

# Goldfields Gas Transmission's Proposed Expansion of the Goldfields Gas Pipeline

Issues Paper

27 March 2014

**Economic Regulation Authority**

WESTERN AUSTRALIA

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Economic Regulation Authority  
Perth, Western Australia  
Phone: (08) 6557 7900

## Request for submissions

On 4 November 2013, Goldfields Gas Transmission (**GGT**) notified the Authority that the capacity of the Goldfields Gas Pipeline (**GGP**) was being expanded. The Authority understands that the expansion capacity will be fully commissioned in 2014.

On 6 December 2013, GGT provided a submission to the Authority that outlined its proposed treatment of the current expansion of GGP.<sup>1</sup> Pursuant to clause 10.2(a) of the GGP Access Arrangement, GGT has elected not to treat the capacity from the proposed expansion of the GGP as part of the covered pipeline for any purpose. Also pursuant to clause 10.2(a), GGT has sought the Authority's approval for its election.

In formulating its decision on whether or not to consent to Goldfields Gas Transmission's election, the Authority is seeking to consult with current and potential users of the GGP, in addition to other interested parties.

You are invited to provide a submission on matters of relevance, including the issues raised in this Issues Paper. Submissions are due by 4:00 pm (WST) on **Friday, 11 April 2014**. All feedback received in response to this Issues Paper will be considered, and will assist the Authority in its decision.

This Issues Paper is intended to assist you in preparing your response. The paper provides background information on the GGP. The paper also discusses the framework that the Authority considers is relevant to its determination.

After reviewing the responses received to this Issues Paper, the Authority will make a determination on GGT's election.

The Authority plans to publish its determination in May 2014.

Submissions may be provided in written or electronic form. Submissions should be labelled "Determination on Goldfields Gas Transmission's Proposed Expansion of the Goldfields Gas Pipeline", and marked to the attention of Richard Begley, Regulatory Advisor.

Email address: [publicsubmissions@erawa.com.au](mailto:publicsubmissions@erawa.com.au)

Postal address: PO Box 8469, PERTH BC WA 6849

Office address: Level 4, Albert Facey House, 469 Wellington Street, PERTH WA 6000

Responses will be placed on the ERA website. The response, or parts of the response in relation to which confidentiality is claimed, should be clearly marked. Any claim of confidentiality will be dealt with in accordance with section 7.12 of the *National Third Party Access Code for Natural Gas Pipeline Systems (Code)* (see paragraph 30 below for reasoning).

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<sup>1</sup> Goldfields Gas Transmission 2014, *Proposed treatment of the RTIO/BHPBIO expansion – election under clause 10.2(a) of the Goldfields Gas Pipeline Access Arrangement (Public Version)*, [www.erawa.com.au](http://www.erawa.com.au).

## CONFIDENTIALITY

In general, all submissions from interested parties will be treated as being in the public domain and placed on the Authority's website. Where an interested party wishes to make a submission in confidence, it should clearly indicate the parts of the submission for which confidentiality is claimed, and specify in reasonable detail the basis for the claim.

The publication of a submission on the Authority's website shall not be taken as indicating that the Authority has knowledge either actual or constructive of the contents of a particular submission and, in particular, whether the submission in whole or part contains information of a confidential nature and no duty of confidence will arise for the Authority.

### **General Enquiries**

Richard Begley  
Economic Regulation Authority  
Ph: 08 6557 7900  
[records@erawa.com.au](mailto:records@erawa.com.au)

### **Media Enquiries**

Richard Taylor  
Riley Mathewson Public Relations  
Ph: 08 9381 2144  
[admin@rmp.com.au](mailto:admin@rmp.com.au)

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## Introduction

1. On 4 November 2013, Goldfields Gas Transmission Pty Ltd (**GGT**) notified the Authority that the capacity of the Goldfields Gas Pipeline (**GGP**) was being expanded. The Authority understands that the full expansion capacity will be commissioned in 2014.
2. On 6 December 2013, GGT provided a submission to the Authority that outlined its proposed treatment of the current expansion of GGP.<sup>2</sup> Pursuant to clause 10.2(a) of the GGP Access Arrangement, GGT has elected not to treat the capacity from the proposed expansion of the GGP as part of the covered pipeline for any purpose under the Code. Also pursuant to clause 10.2(a), GGT has sought the Authority's consent for its election.
3. Clause 10.2 of the GGP Access Arrangement stipulates that if the Authority refuses to consent to GGT's election, the Authority must make an express determination whether or not the expansion of the capacity of the Pipeline should be treated as part of the Covered Pipeline for all purposes under the Code or should not be treated as part of the Covered Pipeline for any purpose under the Code.
4. The GGP Access Arrangement does not prescribe the decision framework that the Authority should use in its determination.
5. The purpose of this Issues Paper is to consult on the framework to be used to assess the election and to identify related issues.

## The Goldfields Gas Pipeline

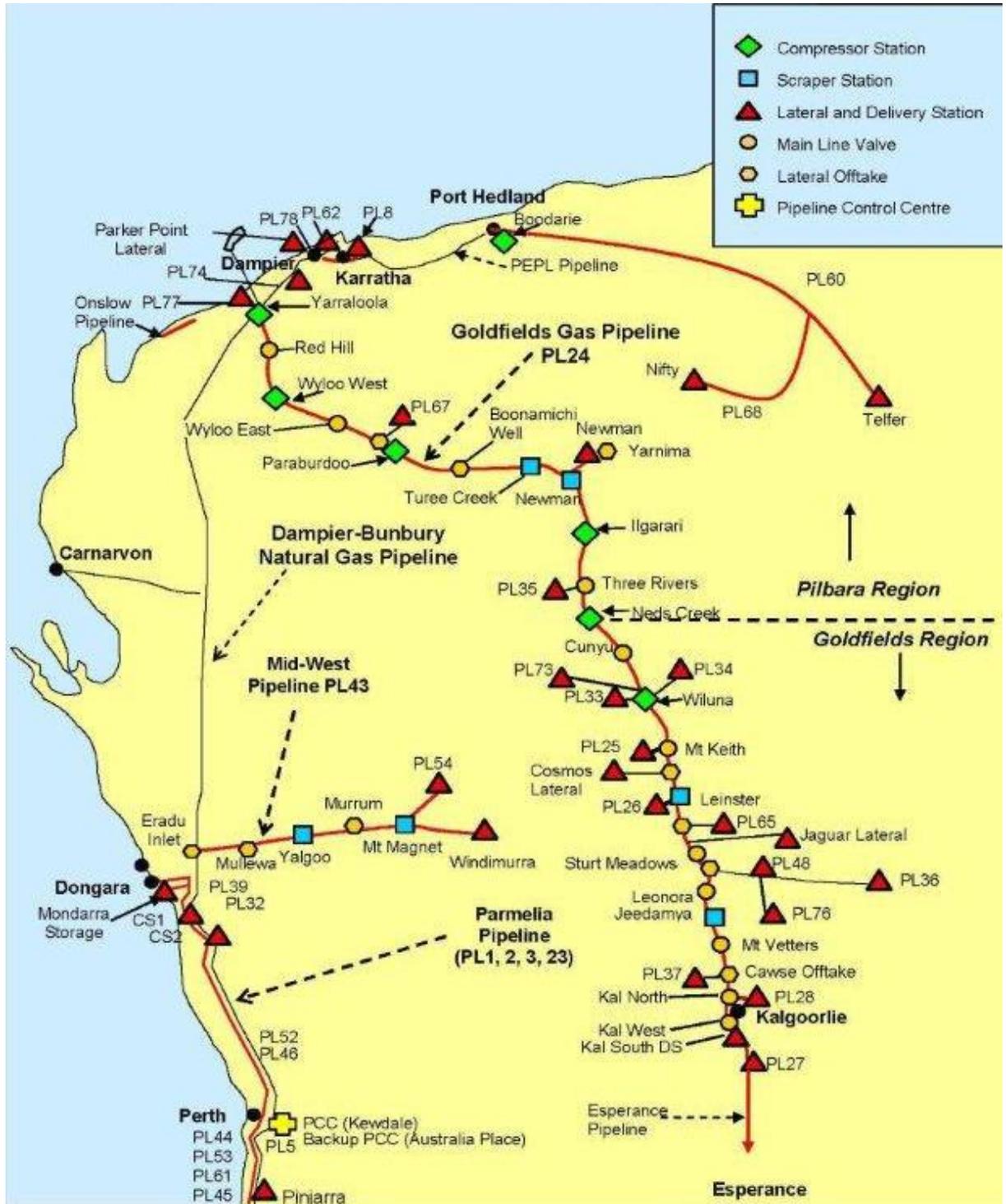
6. The GGP is a transmission pipeline that enables gas to be transported from the Carnarvon Basin, via either the Dampier to Bunbury Natural Gas Pipeline or the Varanus Island gas processing facilities, to the Pilbara, Mid-West and Goldfields mining regions and the entry point of the Kalgoorlie to Kambalda Pipeline (Figure 1).
7. The GGP services the Pilbara and Goldfields-Esperance regions of Western Australia. The GGP delivers gas to end users at 12 outlet points:
  - Newman;
  - Plutonic;
  - Wiluna;
  - Jundee;
  - Mount Keith;
  - Leinster;
  - Leonora;
  - Parkeston (via a third party lateral);
  - Kalgoorlie North;

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<sup>2</sup> Goldfields Gas Transmission 2014, *Proposed treatment of the RTIO/BHPBIO expansion – election under clause 10.2(a) of the Goldfields Gas Pipeline Access Arrangement (Public Version)*, [www.erawa.com.au](http://www.erawa.com.au).

- Kalgoorlie domestic distribution (via a third party lateral);
- Kalgoorlie South; and
- Kambalda (via a third party lateral).

Figure 1 Goldfields Gas Pipeline



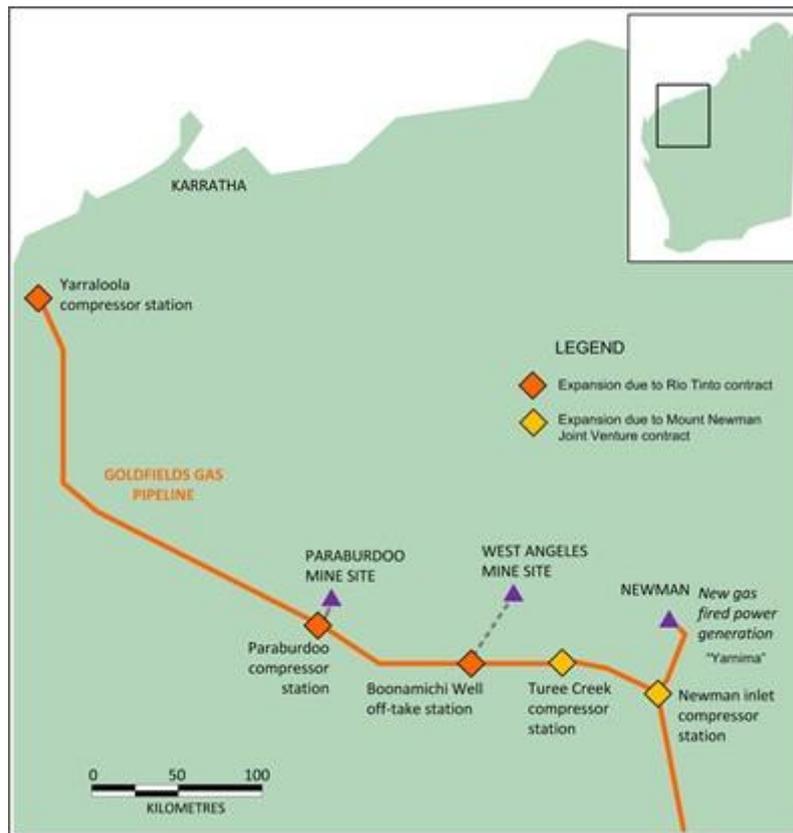
Source: Goldfields Gas Transmission 2014, *Proposed treatment of the RTIO/BHPBIO expansion – election under clause 10.2(a) of the Goldfields Gas Pipeline Access Arrangement (Public Version)*, [www.erawa.com.au](http://www.erawa.com.au).

8. The Pilbara is Western Australia's second most northern region. The Pilbara's economy is strongly dominated by the mining and petroleum industry. The region produces approximately 95 per cent of Australia's iron ore and approximately 70 per cent of Australia's natural gas. Other minerals extracted in this region include salt, silver, manganese and base metals. Pilbara's Gross Regional Product is estimated to be \$32.548 billion. As of the last census in 2011, it is estimated that 44,956 people work in the Pilbara region. Of this number, 18,500 people are employed in the mining industry.
9. The Goldfields-Esperance region is located in the south eastern corner of Western Australia. The Goldfields is the largest of Western Australia's nine regions. The major towns in the region are Kalgoorlie-Boulder and Esperance.
10. The Goldfields region supports a wide range of industries, including mining and agriculture. Mining is the predominant industry in the central and northern parts of the region, whilst the agricultural industry is located in the southern parts of the region. Goldfields accounted for 65 per cent of the State gold production and 75 per cent of the State nickel production in 2012. The Gross Regional Product of Goldfields is estimated to be \$7.002 billion. As of the last census in 2011, it is estimated that 29,012 people work in the Goldfields. Of this number, 7,958 people are employed in the mining industry.
11. The GGP is primarily used by mining companies with interests in iron ore, gold, nickel and lead. Other users of the GGP include independent electricity generators that supply mining operations and local townships, and a gas distributor supplying the Kalgoorlie township.

## The GGP expansion

12. The expansion of the GGP comprises an integrated project to expand capacity in the Pilbara region, and covers the following (Figure 2):
  - construction of custody transfer meter stations at Boonamichi Well (about 110 km west of Newman) and Yarnima (on the Newman lateral);
  - installation of four compressor units at existing compressor station sites in Yarraloola and Paraburdoo; and
  - construction of a new compressor station at Turee Creek, between Paraburdoo and Newman.
13. The proposed expansion of GGP will add 43.3 TJ/day to GGP, and is underpinned by agreements with:
  - Pilbara Iron Company Services Pty Ltd, a subsidiary of Rio Tinto Iron Ore (**RTIO**); and
  - BHP Billiton Iron Ore Pty Ltd (**BHPBIO**).

**Figure 2 Map of Proposed Expansion of GGP**



Source: APA Group, [www.apa.com.au](http://www.apa.com.au)

14. The iron ore operations of RTIO are based in the Pilbara region. RTIO has a system of 14 mines, 1,400 km of rail network and three port facilities. In 2012-2013, iron ore interests in the Pilbara that are owned by RTIO produced an equivalent of 45 per cent of Australia's iron ore exports. RTIO has undertaken investments to further increase the production of these interests.
15. RTIO intends to use the capacity from the proposed expansion of GGP to supply a new 80 MW open cycle gas turbine electricity generation plant, which has been developed at the company's West Angelas site in the Pilbara. The development of this power station is part of a broader program that is being implemented by RTIO to expand its iron ore operations in the Pilbara.
16. The iron ore operations of BHPBIO are also based in the Pilbara region. BHPBIO has a system of seven inland mining operations, in addition to over 1,000km of rail stock, stock yards and port facilities in Port Hedland. In 2012-2013, iron ore interests in the Pilbara that are owned by BHPBIO produced an equivalent of 36 per cent of Australia's iron ore exports. BHPBIO has undertaken investments to further increase the production of these interests.
17. BHPBIO intends to use the capacity from the proposed expansion of GGP to supply gas to a combined cycle gas turbine plant that has been developed at Yarnima. BHPBIO plans to use the plant to supply power to its existing iron ore operations, which have been supplied by Alinta Energy's Newman Power Station. BHPBIO also intends for the plant to provide a platform for further mine development in the Pilbara. BHPBIO also supplies electricity to the Newman township. The Yarnima Power Station is therefore expected to take over the role of the Newman Power Station.

## GGP access

18. The Goldfields Gas Pipeline (**GGP**) was funded and built by a private consortium in 1995. Following a competitive selection process, the Goldfields Gas Transmission Joint Venture (**GGTJV**) was selected as the preferred applicant to build the pipeline. An agreement between the West Australian Government and GGTJV participants was subsequently reached, and signed in March 1994. This agreement was legislated through the *Goldfields Gas Pipeline Agreement Act 1994*.
19. Goldfields Gas Transmission Pty Ltd (**GGT**) operates GGP on behalf of GGTJV. GGTJV is an unincorporated joint venture that currently comprises:
  - APA Group, through subsidiaries, Southern Cross Pipelines Australia Pty Limited and Southern Cross Pipelines (NPL) Australia Pty Ltd, as majority shareholder with an 88.2% share; and
  - Alinta DEWAP Pty Ltd, with an 11.8% share.
20. The *Goldfields Gas Pipeline Agreement Act 1994* imposed on GGTJV a number of obligations, including the need to provide third party access and associated tariffs in compliance with agreed principles.
21. Subsequently, the *Gas Pipelines Access (Western Australia) Act 1998* was amended to include, at Schedule 2, the *National Third Party Access Code for Natural Gas Pipeline Systems* (the **Code**). In turn, the Code contained a Schedule A of pipelines which were deemed to be covered by the Code on the basis that they were agreed jointly by governments as passing the tests for ‘coverage’ under the Code. The GGP was included in Schedule A, implying the GGP was a covered pipeline. The GGP access arrangement then became subject to the *Goldfields Gas Pipeline Agreement Act 1994* and the Code.<sup>3</sup>
22. In 2003, GGT applied to the National Competition Council (**NCC**) to revoke coverage of the GGP under the Code.
23. Following review, the NCC recommended that coverage not be revoked, and the State Treasurer issued a decision to that effect. The NCC considered that coverage promoted competition in:<sup>4</sup>
  - the upstream domestic gas market – the NCC concluded that Varanus Island gas producers had limited ability to sell domestic gas into domestic gas markets other than those supplied by the GGP;
  - the downstream gas sales market at locations within reasonable proximity to the GGP – the NCC concluded that diesel was not a close substitute for gas;
  - the retail gas sales market in the Kalgoorlie Boulder area – the NCC concluded that bottled gas is not a close substitute for natural gas; and

<sup>3</sup> When the Pipeline was completed in 1996 it incorporated two compressor stations. One was at Yarraloola and the other at Ilgarari. A further compressor was installed in 2000 – 2001 at Wiluna and another at Paraburdoo in 2003 - 2004. These four compressors (together the “Initial Compressors”) were operating when the 2005 Access Arrangement was approved. At that time, the Initial Compressors serviced the entire capacity of the Pipeline, which was some 109 TJ/day and was all Covered (Western Australian Electricity Review Board 2010, *Application No. 1 and 2 of 2010*, p. 71).

<sup>4</sup> National Competition Council 2003, *Application for revocation of coverage of the Goldfields Gas Pipeline under the National Gas Access Regime: Final Recommendation*, [www.ncc.gov.au](http://www.ncc.gov.au), p. 110.

- the downstream electricity sales market in the area in the vicinity of Kalgoorlie connected to the South West Interconnected System (**SWIS**) – the NCC concluded that the constraint on the Muja – Kalgoorlie electricity transmission line limits substitution of Kalgoorlie generated electricity by electricity generated elsewhere in the SWIS.
24. Between 2006 and 2009, GGP was expanded through the installation of compressors at Paraburdoo, Wyloo West and Ned’s Creek.<sup>5</sup> This resulted in an increase in GGP capacity by 49 TJ/day. These expansions are not treated as part of the covered GGP, as GGT elected to proceed under clause 10.3(c) of the 2005 – 2010 Access Arrangement in relation to all three expansions. Under 10.3(c), GGT could simply notify the Authority of its decision not to cover the expansion; the Authority had no role in evaluating the appropriateness of these elections.<sup>6</sup>
- 10.3 Application of Arrangement to Pipeline Extension/Expansion
- If GGT expands the capacity of the Pipeline, GGT will elect:
- a) that the expanded capacity will be treated as part of the Pipeline for the purposes of the Access Arrangement and GGT will exercise its discretion to submit proposed revisions to the Access Arrangement under Section 2 of the Code; or
  - b) that the expanded capacity will not be treated as part of the Pipeline for the purposes of this Access Arrangement and that GGT will lodge a separate Access Arrangement for such expanded capacity; or
  - c) that the expansion will not be covered, subject to GGT notifying the Regulator of this fact prior to the expansion coming into operation.
25. It was partly due to a concern that an unfettered election by GGT in relation to expansions may lead to an outcome inconsistent with the policies and objectives of the Code that the Authority amended the 2010 proposed GGP Access Arrangement, in its Final Decision, to require that any *expansions* would be automatically included as part of the Covered Pipeline. The Authority determined that GGT could still elect coverage, or otherwise, for *extensions*.
26. GGT appealed this amendment in the Electricity Review Board (**ERB**) in 2010. The ERB ruled that each expansion needed to be considered by the Authority on a case by case basis, ‘at the time the extension or expansion is proposed’. The ERB’s decision is discussed in more detail in subsequent sections.
27. The current covered GGP capacity is therefore 109 TJ/day. The related spare capacity, which is covered but uncontracted, is around 4 TJ/day.<sup>7</sup> The existing uncovered capacity is currently 49 TJ/day, or just under a third of the total capacity.
28. On 1 January 2010, the *National Gas Access (Western Australia) Act 2009 (NGL(WA))* was enacted. Pursuant to section 7, NGL(WA) applies as law in Western Australia. The NGL(WA) contains clauses 29 and 30 of Schedule 3 that govern access arrangements that have been in place before its enactment (transitioned access arrangements). Under Clause 29, the Authority is required to deal with proposed revisions to transitioned access arrangements as if the Code

<sup>5</sup> Wyloo West and Paraburdoo are upstream of the Newman lateral, whereas Ned’s Creek is around 300 kilometres downstream.

<sup>6</sup> Goldfields Gas Transmission 2008, Goldfields Gas Pipeline Approved Access Arrangement, 17 December.

<sup>7</sup> Economic Regulation Authority 2010, *Final Decision on GGT’s Proposed Revisions to the Access Arrangement for the Goldfields Gas Pipeline*, [www.erawa.com.au](http://www.erawa.com.au), p. 20.

continued to apply. Under Clause 30, sections 3, 8 and 10.8 of the Code continue to apply to access arrangements until their next review:

- section 3 refers to the content of an access arrangement;
- section 8 refers to reference tariff principles; and
- section 10.8 refers to definitions of terms.

29. The next review of the GGP access arrangement commences in mid-2014, and will be subject to the full NGL(WA).

30. However, clause 3(1)(b) of Schedule 3 (known as the **General Savings Provision**) of the NGL (WA) states that anything begun under the *Gas Pipelines Access (Western Australia) Act 1998* is saved as being subject to the Code until the next access arrangement:

### 3. Saving of operation of old access law and Gas Code

(1) Subject to this Schedule, the Regulations and the Rules, the repeal of the old access law or Gas Code does not—

- (a) revive anything not in force or existing at the time the repeal takes effect; or
- (b) affect the previous operation of the old access law or Gas Code or anything suffered, done or begun under or in accordance with the old access law or Gas Code; or
- (c) affect a right, privilege or liability acquired, accrued or incurred under the old access law or Gas Code; or
- (d) affect a penalty incurred in relation to—
  - (i) an offence arising under the old access law; or
  - (ii) a penalty incurred in relation to a breach of a provision of the old access law or Gas Code; or
- (e) affect an investigation, proceeding or remedy in relation to such a right, privilege, liability or penalty.

(2) Subject to this Schedule, the Regulations and the Rules, any such penalty may be imposed and enforced, and any such investigation, proceeding or remedy may be begun, continued or enforced, as if the old access law or Gas Code had not been repealed.

31. In summary, the current GGP Access Arrangement is a full access arrangement under NGL(WA), but was developed in light of the requirements of the Code. Any decision made during the life of the current GGP Access Arrangement relating to the content of the access arrangement or the reference tariff principles is governed by the Code. Otherwise, the NGL(WA), the National Gas Objective (**NGO**) and the National Gas Rules (**NGR**) apply.

32. However, in relation to the matter at hand, as the application was begun under the old law and Code, under the NGL(WA)'s General Savings Provision, the old law and Code continue to apply.

**Qu.1** Do you have any views about whether the Code governs the Authority's consideration of GGT's election to not cover the expansion?

## Issues

33. The key issue for the Authority's determination is whether the GGP expansion should be covered or not.

## GGT's application

34. In support of its election, GGT is of the view that the ERA should:<sup>8</sup>
1. Start with the election GGT has made under the EEP, as required by the EEP drafted and approved by the Electricity Review Board.
  2. Determine whether to provide its consent to GGT's election having regard to the coverage criteria and the decision-making rule set out in sections 1.9 and 1.15 of the Code, respectively (or sections 15 and 100 of the NGL, respectively), because it is in effect a decision as to coverage which is being made. Consistent with the decision-making rule set out in section 1.15 of the Code (or section 100 of the NGL), the ERA:
    - should consent to GGT's election that the RTIO/BHPBIO expansion *not* be treated as part of the covered pipeline, if one or more coverage criteria are *not* satisfied; and
    - may *only* refuse to provide its consent to the election if it is positively satisfied that all four of the coverage criteria are met.

GGT further submits that, pursuant to the above decision-making framework it is not necessary for GGT to adduce material that is sufficient to satisfy the ERA that the expansion should not be covered and, if it fails to do so, that it would then be open to the ERA not to consent to GGT's election. Rather, if the ERA is going to refuse to consent to GGT's election and make a decision that the expansion is to be covered, it is only open to the ERA to do so on the basis of a body of evidence that the ERA says satisfies it that the coverage criteria are met. In the absence of such a body of material, the ERA's decision must be to consent to GGT's election.
35. Section 1.9 of the Code sets out the pipeline coverage criteria that are to be applied by the NCC in making coverage decisions.<sup>9</sup> Section 1.15 of the Code sets out that the relevant Minister must decide coverage or otherwise, based on all of the matters set out in section 1.9.
36. According to GGT, the Authority may only determine to cover the proposed GGP expansion under the GGP Access Arrangement if it can demonstrate that the expansion satisfies the criteria in section 1.9 (a) to (d). GGT submits that if one of criteria (a) to (d) is not satisfied by the expansion, then the expansion cannot be covered pursuant to the GGP Access Arrangement.

<sup>8</sup> Goldfields Gas Transmission 2014, *Proposed treatment of the RTIO/BHPBIO expansion – election under clause 10.2(a) of the Goldfields Gas Pipeline Access Arrangement (Public Version)*, [www.erawa.com.au](http://www.erawa.com.au), p. 4.

<sup>9</sup> *Gas Pipelines Access (Western Australia) Act 1998* (National Third Party Access Code for Natural Gas Pipeline Systems), p. 7.

37. Under the GGP Access Arrangement, GGT has elected not to cover the proposed GGP expansion because GGT considers that:
- the proposed GGP expansion does not satisfy criterion (a);
  - it is uncertain whether the proposed GGP expansion satisfies criterion (b); and
  - in light of the above, it is unnecessary to assess the proposed GGP expansion under criterion (d).
38. In assessing criterion (a) of the Code in relation to the proposed GGP expansion, GGT considers that coverage of access to the services provided by the proposed GGP expansion would have no effect on competition in dependent markets over the lives of the RTIO and BHPBIO contracts. GGT defines dependent markets as upstream and downstream markets that would supply or be supplied with 'gas transported by the proposed GGP expansion'. GGT considers these markets to be the global seaborne iron ore market, the retail electricity market in Newman and the upstream production and gas sales market. According to GGT:
- All of the capacity that is associated with the proposed GGP expansion has been contracted to RTIO and BHPBIO under terms and conditions that have been locked in over the lives of the relevant agreements.<sup>10</sup>
  - The impact of the proposed GGP expansion on the reference tariff, in the event that the expansion was covered, would be negligible.
39. GGT's claims are discussed in more detail in what follows.

## The framework for the Authority's decision

40. The GGT election on the proposed expansion of GGP is subject to the current 2010 – 2015 GGP Access Arrangement.<sup>11</sup> In particular, the Extensions and Expansion Policy (**EEP**) at Section 10.2 of the GGP Access Arrangement sets out the coverage treatment of pipeline extensions/expansions:
- 10.2 Application of Arrangement to Pipeline Extensions/Expansions
- (a) GGT must, with the Authority's consent, elect at some point in time whether or not a proposed extension to, or expansion of the capacity of, the Pipeline should be treated as part of the Covered Pipeline for all purposes under the Code or should not be treated as part of the Covered Pipeline for any purpose under the Code.
- (b) To avoid doubt, in the event that the Authority refuses consent to GGT's election, the Authority must make an express determination whether or not the proposed extension to, or expansion of the Capacity of, the Pipeline should be treated as part of the Covered Pipeline for all purposes under the Code or should not be treated as part of the Covered Pipeline for any purpose under the Code.
41. GGT states that a first step for the Authority is to start with GGT's election for the expansion not to be treated as part of the Covered Pipeline, and to determine whether or not it consents to that election.

<sup>10</sup> Goldfields Gas Transmission 2014, *Proposed treatment of the RTIO/BHPBIO expansion – election under clause 10.2(a) of the Goldfields Gas Pipeline Access Arrangement (Public Version)*, [www.erawa.com.au](http://www.erawa.com.au), p. 4.

<sup>11</sup> Economic Regulation Authority 2012, *Goldfields Gas Pipeline: Proposed Revisions to Access Arrangement*, As amended by the Western Australian Electricity Review Board 30 March 2012, [www.erawa.com.au](http://www.erawa.com.au).

**Qu.2 Do you agree that the first step for the Authority's determination is to start with GGT's election?**

### Decision method

42. In the decision of the Western Australian Electricity Review Board (**ERB**) in review proceedings commenced by BHP Billiton Nickel West Pty Ltd and Southern Cross Pipelines Australian Pty Ltd and others, in Applications No. 1 and 2 of 2010 respectively, the ERB considered the requirement in section 3.16(a) of the Code that an access arrangement include a policy which sets out the method to determine whether an extension to, or expansion of, a Covered Pipeline should be treated as part of the Covered Pipeline for all or any purposes under the Code. The ERB held:<sup>12</sup>

The evaluation of a particular extension or expansion should be undertaken in light of the prevailing circumstances of each case, as they exist at the time the extension or expansion is proposed, rather than at the time the revised Access Arrangement is proposed. This approach facilitates the proper application of the Code Criteria [i.e. the policies and objectives of the Code] to the extension or expansion and follows from the nature of the task which is before the Regulator...Evaluation of Coverage should be carried out by reference to the Code Criteria.

43. The ERB's decision provides important guidance for the Authority's determination. The ERB considered that section 3.16(a) of the Code should inform the drafting of the EEP:<sup>13</sup>

112 In the Board's opinion, a replacement clause 10.2... would contain the elements and satisfy the principles identified in s 3.16 of the Code.

44. Section 3.16 of the Code stated:<sup>14</sup>

#### **3.16 Extensions/Expansions Policy**

An Access Arrangement must include a policy (an *Extensions/Expansions Policy*) which sets out:

- (a) the method to be applied to determine whether any extension to, or expansion of the Capacity of, the Covered Pipeline:
  - (i) should be treated as part of the Covered Pipeline for all purposes under the Code; or
  - (ii) should not be treated as part of the Covered Pipeline for any purpose under the Code;

(for example, the Extensions/Expansions Policy could provide that the Service Provider may, with the Relevant Regulator's consent, elect at some point in time whether or not an extension or expansion will be part of the Covered Pipeline or will not be part of the Covered Pipeline);
- (b) specify how any extension or expansion which is to be treated as part of the Covered Pipeline will affect Reference Tariffs (for example, the Extensions/Expansions Policy could provide:
  - (i) Reference Tariffs will remain unchanged but a Surcharge may be levied on Incremental Users where permitted by sections 8.25 and 8.26; or

<sup>12</sup> Western Australian Electricity Review Board 2010, *Application No. 1 and 2 of 2010*, p. 24 and p. 25.

<sup>13</sup> Western Australian Electricity Review Board 2010, *Application No. 1 and 2 of 2010*, p. 43.

<sup>14</sup> *Gas Pipelines Access (Western Australia) Act 1998* (National Third Party Access Code for Natural Gas Pipeline Systems), p. 48.

- (ii) specify that a review will be triggered and that the Service Provider must submit revisions to the Access Arrangement pursuant to section 2.28);
- (c) 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.

The Relevant Regulator may not require the Extensions/Expansions Policy to state that the Service Provider will fund New Facilities unless the Service Provider agrees.

45. Section 10.2 of the GGP access arrangement was amended specifically to reflect the supplementary decision of the ERB of 30 March 2012.<sup>15</sup> The interpretation of section 10.2 is informed by the Code, as the ERB referenced the Code when making its supplementary decision.
46. The Authority notes that the amended EEP *method*, as required by section 3.16(a) of the Code and set out in clause 10.2(a) of the GGP Access Arrangement (refer paragraph 40 above), involves consent by the Authority. With regard to the evaluation of any expansion, the ERB concluded that:<sup>16</sup>
- On a proper construction of s 3.16(a) of the Code, an EEP must set out a method to be applied by which Coverage of an extension to, or an expansion of the Capacity of, a Covered Pipeline is evaluated by reference to the policies and objectives of the Code (“the Code Criteria”), which include the factors referred to in s 2.24(a) to (g). That evaluation requires consideration of the particular circumstances of each extension or expansion, at the time the extension or expansion is proposed...
- The evaluation of a particular extension or expansion should be undertaken in light of the prevailing circumstances of each case, as they exist at the time the extension or expansion is proposed, rather than at the time the revised Access Arrangement is proposed. This approach facilitates the proper application of the Code Criteria to the extension or expansion and follows from the nature of the task which is before the Regulator.
47. The Authority notes the direction of the ERB that any evaluation method involve reference to the policies and objectives of the Code, including the factors referred to in section 2.24.
48. The Authority's view is that section 1.9 of the Code contains relevant criteria which is to be used by it when evaluating coverage of an extension to or an expansion of the capacity of a covered pipeline, guided also by the factors in section 2.24 of the Code.<sup>17</sup>
49. The objectives of the Code, found in the Introduction section of the Code (“Code Objective”), can be used to assist in the interpretation of sections 1.9 and 2.24 of the Code. The Authority notes that the Code states that the Code Objective does not form part of the Code, but that regard may be had to it in interpreting the Code provisions.<sup>18</sup>

<sup>15</sup> Western Australian Electricity Review Board 2010, *Supplementary Decision*, Application No.s 1 and 2 of 2010, 30 March.

<sup>16</sup> Western Australian Electricity Review Board 2010, *Application No. 1 and 2 of 2010*, p. 10 and p. 24.

<sup>17</sup> With regard to section 1.9, the ERB decision of 2010 noted (Western Australian Electricity Review Board 2010, *Application No. 1 and 2 of 2010*, p. 25):

Mr Zelestis QC submitted on behalf of GGT that “the ultimate decision that’s being made in relation to Coverage has to be informed by the s 1.9 criteria and also by the s 2.24 criteria”. The Board agrees with this proposition, although the importance of specific factors will depend on the circumstances of the case.

<sup>18</sup> *Gas Pipelines Access (Western Australia) Act 1998* (National Third Party Access Code for Natural Gas Pipeline Systems), Schedule 2, p. 113.

- Qu.3** Should the Authority take into account the policies and objectives of the Code in making its determination?
- Qu.4** Do you think the coverage criteria set out in section 1.9 of the Code and the factors in section 2.24 of the Code are the correct criteria and factors which the Authority should take into account in its determination?
- Qu.5** Are there any other objectives, criteria or matters that the Authority should take into account in making its determination?

## Coverage of expansions

50. Section 1.9 of the Code sets out the relevant pipeline coverage criteria that are to be applied by the NCC in making coverage decisions.

51. GGT submits that coverage should relate to the ‘services provided by means of the pipeline’, which is what is referred to in each of the coverage criteria (set out at paragraph 55 below). GGT submits:<sup>19</sup>

...that in applying the coverage criteria in the current context, which is the application of the coverage criteria to the RTIO/BHPBIO expansion pursuant to the EEP, the term ‘Services provided by means of the Pipeline’ is appropriately construed to be services that will be provided by means of that expansion. The decision that is being made is confined to the treatment of the expanded capacity. An enquiry by the ERA into whether it should consent to GGT’s election, should therefore be directed to the effects that a decision as to coverage (or otherwise) of the RTIO/BHPBIO expansion will have.

52. The Authority notes that the Electricity Review Board endorsed this interpretation of the Code as separating out the (additional) services provided by the expansion from the pipeline more generally:<sup>20</sup>

The definition of “Service” in s 10.8 of the Code uses the expression “Covered Pipeline” rather than “Pipeline”, in the first phrase of that definition. This use must be deliberate because the expression “Pipeline” is used without “Covered” in the next phrase, “(or when used in s 1 a service provided by means of a Pipeline)”. The Code could have used the expression “Pipeline” throughout had it been intended to emphasize the physical assets making up the Pipeline, and to include within the definition of “Service” all services provided by means of the physical assets making up the Pipeline. The use of the expression “Covered Pipeline” rather than “Pipeline” in the definition of “Service” shows that paragraph (a) of the definition of “Service” is not directed to the relationship between a service and the physical pipeline but to the relationship between that service and the “Covered Pipeline”, i.e. that part of the capacity of the physical pipeline that is Covered Capacity.

There is no relevant relationship between the Additional Services and the Covered Pipeline because the uncovered capacity is not subject to regulation under the Code (apart from the possibility of an application for Coverage under s 1) and the Additional Services only utilise or form part of the uncovered capacity. The Additional Services are not provided by means of the Covered Pipeline and do not, therefore, fall within paragraph (a) of the definition of “Service” in s 10.8.

<sup>19</sup> Goldfields Gas Transmission 2014, *Proposed treatment of the RTIO/BHPBIO expansion – election under clause 10.2(a) of the Goldfields Gas Pipeline Access Arrangement (Public Version)*, [www.erawa.com.au](http://www.erawa.com.au), p. 15.

<sup>20</sup> Western Australian Electricity Review Board 2010, *Application No. 1 and 2 of 2010*, p. 10 and pp. 79 and 80.

... the idea that part of the capacity of the pipeline and part of the activities of the Service Provider in relation to the pipeline may not be subject to regulation under the Code is implicit in s 3.16, which is a mandatory element of any Access Arrangement under the Code, and in the definitions of “Covered Pipeline” and “Coverage/Covered”.

**Qu.6** Should the Authority consider the additional services provided by the expansion separately to the other services provided on the GGP when making its determination?

## Evaluation of GGT’s election in light of the policies and objectives of the Code

53. As noted above, the key considerations for the Authority’s determination are the policies and objectives of the Code.
54. In what follows, issues relating to consideration of the coverage criteria in section 1.9, the factors in section 2.24 of the Code and the Code objective are identified.

### Considerations relating to section 1.9 of the Code

55. Section 1.9 of the Code states:<sup>21</sup>

... the NCC must recommend that the Pipeline be Covered (either to the extent described, or to a greater or lesser extent than that described, in the application) if the NCC is satisfied of all of the following matters, and cannot recommend that the Pipeline be Covered, to any extent, if the NCC is not satisfied of one or more of the following matters:

  - (a) that access (or increased access) to Services provided by means of the Pipeline would promote competition in at least one market (whether or not in Australia), other than the market for the Services provided by means of the Pipeline;
  - (b) that it would be uneconomic for anyone to develop another Pipeline to provide the Services provided by means of the Pipeline;
  - (c) that access (or increased access) to the Services provided by means of the Pipeline can be provided without undue risk to human health or safety; and
  - (d) that access (or increased access) to the Services provided by means of the Pipeline would not be contrary to the public interest.
56. Section 1.9 is directed to decisions made by the NCC and the relevant Minister. In the case of the GGP, coverage was tested in the 2003 application by GGT to the National Competition Council (**NCC**) for revocation of coverage on the GGP. The NCC considered that coverage of the GGP should be retained, among other things because it would promote competition. The Minister in 2004 endorsed the NCC’s recommendation and decided that coverage of the capacity of the GGP be retained.
57. The Authority notes that its consideration of the coverage criteria in section 1.9 of the Code in relation to a proposed expansion of the GGP pipeline should be distinguished from decisions of the NCC and the relevant Minister under section 1.9 of the Code. While the Authority will take into account previous decisions of the NCC and the relevant Minister, the Authority’s primary decision-making framework is an evaluation of the section 1.9 criteria, guided by the section 2.24 factors, in

<sup>21</sup> *Gas Pipelines Access (Western Australia) Act 1998* (National Third Party Access Code for Natural Gas Pipeline Systems), p. 7.

relation to the prevailing circumstances of the proposed GGP pipeline expansion as it is required to do under clause 10.2 of the GGT Access Agreement.

### *Promotion of competition*

58. The NCC in 2003 considered that coverage would promote coverage in upstream and downstream markets on the GGP (Box 1).
59. However, GGT submit that coverage would not promote competition in the relevant downstream market, because:<sup>22</sup>
- All of the capacity to be created by the RTIO/BHPBIO expansion has been contracted to RTIO and BHPBIO. The only dependent markets that could *potentially* be affected by access (or increased access) to the services provided by this expansion over the next 20 years are therefore:
- the downstream markets that will be supplied by RTIO and BHPBIO using the gas transported via the RTIO/BHPBIO expansion, which as the information in section 2.2 indicates, are:
    - ◆ the global seaborne iron ore market, in which both RTIO and BHPBIO compete; and
    - ◆ the retail electricity market in Newman, which BHPBIO supplies through its interest in the Mt Newman JV; and
  - the upstream production and gas sales market that will be used to supply RTIO and BHPBIO using the RTIO/BHPBIO expansion, which includes any producer in the Carnarvon Basin that is within scope of feasible interconnection to the GGP.
60. GGT contends that there would be no difference in the conditions prevailing in the dependent markets, irrespective of coverage, given the fixed terms and conditions of the contracts with RTIO and BHPIO. In other words, even if the expansion was covered, GGT considers that the prices paid by RTIO and BHPIO would not change. The contracts would represent a negotiated outcome between the two parties as to the terms and conditions of access. Such a negotiated approach is allowed under the legislation:<sup>23</sup>

#### **Access Arrangement not to limit Access**

- 2.50 For the avoidance of doubt, nothing (except for the Queuing Policy) contained in an Access Arrangement (including the description of Services in a Services Policy) limits:
- (a) the Services a Service Provider can agree to provide to a User or Prospective User;
  - (b) the Services which can be the subject of a dispute under section 6;
  - (c) the terms and conditions a Service Provider can agree with a User or Prospective User; or
  - (d) the terms and conditions which can be the subject of a dispute under section 6.

<sup>22</sup> Goldfields Gas Transmission 2014, *Proposed treatment of the RTIO/BHPBIO expansion – election under clause 10.2(a) of the Goldfields Gas Pipeline Access Arrangement (Public Version)*, [www.erawa.com.au](http://www.erawa.com.au), p. 24.

<sup>23</sup> *Gas Pipelines Access (Western Australia) Act 1998* (National Third Party Access Code for Natural Gas Pipeline Systems), p. 136. The Authority notes that clause 322 of the NGL provides for a similar outcome.

### Box 1 The NCC's findings on promotion of competition

The NCC found that coverage of the GGP would promote competition in upstream and downstream markets.

First, with regard to the upstream gas market, the NCC was of the view that the Varanus Island domgas producers had limited ability to sell domgas into other markets, particularly given constraints on the Dampier Bunbury Natural Gas Pipeline (DBNGP).<sup>1</sup>

Second, the NCC determined that GGP coverage also would promote competition in:

- the downstream gas sales market at locations within reasonable proximity to the GGP – the NCC concluded that diesel was not a close substitute for gas;
- the retail gas sales market in the Kalgoorlie Boulder area – bottled gas is not a close substitute for natural gas; and
- the downstream electricity sales market in the area in the vicinity of Kalgoorlie connected to the SWIS – the constraint on the Muja – Kalgoorlie electricity transmission line limits substitution of Kalgoorlie generated electricity by electricity generated elsewhere in the SWIS.

The NCC concluded:<sup>1</sup>

For two products to be competitive alternatives what is required is *close* substitution between them. That is, substitution between diesel and gas for remote electricity generation must be likely to occur to a significant extent in response to a SSNIP [Small but Significant and Non-transitory Increase in Price] in the delivered price of gas such that a SSNIP is unprofitable. The occurrence of substitution at the margin will not suffice to put gas and diesel in the same market.

...In the event that, having regard to these factors, the cost differential for mining ventures between diesel and gas fired electricity generation is significantly large, then gas and diesel will not be in the same market. Projects will not substitute towards diesel in response to a relative increase in the delivered price of gas.

The NCC noted that the cost difference between a gigajoule of energy supplied by gas and a gigajoule supplied by diesel was large. Given the size of the cost difference, the NCC considered that there were no competitive alternatives to gas available to remotely located mining ventures. Diesel does not provide effective competition for the gas provided by the GGP.

Furthermore, the NCC considered that GGT would have the ability and incentive to exercise market power to adversely affect competition in the relevant downstream markets, including those for energy in proximity to the GGP. On this basis, the NCC concluded that coverage of the GGP would promote competition in the relevant downstream markets for energy in remote locations in close proximity to the GGP.

*Source: National Competition Council 2003, Application for revocation of coverage of the Goldfields Gas Pipeline under the National Gas Access Regime: Final Recommendation, [www.ncc.gov.au](http://www.ncc.gov.au), p. 110.*

61. The Authority notes that the GGP expansion will deliver gas to locations in close proximity to the GGP where the only substitute energy source would be diesel.
62. The Authority notes that, in the event that parties could not agree on the terms and conditions of access through negotiation, then users would have recourse to the dispute resolution provisions of the Code if the pipeline services were covered services:<sup>24</sup>

The dispute resolution mechanism applies only to a dispute about Service provided by means of a Covered Pipeline (for example, a dispute about access to Spare or Developable Capacity or a dispute about interconnection). Spare Capacity is defined as meaning, in the case of a Contract Carriage Pipeline, essentially, capacity that has not already been reserved in a contract plus contractually reserved capacity that is not being used. Although the Arbitrator can determine that access should be provided to contractually reserved capacity that is not being used, it must not make a decision that deprives a person of a contractual right. Consequently, access to contracted but unused capacity can be ordered on an interruptible basis but the original contract holder retains a priority right to that capacity.

Although an Access Arrangement (apart from the Queuing Policy) cannot limit the scope for commercial negotiation, or limit the range of matters that can be the subject of an access dispute, the Arbitrator is bound to apply the provisions of the Access Arrangement in an access arbitration. The implications of this are that:

- except in relation to the Queuing Policy, the dispute resolution procedure is the mechanism through which a User can require the Service Provider to grant access according to the terms of the Access Arrangement (for example, to grant access to the Reference Service at the Reference Tariff); and
- the Access Arrangement provides a degree of certainty as to the outcome of an access dispute.

**Qu.7 Do you consider that coverage of the GGT expansion would promote or not promote competition in upstream or downstream markets?**

### *Uneconomic to develop another pipeline*

63. This criterion hinges on whether it would be privately profitable for anyone to develop another pipeline to provide the same services on a standalone basis, or as part of a larger project.<sup>25</sup>
64. RTIO and BHPIO could have considered constructing a standalone pipeline or pipelines to service their needs. This stand alone cost sets a ceiling on the costs able to be charged by the service provider.
65. GGT states:<sup>26</sup>
- it is unlikely that it would be profitable for anyone to develop another pipeline to provide the same services as the RTIO/BHPBIO expansion on a stand-alone basis; but

<sup>24</sup> *Gas Pipelines Access (Western Australia) Act 1998* (National Third Party Access Code for Natural Gas Pipeline Systems), p. 164.

<sup>25</sup> National Competition Council 2013, *Gas Guide*, [www.ncc.gov.au](http://www.ncc.gov.au), p. 39.

<sup>26</sup> Goldfields Gas Transmission 2014, *Proposed treatment of the RTIO/BHPBIO expansion – election under clause 10.2(a) of the Goldfields Gas Pipeline Access Arrangement (Public Version)*, [www.erawa.com.au](http://www.erawa.com.au), p. 30.

- it *may* be, or may have been, profitable for RTIO or BHPBIO to develop such a pipeline as part of their iron ore expansion projects, but additional information from RTIO and BHPBIO and a detailed quantitative assessment of the profitability of this option would be required to confirm this.
66. In this context, the Authority notes that the Fortescue River Gas Pipeline (**FRGP**) – for capacity of 64 TJ/day – involves a similar magnitude of capacity as the proposed expansion.<sup>27</sup> The FRGP is entirely funded by a 20 year 100 per cent take or pay contract with Fortescue Metals Group.

**Qu.8** Do you consider that it would or would not be privately profitable for anyone to develop another pipeline to provide the same services as provided by the GGP expansion, on a standalone basis?

### *Health and safety*

67. This criterion considers whether access (or increased access) to the Services provided by means of the pipeline can be provided without undue risk to human health or safety.
68. The NCC considers matters such as whether:<sup>28</sup>
- there is a statutory health and safety scheme which would apply for any access to third parties; and
  - the terms and conditions of access can adequately deal with any safety issues.
69. The Authority is not aware of any health or safety considerations relevant to allowing access by third parties to the proposed expansion.

**Qu.9** Do you consider that there are health and safety considerations which the Authority should take into account in considering GGT's election to not cover the GGP expansion?

### *Access not contrary to the public interest*

70. This criterion allows for identification of any matter that could mean access might be contrary to the public interest, and for a subsequent assessment of whether that matter might lead to coverage not being in the public interest.
71. The NCC in its 2003 coverage recommendation for the GGP accepted that there are direct costs associated with coverage as a result of regulatory and compliance requirements.<sup>29</sup> There may also be indirect costs, such as impacts on investment.
72. Nevertheless, the NCC considered that these costs needed to be weighed against the substantial benefits of coverage, including:
- preventing abuse of market power and promoting competition;
  - environmental and regional development benefits.

<sup>27</sup> DUET Group 2014, *ASX release*, Fortescue River Gas Pipeline Project and \$100m Placement, 16 January.

<sup>28</sup> National Competition Council 2013, *Gas Guide*, [www.ncc.gov.au](http://www.ncc.gov.au), p. 45.

<sup>29</sup> National Competition Council 2003, *Application for revocation of coverage of the Goldfields Gas Pipeline under the National Gas Access Regime: Final Recommendation*, [www.ncc.gov.au](http://www.ncc.gov.au), pp. 163 to 164.

73. The NCC concluded that the benefits of coverage outweighed the costs, and that coverage of the GGP would not be contrary to the public interest.

**Qu.10** Are there any public interest considerations that are relevant to the Authority's decision whether or not to allow GGT's election not to cover the expansion?

**Qu.11** Overall, do you consider that the criteria in section 1.9 support GGT's election, or alternatively, a determination by the Authority to not consent to GGT's election and to require coverage?

### *Considerations relating to section 2.24 of the Code*

74. Section 2.24 of the Code states:

2.24 The Relevant Regulator may approve a proposed Access Arrangement only if it is satisfied the proposed Access Arrangement contains the elements and satisfies the principles set out in sections 3.1 to 3.20. The Relevant Regulator must not refuse to approve a proposed Access Arrangement solely for the reason that the proposed Access Arrangement does not address a matter that sections 3.1 to 3.20 do not require an Access Arrangement to address. In assessing a proposed Access Arrangement, the Relevant Regulator must take the following into account:

- (a) the Service Provider's legitimate business interests and investment in the Covered Pipeline;
- (b) firm and binding contractual obligations of the Service Provider or other persons (or both) already using the Covered Pipeline;
- (c) the operational and technical requirements necessary for the safe and reliable operation of the Covered Pipeline;
- (d) the economically efficient operation of the Covered Pipeline;
- (e) the public interest, including the public interest in having competition in markets (whether or not in Australia);
- (f) the interests of Users and Prospective Users;
- (g) any other matters that the Relevant Regulator considers are relevant.

75. This section of the Code provides for matters the Authority was required – under the Code – to take into account in approving an access arrangement. The section also was identified by the Electricity Review Board as an element of the 'policies and objectives' of the Code that the Authority would need to consider in determining the appropriate coverage treatment for any expansion election (paragraph 45 above refers).

### *The Service Provider's legitimate business interests*

76. This factor provides for the legitimate business interests of the service provider to be taken into account in evaluating whether the GGP expansion should be covered or not. The Authority notes that the service provider has elected to not cover the GGP expansion, and considers that the election would be informed by its business interests.
77. However, the Authority notes that, to the extent that the election to not cover the GGP expansion would lead to outcomes that are related to the exercise of monopoly power, then any resulting extraordinary returns would be beyond the legitimate business interests of the service provider.

### *Firm and binding contractual obligations of the Service Provider or other persons (or both) already using the Covered Pipeline*

78. As the Authority is considering an expansion to the GGP pipeline, this factor is directed to the effect of coverage or otherwise on any firm and existing contractual arrangements relating to the pipeline expansion. Generally, a user's existing firm and binding contractual arrangements relating to a pipeline expansion would not be affected by an election to not cover a pipeline. However, where contracts are rolling over, then the revised outcomes on the pipeline expansion may have an effect on existing firm and binding contractual arrangements.

### *Safe and reliable operation of the pipeline*

79. This factor considers whether the GGP pipeline expansion can be operated safely and reliably. The Authority notes that it is standard practice to expand pipelines through additional compression.

### *The economically efficient operation of the pipeline*

80. This factor considers whether the GGP pipeline expansion can be operated in an economically efficient manner. The Authority notes that the GGT will have incentives to minimise the costs of operating the pipeline expansion, irrespective of coverage.
81. The efficient operation of the pipeline expansion will also encompass efficient pricing for the use of its services. In this context, the Authority notes that an issue for consideration will be the allocation of common or joint costs to users of the existing covered pipeline and to users of the uncovered capacity of the pipeline, in the event that the GGP expansion in question was not covered. The existing access arrangement sets out that:<sup>30</sup>

#### **(c) Design of Reference Tariff**

- (i) 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 Reference Service and no User pays a tariff which is less than the marginal cost of the provision of the Reference Service. Total Revenue is allocated between the Reference Service and other Services in a manner designed to ensure that the Reference Tariff reflects:
- (i) costs incurred (including capital costs) that are directly attributable to the provision of the Reference Service; and
  - (ii) a share of the Total Revenue that reflects costs incurred (including capital costs) that are attributable to providing the Reference Service jointly with other Services

### *The public interest including the public interest in having competition in markets*

82. This factor requires identification of any matter involving the proposed GGP expansion that might affect the public interest, including the public interest in having competition in markets.

<sup>30</sup> Economic Regulation Authority 2012, *Goldfields Gas Pipeline: Proposed Revisions to the Access Arrangement*, Approved 5 August 2010 - as amended by the Western Australian Electricity Review Board, [www.erawa.com.au](http://www.erawa.com.au), 30 March, clause 5.2(c)(ii), p. 7.

### *The interests of Users and Prospective Users*

83. This factor requires the Authority to consider the interests of users and prospective users of the proposed GGP pipeline expansion in its evaluation of GGT's election that the GGP pipeline expansion should not be covered.

### *Any other matters that the Relevant Regulator considers are relevant*

84. This factor allows the Authority to consider any matter not mentioned in section 2.24(a) to (f) that it considers relevant in an evaluation of GGT's election that the GGP pipeline expansion should not be covered.

**Qu.12** Do you consider that the factors in section 2.24 support GGT's election not to cover the expansion or alternatively, a determination by the Authority to not consent to GGT's election and to require coverage? Why?

### *Considerations relating to the Code Objective*

85. Although the Code Objective does not form part of the Code, in certain circumstances regard may be had to the Code Objective in interpreting the Code.<sup>31</sup>

86. The Code Objective is set out as follows:<sup>32</sup>

The objective of this Code is to establish a framework for third party access to gas pipelines that:

- (a) facilitates the development and operation of a national market for natural gas; and
- (b) prevents abuse of monopoly power; and
- (c) promotes a competitive market for natural gas in which customers may choose suppliers, including producers, retailers and traders; and
- (d) provides rights of access to natural gas pipelines on conditions that are fair and reasonable for both Service Providers and Users; and
- (e) provides for resolution of disputes.

**Qu.13.** Do you consider that the Code Objective assists in interpreting sections 1.9 and 2.24 of the Code? If so, how?

<sup>31</sup> *Gas Pipelines Access (Western Australia) Act 1998* (National Third Party Access Code for Natural Gas Pipeline Systems), Schedule 2, p. 113.

<sup>32</sup> *Gas Pipelines Access (Western Australia) Act 1998* (National Third Party Access Code for Natural Gas Pipeline Systems), Schedule 2, p. 112.

## Appendix 1 Summary of questions for interested parties

Questions for interested parties are provided at the end of each section throughout this Issues Paper. The full list of questions has also been provided below.

- |        |   |
|--------|---|
| Qu.1   | Do you have any views about whether the Code governs the Authority's consideration of GGT's election to not cover the expansion?  |
| Qu.2   | Do you agree that the first step for the Authority's determination is to start with GGT's election?   |
| Qu.3   | Should the Authority take into account the policies and objectives of the Code in making its determination?   |
| Qu.4   | Do you think the coverage criteria set out in section 1.9 of the Code and the factors in section 2.24 of the Code are the correct criteria and factors which the Authority should take into account in its determination? |
| Qu.5   | Are there any other objectives, criteria or matters that the Authority should take into account in making its determination?  |
| Qu.6   | Should the Authority consider the additional services provided by the expansion separately to the other services provided on the GGP when making its determination?   |
| Qu.7   | Do you consider that coverage of the GGT expansion would promote or not promote competition in upstream or downstream markets?  |
| Qu.8   | Do you consider that it would or would not be privately profitable for anyone to develop another pipeline to provide the same services as provided by the GGP expansion, on a standalone basis?                           |
| Qu.9   | Do you consider that there are health and safety considerations which the Authority should take into account in considering GGT's election to not cover the GGP expansion?  |
| Qu.10  | Are there any public interest considerations that are relevant to the Authority's decision whether or not to allow GGT's election not to cover the expansion?   |
| Qu.11  | Overall, do you consider that the criteria in section 1.9 support GGT's election, or alternatively, a determination by the Authority to not consent to GGT's election and to require coverage?                            |
| Qu.12  | Do you consider that the factors in section 2.24 support GGT's election not to cover the expansion or alternatively, a determination by the Authority to not consent to GGT's election and to require coverage? Why?      |
| Qu.13. | Do you consider that the Code Objective assists in interpreting sections 1.9 and 2.24 of the Code? If so, how?  |