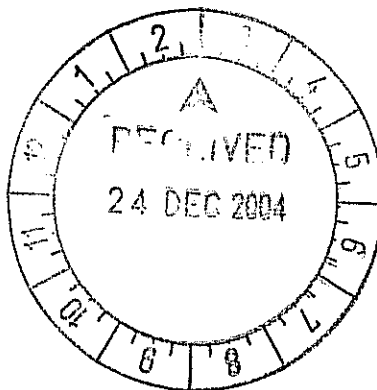


OUR REF: SH:21024
YOUR REF:



Level 16 OV1
250 St Georges Terrace
Perth WA 6000 Australia
GPO Box A12 Perth WA 6837
telephone +61 (08) 9214 5000
facsimile +61 (08) 9214 5001
email info@maximlaw.com
web www.maximlaw.com

Mr Dumas
Economic Regulation Authority
Level 6 Governor Stirling Tower
197 St Georges Terrace
PERTH WA 6000

**Maxim
Litigation
Consultants**

By Facsimile: 9213 1999

24 December 2004

Dear Sir

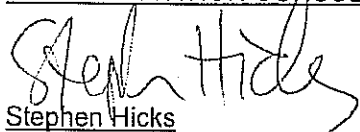
Re: Issues Paper – Revised Access Arrangement – Goldfields Gas Pipeline

We act for Newmont Australia and we refer to our recent conversation with you.

We enclose a Submission by our client dated 24 December 2004.

Should you have any queries, please contact Stephen Hicks.

Yours faithfully
MAXIM LITIGATION CONSULTANTS


Stephen Hicks
Consultant

SUBMISSION BY NEWMONT AUSTRALIA

TO

THE ECONOMIC REGULATION AUTHORITY

IN RESPONSE TO ISSUES PAPER

REGARDING

THE REVISED ACCESS ARRANGEMENT FOR

THE GOLDFIELDS GAS PIPELINE

24 December 2004

Prepared by:

Maxim Litigation Consultants
Level 16, QV1
250 St Georges Terrace
PERTH

1. This submission is made on behalf of Newmont Australia in response to the Issues Paper published by the Economic Regulation Authority ('ERA') dated 1 December 2004.
2. Newmont has been greatly disadvantaged by the limited time available in which to respond to the Issues Paper and consider the revised Access Arrangement submitted by GGT. It is apparent from the Issues Paper that GGT had some 3-4 months to prepare the revised Access Arrangement but Newmont was only given 3 weeks in which to respond to it. Furthermore it appears that the ERA was aware since 8 October 2004 that a revised Access Arrangement would be submitted, but Newmont was given no such warning and therefore had no opportunity to organise people and resources to be available during the 3 week period for responding to the Issues Paper. This short period, and the lack of warning, has significantly compromised Newmont's ability to properly consider and respond to the revised Access Arrangement. As a result, Newmont has been forced to limit the issues on which it can provide detailed submissions, but Newmont's failure to address any issue must not be taken as any admission or concession of the validity of the approach adopted by GGT in the revised Access Arrangement.
3. Newmont remains generally supportive of the draft Access Arrangement dated 29 July 2004 issued by the ERA and considers that the approach adopted by the ERA in the draft Access Arrangement is preferable to the approach adopted by GGT in the revised Access Arrangement. However, for the reasons set out in its submission dated 17 September 2004, Newmont submits that the ERA's draft Access Arrangement:
 - a. Incorrectly concludes that recognition of profits earned under the State Agreement regime creates a perception of sovereign risk in dealing with the State of Western Australia;
 - b. Incorrectly exercises its discretion, and acts contrary to the Code, in not taking into account profits earned under the State Agreement regime;
 - c. Attaches undue significance to the expectations of the GGP owners arising from the operation of the State Agreement regime; and
 - d. Incorrectly exercises its discretion, and acts in a manner not permitted by the Code, in arriving at a value for the Initial Capital Base of the GGP.

4. Newmont considers that the revised Access Arrangement submitted by GGT attaches undue significance to 'sovereign risk' and, for the reasons set out more fully in its submission dated 17 September 2004, Newmont contends that:
 - a. The pipeline owners are exposed to no greater risk in Western Australia than they would be exposed elsewhere in which they were investing in a regulated pipeline; and
 - b. The perception of this risk in Western Australia does not differ from the perception of this risk anywhere else.
5. In respect of the Initial Capital Base (ICB) the revised Access Arrangement attaches significant weight to sovereign risk. If Newmont's submissions above regarding sovereign risk are accepted, then it follows that GGT's methodology in calculating the ICB are flawed and should be rejected.
6. Further, the revised Access Arrangement continues to attach great significance to the expectation held by the owners of the GGP that the high rate of return would continue, a rate of return which is substantially in excess of a reasonable estimate of the cost of capital for the GGP. This is expressed in the Supplementary Submission in support of the revised Access Arrangement as "(the investors) expected a return consistent with the approved proposals under the State Agreement" (p.6) and "...these approved tariffs were entrenched under the previous regime and created legitimate expectations that they would continue into the future". The GGP owners do not point to any express promise or warranty that the high rate of return would continue and in truth, this 'expectation' is no more than a hope that the super profits would continue, being a hope founded on the mere fact that the Government had not changed anything. The GGP owners' expectation is not a reasonable expectation for the purposes of clause 8.10(g) of the Code, nor is it a legitimate business interest for the purposes of clause 2.24(a) of the Code.
7. On this issue, GGT's Supplementary Submission seeks to make much of there being "no evidence on which the Authority can conclude that the offering of discounted tariffs during the period in question correlated with any change on the part of the joint venturers in their expectations as to the overall rate of return to be derived from the project" (p.14). Newmont notes that the ERA has power to compel the production of information under s.41 of the Gas Pipelines Access Law. Should the ERA attach any significance to the "no evidence" argument being advanced by GGT then Newmont submits that the

ERA should give detailed consideration to the exercise of its powers under s.41 to obtain evidence and information relating to this argument.

8. GGT's Supplementary Submission also seeks to explain away the discounted tariffs in existence at the time that the current owners purchased their interests in the GGP, on the basis of principle 13 of the Tariff Setting Principles (which permits voluntary reductions in the tariffs). It is submitted by GGT that the discounted tariffs that were made available pursuant to principle 13 do not support the ERA's assumption that there was a reduction in the overall rate of return expectations (p.14). This submission is incorrect and ignores the interaction between principles 12 and 13 of the Tariff Setting Principles. Principle 12 provides, in effect, that when the tariffs generate a rate of return which is inconsistent with a commercial rate of return, the tariffs are automatically re-determined, except where the Owners use principle 13 to voluntarily reduce tariffs. The Tariff Setting Principles are structured so that unless the Owners voluntarily reduce tariffs under principle 13 then principle 12 will automatically trigger a re-determination of the tariffs to provide a commercial rate of return. The proper interpretation of the Tariff Setting Principles taken with the discounts in the A1 tariff in fact supports the inference that the original tariffs set under the Tariff Setting Principles provided an excessive return.
9. GGT's Supplementary Submission also seeks support from correspondence said to have issued on behalf of the previous owners of the GGP (p.14 and 17); and revenue earned by Newmont (p.17) all of which is said to be confidential so the detail is not disclosed. It is impossible for Newmont to properly respond to this material in this form. If the ERA proposes to attach any weight to this material then Newmont demands the opportunity to consider the detail and to respond to it properly.
10. In Newmont's submission the revised Access Arrangement still sets out no unique or distinguishing reasons which would justify an ICB for the GGP outside of the range of values determined by clauses 8.10(a) and (b) of the Code.
11. Newmont takes specific objection to the failure of the revised Access Arrangement to provide a Reference Tariff which varies with the term of the Access Arrangement, and in particular which specifies a Reference Tariff for the traditional benchmark of a 20 year firm service contract. The only explanation offered for this omission is that the use of a single reference tariff

across all contract durations 'has become common in access arrangements for transmission pipelines' (p.45 of the Supplementary Submission). However no evidence is provided in support of this proposition; it is entirely contrary to the structure of the previous Access Arrangements submitted for the GGP; and it is contrary to Newmont's experience. Further any shipper who is prepared to commit to a 20 year firm service contract should be entitled to a discount on shorter term or spot transmission tariffs by reason that such a commitment provides the owner with considerable commercial certainty. This is such a well known and widely recognised fact in tariff pricing for gas transmission that it would be entirely wrong to permit GGT to depart from it as it proposes to do in the revised Access Arrangement. As a minimum the Access Arrangement should specify the Reference Tariff for a 20 year firm service contract, and indicate appropriate premiums for shorter terms (as provided in the ERA's draft Access Arrangement).

12. Newmont makes no specific submission in relation to the issues of Rate of Return, Non Capital Costs, Depreciation and Forecast Demand other than to prefer the approach of the ERA in its draft Access Arrangement and to submit that GGT's revised Access Arrangement does not adequately otherwise address the amendments requested by the ERA.

MAXIM LITIGATION CONSULTANTS