Public Submission

By BHP Billiton

In Response to the Draft Decision on GGT's Proposed Revisions to the Access Arrangement for the Goldfields Gas Pipeline dated 9 October 2009

11 December 2009

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PART A - INTRODUCTION

1 Background

On 23 March 2009, Goldfields Gas Transmission Pty Ltd (**GGT**) submitted proposed revisions to the access arrangement (**Proposed Access Arrangement**) for the Goldfields Gas Pipeline (**GGP**) for approval under the National Third Party Access Code for Natural Gas Pipeline Systems (**Code**).[1]

On 23 March 2009, GGT provided Supporting Information to the Proposed Access Arrangement (**GGT's Further Supporting Information**) to the Economic Regulation Authority (**Regulator**) which the Regulator released to the public, along with an Issues Paper prepared by the Regulator on the Proposed Access Arrangement, on 22 April 2009.

On 2 April 2009, the Regulator invited interested parties to make submissions on the Proposed Access Arrangement by 29 May 2009.[2] On 29 May 2009, BHP Billiton Nickel West Pty Ltd made a submission on the Proposed Access Arrangement, and on 29 May 2009 (confirmed in writing on 2 June 2009) received an extension of time to make a further submission in respect of the Proposed Access Arrangement to 30 June 2009.

On 30 June 2009 BHP Billiton (**BHP Billiton)** lodged a submission in response to the Proposed Access Arrangement (**BHP Billiton's First Submission**).

On 9 October 2009 the Regulator issued a redacted draft decision not to approve the Proposed Access Arrangement (**Draft Decision**), and invited interested parties to make submissions on the Draft Decision by 27 November 2009.

On 9 November 2009 the Regulator released a non-redacted version of the Draft Decision and extended the deadline for submissions on the Draft Decision to 11 December 2009.

2 Introduction

This Submission is made by BHP Billiton in relation to the Draft Decision and related material including:

(a) the Parsons Brinckerhoff - Goldfields Gas Pipeline Access Arrangement - Prepared for Economic Regulation Authority of Western Australia - Draft Report;

(b) Frontier Economics - Review of Weighted Average Cost of Capital estimate proposed by Goldfields Gas Transmission - Final Draft Report Prepared for the Economic Regulation Authority (**Frontier WACC Report**);

(c) Frontier Economics - Review of application of the New Facilities Investment Test by Goldfields Gas Transmission - Draft Report Prepared for the Economic Regulatory Authority; and

(d) Draft Decision on Goldfields Gas Transmission Pty Ltd's Proposed Revisions to the Access Arrangement for the Goldfields Gas Pipeline – Appendix 1 - Authority's Reference Tariff Model.

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1 Contained in Schedule 2 of the *Gas Pipelines Access (Western Australia) Act 1998* (WA).

2 Economic Regulation Authority, 2 April 2009, "Notice - Revisions to Goldfields Gas Pipeline Access Arrangement and Access Arrangement Information Invitation for Public Submissions"

3 Structure

This Submission is structured to focus on the following four areas:

(a) Part A - Introduction

(b) Part B - Coverage

(c) Part C - Volume Forecasts and Trigger Event

(d) Part D - Reference Tariffs

(e) Part E - General Terms & Conditions

(f) Part F - Other Issues

Unless otherwise defined, words and expressions used in this Submission have the meaning given in the Code.

4 Executive Summary

4.1 Coverage

BHP Billiton maintains the position set out in BHP Billiton's First Submission in respect of the coverage of capacity on the GGP. Further, it supports the Regulator's decision:

(i) to include the cost of the assets used to provide the Expansions of Capacity during the current Access Arrangement Period in the Capital Base of the GGP for the purposes of determining the Reference Tariff; and

(ii) to include all actual and forecast costs, revenues and volumes relating to the Expansions of Capacity in the upcoming Access Arrangement Period in determining the Reference Tariff.

BHP Billiton supports the Regulator's amendments to the Extension and Expansion Policy under the General Terms & Conditions proposed in the Draft Decision.

4.2 Volume Forecasts and Trigger Event

The Draft Decision forecasts no increase in current average daily and total throughputs over the entire upcoming Access Arrangement Period. BHP Billiton submits that such forecasts can not be regarded as *"best estimates arrived at on a reasonable basis"*, as required under the Code.

On this basis, BHP Billiton submits that the Regulator should:

(i) utilise the volume forecasts prepared by BHP Billiton set out in section 6.8; and

(ii) request information from GGT regarding any expressions of interest it has received from, or negotiations it has had with, prospective Users to determine the appropriate forecasts.

BHP Billiton also submits that there should not be a trigger event included in the Access Arrangement as discussed in section 7.

4.3 Reference Tariffs

BHP Billiton submits that the Reference Tariff proposed in the Draft Decision is further inflated because:

(a) the calculation of the Reference Tariff does not take into account (and correct) the over-recovery by GGT during the current Access Arrangement Period (discussed in section 9); and

(b) the Rate of Return used by GGT in determining the Reference Tariff is inflated due to the use of the following inaccurate parameter values:

(i) equity beta and asset beta (discussed in section 11); and

(ii) market risk premium (discussed in section 12).

4.4 General Terms & Conditions

BHP Billiton makes the following submissions in respect of the General Terms & Conditions contained in the Draft Decision:

(a) Any changes to the Access Arrangement made by GGT in response to the Draft Decision must be supported by explanatory information that sufficiently sets out the reasons for the amendments in a manner that enables all Users and Prospective Users to form an opinion as to the compliance of the Access Arrangement with the provisions of the Code.

(b) The General Terms & Conditions of the Draft Decision should contain an incentive mechanism which seeks to ensure that the GGP is operated as efficiently as possible (discussed in section 13.2).

(c) There is no justification for the inclusion of escalation factors in the Reference Tariff Calculation other than CPI (discussed in section 13.3).

(d) The Access Arrangement should not enable GGP to unilaterally install remotely actuated flow control valves (discussed in section 13.4).

4.5 Other Issues

BHP Billiton also makes the following submissions in relation to the Draft Decision:

(a) BHP Billiton notes its support for a number of the changes made to the Proposed Access Arrangement by the Draft Decision (discussed in section 14.1).

(b) BHP Billiton supports the proposed price path mechanism, but only if the Reference Tariff is decreased at the commencement of the upcoming Access Arrangement Period to provide the required present value of the tariff revenue (discussed in section 14.2).

(c) In respect of the Non Capital Costs contained in the Draft Decision, BHP Billiton submits that the value of GGT's defined benefit superannuation fund needs to be re-valued given the recovery in global financial markets over recent months to avoid an unnecessary overstatement of future costs.

PART B - COVERAGE

5 Coverage of Capacity

5.1 Issue

In the Proposed Access Arrangement, GGT purported to reserve itself the option to treat Capacity created by future expansions of the GGP as “uncovered capacity” and therefore outside the scope of the Proposed Access Arrangement.

GGT proposed further that, on this basis, the cost of the assets used to provide the expansions of capacity during the current Access Arrangement Period and the actual and forecast costs, revenues and volumes relating to the relevant expansions were not to be included when determining the Reference Tariff.

The Regulator in its Draft Decision has not supported GGT’s proposal in relation to expansions.

5.2 Summary - BHP Billiton position

BHP Billiton broadly supports the position reached by the Regulator in the Draft Decision.

5.3 BHP Billiton’s First Submission

In BHP Billiton’s First Submission, BHP Billiton submitted that all Capacity that is, or becomes, available on the GGP which is provided by means of the infrastructure comprising the Covered Pipeline should be dealt with under the Access Arrangement as part of the Covered Pipeline.

Infrastructure (such as compressors) which expands Capacity on the GGP is part of the GGP. That additional Capacity represents a haulage Service provided by means of the GGP (as a Covered Pipeline) and that Service falls within the Code.

An extension to the GGP (considered separately from an expansion of Capacity of the GGP) is capable of being uncovered and providing a relevant Service in its own right (being from one point to another point serviced by that extension).

Costs in relation to the Covered Pipeline as a whole (including infrastructure expanding Capacity) should be applied in a fair and reasonable manner across all Services provided by means of the Covered Pipeline.

5.4 Regulator’s Draft Decision

In response to GGT’s proposal in relation to the Coverage and expansion of the GGP, the Regulator in its Draft Decision:

(i) rejected GGT’s proposed Extension and Expansion Policy which purported to allow GGT to elect for expanded Capacity on the GGP to not be treated as part of the Covered Pipeline, and imposed an Extension and Expansion Policy which operates to deem expanded Capacity to be part of the Covered Pipeline for all purposes under the Code;[3]

(ii) distinguished between a extension to the GGP and an expansion of Capacity of the GGP so that:

(A) in the case of any future extension during the upcoming Access Arrangement Period, it will be appropriate for GGT to elect either that the extension will be

[3] Required Amendment 44, pp. 206 - 207 of Draft Decision.

treated as part of the Covered Pipeline or (subject to notification to the ERA) that the extension not be treated as part of the Covered Pipeline; and

(B) in the case of any future expansion of capacity during the upcoming Access Arrangement Period, the expansion will be treated as part of the Covered Pipeline;

(iii) determined that, having regard to the Code, the capital assets constructed, developed or acquired for the purpose of providing the Expansion of Capacity are "New Facilities" for the purpose of the Code, and are assets which "are otherwise used to provide Services" and, therefore, form part of the Capital Base of the GGP for the purpose of determining Reference Tariffs;[4] and

(iv) did not accept GGT's submission that the capital and other costs incurred in relation to the Expansions of Capacity are to be excluded from the determination of Reference Tariffs, and determined that all actual and forecast costs, revenues and volumes relating to the Expansions of Capacity must be taken into account in determining the Reference Tariff.[5]

5.5 BHP Billiton response to position in Draft Decision

The decision of the ERA in the Draft Decision is consistent with the submissions made by BHP Billiton in its First Submission:

(i) the ERA has distinguished between a future extension to the GGP and a future expansion of Capacity of the GGP;

(ii) the ERA has decided that a capital asset constructed to expand capacity and enable the Service Provider to provide Services in the nature of haulage services is a "New Facility" (i.e. infrastructure) for the purposes of the Code that forms part of the Covered Pipeline;

(iii) the ERA has decided that the Services for the purposes of the Code include the haulage services for additional capacity provided by means of the GGP as a Covered Pipeline (including the "New Facilities" infrastructure that forms part of the GGP); and

(iv) the ERA has decided that such capital assets are used to provide Services and are to be treated as part of the Capital Base.

Further, BHP Billiton supports the Regulator's decision:

(v) to include the cost of the assets used to provide the Expansions of Capacity during the current Access Arrangement Period in the Capital Base of the GGP for the purposes of determining the Reference Tariff; and

(vi) to include all actual and forecast costs, revenues and volumes relating to the Expansions of Capacity in the upcoming Access Arrangement Period in determining the Reference Tariff.

BHP Billiton also notes its support of the Regulator's proposed amendments to the Extension and Expansion Policy that were proposed under the General Terms & Conditions of the Proposed Access Arrangement.[6]

[4] para. 197 of Draft Decision.

[5] para. 198 of Draft Decision.

[6] See Required Amendment 44.

PART C - FORECAST VOLUMES AND TRIGGER EVENT

6 Volume Forecasts

6.1 Issues

The Proposed Access Arrangement forecasts no increase in current average daily and total throughputs over the upcoming Access Arrangement Period.

While the Regulator has recognised in its Draft Decision that underestimates of volumes would result in Reference Tariffs being substantially above the level that they should be if more accurate forecasts were to be provided,[7] the Regulator has used GGT's data as the basis for determining the Reference Tariff.

6.2 BHP Billiton Submission - Summary

BHP Billiton submits that the volume forecasts used in the Draft Decision to determine the Reference Tariff are crucial and must *"represent best estimates arrived at on a reasonable basis"*, as required under the Code.[8] On this basis, BHP Billiton submits that the Regulator should:

(i) reject GGT's forecasts as clearly contrary to the requirements of the Code;

(ii) utilise the volume forecasts prepared by BHP Billiton set out in section 6.8; and

(iii) request information from GGT regarding any expressions of interest it has received from, or negotiations it has had with, prospective Users to assist in determining the appropriate forecasts.

6.3 Code requirements

Section 8.1(a) of the Code provides that a Reference Tariff should be designed with a view to achieving the objective of providing the Service Provider with the opportunity to earn a stream of revenue that recovers the efficient costs of delivering the Reference Service over the expected life of the assets used in delivering that Service.

Section 8.2(e) of the Code specifies that the Regulator must, prior to approving a Reference Tariff, be satisfied that *"any forecasts required in setting the Reference Tariff represent best estimates arrived at on a reasonable basis."*

The Regulator notes in the Draft Decision that *"in order for a Reference Tariff to achieve the above objectives, it is necessary for the Service Provider to forecast volumes of Services to be provided using the Covered Pipeline"*.

However, BHP Billiton submits that, in the absence of proper forecasts provided by the Service Provider (as is the case with the Proposed Access Arrangement), the Regulator is not in a position to simply utilise these forecasts in determining the Reference Tariff as, by the Regulator's own admission, these do not *"represent best estimates arrived at on a reasonable basis"*.[9] BHP Billiton submits that, in order for the Regulator to ensure that the Reference Tariff meets this requirement, it has the discretion under the Code to formulate its own "best estimates" of forecast volumes, taking into account all available information.

[7] para. 692 of the Draft Decision.
[8] section 8.2(e) of the Code.
[9] section 8.2(e) of the Code.

6.4 Inaccuracy of Historical Forecast Volumes provided by GGT

As noted above, the importance of accurate forecasts is crucial. The importance of forecasting and the significant impact of inaccurate forecasting is best highlighted by GGT's own historical forecasting error.

The Regulator has noted in its Draft Decision that the actual volumes during the current Access Arrangement Period have been "*substantially and materially above the volumes forecast by GGT over the period 2005 to 2009, with the effect that the Reference Tariffs under the current GGP Access Arrangement have been above those which would have been approved had forecasting been more accurate, based on the entire Capacity of the GGP*".[10]

As stated further by the Regulator in the Draft Decision:[11]

> *"It appears that the volume forecasts provided by GGT on 7 July 2005 did not include contracted Capacity totalling approximately 12 TJ/day. This contracted Capacity was not excluded from Coverage at the time GGT submitted its volume forecasts."*
>
> *"Had the additional 12 TJ/day contracted Capacity been included in those forecasts, the Capacity forecast would have been 117.4 TJ/day instead of 105.4 TJ/day. The additional volume of 12 TJ/day, had it been taken into account, is likely to have increased the total contracted volume figures used to determine Reference Tariffs by 11 per cent. This is likely to have produced lower reference tariffs over the access arrangement period 2000 to 2009."*

In addition to the 12 TJ/day understatement of contracted Capacity referred to above, GGT's understatement of contracted Capacity for the current Access Arrangement Period was an average of 24 TJ/d. Table 1 below sets out the variance in each year of the current Access Arrangement Period (based on the figures contained in the Draft Decision[12]).

Table 1: GGP Forecast Contracted Capacity and Actual Contracted Capacity 2005 - 2009

2005-2009 Access Arrangement					
	2005	2006	2007	2008	2009 F
GGP 2005 Forecast Contracted Capacity (TJ/D)	105.6	108.4	110	109.8	107.9
Actual Contracted Capacity (TJ/D)	118.7	120.5	130	142.1	149.2
Actual vs. GGP 2005F (TJ/D)	**13.1**	**12.1**	**20.0**	**32.3**	**41.3**

6.5 Projected Growth

As noted above, the volume forecasts in the Draft Decision predict no increase in the average daily and total throughputs on the GGP during the upcoming Access Arrangement Period. BHP Billiton submits that there is no basis on which such figures could be deemed to be "*best estimates arrived at on a reasonable basis*".

A number of expansion projects have been publicly announced by companies operating in the region serviced by the GGP. For example:

[10] para. 691 of Draft Decision.

[11] paras. 687 - 688 of the Draft Decision.

[12] The data set out in the table is taken from Table 23 an Table 24 on pages 115-116 of the Draft Decision.

- in respect of BHP Billiton's Iron Ore Operations in the region:[13]
    - Rapid Growth Project 4 was approved in March 2007 and will increase capacity by 26Mtpa to 155Mtpa, with construction expected to be completed in 2010;
    - Rapid Growth Project 5 is expected to increase capacity to more than 200 million tonnes per annum (Mtpa) during calendar year 2011;
- Jabiru Metals Limited announced in August 2009 a significant increase in its mineral resources and ore reserves in respect of its Jaguar Operations;[14]
- Apex Minerals NL announced in October 2009 its intention to "to undertake substantial mine development" at its Wiluna gold project;[15]
- St Barbara Limited announced in November 2009 the potential for a new underground gold operation at its Leonora Operations in the later part of 2010;[16] and
- Reed Resources Ltd announced in November 2009 that production for the Mount Marion Lithium Project in is anticipated to commence in 2010.[17]

6.6 New Facilities

BHP Billiton submits that GGT itself clearly anticipates an increase to the average daily and total throughputs on the GGP based on data in the Tariff Model in the Draft Decision (as provided by GGT). For example the Tariff Model includes the following amounts for "New Facilities Investments":

(a) $15.3M for Compressor Stations Upgrade in 2010 (for forecast New Facilities Investment);[18] and

(b) $25.2M in 2008 and $52.2M in 2009 for "Uncovered" Compressor Stations Capex (for New Facilities Investment already carried out).[19]

"New Facilities Investment" is defined in section 8.15 of the Code to mean *"additional capital costs incurred in constructing, developing or acquiring New Facilities for the purpose of providing Services"*.

New Facility is defined in section 10.8 of the Code to mean:

[13] Media Release dated 4 February 2008, available at: http://www.bhpbilliton.com/bb/investorsMedia/news/2008/bhpBillitonApprovesFundingForAcceleratedGrowthAtWesternAustraliaIronOre.jsp

[14] ASX Announcement dated 25 August 2009, available at: http://www.asx.com.au/asxpdf/20090825/pdf/31k8x53cwnzyt6.pdf

[15] ASX Announcement dated 8 October 2009., available at: http://www.asx.com.au/asxpdf/20091008/pdf/31l6nlp1lzhdpn.pdf

[16] ASX Announcement dated 9 November 2009, available at: http://www.stbarbara.com.au/uploads/tx_rlsortthis/091109_ASX_Tarmoola_Final.pdf

[17] ASC Announcement dated 19 November 2009, available at: http://www.asx.com.au/asxpdf/20091119/pdf/31m4xl0xxtr0zg.pdf

[18] para. 315 of Draft Decision.

[19] The Draft Decision states in paragraph 695: "The forecast throughput data for the 2010 to 2014 period, like the historical data, excludes the throughputs related to the Expansions of Capacity by reason of the second Paraburdoo compressor and the Wyloo West and Ned's Creek compressor stations."

“(a) *any extension to, or expansion of the Capacity of, a Covered Pipeline which is to be treated as part of the Covered Pipeline in accordance with the Extensions/Expansions Policy contained in the Access Arrangement for that Covered Pipeline;*

(b) *any expansion of the Capacity of a Covered Pipeline required to be installed under section 6.22; and*

(c) *any capital asset constructed, developed or acquired to enable the Service Provider to provide Services including, but not limited to, assets required for the purposes of facilitating competition in retail markets for Natural Gas.”*

Based on the above, GGT has committed approximately $92.7M over the last two years and the coming year to be spent on New Facilities which, by definition in the Code, are “constructed, developed or acquired to enable [GGT] to provide Services.”

On this basis, it stands to reason that GGT are forecasting the daily and total throughputs on the GGP during the upcoming Access Arrangement Period to increase. This means that the forecasts provided by GGT, and those set out in the Draft Decision, are clearly erroneous and could not be arrived at on a reasonable basis.

It stands to reason that given incorporation of a New Facilities Investment Amount in the Capital Base there must be an expectation of increased throughput.

6.7 Regulator to obtain information from GGT of forecast volumes

BHP Billiton submits that the issues raised in sections 6.5 and 6.6 above are sufficient to give the Regulator reason to believe that GGT has information that may assist the Regulator in the performance of its obligations under the Code.[20] On this basis, BHP Billiton submits that the Regulator should utilise its powers under section 41 of the Gas Pipelines Access (Western Australia) Act 1998 (WA) to require GGT to provide the Regulator with any information that relates to the potential growth of throughput on the GGP during the upcoming Access Arrangement Period, including:

(a) any expressions of interest received by GGT from Prospective Users of the GGP;

(b) information in relation to negotiations or discussions GGT has had with prospective users of the GGP for the upcoming Access Arrangement Period; and

(c) any of GGT’s internal forecast modelling information it has prepared for its own purposes.

6.8 BHP Billiton’s forecast modelling

BHP Billiton submits that the use of extrapolation of historical figures contained in the Draft Decision is a reasonable and appropriate basis for setting Reference Tariffs, with those estimates being:

(a) Historical Extrapolation of 5 year data; and

(b) Historical Extrapolation of 9 yr data.

[20] In particular, information which will assist the Regulator to ensure that forecasts required in setting the Reference Tariff represent best estimates arrived at on a reasonable basis (section 8.2 of the Code) and the general principles in section 8.1 of the Code.

Historical extrapolation of 5 year data from the current Access Arrangement provides a good indication of likely future utilisation. The current Access Arrangement Period includes both 'boom' and 'bust' economic conditions with expansions, closures and new ventures. There appears to be no abatement of project expansions and potential new projects on the GGP.

Historical extrapolation of 9 year data from the current Access Arrangement Period and from the period prior to this provides a more conservative estimate of likely contracted Capacity. This includes the slow growth period of 2000 to 2004, and could be considered as a very conservative long term average growth of business in the Goldfields.

It should be noted that BHP Billiton's proposal (being the average of the two extrapolations) represents a very modest 7.4% annual growth of contracted Capacity.

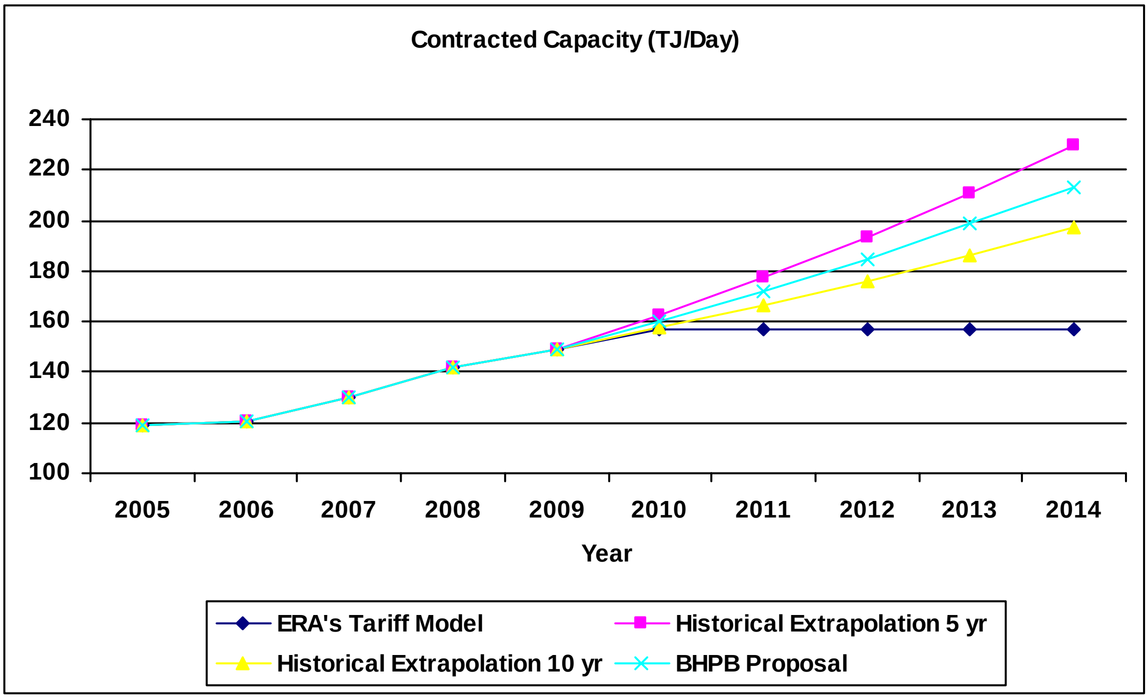
Table 2 below sets out BHP Billiton's volume forecast amounts, and Figure 1 sets out BHP Billiton's volume forecasts in graph form.

The Regulator's Tariff Model has been included in the table for comparison purposes only. BHP Billiton considers it unreasonable to use the Regulator's Tariff Model as a basis for establishing a 5 year forecast. Further, this is inconsistent with the GGT's plans for immediate continuation of capital expenditure to expand the Capacity of the GGP.

Table 2: BHP Billiton's volume forecast amounts for GGP

2010-2014 Access Arrangement - Proposed Contracted Capacity					
	2010	2011	2012	2013	2014
Regulator's Tariff Model (TJ/day)	156.8	157.0	156.9	157.2	157.2
Historical Extrapolation 5 yr (TJ/D)	162.6	177.2	193.2	210.6	229.5
Historical Extrapolation 9 yr (TJ/D)	157.7	166.7	176.3	186.3	197.0
BHP Billiton's Proposal (TJ/D)	**160.2**	**172.0**	**184.7**	**198.4**	**213.2**

Figure 1: BHP Billiton GGP volume forecasts



6.9 BHP Billiton's Conclusion

BHP Billiton submits that, in the absence of reasonable estimates from GGT of volume forecasts, the Regulator should use the figures set out in BHP Billiton's Proposal, which provides an average of all historical data available.

In addition, BHP Billiton submits that the issues raised in sections 6.5 and 6.6 above are sufficient to establish that GGT has information that may assist the Regulator in the performance of its obligations under the Code, and the Regulator should request this information from GGT.

In the event that GGT provide revised estimates, and those estimates are considered reasonable by the Regulator, then BHP Billiton would not be opposed to those estimates being included as a one-third contributor to above estimate average.

7 Trigger event

7.1 Issue

The Regulator has proposed that a trigger event be incorporated into the Access Arrangement.

7.2 BHP Billiton Submission - Summary

BHP Billiton submits that there should not be a trigger event.

7.3 Trigger event proposed in the Draft Decision

The Regulator has proposed the insertion of the following "trigger event" in the Draft Decision:

> *"(a) If a Revisions Trigger Event occurs at any time prior to 3 months before the Revisions Submission Date then GGT must submit revisions to this Access Arrangement by no later than the day which is 3 months after the Revisions Trigger Event occurs.*

(b) *For the purpose of paragraph (a) a Revisions Trigger Event occurs when GGT lodges with the Minister for Mines, Western Australia, an application/s for alteration/s to Pipeline Licence PL24, Goldfields Gas Pipeline, as required under licence condition 10 "Alterations to the Pipeline", under which:*

(i) *GGT seeks to vary Pipeline Licence PL24 where the alteration/s relates to the construction and installation of expansion facilities; and*

(ii) *the capacity of the GGP will be increased (as measured at the GGP Inlets, noting that in GGT's Access Arrangement Information the current inlets are described in section 12, System Description); and*

(iii) *the total amount of all such applications made within the forthcoming Access Arrangement Period increase the capacity of the GGP (as measured at the GGP Inlets) beyond 173 TJ/day."*

7.4 Reasons why trigger event is inappropriate

It is unclear from the Draft Decision and GGT's current Pipeline Licence PL24 (**PL24**) what Capacity the GGP can achieve before GGT is required to apply for a change to the PL24. It appears that the Regulator has inferred from data supplied by GGT that the current PL24 limits the GGP Capacity to something below 173 TJ/day.

BHP Billiton submits that the inclusion of the trigger event proposed in the Draft Decision is likely to have the effect of restricting the ability for the Access Arrangement to achieve the objectives in section 8.1 of the Code, namely:

(a) providing the Service Provider with the opportunity to earn a stream of revenue that recovers the efficient costs of delivering the Reference Service (section 8.1(a));

(b) replicating the outcome of a competitive market (section 8.1(b));

(c) efficiency in the level and structure of the Reference Tariff (section 8.1(e)); and

(d) providing an incentive to the Service Provider to reduce costs and to develop the market for Reference and other Services (section 8.1(f) of the Code).

BHP Billiton makes this submission on the basis that the inclusion of the Trigger Event operates as a disincentive to proper and efficient operation and expansion for several reasons:

(a) There is a significant incentive for GGT to underestimate forecast contracted Capacity.

(b) GGT will be incentivised to limit GGP Capacity below the Trigger Event value as there is likely to be a step reduction in Tariffs following a Trigger Event.

(c) GGT will be incentivised to apply for PL24 variations that keep it marginally below the threshold for the Trigger Event (even if the GGP is capable of Capacity in excess of the limits imposed by PL24). Only when the demand significantly exceeds 173 TJ/day will GGT consider it worthwhile to sell Capacity to exceed the threshold for the Trigger Event.

7.5 BHP Billiton Submission

BHP Billiton submits that, if the Regulator accepts BHP Billiton's proposed volume forecasts as set out in section 6.8, there is no requirement for a Trigger Event. BHP Billiton acknowledges that, if throughput exceeds the forecasts proposed by BHP Billiton, that GGT will earn the additional income and that this operates as an incentive for expansion.

However, in the alternative, if the Regulator rejects BHP Billiton's proposed forecast set out in section 6.8, a Trigger Event mechanism that discourages forecast underestimates is necessary. The appropriate Trigger Event should be based on variance between forecast contracted capacity and actual contracted capacity. Such a variance should not be in excess of 5% of forecast contract Capacity as:

(a) 5% variance is material; and

(b) any Trigger Event outside 5% Variance from forecast is likely to be a significant detrimental behaviour modifier.

PART D - REFERENCE TARIFFS

8 Introduction

8.1 Issue

BHP Billiton submits that the Reference Tariff proposed in the Draft Decision is inflated because:

(a) the calculation of the Reference Tariff does not take into account (and correct) the over-recovery by GGT during the current Access Arrangement Period (discussed in section 9); and

(b) the Rate of Return used by GGT in determining the Reference Tariff is inflated due to the use of the following inaccurate parameter values:

(i) equity beta and asset beta (discussed in section 11);and

(ii) market risk premium (discussed in section 12).

9 Consideration of GGT's over-recovery

9.1 Issue

As a result of GGT's inaccurate volume forecasts provided for the current Access Arrangement Period (see section 6.4 above), GGT's revenue during the current Access Arrangement Period was in excess of the revenue GGT was properly entitled to receive under the Code.

9.2 Summary - BHP Billiton Position

BHP Billiton submits that GGT's over-recovery of revenue during the current Access Arrangement Period should be taken into account by the Regulator when determining the Reference Tariffs to apply during the upcoming Access Arrangement Period. BHP Billiton submits that such an approach is consistent with the provisions of the Code.

9.3 Over-recovery by GGT

BHP Billiton submits that GGT will have over-recovered revenue for the equivalent of 43.4 PJ by the end of the current Access Arrangement Period. Using the Regulator's estimate of $25 million as the amount over-recovered by GGT for the understatement of contracted Capacity by 12 TJ/day,[21] this equates to a total over-recovery of approximately $50 million in the current Access Arrangement Period.

BHP Billiton's calculation of GGT's over-recovery during the Current Access Arrangement Period relies on data extracted from the Regulator's Draft Decision, and is set out in Table 3.

[21] Draft Decision, para. 689.

Table 3: GGT's over-recovery during the current Access Arrangement Period

GGT Over-recovery 2005-2009						
Contracted Capacity	**2005**	**2006**	**2007**	**2008**	**2009**	**2005-09**
GGP 2005 Forecast (TJ/D)	105.6	108.4	110	109.8	107.9	108.34
GGP 2005 Forecast Annual (PJ)	38.5	39.6	40.2	40.2	39.4	197.8
Actual (TJ/day)	118.7	120.5	130	142.1	149.2	132.1
Actual Annual (PJ)	43.3	44.0	47.5	52.0	54.5	241.2
12 TJ/D Impact (PJ)	4.4	4.4	4.4	4.4	4.4	21.9
Lower Forecast (PJ)	0.4	0.0	2.9	7.4	10.7	21.5
Total Over-recovery (PJ)	**4.8**	**4.4**	**7.3**	**11.8**	**15.1**	**43.4**

(a) Over recovery by GGT recognised in the Draft Decision

As noted in the Draft Decision (para. 687) the volume forecasts provided by GGT for the Current Access Arrangement did not include contracted Capacity totalling approximately 12 TJ/day. The effect of this on GGT's revenue is noted in the Draft Decision:

> *"Had the additional 12 TJ/day contracted Capacity been included in those forecasts, the Capacity forecast would have been 117.4 TJ/day instead of 105.4 TJ/day. The additional volume of 12 TJ/day, had it been taken into account, is likely to have increased the total contracted volume figures used to determine Reference Tariffs by 11 per cent. This is likely to have produced lower reference tariffs over the access arrangement period 2000 to 2009.*
>
> *The impact on the total revenue over the 2000 to 2009 period (in present value $2009) is likely to have been approximately $25 million or 2 per cent of the total revenue figure over this period (89% of revenue is distance based so there is not a one-to-one relationship between contracted capacity and reference tariff revenue). Similarly, Reference Tariffs are likely to have been 2 per cent lower if this additional volume had been taken into account."*

BHP Billiton submits that the 12 TJ/day understatement by GGT of forecasted load at the time of submitting it proposed Access Arrangement should have been reasonably known by GGT and should have been included in the volume forecasts for 2005-2009 Access Arrangement. In BHP Billiton's view, this is a clear mistake and should be treated similarly to the Regulator's treatment of the mistaken advice for Asset Depreciation (ref para 377 of the Draft Decision) that is: *"The [Regulator] requires that the Cost of Service for the forthcoming Access Arrangement be reduced to account for the overstated Depreciation during the current Access Arrangement Period"*.

(b) Over recovery by GGT not recognised in the Draft Decision

BHP Billiton ascertains from the Regulator's Tariff Model that large amounts of Compressor Station Capex have been included progressively from 4th Quarter 2005, which is consistent with significant increases in Capacity commencing 4th Quarter 2006. BHP Billiton submits that, given the inclusion of the cost of that expansion in the current Access Arrangement, the forecast of associated revenue (based on increased throughput) should have similarly been included. BHP

Billiton submits that it is reasonable to extrapolate that GGT was, or should have been, aware of the likely contracted Capacity to be taken up progressively from the 4th Quarter 2006, given the long lead times for implementation of such expansions. Again, BHP Billiton submits that the additional over-recovery of revenue from an additional 21.5 PJ (being the quantity by which the forecast volume was understated) be returned to the Users during the upcoming Access Arrangement Period.

9.4 Code Provisions

The preamble to section 8 of the Code states:

> *"The Reference Tariff Policy and all Reference Tariffs should be designed to achieve a number of objectives, including providing the Service Provider with the opportunity to earn* ***a stream of revenue that recovers the costs of delivering the Reference Service over the expected life of the assets used in delivering that Service****, to replicate the outcome of a competitive market, and to be efficient in level and structure* (emphasis added).*"*

Similarly, clause 8.1(a) states:

> *"A Reference Tariff and Reference Tariff Policy should be designed with a view to achieving the following objectives:*
>
> *(a) providing the Service Provider with the opportunity to earn a stream of revenue that recovers the efficient costs of delivering the Reference Service over the expected life of the assets used in delivering that Service."*

Based on the above, the Code (specifically clause 8.1(a)) contemplates that GGT will recover the *"efficient costs of delivering the Reference Service over the expected life of the* [GGP]".

If GGT's over-recovery during the current Access Arrangement Period is not corrected, the likely outcome will be that, over the life of the GGP, GGT will recover an amount greater than the "*efficient costs of delivering the Reference Service"*. BHP Billiton submits that such an outcome would be inconsistent with the objectives and intent of the Code.

BHP Billiton submits that in order to satisfy this Code objective, an ongoing assessment of the revenue should be undertaken during the life of the asset, and for any necessary corrections to the revenue stream to be made periodically.

9.5 Incorporation of GGT over-recovery into calculation of Reference Tariff

The Regulator has *"a broad discretion to refuse to accept an Access Arrangement"*[22] and, more specifically, a broad power to determine whether a Reference Tariff meets the requirements of the Code. Section 8.49 of the Code states:

> *"Subject to the requirement for public consultation, the Relevant Regulator may determine its own policies for assessing whether a Reference Tariff meets the requirements of this section 8* [which sets out the principles with which Reference Tariffs included in an Access Arrangement must comply]."

BHP Billiton submits that the best approach for taking into account the over-recovery by GGT during the current Access Arrangement Period would be for the Regulator to use its discretion under the Code in respect of the approval of the Reference Tariffs to lower the Reference Tariffs applicable during the upcoming Access Arrangement Period by an amount equivalent to GGT's over-recovery (as set out in section 9.3). One way the Regulator could do this is to reduce the Cost of Service under the Proposed Access Arrangement by an amount equal to GGT's over-recovery.

[22] Preamble to section 2 of the Code.

10 Rate of Return

10.1 Issue

In determining the Reference Tariff, the Draft Decision proposes a range for the Nominal Pre-tax WACC of 9.34% - 11.22%.

10.2 Summary - BHP Billiton Position

It is BHP Billiton's view that the proposed range for the Nominal Pre-tax WACC is too wide, with the high point of 11.22% being unreasonably high. BHP Billiton submits that, broadly, the reason for the inflated upper limit on the Nominal Pre-tax WACC is that the upper limits of the input assumptions, in particular the market risk premium and equity beta, is inflated and unreasonable.

11 Equity Beta and Asset Beta

11.1 Issues

The equity beta recommended in the Draft Decision was 0.8 - 1.2. BHP Billiton submits that this is inflated.

11.2 Summary - BHP Billiton position

BHP Billiton submits that the equity beta should be 0.5 - 0.8.

11.3 Draft Decision and Frontier's Report

In its Draft Decision, the Regulator did not accept GGT's proposed equity beta value range of 1.0 - 1.8, instead setting a range of 0.8 - 1.2. The Regulator's decision was based on the findings in respect of equity beta in the Frontier WACC Report.

11.4 Appropriate equity and asset beta

Equity beta is a method of assessing volatility of an asset or business (as reflected by the market value of the owner) relative to the market as a whole. On this basis, in determining the appropriate equity beta for the Proposed Access Arrangement, consideration must be given to whether GGT is exposed to a level of systematic (non-diversifiable) risk that is higher, lower or equal to the market as a whole.

BHP Billiton submits that setting the upper boundary of 1.2 in the Frontier WACC Report is erroneous (i.e. including mining company betas- systematic risk does not reflect that of the customer base) for reasons acknowledged by Regulator. BHP Billiton's First Submission sets out why GGT should not be considered an average firm in the market (beta = 1.0) and its beta should be significantly reduced to reflect GGT's risk reduction via contractual volume and price agreements and ability to secure bonds from customers.[23]

APA Group (**APA**), who holds an 88% ownership interest in GGP, has an equity beta of 0.69.[24] APA has noted in ASX announcements that one of their strengths is stable cash flow through

[23] For example, see pages 30 - 35 of BHP Billiton's First Submission.

[24] http://www.reuters.com/finance/stocks/overview?symbol=APA.AX

regulated and contracted revenue.[25] Similarly, it was noted in APA's Chairman's address at APA's most recent annual general meeting:[26]

> *"APA is one of the few companies whose security price increased while the value of Australian shares on the market fell. We gained 42 cents in the 15 months to September 2009 - a 15% increase on the corresponding period the previous year - while the market fell by 3% in the same period."*

Further to this, in APA's 2009 Annual Report, the following comments are made:

> *"APA's revenue is secure and predictable, a benefit that has been highlighted in this difficult economic environment. The security of these cash flows reflects the nature of the industry in which APA operates"*

> *"APA is fortunate to earn most of its revenue from large, credit worthy customers, such as AGL Energy, Origin Energy, TruEnergy and Santos. As well, our pipelines that are focused on the mineral provinces in Western Australia and Queensland also benefit from dealing with organisations such as BHP Billiton, Newmont, Xstrata and Rio Tinto. While we also deal with some smaller companies in the mining sector, we are cautious to ensure that we seek appropriate security arrangements for their payment obligations. A highlight of this year was the growth in EBITDA from our Goldfields Gas Pipeline, despite the significant downturn in the mining sector."*

These comments are again consistent with APA having an equity beta of less than 1.0, and are a reflection that their key assets are natural gas infrastructure. BHP Billiton submits it is therefore inconsistent that the parent company (which is close to a pure transmission and fixed infrastructure investment company) has an equity beta significantly less than 1.0 (as measured by the market), but one of its key regulated and contracted revenue streams is viewed as having an equity beta between 0.8 and 1.2 – or indeed almost double that of its parent company at the upper end of the range.

In BHP Billiton's First Submission, BHP Billiton referred to the AER's equity beta range of 0.7-1.1 for electricity and gas transmission assets in its May 2009 review of the weighted average cost of capital parameters (**AER WACC Report**).[27] The Frontier WACC Report questions the utility of the AER's decision on the basis that *"it is generally accepted that the gas pipeline business has higher systematic risk than the electricity transmission and distribution business because of its greater exposure to commercial/industrial customers."* Frontier did not provide any supporting evidence for this statement. BHP Billiton submits that, given the lack of supporting evidence for this statement, the AER WACC Report should be considered in determining the equity beta for the Proposed Access Arrangement.

Six of eight decisions considered in the AER WACC Report had final equity betas of less than 1.0, with only a single decision having an equity beta of 1.1. Additionally, the equity beta range adopted by the NER was 0.9-1.0.[28] AER note that *"in the most recent electricity and gas determinations jurisdictional regulators have all adopted point estimates of the equity beta of less than 1.0"*.[29] The ESC's 2008 decision for the Victorian gas distribution business determined an equity beta of 0.7. The AER concluded that there was persuasive evidence to lower the previously adopted equity beta of 1.0.

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[25] source; http://www.apa.com.au/investor-centre/news/asxmedia-releases/2009/citi-australian-investment-conference.aspx

[26] Set out in the APA Group's ASX announcement dated 30 October 2009 available here: http://www.asx.com.au/asxpdf/20091030/pdf/31lqr8y0mmx7sl.pdf.

[27] Australina Energy Regulator, Electricity transmission and distribution network service providers Review of the weighted average cost of capital (WACC) parameters, May 2009, p

[28] page 241 of AER WACC Report.

[29] page 243 of AER WACC Report.

BHP Billiton submits that the historical use of an equity beta of 1.0 by regulators is an overly conservative interpretation of the empirical evidence. Applying a similar methodology to this situation, the high case should be set a 0.8, not at 1.2, as there is no logical reason to extend the upper range for the equity beta beyond 0.8. BHP Billiton submits further that taking an overly cautious approach in determining equity beta results in the Pipeline Operator unfairly benefiting through receiving higher payments for gas distribution, at the expense of gas customers who are paying rates which are inconsistent with the underlying risk that the distributor of that gas is carrying.

For the reasons outlined above GGT carries less risk than the market and BHP Billiton advocates a high case beta of no more than 0.8 and a low of 0.5 (which is consistent with the lowest beta seen for the American company AGL Resources).

12 Market Risk Premium

12.1 Issue

The Draft Decision adopts a range value of 5% - 7% for the market risk premium (**MRP**).

12.2 Summary - BHP Billiton Position

BHP Billiton submits that there is no basis for a 7% upper range amount, and that the range value for the MRP should be 5 – 6%.

12.3 Draft Decision and Frontier Report

In the Draft Decision, the Regulator has concluded that a reasonable range of values for the MRP is 5% to 7%.

In making its decision, the Regulator supported its earlier position taken in respect of the South West Interconnected System, in which the Regulator noted that most regulators apply a value of 6% to the MRP.[30]

The basis for the Regulator including an upper limit of 7% for the MRP in the Draft Decision appears to have been the perceived "impacts of the financial crisis", as set out in the Frontier WACC Report prepared for the Regulator.

In setting the upper limit of 7% for the range of values for the MRP, the Frontier WACC Report states:

> *"At present, debt spreads, dividend yields, and option volatilities are all at abnormally high levels. This points strongly towards an increase in the market risk premium to a value above 6%".*

However, due to the timeframes associated with the preparation of the Frontier WACC Report and the finalisation process for the Draft Decision, the data used in the Frontier WACC Report (and relied on by the Draft Decision) to support the above position is outdated, being published during the period February - May 2009.[31]

12.4 Appropriate market risk premium

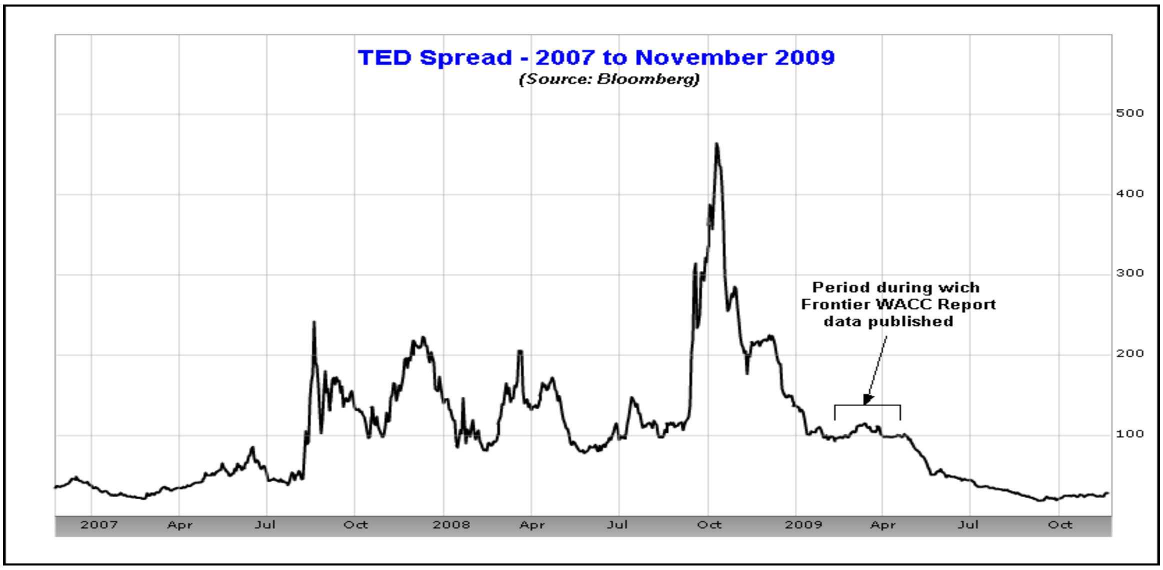
BHP Billiton submits that in the seven to ten months since the data relied on in the Frontier WACC Report was published, the market has stabilised, with debt spreads and market volatility returning

[30] para. 453 of Draft Decision.

[31] Frontier WACC Report, pp. 10-15.

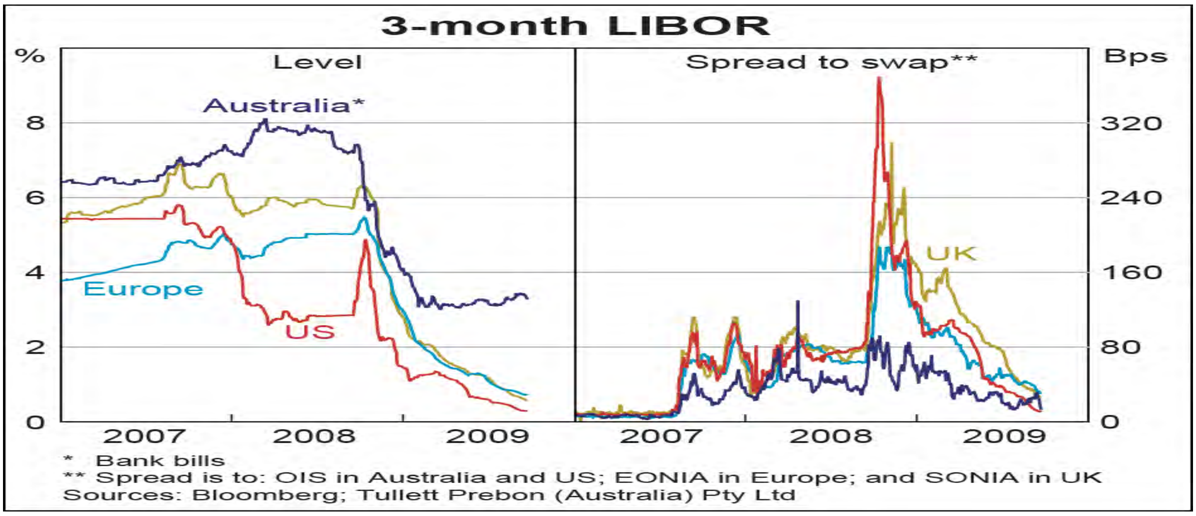
to near historical levels. This position is reflected in the TED Spread during the last 12 months, as shown in Figure 2 below.[32]

Figure 2: Ted Spread - 2007 to November 2009



The narrowing of risk spreads is occurring across the majority of global financial markets. The Reserve Bank of Australia (**RBA**) states in its September 2009 Financial Stability Review that *"in all major short-term money markets, risk spreads have returned to levels prevailing in 2007, taking market interest rates to very low levels"*.[33] This is reflected in the 3 month London Interbank Offered Rate figures set out in figure 3 below.

Figure 3: 3-month London Interbank Offered Rate



Based on the above information, BHP Billiton submits that the market circumstances that the Regulator used to support setting a higher than usual upper range of 7% on the range value for the

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32 The TED spread is calculated as the gap between 3 month LIBOR (an average of interest rates offered in the London interbank market for 3-month dollar-denominated loans) and the 3-month US Treasury bill rate (ie short term US Government debt). The TED spread is an indicator of perceived credit risk in the general economy. When the conditions bring about an increase in the TED spread, lenders believe the risk of default on interbank loans (also known as counterparty risk) is increasing.

33 Reserve Bank of Australia, September 2009 Financial Stability Review, page 9, available at: http://www.rba.gov.au/PublicationsAndResearch/FinancialStabilityReview/Sep2009/Pdf/financial-stability-review-0909.pdf

MRP, namely high levels of debt spreads, dividend yields, and option volatilities are no longer in existence or are in the final stages of working their way through the financial system.

BHP Billiton submits that, given the stabilisation of the market, there are currently no financial market conditions that warrant any adjustment to the historical average range value for the MRP of 5% - 6%. Any range that extends to a value higher than 6% is unreasonable.

PART E - GENERAL TERMS & CONDITIONS

13 Amendments to the General Terms and Conditions

13.1 Obligation to provide sufficient information in support of changes

(a) Issue

As noted by the Regulator in the Draft Decision, GGT did not provide the Regulator with any Access Arrangement Information or any further submissions in relation to a number of the proposed amendments to the current Access Arrangement.

(b) BHP Billiton Submission

BHP Billiton maintains its position set out in BHP Billiton's First Submission,[34] namely that the Code requires GGT to provide sufficient supporting information to enable BHP Billiton (and other Users) to understand the derivation of all amendments to the current Access Arrangement and to form an opinion as to the compliance of the Access Arrangement with the provisions of the Code.[35]

On this basis, any changes to the Access Arrangement made by GGT in response to the Draft Decision should be supported by explanatory information that sufficiently sets out the reasons for the amendments in a manner that enables all Users and Prospective Users to form an opinion as to the compliance of the Access Arrangement with the provisions of the Code. It follows that any proposed amendments not accompanied by such information should not be allowed.

(c) Relevant provisions of the Code

The Function of Access Arrangement Information is set out in the pre-amble to section 2 of the code:

> *"Access Arrangement Information should enable Users and Prospective Users to understand the derivation of the elements of the proposed Access Arrangement and form an opinion as to the compliance of the Access Arrangement with the Code. The Access Arrangement Information must include the categories of information identified in Attachment A to the Code."*

Clauses 2.6 of the Code state:

> *"Access Arrangement Information must contain such information as in the opinion of the Relevant Regulator would enable Users and Prospective Users* ***to understand the derivation of the elements in the proposed Access Arrangement and to form an opinion as to the compliance of the Access Arrangement with the provisions of the Code****."*

13.2 Efficiency-incentive mechanism

(a) Issue

The Draft Decision does not contain any incentive or obligation for GGT to operate the GGP as efficiently as possible.

(b) BHP Billiton Submission - Summary

[34] page 44 of BHP Billiton First Submission.

[35] Clause 2.6 of the Code.

BHP Billiton submits that the Access Arrangement should contain an incentive mechanism which seeks to ensure that the GGP is run as efficiently as possible.

(c) Requirement for efficient operation

The Code specifies that, in assessing a proposed Access Arrangement, the Regulator must take into account (among other things) *"the economically efficient operation of the Covered Pipeline"*[36] as well as *"the interests of Users and Prospective Users"*.[37]

(d) Proposed incentive mechanism

BHP Billiton submits that in taking into account the economically efficient operation of the GGP the Regulator must ensure that GGT is motivated under the terms of the Access Arrangement to minimise gas consumption and losses and therefore associated emissions. This is consistent with both the Code objectives and market practice in a competitive market where there is any attempt to pass the risk of future carbon costs to consumers.

The current pass through of System Use Gas costs to the pipeline Users provides little incentive for GGT to operate the GGP efficiently. Under the Proposed Access Arrangement, Users are required to provide System Use Gas to meet GGT's actual requirements, with no provision for GGT to contribute in the event of inefficient operations.

BHP Billiton submits that the Proposed Access Arrangement should be amended to ensure that GGT is required to operate the GGP efficiently. For this reason, BHP Billiton submits that an incentive mechanism should be incorporated into the proposed Access Arrangement which encourages GGT to comply with that requirement.

BHP Billiton submits that a mechanism along the following lines would provide appropriate incentive for the efficient operation of the GGP:

(i) an independent specialist consultant be engaged to establish the efficient level of System Use Gas for the GGP. This may include a narrow range of acceptable operation; and

(ii) System Use Gas limits are then set through the Access Arrangement; and

(iii) where GGT operates the GGP more efficiently than the set guidelines, it is allowed to keep incremental System Use Gas provided by Shippers below the set guidelines; and

(iv) where GGT operates the GGP less efficiently that the set guidelines, it is required to provide the incremental System Use Gas above the set limits (at its cost).

BHP Billiton notes that the inclusion of an incentive mechanism in respect of Shipper System Use Gas would be broadly consistent with the Access Arrangement in respect of the DBNGP.

BHP Billiton also notes that a number of Users on the GGP access the GGP under agreements outside of the Access Arrangement. On this basis, BHP Billiton submits that any incentive mechanism should be separate from the Reference Tariff (i.e. the mechanism should not, for example, seek to incorporate a fixed charge for Shipper System Use Gas into the Reference Tariff) otherwise there is a risk that shippers under legacy agreements will effectively be charged twice for Shipper System Use Gas.

Further, it would be inappropriate to impose a change to the Tariff Structure that requires GGT to purchase the whole of system use gas, where long term agreements are likely to already be in place where the Shippers are responsible for supplying Shipper System Use Gas. The Regulator, in

[36] section 2.24(d) of the Code.

[37] section 2.24 (f) of the Code.

determining an appropriate incentive mechanism should seek information from GGT on these issues.

13.3 Use of multiple escalation factors in the Reference Tariff calculations

(a) Issue

The Draft Decision allows for three escalation factors applicable in the Reference Tariff Calculation.

(b) BHP Billiton Submission - Summary

BHP Billiton submits that there is no justification for the inclusion of escalation factors in the Reference Tariff Calculation other than CPI.

(c) Reference Tariff Adjustment Mechanism Draft Decision

Reference Tariff Adjustment Mechanism set out in the Draft Decision contains three distinct parts:

(i) Tariff Components increase annually in accordance with movements in the CPI;

(ii) Variations in Regulatory Costs from forecasts are reflected in annual variations to Reference Tariffs which thereby are passed through to Users (**Regulatory Costs Escalation**); and

(iii) Tariff Components may be varied individually in accordance with the overall Price Path, subject to a (1+Y) cap on variances, with Y set at 2% (**Y Escalation**).

(d) Relevant provision of the Code

Clause 8 of the Code includes the provision:

> *"The overarching requirement is that when Reference Tariffs are determined and reviewed, they should be based on the efficient cost (or anticipated efficient cost) of providing the Reference Services."*

(e) BHP Billiton Submission

BHP Billiton submits that the Regulator's Tariff Model is intended to provide Reference Tariffs which reflect an efficient Cost of Service. The inclusion of the Regulatory Costs Escalation and the Y Escalation provides for additional return to GGT above the efficient Cost of Service.

(f) Regulatory Cost Escalation

BHP Billiton submits that GGT has control over the costs that it chooses to expend in managing its regulatory affairs. Further, BHP Billiton submits that the Regulator is obliged to consider those costs and determine if they are appropriate. The inclusion of a right for GGT to pass any incurred "Regulatory Costs" through to the Users encourages GGT to expend large amounts on regulatory affairs which otherwise should not be expended in an efficient model. It should be noted that if the Regulatory Costs Escalation were part of the current Access Arrangement all the costs incurred by GGT in submitting the Proposed Access Arrangement (which, in BHP Billiton's view contained a number of tenuous submissions which were rejected by the Regulator) would have been passed through to Users. BHP Billiton submits that this is unreasonable and contrary to the objectives of the Code.

It is also noted that the Regulatory Costs Escalation calculation includes a WACC mark-up. BHP Billiton submits that this is inappropriate as it has the effect of providing GGT with a profit on its Regulatory Costs.

BHP Billiton submits that the Regulatory Cost Escalation should be removed from the Reference Tariff Adjustment Mechanism in the Draft Decision. In the alternative, if the Regulator does not accept BHP Billiton's position, the Regulatory Cost Factor should only include a narrow definition of Regulatory costs which are fully outside the control of GGT, such as licence fees and not the cost of any proposed Access Arrangement or submission process or disputes.

(g) Y Escalation

There has been no information or explanation provided in respect of the Y Escalation Factor in the Draft Decision, or in GGT's submissions to the Regulator. BHP Billiton refers to its submission in section 13.1 that the Code requires GGT to provide sufficient supporting information to enable BHP Billiton (and other Users) to understand the derivation of the elements in the proposed Access Arrangement and to form an opinion as to the compliance of the Access Arrangement with the provisions of the Code.

BHP Billiton submits that inclusion of such an adjustment by its nature provides uncertainty as to the forward structure of Regulated Tariffs, and will impact costs to Users. BHP Billiton submits that the Y Escalation should be removed from the Reference Tariff Adjustment Mechanism.[38]

13.4 Remotely actuated shut off valve and a remotely actuated flow control valve

(a) Issue

The Draft Decision contemplates the installation of a remotely actuated shut off valve and flow control valve "for the benefit of the User at the User's cost."

(b) BHP Billiton Submission

BHP Billiton agrees that a remotely operated shut off valve is a necessary safety provision. However, BHP Billiton submits that a remotely actuated flow control valve does not provide any benefit to Users of the GGP nor does it enhance the safety of the GGP. On this basis, the Access Arrangement should not enable GGP to unilaterally install remotely actuated flow control valves.

[38] Further, BHP Billiton notes that, in the event that there are significant changes to costs and/or types of service being provided to Users, GGT has the right to submit a revised Access Arrangement to the Regulator for consideration.

PART F - OTHER ISSUES

14 Other Issues

14.1 Regulator’s Required Amendments to the Access Arrangement supported by BHP Billiton

In addition to various amendments in the Draft Decision which BHP Billiton has noted its support of elsewhere throughout this submission, BHP Billiton also supports the following decisions (and related Required Amendments) of the Regulator:

(a) the recommendation in the Draft Decision for a gamma parameter value for determination of a Rate of Return of 57% - 81% (para. 529);

(b) the Regulator’s decision not to approve GGT’s proposal to include an allowance for asymmetric risk in its forecast Non Capital Costs (para. 641);

(c) the Regulator’s decision not to approve the proposed clause 10 of the General Terms and Conditions so far as it concerns the increase in the Minimum GHV Specification from 35.5 MJ/m3 to 37.0 MJ/m3 (para. 1036);

(d) the Regulator’s decision to approve the proposed clause 10 of the General Terms and Conditions so far as it concerns the Maximum CO2 Specification and for the provision of separate Inlet and Outlet Specifications (para. 1035);

(e) the Regulator’s rejection of GGT’s proposed removal of clause 9.6(e) of the General Terms and Conditions in the current Access Arrangement (para. 1006);

(f) the Regulator’s rejection of submission that GGT should have exclusive right to provide outlet facilities, by deciding not to approve:

(i) the proposed sub-clause 11.2(a) of the General Terms and Conditions (para. 1051);

(ii) the proposed sub-clause 11.3 of the General Terms and Conditions (para. 1052);

(iii) the deletion of sub-clause 11.4 of the General Terms and Conditions to the current Access Arrangement (para. 1053);

(iv) the first amendment in the proposed sub-clause 11.5 of the General Terms and Conditions (para. 1054);

as well as all related amendments to give effect to the above amendments;

(g) the Regulator’s decision that a quarterly modelling approach should be adopted with the proposed annual modelling approach proposed by GGT to be rejected; and

(h) the Regulator’s proposed amendments to the Extension and Expansion Policy.

14.2 Tariff Structure

(a) Issue

In the Draft Decision, the Regulator does not accept the Price Path (to adjust the Reference Tariff in accordance with inflation) proposed by GGT. The Regulator considers that Reference Tariff charges should remain constant in nominal terms throughout the upcoming Access Arrangement Period, subject to adjustment where actual quarterly CPI does not equal forecast quarterly CPI.

(b) BHP Billiton Submission

BHP Billiton supports GGT's proposed price path mechanism, but only if the Reference Tariff is decreased at the commencement of the Access Arrangement Period to provide the required Present Value of Tariff Revenue.

BHP Billiton acknowledges that there will need to be a downward adjustment of the Reference Tariff at the commencement of the upcoming Access Arrangement Period in order to provide the required Present Value of Tariff Revenue, and would accept the imposition of such a step change.

Further, BHP Billiton considers that the required step change at the end of the upcoming Access Arrangement Period is likely to be insignificant relative to other changes that could be required as a result of not addressing other key issues that have affected the Draft Decision.

14.3 Defined Benefits Superannuation Scheme

GGT proposed the inclusion of costs associated with its defined benefit superannuation fund in operations and maintenance costs. The amount to be included in costs has been provided on a confidential basis, however, it will be a function of the fund's present value, projected earnings and actuarially determined future liabilities. Given the precipitous decline in domestic and almost all financial markets to the period around March 31 2009 any valuation of the fund around that time will be low, resulting in an increase in projected contributions. On this basis, BHP Billiton contends that the value of the fund needs to be re-valued given the recovery in global financial markets since that time to avoid an unnecessary overstatement of future costs.