs basis.

The Regulator considers it reasonable that the Access Arrangement should make provision for user specific information to be available to Users on a timely basis.

The following amendment is required before the proposed Access Arrangement will be approved.

Amendment 49

The proposed Access Arrangement should be amended to make provision for user specific information to be available to Users on a timely basis to assist them in managing their operations and avoid penalty charges.