SUBMISSION BY WMC RESOURCES LTD ON

GOLDFIELDS GAS TRANSMISSION PTY LTD SUPPLEMENTARY SUBMISSION TO THE REGULATOR

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1. Background

On 6 November 2002 the Western Australian Gas Access Regulator (the "**Regulator**") informed interested parties of the procedure it intended to follow to amend its draft decision on the proposed Access Arrangement for the Goldfields Gas Pipeline ("**GGP**") issued on 10 April 2001 ("**Draft Decision**"). This procedure was developed in light of the decision by the Full Court of the Supreme Court of Western Australia in the proceedings brought by Epic Energy (WA) Nominees Pty Ltd and another in respect of the Regulator's draft decision regarding the proposed Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline ("**Epic Decision**").

By this notice, the Regulator invited all interested parties to make written submissions having regard to the reasons in the Epic Decision and the effects on those matters identified in the Draft Decision as being the reasons for requiring amendments to the proposed Access Arrangement.

On 17 December 2002, in accordance with the procedure set down by the Regulator, both WMC Resources Ltd ("**WMC**") and Goldfields Gas Transmission Pty Ltd ("**GGT**") lodged submissions in response to the Regulator's invitation. On 5 June 2003, GGT lodged a supplementary submission (the "**Supplementary Submission**") for the purpose of addressing various issues and concerns regarding WMC's submission of 17 December 2002 ("**WMC Submission**").

Much of the Supplementary Submission is irrelevant, particularly insofar as it seeks to address issues concerning WMC's sale of its interest in the GGP to Southern Cross Pipelines Australia Pty Ltd ("**SCPA**"). As made clear by Justice Heenan in his decision concerning WMC's application to be joined as a defendant in the proceedings brought by Southern Cross Pipelines (NPL) Australia Pty Ltd, Duke Energy WA Power Ltd and SCPA (the "**Current Pipeline Owners**") last year, the gas transmission agreement between WMC and SCPA contemplates that tariffs set by the Regulator under the *National Third Party Access Code for Natural Gas Pipeline Systems* (the "**Code**") would apply if such tariffs were lower than other stipulated tariffs.

Without prejudice to that general proposition, the purpose of this submission is to:

(a) respond to specific matters raised in the Supplementary Submission so as to ensure that WMC's position is unambiguously stated; and

(b) address certain representations made by GGT in its 17 December 2002 submission ("**December Submission**") and Supplementary Submission (together, the "**GGT Submissions**") which WMC submits are factually incorrect.

Importantly, there are numerous misrepresentations and misconceptions in the GGT Submissions. However, WMC has not attempted to respond to every part of the GGT Submissions, and a failure to do so should not be taken to mean that WMC agrees with them.

2. Regulatory Process

In section 3 of the Supplementary Submission, GGT notes its support for the Regulator's procedure for considering clause 21(3) of the State Agreement and notes concerns raised by WMC with the procedure. In section 5.2.1 of the Supplementary Submission GGT goes on to suggest that:

(a) on the one hand, the WMC Submission notes certain representations about the tariff determination methodology under the State Agreement to which the Regulator should give regard; and

(b) on the other hand, the WMC Submission goes on to assert that the Regulator should give no regard to the effect of other aspects of the State Agreement.

This is a misrepresentation of the WMC Submission. There is no inconsistency in WMC demonstrating that the A1 Tariff does not comply with the State Agreement and, in particular, the tariff setting principles approved by the Minister pursuant to clause 9(1) of the State Agreement and set out in Annexure A to this submission ("**Tariff Setting Principles**") on the one hand, and on the other submitting that clause 21(3) of the State Agreement forms no part of the Regulator's jurisdiction.

WMC contends that:

(a) the Regulator is not a party to the State Agreement and the Regulator has no jurisdiction under that Agreement to consider clause 21(3);

(b) the Regulator should not anticipate any decision about the application of clause 21(3) of the State Agreement, regardless of whether the decision is ultimately found to vest in the Minister (as the State and WMC contends or the Court as the Current Pipeline Owners contend); and

(c) clause 21(3) of the State Agreement, to the extent that it is relevant, can only be given effect once the Regulator has delivered a final decision (pursuant to sections 2.16 to 2.26 of the Code).

In essence, WMC submits that all parties, including GGT, will be best served if the Regulator delivers its final decision on GGT's proposed Access Arrangement and the parties to the State Agreement are then permitted to pursue their rights and seek to enforce their interests thereunder.

3. Alignment Between WMC's Submission and GGT's Position

Two of GGT's contentions require comment.

The allegation that the original owners of the GGP ("**Original Pipeline Owners**") were instrumental in determining the terms of Third Party Access and that WMC wrote its own contract governing its terms of access, later novating part of its interest in the contract to SCPA, is of historical interest only, and is not a

matter which should influence the Regulator in his decision making process. The allegation is also factually incorrect. At the time of the sale by WMC of its interest in the GGP, SCPA was invited by the bid documents to make changes to the gas transmission agreement and changes were made to the gas transmission agreement as a result.

GGT also makes no mention of the fact that at the time of SCPA taking a novation of the gas transmission agreement, SCPA applied to the Minister and was granted approval for SCPA and WMC to be associates. The granting of "associate" status between SCPA and WMC provides SCPA with an ongoing benefit. However, SCPA does not acknowledge this, nor does SCPA seek to identify any ongoing benefit that accrues to WMC. Refer to confidential attachment.

Secondly, GGT notes that the tariff calculation methodology reported by WMC contrasts with that employed by the Regulator. WMC does not dispute this. WMC's method takes a tariff and calculates an internal rate of return ("**IRR**") whereas the Regulator determines an IRR and an asset and cost base for the regulated assets and determines a tariff. However, this difference in approach does not suggest an inconsistency of results and conclusions. Instead, the use of a different methodology to arrive at a similar result would appear to validate to Regulator's tariff.

WMC does not produce a "number of tariff scenarios" and then select "a single desired tariff", as alleged by GGT, but simply takes GGT's Benchmark Tariff from the indicative tariff schedule purportedly published pursuant to the State Agreement, as applicable from time to time, and calculates, to the best of its ability, GGT's likely resulting rate of return. The rate of return varies from case to case because of changes in the underlying demand, not, as GGT suggests, because the tariff scenario is revisited.

WMC has not attempted to specify the appropriate tariff for the GGP but, rather, has attempted to determine whether GGT is complying with its obligations under the State Agreement.

4. Propositions in WMC's Submission Which GGT Disagrees With

4.1 WMC's sale to SCPA

In section 5 of the Supplementary Submission GGT notes that WMC:

(a) accounts for approximately half the committed capacity of the GGP;

(b) was highly influential in developing GGT's Third Party Tariffs and devising GGT's General Terms of Access; and

(c) effectively devised the terms on which it is entitled to use and pay for gas transmission services on the GGP,

and then submits that it is appropriate for the Regulator to consider:

(d) the potential for any reduced tariffs which might eventuate under the Code to yield a financial "windfall" to WMC in addition to the economic profit it realised upon the sale of its interests in the GGT; and

(e) the distorting effect that such an outcome would have upon a commercial arms length arrangement previously entered into within a functionally competitive market.

The first point to note is that the Supplementary Submission contains no evidence from which it could be concluded that if the Regulator's Draft Decision was made final, WMC would receive a financial "windfall".

Further, even if such evidence existed (which it doesn't), any alleged financial "windfall" of the type described by GGT is completely irrelevant to the Regulator's considerations.

WMC considers that it is important for the Regulator to note that at the time of the sale of WMC's interest in the GGP to SCPA, both parties were aware that from 1 January 2000 the GGP would be subject to the Code and its tariffs and access arrangements subject to determination by the Regulator.

Further, as GGT discloses, WMC is subject to GGT's General Terms and Conditions and, for all intents and purposes, is a user like any other of the GGP and a Third Party as that term is defined in the State Agreement. As noted by Heenan J in the Supreme Court proceedings initiated by the Current Pipeline Owners in December 2001, provided that if, as a result of the application of the Code, there is a tariff published which is lower than the tariff otherwise applicable, WMC obtains the benefit of the lower, regulated tariff.

Given the availability for regulated tariffs to apply under WMC's gas transmission agreement, agreed to by SCPA at the time of purchasing its interest in the GGP from WMC, it is impossible to see how it can be alleged that WMC would somehow receive a "windfall" profit by virtue of the Regulator applying the Code. That the application of the Code could result in WMC paying lower tariffs was within the contemplation of both parties.

Whilst it may be true that WMC accepted the risk of developing the GGP, and that the sales process valued both the removal of this risk and the payment stream which WMC committed to make under its gas transportation arrangement with the purchaser, WMC submits that:

(a) consideration of the outcome of the sale process, vis-à-vis WMC, has no relevance to any consideration under the Code; and

(b) WMC’s arrangement with SCPA is not an issue to be considered when evaluating GGT’s proposed Access Arrangement.

Whether WMC made a windfall loss or profit, whether it is the beneficiary of special rights or suffers under special obligations to the buyer of its interest in the GGP, or whether it has received full or partial

compensation, transferred risk, or otherwise, is of no relevance to the Regulator's consideration of GGT's proposed Access Arrangement.

4.2 Background to basis for WMC assertions

In this section of the Supplementary Submission GGT appears to suggest that WMC's submissions to the Regulator should be viewed with some suspicion because it has a vested interest in the outcome. Of course, not only WMC but also GGT and other users have an interest in the outcome and clearly this part of GGT's Supplementary Submission is completely irrelevant to the Regulator's considerations.

At p. 6 of the Supplementary Submission GGT appears to complain that WMC represents a significant degree of countervailing market power. Given the long term nature of WMC's gas transmission agreement, this statement is simply incorrect. Nor is it clear what relevance GGT seek to ascribe to such an allegation.

The suggestion by GGT that WMC's submissions are influenced by an attempt to seek windfall economic gains or to raise barriers to market entry for their downstream competitors (p.7 of the Supplementary Submission) is not supported by any evidence and should be disregarded completely by the Regulator.

Further, GGT completely misinterprets WMC's submission that prejudice to WMC is a relevant consideration to take into account by the Regulator in determining when and how to proceed with the completion of review of the access arrangement (pp 7-8 of the Supplementary Submission). WMC's submission in this regard has nothing to say about the level of tariffs. It is simply that the Regulator should hand down a final decision as soon as possible. This contention could hardly be opposed by GGT or the Current Pipeline Owners.

GGT has also stated that in its disposal process, WMC established a market value for its interest in the GGP. WMC has acknowledged this and that, as contemplated in the Epic Decision, this is a matter to be considered by the Regulator in considering GGT's proposed Access Arrangement. WMC does note, however, that an acquisition price and a regulated value are not derived for the same purpose, nor are they derived using the same methodology. If the acquisition cost is used by the Regulator to set the capital base for regulating the GGP, care must be taken to ensure that the Regulator adjusts its other practices and procedures to produce compatible and consistent outcomes.

4.3 Consistency

(a) Regulator's Consideration of the State Agreement

GGT criticises the WMC submission as presenting an inconsistent position in regard to the consideration the Regulator should give to the State Agreement. There is nothing inconsistent about:

(i) presenting information to show that the A1 Tariff, put forward as the indicative tariff by the Current Pipeline Owners, does not comply with the Tariff Setting Principles under the State Agreement on the one hand; and

(ii) on the other hand, contending that the Regulator has no jurisdiction to consider clause 21(3) of the State Agreement.

There are several other misconceptions and misrepresentations contained in this part of the Supplementary Submission.

(b) **Methodology**

GGT makes various criticisms in respect of WMC's review of the A1 Tariff to suggest that the Regulator should not give consideration to the outcomes demonstrated by the WMC model. In this respect, WMC requests the Regulator take account of the following matters.

The WMC Submission drew on the analysis contained in a report prepared for WMC which examines the IRR potentially being earned by the Current Pipeline Owners and which goes on to consider this in light of the State Agreement ("**WMC IRR Report**"). A copy of the IRR Report has been provided to the Regulator on a confidential basis.

WMC understands that the methodology used in this report is similar to that used by GGT to support its 1994, 1995 and 1998 tariffs. The model has been constructed by WMC in an attempt to replicate an IRR analysis provided to the State previously by GGT. It is not, as stated by GGT, a GGT model (p 8 of the Supplementary Submission).

The need for this model reveals that:

(i) the State has to evaluate the structure of GGT's tariff and access arrangements separately from the IRR encapsulated in the tariff;

(ii) the State must consider the IRR encapsulated in GGT's tariff when evaluating compliance with Tariff Setting Principles 2 and 12; and

(iii) GGT has, to date, reported its rate of return to the State on the basis of an IRR calculated using forecast and historical cash flows.

It is important to note that this IRR analysis is <u>not</u> a tariff setting model as it simply calculates the IRR associated with a particular tariff. The IRR model assumes a tariff and a tariff structure and, from this tariff and tariff structure, derives an IRR. It provides no indication as to how the tariff itself was derived.

In fact, GGT has never, to WMC's knowledge, tabled a tariff setting model with the State.

(c) **IRR**

The key drivers in the calculation of GGT's IRR are:

(i) the initial capital cost

(ii) forecast demand;

(iii) project risk; and

(iv) tariffs.

It appears that GGT would suggest that the IRR on equity and project/asset life should remain unchanged (because this was the expectation at the time the A1 Tariff was determined) but that the capital cost, demand forecast and other costs should be updated.

As noted in the WMC IRR Report, the return on equity quoted by GGT attaches to a capital budget of $407 million and to the construction and completion risks enshrined in that capital budget. That is to say, the tariff released in the 1995 Tariff Package recognised the risk to the Original Pipeline Owners that they were obliged to commit to supply services to Third Parties prior to, and during, pipeline construction[1].

WMC submits that the return on equity quoted by GGT can only be applied to the same construction cost estimate for which it was derived.

It follows that, if the construction cost budget is replaced by a risk free (ie. actual) capital expenditure, then the IRR applied to that revised cost estimate must also be revised to reflect the fundamentally different risk profile of the cost function.

To ascertain the IRR which should be applied to this revised capital cost figure, WMC considered the results of arms length, private sector tenders:

(i) from roughly the same time period (although financial market parameters can be adjusted);

(ii) for gas pipeline projects;

(iii) for projects where actual capital costs would be used to reset tariffs on project completion;

(iv) for projects where the developer would not have long term contracts for off take; and

(v) for projects where forecast market growth significantly reduced front end tariffs.

On the whole, using this IRR as a commercial benchmark for the GGP favours the Current Pipeline Owners who have substantial long term off take contracts.

This matter is discussed in the context of section 5 below.

[1] This period was identified by the Honourable N F Moore as the period before actual construction costs and tariffs became known. (Hon NF Moore (Mining and Pastoral – Leader of the House), Hansard, 26 August 1997, page 5364.

The other parameters which GGT argues secured Ministerial approval in 1995 are the 42 year life of the GGP project, pipeline licences and renewals and the State Agreement. The analysis undertaken by WMC:

(i) assumes a 42 year project life; but

(ii) focuses on a 20 year (operating) analysis and IRR, because that is the basis on which the commercial rate of return benchmark adopted by WMC is specified.

(d) Revision of State Agreement tariffs

Accordingly, it appears that GGT is contending that it is flawed to argue that GGT's tariff should be reset during the life of the State Agreement so as to ensure that these tariffs comply with the Tariff Setting Principles, and that instead the Regulator should have regard to the A1 Tariff which applied from approximately March 1995 to March 1998. This is surprising for the following reasons.

Firstly, Tariff Setting Principle 12 clearly states that whenever tariffs for GGP services then being applied:

(i) do not promote the use of the GGP;

(ii) do not promote the efficient use of reserved capacity; or

(iii) except where the owners of the GGP from time to time ("**Pipeline Owners**") elect to exercise Tariff Setting Principle 13, generate a rate of return to the Pipeline Owners which is inconsistent with Tariff Setting Principle 2,

the tariffs shall be re-determined, and that re-determination shall be applied so as to ensure the Tariff Setting Principles are satisfied. Such re-determination shall not, under any circumstances, oblige the Pipeline Owners to adopt the tariff which does not satisfy Tariff Setting Principle 2.

Tariff Setting Principle 12 expressly confirms that existing and prospective shippers on the GGP are beneficiaries of Tariff Setting Principle 12, subject to the rules set out therein.

Secondly, GGT, in its 1995 Tariff Package, issued an Explanatory Note entitled "Tariff Setting Method" which stated that in the long term:

> *"the tariff will be modified in accordance with tariff setting Principle (12). The built-in escalation of the tariff by CPI will thus be modified in accordance with changes made pursuant to Principle (12)"*
>
> and in the context of the tariff method:
>
> *"The Minister will monitor compliance by the Owners with their obligations under the GGP Act".*

Third, in his statement to the Legislative Council of 26 August 1997, which has been quoted on numerous occasions by GGT in the GGT Submissions, the Honourable N F Moore stated that it was always expected that:

> *"a first review of the tariffs would be undertaken when the capital cost for the pipeline was known. The problem has been that the GGP has been unable until recently to finalise the capital cost of the pipeline. As the tariff is very sensitive to capital cost it was sensible to wait until the final cost was known. The tariff setting principles require than any reduced price flows on to existing contracts. This means that projects can contract now knowing that any future lower tariff will automatically flow on to them.*[2]

and stated that:

> *"it has always been understood between the State and the GGP that there would be a review of the tariffs when the project capital costs were known accurately. It seems that this time has now arrived and it is expected that the GGP will commence a review shortly. This may result in lower tariffs, but this will depend on the difference between the projected and the final capital cost. The GGP's success in signing up customers will cause a downward adjustment as a result of sales being greater than projected".*[3]

Finally, following a Legislative Council enquiry into GGT's tariffs, GGT reduced its tariff in 1997 and 1998 because of the improved economic circumstances foreshadowed by the Honourable N F Moore.

In February 1999, GGT announced two further tariff discounts, one effective from 1 July 1999 to 31 December 1999 and the other effective from 1 January 2000. GGT described these discounts as being developed after discussions with the Western Australian Government. In an associated press statement, the Minister noted the obligations of the Pipeline Owners under the State Agreement and indicated that an independent review of GGT's tariff, initiated by the State, showed that GGT's "benchmark tariff required reduction".[4] The benchmark tariff is defined by GGT as "the tariff which applies to the services provided under a 20 year Firm Service Agreement". The Minister went on to indicate that after discussions with the Pipeline Owners "it has been agreed that tariffs will be reduced by 25 per cent".[5]

It is clear that GGT, the Pipeline Owners , the market and the State are aware, under the State Agreement that tariffs in relation to the GGP are required to comply with the Tariff Setting Principles and are required to be tested against those principles on a regular basis.

(e) Clause 9 proposals

Further, it is also incorrect for GGT to submit, as it did in its December Submission, that the original tariffs or a specific return on equity by the GGP owners were approved by the Minister.

[2] Hon NF Moore (Mining and Pastoral – Leader of the House), Hansard, 26 August 1997, page 5364,
[3] Ibid.
[4] Media Announcement dated 16 February 1999.
[5] Ibid

The GGT tariff has never been required to be approved, nor has the GGT tariff been approved, under the State Agreement.

As stated by the Honourable N F Moore to the Legislative Council, the State Agreement:

> *"does not allow the State to directly approve of the GGP tariffs. Instead, the State approves tariff setting principles and must be satisfied that the tariffs are consistent with those principles".*[6]

Although the original GGT tariff was submitted as part of the clause 9 proposals, WMC submits that it is incorrect to therefore conclude that the original GGT tariff was approved by the State.

Clause 9(1) of the State Agreement did not by its terms require the Original Pipeline Owners to submit tariffs to the Minister for his approval.

Further, although the Original Pipeline Owners were also obliged to submit proposals pursuant to clauses 8 and 16 of the State Agreement, none of these submissions necessitated the submission by them of a tariff and none provided for the approval of a tariff by the Minister.

Instead, section 22 of the State Agreement provided, at sub-section 22(3), that the Pipeline Owners would:

> *"establish and maintain an "indicative tariff schedule" based on the tariff setting principles approved from time to time by the Minister under this Agreement. The "indicative tariff schedule" shall provide sufficient detail to allow potential users to calculate gas transmission charges likely to apply in any reasonable circumstance".*

Section 22 does not, as the Honourable N F Moore confirms,[7] require that the Minister approve the indicative tariff schedule. Instead, the Minister's rights under the State Agreement in regard to the indicative tariff schedule are limited to considering whether the tariffs set out in the indicative tariff schedule comply with the State Agreement. If the indicative tariff schedule does not comply with the obligation of the Original Pipeline Owners under the State Agreement, the Minister may pursue rectification by negotiation with the Pipeline Owners or exercise the rights of the State under section 32 of the State Agreement.

The Minister:

(i) was never required to approve, and never has approved, the original tariffs;

(ii) was never required to approve, and never has approved, recovery of a specific return on equity by the GGP owners;

(iii) was never obliged to approve, and never has approved, any assumptions used by GGT to prepare its 1995 indicative tariff schedule;

[6] Hon NF Moore (Mining and Pastoral – Leader of the House) Hansard, 26 August 1997, page 5363
[7] Ibid

The statements made by the Honourable N F Moore, regarding the GGT tariff, previous decisions by GGT to reduce its tariffs since 1995 and the statement by the State regarding the tariff discounts introduced in 1999 also run counter to GGT's argument.

Further, Tariff Setting Principle 2, which was approved by the Minister in accordance with the State Agreement, makes it clear that GGP tariffs are to be set to earn a "commercial" rate of return. Tariff Setting Principle 2 does not provide, nor did the Minister approve, a specific rate of return which the Pipeline Owners are entitled to earn. Accordingly, the fact that the Original Pipeline Owners earned a real, after tax return on equity of 17.45% in 1994 at the time of their submission of the proposals required pursuant to the State Agreement, is of historic interest only and must be viewed in the context of the surrounding circumstances. Importantly, it must be read against the level of demand risk, completion risk and construction cost overrun which existed at the time and the capital cost to which it was applied.

Clearly, the return on equity would only remain constant if the level of demand risk, completion risk and construction cost overrun have remained unchanged and is applied to the original capital cost estimate.

Sections 4.3(g) and (h) and 4.4(c) make it clear that these assumptions have not remained constant over the life of the GGP.

(f) Obligations of Owners under the State Agreement

There is no basis under the Code which would justify the Regulator taking into account such matters as:

(i) WMC's involvement in establishing the initial GGP Tariff Schedule;

(ii) WMC's subsequent sale of its interest in the GGP;

(iii) GGT's view that the WMC Submission confuses the perspectives of a pipeline owner with that of a nickel producer;

(iv) that prior to the sale of WMC's interest in the pipeline, GGT had published only one discounted tariff (the "**A2 Tariff**"); and

(v) WMC had not until recently contested tariffs published by GGT,

when considering GGT's proposed Access Arrangements.

The fact that WMC was involved in establishing the initial GGP Tariff Schedule is irrelevant to the Regulator's considerations. As previously stated by WMC, the risks faced by the Original Pipeline Owners in 1994 are different to those faced by the Pipeline Owners.

For similar reasons the price at which WMC subsequently sold its interest in the GGP to SCPA is also irrelevant.

Although it is true that GGT had published only one discounted tariff at the time of WMC's sale of its interest in the GGP, it was apparent to GGT, WMC and SCPA that the Minister had been investigating

pipeline tariffs during 1998 and had come to the view that further reductions were required in order for the tariff to comply with the Tariff Setting Principles. Refer confidential attachment.

The same comments apply to the allegation that WMC had not contested tariffs published by GGT. The adequacy of the initial tariff, established in 1994, is simply irrelevant. At the time of the sale of WMC's interest to SCPA it was readily apparent that further discounts to the A2 Tariff were required by the Minister. Further, on 21 December 2001 GGT purportedly withdrew all discounts to its tariff, returning to the A1 Tariff (adjusted by CPI as provided for in GGT's General Terms & Conditions) which is a 30% increase to the tariff then being charged (the "**A4 Tariff**"). GGT has made no public statement as to the reason behind this action and, instead, has claimed that it was "forced" to withdraw all discounts to its (published) third party tariff.[8]

As GGT is well aware, WMC immediately protested the withdrawal of the A4 Tariff.

(g) Relationship Between Forecast Demand and Rate of Return

GGT appears to have missed the point in its claim of a 'logical inconsistency' (p13 of the Supplementary Submission) in the stated link between the Regulator's WACC and the market valuation. WMC submits that it is possible to derive different valuations for the GGP depending on the risk which is built into the investment cashflows. For example, the risk (and therefore the commensurate rate of return) built into the tariff of a service provider embarking on construction of a $400 million pipeline will be greater than the risk built into a tariff for the same investor when the tariff is reset to reflect the as built cost of the same pipeline. The construction project carries additional risks such as completion risk and construction cost overrun risk. Similarly, the risk, and rate of return, built into the tariff of a service provider accepting significant market risk is greater than the rate of return which should be built into the tariff of a service provider taking little or no market risk.

GGT goes on to criticise the proposition that a low risk demand scenario should attract a low rate of return. The WMC reasoning is the simple and well established principle that higher risk attracts a higher reward. GGT asserts that there is a problem in WMC's methodology because "if tariffs are set at a level which cannot later be exceeded" (p15 Supplementary Submission) then a lower than expected demand profile will result in a lower than expected rate of return being realised.

This is simply a statement of the obvious. Conversely, it could be stated that a higher than expected demand profile will result in a higher than expected rate of return being realised. This is a simple statement of demand risk and clearly the lower the demand forecast the lower the probability that the demand profile will not be realised. Accordingly, a lower demand forecast reduces the demand risk. Similarly, the premise that "tariffs are set at a level that cannot later be exceeded" is incorrect. A tariff review will be carried out at the end of each of the Regulator's 5 yearly decisions, a satisfactory frequency for a pipeline with a 42 year life.

[8] Application by GGT on behalf of the current owners of the GGP to revoke coverage of the GGP under the provisions of the GPA Law, page 58.

GGT's assertions that WMC wrongly refers to the calculated IRR as a "commercial rate of return" again have missed the point. The WMC methodology simply calculates an IRR for each demand scenario. It is left to the reader (Regulator) to determine a "commercial rate of return".

(h) Demand Responsiveness - Fuel Switching and Competition

GGT's comments that the installation of dual fuel capacity implies future competition from liquid fuels is mischievous at best. Dual fuel capacity is installed as a back up in the event that gas is unavailable and, in some cases, the back up capacity is limited to the operation of emergency services only. To assert that fuel switching from gas is likely to be a readily available option for any large new customer ignores the simple commercial reality that in most cases the alternative fuel (distillate) costs approximately $12/GJ compared with approximately $2.50/GJ[9] for natural gas.

A gas consumer with long term take or pay obligations for gas and gas delivery obligations is not normally in a position to engage in fuel switching. Further, as a general rule, the cost of putting in place alternative fuel supply, fuel delivery and fuel storage arrangements is prohibitive. Wholesale fuel switching is not really an option for most users of gas. As a general rule, gas users shift from gas to another energy source in the short to medium term to ameliorate problems with gas supply. Even then, the high cost of providing a sufficient back-up supply of alternative fuel is enough for some gas users to simply accept the relatively low risk and cost of a curtailment in gas supply. These latter gas users have no fuel switching capacity at all.

4.4 Accuracy

(a) Confusing Owners' Initial Committed Capacity and Contracts

GGT contends that WMC's proposition that the Initial Committed Capacity of the Original Pipeline Owners accounted for all of the original capacity of the GGP is inaccurate.

In this regard, WMC notes that GGT's clause 9 Submissions from 1994 confirm that the Initial Committed Capacity of the pipeline was 91TJ/day and the Initial Installed Capacity of the pipeline was only 81.5TJ/day (a fact emphasised by a number of pipeline capacity expansions since December 1996).

(b) Commercial Rate of Return

GGT suggests that WMC's proposition that the Pipeline Owners are not entitled to earn more than a commercial rate of return is incorrect.

In response, WMC notes that Tariff Setting Principle 12 clearly requires GGT to reset its tariffs if GGT's rate of return is inconsistent with Tariff Setting Principle 2. It is not correct to conclude that the Pipeline Owners' right under the State Agreement is to earn "no less than a commercial rate of return".

[9] The fixed cost of gas transport has been ignored in this example due to the nature of GGT contracts.

Contrary to GGT's alternative proposition, Tariff Setting Principle 13 contemplates GGT earning a rate of return which is less than a commercial rate of return.

(c) Relationship Between Risk, Tariff and Investment

In this section, GGT suggests that WMC's submission that the value of assets which do not constitute part of the regulated assets of the GGP should be removed from the acquisition and should be deducted from the Initial Capital Base does not recognise GGT's correction, in its December Submission, to its draft Access Arrangement Information.

In response, WMC says that it could not have anticipated, in the WMC Submission, that GGT would, in the December Submission, correct an obvious error in GGT's draft Access Arrangement. However, WMC continues to question the extent of GGT's proposed correction to, and the determination of, the GGP's estimated acquisition cost. Clearly, the Pipeline Owners have not installed capacity in advance of the market's needs and claim substantial risk of pre-investment in surplus pipeline capacity is difficult to quantify.

GGT seeks to draw the conclusion that WMC chose, when it sold its interest in the GGP, to accept that future tariffs could only be expected to be reduced when (and if) a higher demand for gas transportation services eventuate. The fact is that at the time of the sale of WMC's interest in the GGP to SCPA, the Minister had already given notice that he expected tariffs calculated under the State Agreement to be reduced. This was consistent with WMC's expectations at the time that regulated tariffs under the Code would also result in reduced tariffs. In contrast to GGT's assertion, WMC was acutely aware, at the time of sale, that it was sacrificing sale proceeds in return for adopting the future regulated tariff.

(d) Satisfaction of Development Objectives

WMC takes issue with GGT's statement that discounts to the A1 Tariff offered by GGT were made to further promote the use of the GGP. Though this may be true in part, it was also apparent that the A3 and A4 Tariffs were made as a result of pressure from the Minister who had sought and received advice from independent experts that the then existing tariffs did not comply with the requirements of the State Agreement, including the Tariff Setting Principles.

5. Expectations of Pipeline Owners

5.1 Background

As a preliminary point, it should be noted that the Regulator's task in setting the Initial Capital Base for the GGP is completely unlike the task which faced the Regulator in the case of the Epic pipeline. This is not a case like Epic where the State Government publicly sold the pipeline having made statements in relation to the future level of tariffs. For this reason, WMC considers the GGT Submissions which emphasise the importance of the reasonable expectations of the Current Pipeline Owners when they purchased their interests in the GGP are largely irrelevant.

Without prejudice to WMC's position in this regard, WMC will respond to the submissions made by GGT. In this context, GGT identifies as relevant the expectations of:

(a) the Current Pipeline Owners;

(b) GGP shippers; and

(c) the Original Pipeline Owners,

at the time the commitment was made to construct the GGP in 1994/1995 and the time of divestment of the Original Pipeline Owners' interests in the GGP in and around December 1998.

5.2 The Original Pipeline Owners' Expectations – the GGT View

In its December Submission, GGT emphasised the comments contained in the Epic Decision regarding the role of the reasonable expectations of the service provider under the Code.

Section 3.3 of GGT's December Submission purports to outline the expectations of the Original Pipeline Owners but instead:

(a) repeats claims regarding the risk borne by the Original Pipeline Owners when they oversized the GGP and accepted risks regarding future third party sales and accepted the deferral of investment recovery by adopting a levelised tariff;

(b) reiterates the claim that the tender process by which the State selected the Original Pipeline Owners to develop the GGP satisfies the requirements of competition policy;

(c) asserts that the initial GGP tariffs were governed by the Tariff Setting Principles, supervised by the State and approved as part of a clause 9 project proposal; and

(d) summarises selected provisions of the State Agreement.

The material presented in section 3.3 of the December Submission does not address the expectations of the Original Pipeline Owners at the time of their investment. Furthermore, this section is not factually accurate.

There is a fundamental difference between the initial installed pipeline capacity of the GGP and its ultimate expandable capacity. Indeed, the initial installed capacity of the GGP was actually less than the Initial Committed Capacity of the Original Pipeline Owners. Further, the risk borne by the Original Pipeline Owners cannot be measured by reference to the capacity of the GGP but must be measured against the assumed Third Party sales which were built into the initial GGT tariff. The subsequent investments by the Original Pipeline Owners to expand the capacity of the GGP, and the reductions in tariffs resulting from greater than expected third party sales (it would seem there is no other basis), suggest that the risks built into GGT's initial tariff were negligible. Accordingly, in the absence of evidence to the contrary, the perception of risk painted by GGT in its December Submission is difficult to accept.

WMC has never been privy to the details of the process or analysis pursuant to which the Original Pipeline Owners were selected to develop the GGP and therefore, cannot comment.

However, in regard to the specific suggestion that GGT's initial tariff formed part of the tender evaluation criteria, it should be noted that this tariff was not tabled with the State until July 1994 (for GGT's Open Season), and November 1994 (for post Open Season sales). The Original Pipeline Owners' tender was accepted in mid 1993 and the State Agreement was signed in March 1994.

Further, it should be noted that in mid 1993 the Tariff Setting Principles and the resulting tariffs were developed in parallel to, and only delivered to the State at the end of, the development process in mid 1994:

(a) a project proposal, in the case of the Tariff Setting Principles; and

(b) the indicative tariff schedule, in the case of the initial tariffs.

The development of the GGT tariff was not "overseen by the State". The State, as explained by the Honourable N F Moore,[10] had limited rights in regard to GGT's indicative tariff schedule. Indeed, the State considered, and did not dispute, the proposed indicative tariff schedule.

WMC concurs with the statements made by the Honourable N F Moore that, once construction of the GGP was completed, and the capital cost, operating costs and pipeline utilisation were better understood, GGT would need to revisit its tariff in accordance with the Tariff Setting Principles. That review would require the parties to resolve the "commercial rate of return" which would attach to these revised costs and revenue forecasts. This was done in 1998 to producethe A3 and A4 tariffs which were announced to the market on 16 February 1999.

As noted above, there has been no public statement as to why the A4 tariff was withdrawn in December 2001 and the basis for the withdrawal remains privy to GGT and the Pipeline Owners.

5.3 Original Users' Expectations

In its December Submission, GGT suggests that expectations of users of the GGP were formed by statements made in the Legislative Assembly and the Legislative Council by a number of politicians in the period 1993 to 1996. Essentially, these statements suggest that:

> "*The pipeline operator will face competition from SECWA and vice versa.*"[11]
>
> *"The preliminary work and current work shows that the savings to energy consumers from the gas to the goldfields pipeline project will vary from around 15 per cent in Kalgoorlie to about 30 per cent at Mt Keith and perhaps up to 50 per cent in the eastern Pilbara.*"[12]

[10] Hon NF Moore (Mining and Pastoral – Leader of the House), Hansard, 26 August 1997, page 5363
[11] Mr C J Barnett, Hansard, 6 April 1994, page 11584, Second Reading
[12] Mr C J Barnett, Hansard, 22 November 1994, page 7419, Question no 617

"*The gas price of $2 per gigajoule from the Pilbara, with the delivery cost to the goldfields gas pipeline to Newman would be about $3.57 per Gj [sic]. As Hon Mark Neville said, the price at Kalgoorlie it will be $5.67 per Gj. This compares to $8 or $9 per Gj for the distillate, which price is net of the diesel fuel rebate. If one looks at the prices at Newman - $3.57 delivered compared to $8 or $9 per Gj for distillate – it is a saving of 60 per cent.*"[13]

Neville: "*What is the basis for the claim by the Minister for Resources Development Legislative Council that energy costs will be reduced by 30% at the end of the goldfields gas transmission pipeline?*"

Moore: " *I thank the member for some notice of the question. The answer is: the comparison of the estimated cost of delivered distillate against delivered gas.*"[14]

5.4 Current Pipeline Owners' Expectations at the Time of Acquisition

In its December Submission, GGT represents that the current Pipeline Owners, when making their investment decisions:

(a) considered the implementation of the Code to be in its infancy and that the Pipeline Owners had little upon which to base their expectations as to how the Code would be applied in Western Australia;

(b) considered features of the tariff setting regime, including:

- the approved Tariff Setting Principles;
- Tariff Setting Principle 2 (which GGT purports to "guarantee" certain outcomes);
- the GGP's tariffs to that point; and
- the clause 9 proposals and the assumptions underlying those proposals as "approved" by the Minister and which fully justify, not only to the initial GGP tariffs, but all subsequent discounted tariffs and withdrawals of discounted tariffs.

(c) were influenced by the provisions of the State Agreement and views expressed by the State about how the Code would be applied in Western Australia; and

(d) regarded early Code based outcomes in eastern Australia as "divergent from the original COAG objectives" and as representing "teething issues" and "aberrations" which would not be permitted to persist.

This outline of the Current Pipeline Owners' expectations at the time they made their respective investments in the GGP is problematic for a number of reasons. Firstly, it ignores the applications of the

[13] Hon N F Moore, Hansard, 17 October 1996, page 6736
[14] Neville/Moore, Council, 24 October 1996, p7172

Code in eastern and southern Australia up to that point, other than to discount them as divergent, aberrations and teething issues.

However, SCPA lodged its final bid for WMC's interest in the GGP in September 1998. The bid documentation prepared by WMC contained considerable information on the future regulation of the GGP. Further, as set out below, the national gas access regime was being applied elsewhere in Australia.

By the end of 1997, related companies of APT Pipelines Limited (formerly AGL Pipelines Limited) ("**AGL**") which owned at the time of the purchase of WMC's interest in the GGP, and continues to own, 45% of SCPA, had been through two regulatory tariff reviews under the then emerging regulatory model in New South Wales and had proposed a regulated pre-tax WACC of 14.8% and the Victorian Government had tabled proposed access arrangements incorporating nominal pre-tax WACCs of 13.2% and 13.5% for its gas pipeline assets.

By March/April 1998, the Independent Pricing and Regulatory Tribunal in NSW ("**IPART**") had confirmed a regulated nominal pre-tax WACC of 13.5% for AGL's network assets under a regulatory regime set out in NSW's Gas Supply Act. At that time the Code had not been given effect in any jurisdiction and the Victorian proposals regarding the regulation had been made public, but consideration of the proposals was minimal.

By December 1998, the Australian Competition and Consumer Commission (the "**ACCC**"), the Office of the Regulator General, Victoria and IPART in NSW had published final decisions incorporating regulated nominal pre-tax WACCs of around 10.8% per annum on initial asset values well below those proposed by the relevant service providers. These final decisions followed draft decisions incorporating nominal pre-tax WACCs of below 9% per annum.

Annexure B provides a chronology of regulatory precedents in 1997 and 1998.

Secondly, the Pipeline Owners appear to have ignored fundamental and acutely relevant portions of the views expressed by the State at the time. In particular, reference should be made to the statement by the Honourable C J Barnett, which is quoted heavily by GGT, which is focused upon:

(a) the role of the ACCC;

(b) electricity regulation; and

(c) ensuring that the ACCC does not usurp the energy policy portfolio in Western Australia,

and includes the following statements.

> *"We want a counterpart regulator, operating under the same rules that apply at a national level, to be administered locally. The regulator will not take a policy role. He will apply the code as written. Working with the national institutions, he will communicate with other*

jurisdictions to improve the code. It will not be about setting policy regarding where development will occur. The State Government will maintain that policy role"[15]*;*

and

"The code is about the rules of the game; it is as simple as that. The regulator, whether it be the Australian Competition and Consumer Commission or anyone else, must administer the rules of the game to resolve disputes, help set tariffs, if that be the case, and make sure the system is open and fair. The role of the regulator is not to set policy. That is the difference"[16]*;*

and

"I accept the rules of the game for open, third party and non-discriminatory access. I am happy for that to be regulated in terms of fairness between players. However, I want that done in the context of energy policy in this State. As a Government, we will not cede energy policy to the ACCC"[17].

It is clear from consideration of the full content of the Honourable C J Barnett's speech that the Minister accepted that the Code would be applied as the governing regime other than to the extent that the Government takes specific action to deliver its energy policy outcomes. This understanding was reiterated by the Honourable N F Moore in the Legislative Council when he said:

"The regulator takes an oath to perform functions faithfully and impartially. Clause 36 specifically states that the regulator is independent of direction or control of the Crown or any minister, excepting that the minister may issue directions in relation to general policies to be followed in matters of administration"[18].

The only such policy relevant to the sale and acquisition of WMC's interest in the GGP in 1998, was section 97(4) of the GPA Law.

The above referenced statements were reinforced by analogous statements by the Honourable N F Moore in the Legislative Council to the effect that:

"The buyers of the Dampier-Bunbury natural gas pipeline and the goldfields gas pipeline are doing so at their own risk in regard to future tariffs. The State's decision to implement the National Access Code preceded both the sale of the Dampier-Bunbury pipeline and the WMC share of the goldfields gas pipeline. The Bill provides a strong regime to support the independence of the regulator and to deal with any conflicts of interest"[19].

[15] Mr C J Barnett, Hansard, 16 September 1998, page 1476
[16] Mr C J Barnett, Hansard, 16 September 1998, page 1475
[17] Ibid
[18] Hon NF Moore (Mining and Pastoral – Leader of the House), 3 December 1998, page 4805
[19] Ibid

GGT also draws on earlier statements by Western Australian political leaders to the effect that regulation would be light handed as a basis for forming their expectations regarding the regulatory environment. Again, however, when taken in context, these statements are difficult to interpret in the manner which GGT suggests. In a 6 April 1994 statement to the Legislative Assembly regarding the State Agreement, the Honourable C J Barnett made it clear that what has been applied in this Bill (the State Agreement):

> *"is consistent with the Commission of Australian Governments on pipeline rules, so it is up in front with the practices that apply. The trend is that of light handed regulation. It is essentially uncharted water, a philosophical approach, a practical one, and it will take a bit of working out. There will be probably be hiccups, but it is better than going down the highly regulated route. I am confident it will work, and it will be fair to all parties. It has fairly explicit reporting requirements built into it. The only hesitation I have is that the Minister of the day will find himself faced with some pretty difficult decisions in that it will fall on that person often to decide where there is a dispute".*[20]

Clearly, in 1994, the view was that light handed regulation was desirable but that much would need to be worked out in the future. By 1998, the same Minister and his colleagues delivered the GPA Law to the Parliament of Western Australia as the rules which would give effect to their light handed regulatory vision. Clearly, the Government of the day was aware that the GGP, and other regulated assets, were being sold and acquired while this policy was being developed and it was keen to point out that the risk attaching to these transactions rested with the buyers.

5.5 WMC's Expectations at the Time of Disposal

WMC rejects claims and implications by GGT that WMC attempted to maximise the sale proceeds and then sought to minimise the tariff. WMC elected not to maximise the sale proceeds but instead ensure a tariff that it expected to decline in real terms over the life of the contract. The matter is dealt with further in the confidential submission accompanying this submission.

6. Other Issues

6.1 GGP Risk

In its December Submission, GGT emphasises the market risk borne by the Pipeline Owners because the Pipeline Owners contract with short term users of the GGP. This proposition is ill conceived for at least two reasons when considered in the context of a Code review of GGT's proposed Access Arrangement.

Firstly, GGT offers a range of tariffs to the Regulator but the focus of its proposed Access Arrangement, and its proposed Reference Tariff, is its 16 to 20 year service contract and Benchmark Tariff. That is to say, the focus of both GGT and the Regulator is GGT's long term contract and tariffs, not its short term contracts and tariffs.

[20] Mr C J Barnett, Hansard, 6 April 1994, page 11584

Secondly, GGT charges a premium price on short term contracts, which premium is a reward for accepting the risks that go with selling pipeline capacity in the short term. Clearly, it would be double counting to factor the risk of short term contracts into GGT's Reference Tariff for a 16 to 20 year contract and then to build a premium into the price of short term contracts. In a Code environment, where pipeline users pay for the services they receive, it is appropriate for the risk of short term contracts to be reflected in the price attached to those contracts.

6.2 Levelised Tariff

GGT repeatedly emphasises the risk inherent in its levelised tariff in both its December Submission and its Supplementary Submission. However, it must be emphasised that the level of risk claimed in these instances is driven by the cost and revenue functions used to derive the levelised tariffs. The risk to capital recovery claimed by GGT is only significant if the tariff determination model assumes significant demand late in the project's life.

The risk in any levelised tariff is not measured on an absolute scale, as GGT appears to suggest, but on a relative scale depending on the risk inherent in the assumed cost and revenue functions. This issue might be considered in light of the discussion concerning alternative demand forecasts in the WMC IRR Report.

6.3 WMC's Interest in Third Party Tariffs

WMC's interest in GGT's third party tariffs is twofold. Firstly, WMC has an expectation that it will contract for additional GGT services in the life of its Eastern and Northern Goldfields resource projects. As such, WMC has a valid self interest in ensuring that GGT complies with the law regarding third party access to the GGP. This interest applies irrespective of whether the State Agreement, the GPA Law, or a synthesis of the two, applies to the GGP.

Secondly, when considering the divestment of its interest in the GGP, WMC had to consider whether it would agree to pay a prescribed tariff for the term of its ongoing agreement to use the services of the GGP or whether it would agree to pay the prevailing third party tariff.

The first option would have maximised the sale proceeds whereas the second ensured that WMC remained competitive vis-à-vis other users of the GGP. The second option also parallelled the provisions of Tariff Setting Principle 12 as issued by GGT and approved by the Minister. Notwithstanding the adverse impact on sales proceeds, WMC chose the second option and it can be expected that, as regulation spreads and the results of regulation become more predictable, this contracting approach will be expected to become increasingly common.

WMC is, therefore, critically affected by regulatory decisions affecting GGT's third party tariffs and will continue to pursue its rights to participate in the processes provided in the State Agreement and Code for determining access tariffs and arrangements.

6.4 Section 21(3) of the State Agreement

GGT makes several assertions regarding the operation of section 21(3) in its December Submission. Unfortunately, none of these assertions has been tested and none can be taken at face value.

WMC urges the Regulator to deliver its final decision on GGT's proposed Access Arrangement so that clause 21(3) (to the extent that it is relevant) can be applied, and if necessary tested, by the appropriate parties in the appropriate forum(s).

7. Conclusion

In conclusion, WMC requests that the Regulator, in issuing Part 1 of his Amended Draft Decision in relation to the GGP, only take into consideration those matters which the Code requires him to. As discussed, WMC submits that much of the information provided to the Regulator by GGT in its Supplementary Submission and the December Submission is irrelevant and should not be considered by the Regulator.

However, to the extent that the Regulator chooses to take the GGT Submissions into account, we request that he read them in the context of the additional information provided in this submission.

Annexure A

The principles which govern tariff setting on the Pipeline (the "**Principles**") are as follows:

1 Tariffs will be structured to promote the use of the Pipeline.

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

For the purpose of this Principle, the Owners will be ascribed a notional tariff based on third party tariffs for their utilisation of Pipeline capacity reserved to the Owners pursuant to clause 8(1) of the GGP Agreement.

3 Shippers may be categorised into a Shipper group on the basis of the nature of the service or the duration of the service they are seeking. Shippers cannot be categorised into a Shipper group on the basis of their credit worthiness or on the basis of the volume of their capacity purchase.

4 Tariffs will not discriminate between Shippers in a common Shipper group.

5 Credit support may be requested of a Shipper, before a service contract is accepted, in the event of a genuine concern regarding Shipper's credit worthiness.

6 A minimum account or similar charge may be made to recover the Owners' reasonable costs in regard to connection of a Shipper to the Pipeline and contract administration.

7 Tariffs will have a capacity reservation component, and a throughput component, and will be structured to promote the utilisation of reserved capacity.

8 Tariffs will be structured to recover the capital cost of the Pipeline equitably over time.

9 Tariff differences between Shipper groups will reflect the character of the service to be provided (particularly in terms of the distance of carriage, term of the contract and whether the contract is for interruptible or firm capacity) and the time at which service contracts are entered into.

10 All Firm Transportation Service tariffs will be set by reference to the Benchmark Tariff.

11 Contracts should not set tariff caps in excess of 20 years from the execution thereof.

12 At any time when the tariffs for Pipeline services then being applied:

(a) do not promote the use of the Pipeline; or

(b) do not promote the efficient use of reserved capacity; or

(c) generate a rate of return to the Owners which is inconsistent with Principle (2) above, except where the Owners elect to exercise Principle (13),

the tariffs shall be re-determined, and that re-determination shall be applied so as to ensure the Principles are satisfied. Such re-determination shall not, under any circumstances, oblige the Owners to adopt a tariff which does not satisfy Principle (2).

I Where a tariff re-determination results in a change being made to the Firm Transportation Service tariff, the new tariff shall apply, without any derogation of any existing contractual right, as far as is possible uniformly across all new and existing Firm Transportation Service contracts, and for each existing contract:

(a) if the resulting Firm Transportation Service tariff is less than the Contract Tariff (being those charges specified in the Firm Transportation Service Order Form submitted by the Shipper and accepted by the Owners), then the new Firm Transportation Service tariff shall apply.

(b) if the resulting Firm Transportation Service tariff exceeds the Contract Tariff, then the Contract Tariff shall apply.

II Where a tariff re-determination results in a discount being offered on the Firm Transportation Service tariff, the discount charge shall apply, as far as is permitted by existing contracts and these Principles, and for each new and existing Firm Transportation Service contract:

(a) if the resulting discounted charge is less than the Contract Tariff then the discounted charge shall apply irrespective of whether it represents an increase or a decrease over any discounted charge for the service applicable immediately prior to the re-determination.

(b) if the discounted charge exceeds the Contract Tariff then the Contract Tariff shall apply.

Tariffs for services other than the Firm Transportation Service shall be reviewed at the time of any Firm Transportation Service tariff re-determination so as to ensure they continue to comply with the Principles.

13 Subject to compliance with all the Principles (except Principles (2) and (12)), the Owners, at their sole discretion, may set tariffs, or allow tariffs to remain operative, which are equal to or less than those resulting from the application of Principle (2) and such tariffs shall be applied in a manner consistent with provisions I and II of Principle (12).

The following definitions apply to the above Principles.

"**Firm Transportation Service**" means an agreement between a Shipper and the Owners to reserve Pipeline capacity on an uninterruptible basis.

"**Benchmark Tariff**" means the tariff applicable to a Firm Transportation Service Contract for the longest contract term not exceeding 20 years offered by the Owners to Third Parties in the General Terms and Conditions.

"**Pipeline**" means the Pipeline as defined in the Goldfields Gas Pipeline Agreement Act 1994.

"**Shipper**" means a person contracting with the Owners to reserve capacity in the Pipeline for the purpose of transporting gas.

"**Owners**" means the Goldfields Gas Transmission Joint Venturers consisting, as of 30 November 1994, of Wesminco Oil Pty Ltd (ACN 004 968 389), Normandy Pipelines Pty Ltd (ACN 063 551 888) and Pilbara Energy Pty Ltd (ACN 058 070 689).

Terms used in these Principles have the same meaning as they have in the respective service agreements and the General Terms and Conditions.

Annexure B

VICTORIA

Location/ Route	Service Provider	Application/Submission	Issues Paper	Draft Decision	Final Decision	Final Approval	Final Decision
Principal Transmission System	VENCorp, Gasnet & Western Transmission System	8/8/97 Release of draft access arrangements by proponent (EPD) 3/11/97 AA & AA Information to ACCC for Principal Transmission System by VENCorp 3/11/97 AA and AA Information to ACCC for Principal and Western Transmission Pipelines by Transmission Pipelines Aust 6/3/98 Supplementary Information by TPA 13/3/98 Revised Supplementary Information by TPA 16/3/98 Additonal Supplementary Information by TPA	December 1997	28/5/98	6/10/98	16/12/98	13/11/02
Victorian Distribution System	Multinet, Westar and Stratus	24/11/97 Victorian Gas Industry Tariff Order 3/11/97 AAs to ACCC by Westar, Stratus, Multinet 3/7/98 Public Forum on WACC 7/7/98 Public Forum on Draft Decision (excl WACC issues)	December 1997	29/5/98	6/10/98	17/12/98	

NSW & ACT

NSW Distribution Networks	AGL	August 1996 Third Party Access Code for Natural Gas Distribution Networks in NSW August 1996 Opinion re TPA and GSA Ex parte AGL August 1996? Comparison of NSW Interim Access Framework with National Access Code September 1996 AGL Access Undertaking and AU Information under Gas Supply Act 11/9/96 Media release and presentation by AGL MD Mr Len Bleasel May 1997 AGL Access Undertaking and AU Information (Varied as agreed with IPART) July 1997 AGL Access Undertaking and AU Information (Varied as agreed with IPART) 5/1/99 Revised AA 17/3/99 Public Hearing 16/4/99 Supplementary AA in response to Section 2.9 of National Third Party Access Code 2/2/00 Discussion Paper 7/2/00 Pricing document outlining reference tariffs under DD 8/2/00 Access Arrangement Review - Supporting Information Report 8/2/00 Discussion Paper 24/2/00 Public forum on AGLGN's access arrangement proposal under the Tribunal's draft decision		September 1996 May 1997 28/10/99 March 2000	July 1997	September 2000	
Marsden to Dubbo (Central West Pipeline)	Australian Pipeline Trust	31/12/98 AA Submission 8/2/99 Revised AA			30/6/00	19/10/00	