

Tyson Self
Assistant Director Gas Access
Economic Regulation Authority
PO Box 8469
Perth BC 6849

1 April 2015

Dear Tyson,

Response to GGT further submission

BHP Billiton welcomes the opportunity to comment on the further submission made by Goldfields Gas Transmission Pty Ltd (**GGT**) dated 18 February 2015 in respect of its proposed draft access arrangement for the regulatory period 2015-2019.

The primary purpose of GGT's further submission is to seek to support its preferred approach to cost allocation. That is, after noting that the term 'other services' in the National Gas Rules (**NGR**) could refer to 2 possibilities, GGT seeks to support its proposed approach by, amongst other things, making extensive reference to extrinsic materials such as second reading speeches and explanatory materials.

BHP Billiton considers that GGT's proposed approach is contrary to the correct principles of statutory interpretation. In particular, the High Court has recently confirmed that statutory construction must begin with a consideration of the statutory text and that legislative history and extrinsic materials cannot displace the meaning of the statutory text¹.

Here, the NGR clearly states that a 'pipeline service' is a service provided by means of a 'pipeline'. The word 'covered' simply does not appear before the word 'pipeline'. The attempt to read the word 'covered' into the definition by reference to extrinsic material must fail as it is not consistent with the correct approach to statutory interpretation.

In particular, one of the key principles of statutory interpretation is that a term used more than once in a statute should ordinarily be given the same meaning throughout. The NGR uses the word 'covered' on a number of occasions. For example, Rule 77(1) uses both the terms 'pipeline' and 'covered pipeline' and it is clear that the term 'pipeline' is not limited to covered pipelines. If the legislature had intended the definition of 'pipeline service' to be limited to covered pipelines, it could have reflected this intention in the text by simply inserting the word 'covered' before the word 'pipeline', as it has done in various other rules.

In addition to the general approach to statutory interpretation of limiting the use of extrinsic materials, there is also a clear intention in the Western Australia context to limit the use of extrinsic materials. Clause 8(2) of Schedule 2 to the WA National Gas Law provides that extrinsic materials (such as those referred to in GGT's submission) may only be used to assist in the interpretation of the Gas Law or Rules in 3 circumstances:

- (a) if the provision is ambiguous or obscure, to provide an interpretation of it;

¹ *Federal Commissioner of Taxation v Consolidated Media Holdings* (2012) 250 CLR 503, 519 [39].

- (b) if the ordinary meaning of the provision leads to a result that is manifestly absurd or unreasonable, to provide an interpretation that avoids such a result; or
- (c) in any other case, to confirm the interpretation conveyed by the ordinary meaning of the provision.

Furthermore, clause 8(4) of Schedule 2 to the WA NGL, provides that in determining whether consideration should be given to extrinsic material, and in determining the weight that should be given to such material, regard should be had to:

- (a) the desirability of a provision being interpreted as having its ordinary meaning;
- (b) the undesirability of prolonging proceedings without compensating advantage; and
- (c) other relevant matters.

The result of clause 8 is that limited weight should be given to extrinsic materials that support an interpretation that is not consistent with the ordinary meaning. As discussed above, the definition of pipeline services does not include the word 'covered'. The ordinary meaning of the text is clear – it refers to pipelines, not just covered pipelines. Any references to extrinsic materials which purport to alter the ordinary meaning of the provision should not be given weight by the ERA when performing its regulatory functions.

In short, there is nothing in GGT's further submission and its attempts to support its preferred interpretation of the term 'other services' which alters BHP Billiton's view that the approach to cost allocation which best contributes to the achievement of the national gas objective is one which allocates a share of joint costs between covered and uncovered services.

Yours sincerely

Louis Robertson
Marketing Manager