

Submitted by

Goldfields Gas Transmission Pty Ltd

13 May 2010

**Economic Regulation Authority** 



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# FINAL DECISION

- 1. Goldfields Gas Transmission Pty Ltd (**GGT**) submitted its Proposed Revisions to the Access Arrangement for the Goldfields Gas Pipeline (**GGP**) to the Economic Regulation Authority (**Authority**) on 23 March 2009 for approval under the *National Third Party Access Code for Natural Gas Pipeline Systems* (**Code**).
- 2. The Authority issued its Draft Decision on GGT's Proposed Revisions on 9 October 2009. The Draft Decision listed 45 amendments which were required to be made to GGT's Proposed Revisions.
- 3. On 22 April 2010, GGT submitted an amended version of its Proposed Revisions to the GGP Access Arrangement (**Amended Proposed Revisions**) to the Authority as allowed by section 2.37A of the Code. The amended version of the Proposed Revisions addressed a number of the amendments required under the Draft Decision.
- 4. On 22 April 2010, GGT submitted an amended version of its Access Arrangement Information (**Amended AAI**) to the Authority.
- 5. The Authority has considered GGT's Amended Proposed Revisions in conjunction with the Amended AAI, the Draft Decision, comments made in public submissions to the Authority on the Draft Decision, reports from the Authority's consultants and the requirements of the Code.
- 6. The Final Decision of the Authority is to not approve GGT's Amended Proposed Revisions and to require 21 further amendments in order to provide such approval.
- 7. The Authority's reasons for not approving GGT's Amended Proposed Revisions are set out in this Final Decision. The 21 amendments required under this Final Decision are set out below.

# **List of Amendments**

# **Required Amendment 1**

Section 4.2(a) of GGT's Amended Proposed Revisions of 22 April 2010 should be amended to replace the words "negotiate in relation to providing" with the words "offer" as follows:

"Should any User or Prospective User have requirements which cannot be satisfied through a Reference Service, including for gas transportation from an inlet point other than the Inlet Point at Yarraloola, GGT will negotiate in relation to providing offer a service ("Negotiated Service") to meet that person's specific requirements. the terms and conditions of which have been negotiated between GGT and the User or Prospective User."

# **Required Amendment 2**

In relation to the GGP Capital Base, Table 3 of GGT's Amended AAI of 22 April 2010 should be amended to reflect the values set out in Table 1 of the Final Decision.

# **Required Amendment 3**

In relation to the GGP Capital Base and Depreciation, Table 2 of GGT's Amended AAI of 22 April 2010 should be amended to reflect the values in Table 2 of the Final Decision.

# **Required Amendment 4**

In relation to Working Capital, Table 7 of GGT's Amended AAI of 22 April 2010 should be amended to reflect the headings and values in Table 3 of the Final Decision.

# **Required Amendment 5**

In relation to Forecast Depreciation, Table 6 of GGT's Amended AAI of 22 April 2010 should be amended to reflect the values in Table 4 of the Final Decision.

# **Required Amendment 6**

In relation to the Rate of Return, Table 8 of the GGT's Amended AAI of 22 April 2010 should be amended to reflect the parameter headings and values in Table 7 of the Final Decision.

# Required Amendment 7

GGT's Amended Proposed Revisions should be amended to adopt a nominal pre-tax Rate of Return of 10.48%.

# **Required Amendment 8**

In relation to Non Capital Costs, Table 10 of GGT's Amended AAI of 22 April 2010 should be amended to reflect the values in Table 8 of the Final Decision.

# **Required Amendment 9**

In relation to Total Revenue, Table 1 and Table 14 of GGT's Amended AAI of 22 April 2010 should be amended to reflect the headings and values in Table 9 of the Final Decision.

# **Required Amendment 10**

In relation to volume forecasts, the first row of Table 12 of GGT's Amended AAI of 22 April 2010 should be amended to reflect the values set out in Table 10 of the Final Decision.

# **Required Amendment 11**

In relation to the Annual Reference Service, Table 15 of GGT's Amended AAI of 22 April 2010 should be amended to reflect the values set out in Table 11 of the Final Decision.

#### **Required Amendment 12**

The Reference Service Revenue referred to at page 13 of the Access Arrangement Information should be amended from \$15.11 million to \$321.0 million.

# **Required Amendment 13**

Clause 1 of the Fourth Schedule to Appendix 3 to GGT's Amended Proposed Revisions of 22 April 2010 should be amended to delete the Reference Tariff charges and

replaced with the Authority's Final Decision Reference Tariff charges shown in Table 12 of the Final Decision.

This Schedule 1 should be replaced by Schedule 1 to GGT's Response to Issues Paper dated 29 May 2009, subject to amending the formula contained therein on the basis of this formula taking account of quarterly tariff adjustments with x being the forecast quarterly inflation rate.

The formula under clause 9.8 also needs to be amended to take account of quarterly tariff adjustments to include CPI-x in the formula with x being the forecast quarterly inflation rate.

# **Required Amendment 14**

Clause 9.8 of Appendix 3, clause 5.3(a) of GGT's Amended Proposed Revisions should be deleted and replaced and Schedule 1 of GGT's Amended Proposed Revisions should be revised as follows:

Insert new clause 9.8 as set out below:

"9.8 Tariffs and Charges Adjustment for Inflation

For the purpose of this clause the component charges of the Reference Tariff are to be determined as follows:

$$C_t = C_{t-1} \left[ 1 + \left( \frac{CPI_{t-2} - CPI_{t-3}}{CPI_{t-3}} \right) - K \right]$$
 where:

 $C_t$  is the relevant charge in the Quarter t in which the Billing Period occurs.

 $C_{t-1}$  is the charge for the quarter t-1.

 $CPI_{t-2}$  is the CPI for the Quarter commencing six months prior to the commencement of Quarter t.

CPI<sub>t-3</sub> is the CPI for the Quarter commencing nine months prior to the commencement of Quarter *t*.

$$K = \left[1 + \frac{R}{100}\right]^{0.25} - 1$$

R is 2.5 (the forecast annual percentage inflation rate in the Final Decision)

Revise Schedule 1 by replacing this schedule with Schedule 1 as proposed by GGT in its response to the Draft Decision of 11 December 2009, except that the variable 'x'

should be made equal to  $\frac{R}{100}$  where R is as defined under clause 9.8 of this

Amendment 14.

Replace clause 5.3(a) in the Amended Proposed Revisions as follows:

"CPI and other adjustments in accordance with the Reference Tariff" Adjustment Mechanism as described in Schedule 1 and clause 9.8 of Appendix 3; and"

# **Required Amendment 15**

Clause 6 of Appendix 3 to GGT's Amended Proposed Revisions should be as follows:

# **Required Amendment 16**

Paragraph 22 of Appendix 2.2 to GGT's Amended Proposed Revisions should be amended by cross referencing paragraph 22 to paragraph 1.1(k) in GGT's Information Package rather than paragraphs 1.3(a) and 1.4(a).

# **Required Amendment 17**

Paragraph 23 of Appendix 2.2 to GGT's Amended Proposed Revisions should be amended by cross referencing paragraph 23 to paragraph 1.1(k) in GGT's Information Package rather than paragraph 1.4(e).

# **Required Amendment 18**

Sub-sections 10.2 and 10.3 of GGT's Amended Proposed Revisions should be deleted and replaced with the following sub-sections 10.2 and 10.3. Sub-section 10.3 of GGT's Amended Proposed Revisions should be renumbered as Sub-section 10.4

"10.2 Application of Arrangement to Pipeline Extension

If GGT extends the Pipeline GGT will elect:

- (a) that the extension will be treated as part of the Covered Pipeline for the purposes of this Access Arrangement and GGT will exercise its discretion to submit proposed revisions to the Access Arrangement under Section 2 of the Code; or
- (b) that the extension will not be treated as part of the Covered Pipeline for the purposes of this Access Arrangement and that GGT will lodge a separate Access Arrangement for such extension; or
- (c) that the extension will not be covered, subject to GGT notifying the Regulator of this fact prior to the extension coming into operation.
- 10.3 Application of Arrangement to Pipeline Expansion

If GGT expands the Capacity of the Pipeline the expanded Capacity will be treated as part of the Covered Pipeline for all purposes under the Code."

# **Required Amendment 19**

Section 3 of GGT's Amended Proposed Revisions should be amended by adding a new sub-section 3.4 to read as follows:

- "3.4 Trigger Event
- (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 Covered capacity of the GGP (as measured at the GGP Inlets) beyond 120 TJ/day."

# **Required Amendment 20**

GGT's amendment to the definition of Force Majeure in Appendix 1 of its Amended Proposed Revisions of 22 April 2010 should be amended so that the definition is the same as that set out in Appendix 1 to GGT's Proposed Revisions to the Access Arrangement submitted on 23 March 2009.

# **Required Amendment 21**

GGT's amendments to sub-clauses 18.1 and 18.2 of Appendix 3 of its Amended Proposed Revisions of 22 April 2010 should be amended so that sub-clauses 18.1 and 18.2 are the same as those set out in Appendix 3 to GGT's Proposed Revisions to the Access Arrangement submitted on 23 March 2009

# REASONS FOR THE FINAL DECISION

# **Background**

# **Documentation Received from GGT**

- 8. The documentation submitted to the Authority by GGT on 23 March 2009 comprised:
  - (a) Proposed Revisions (GGT's Proposed Revisions); and
  - (b) The Access Arrangement Information.
- 9. On 7 April 2009, GGT provided further confidential information on its revisions consisting of a supporting submission (including a tariff model). On 21 April 2009, GGT also submitted to the Authority a public supporting submission entitled "Supporting Information to Proposed Revisions to Access Arrangement" (GGT's Supporting Information Submission).
- 10. Parts of GGT's Supporting Information Submission were deleted on the basis that GGT stated that the information in those parts was confidential.
- 11. Copies of the abovementioned documents, other than any confidential information, are available from the Authority or may be downloaded from the Authority's website (<a href="https://www.erawa.com.au">www.erawa.com.au</a>)
- 12. On 21 September 2009, GGT provided an updated Independent Auditor's Review Report to the Directors of Goldfields Gas Transmission Pty Ltd and the Economic Regulation Authority (**Updated Auditor's Report**). This updated Auditor's Report was taken into account in the Final Decision.

# **Further Information Requested by the Authority**

- 13. The Authority requested GGT to provide further information regarding various matters in GGT's Proposed Revisions. GGT provided the Authority with further information in response to those requests. GGT also provided the Authority with information which the Authority had not specifically requested from GGT.
- 14. On 26 May 2009, the Authority issued a section 41 notice to GGT requesting the provision of documents and further information to assist the Authority in the preparation of the Draft Decision (**GGT Section 41 Notice**).
- 15. In response to the GGT Section 41 Notice, on 5 June 2009, GGT provided the Authority with further information and documents (**Section 41 Information**). The Section 41 Information was provided to the Authority on a confidential basis.
- 16. Therefore, the Authority released the Draft Decision with Aggregated Information, as supplied under a Section 41 request, removed. A non redacted version of the Draft Decision was provided to GGT with the release of the Draft Decision.

# **Draft Decision**

- 17. On 9 October 2009, the Authority issued its Draft Decision. Forty five amendments were required to GGT's Proposed Revisions, as submitted on 23 March 2009.
- 18. The Authority initially provided a 7 week public consultation period on its Draft Decision, from 9 October 2009 to 27 November 2009. This period was extended by 2 weeks to 11 December 2009 following the release of the non-redacted version of the Draft Decision on 9 November 2009.
- 19. Four public submissions were received on the Draft Decision, from BHP Billiton (BHPB)<sup>1</sup>, the Australian Pipeline Industry Association Limited (APIA)<sup>2</sup>, Financial Investor Group constituted by APA Group, Prime Infrastructure and DUET Group (FIG)<sup>3</sup> and Esperance Pipeline Company Pty Ltd (Esperance Pipeline Co)<sup>4</sup>.
- 20. On 11 December 2009, GGT submitted its confidential response to the Draft Decision. This submission attached advice from APA Group Limited about corporate costs benchmarking and a report and advice from Synergies Economic Consulting reviewing the Weighted Average Cost of Capital (WACC) to apply to the GGP, both of which were commissioned by GGT. GGT provided a public version of this submission on 18 December 2009.

<sup>&</sup>lt;sup>1</sup> 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 11 December 2009.

The Australian Pipeline Industry Association's (APIA) Response to the ERA Draft Decision on Goldfields Gas Transmission's Proposed Access Arrangement Revisions October 2009 dated 11 December 2009.

<sup>&</sup>lt;sup>3</sup> Financial Investor Group Submission to the ERA's Draft Decision on the Goldfields Gas Transmission's Proposed Revisions to the Access Arrangement for the Goldfields Gas Pipeline dated December 2009.

Draft Decision on Goldfields Gas Transmission Pty Ltd's Proposed Revisions to the Goldfields Gas Pipeline Access Arrangement dated 24 November 2009.

- 21. On 22 January 2010, GGT submitted a further confidential response to the Draft Decision.
- 22. On 12 March 2010, GGT submitted Amended Proposed Revisions to the Authority.
- 23. On 1 April 2010, GGT submitted an Amended AAI and tariff model to the Authority.
- 24. On 22 April 2010, GGT submitted further amended versions of its proposed revisions, AAI, confidential tariff model and public tariff model to the Authority, The Final Decision refers to these amended documents as submitted by GGT on 22 April 2010 (Amended Proposed Revisions and Amended AAI).
- 25. The public submissions received on the Draft Decision and GGT's Amended Proposed Revisions and Amended AAI of 22 April 2010, are available on the Authority's website (<a href="https://www.erawa.com.au">www.erawa.com.au</a>).

# **Legislative Requirements**

# Requirements of the Code

- 26. Section 2.46 of the Code provides that:
  - 2.46 The Relevant regulator may approve proposed revisions to an Access Arrangement only if it is satisfied the Access Arrangement as revised would contain the elements and satisfy the principles set out in sections 3.1 to 3.20. The Relevant Regulator must not refuse to approve proposed revisions to the Access Arrangement solely for the reason that the Access Arrangement as revised would not address a matter that sections 3.1 to 3.20 do not require an Access Arrangement to address. In assessing proposed revisions to the Access Arrangement, the Relevant Regulator:
  - (a) must take into account the factors described in section 2.24; and
  - (b) must take into account the provisions of the Access Arrangement.
- 27. Section 2.24 of the Code provides that:
  - 2.24 The Relevant Regulator may approve a proposed Access Arrangement only if it is satisfied the proposed Access Arrangement contains the elements and satisfies the principles set out in sections 3.1 to 3.20. The Relevant Regulator must not refuse to approve a proposed Access Arrangement solely for the reason that the proposed Access Arrangement does not address a matter that sections 3.1 to 3.20 do not require an Access Arrangement to address. In assessing a proposed Access Arrangement, the Relevant Regulator must take the following into account;
  - (a) the Service Provider's legitimate business interests and investment in the Covered Pipeline;
  - (b) firm and binding contractual obligations of the Service Provider or other persons (or both) already using the covered Pipeline;
  - (c) the operational and technical requirements necessary for the safe and reliable operation of the Covered Pipeline;
  - (d) the economically efficient operation of the Covered Pipeline;
  - (e) the public interest, including the public interest in having competition in markets (whether or not in Australia);
  - (f) the interests of Users and Prospective Users;

- (g) any other matters that the Relevant Regulator considers are relevant.
- 28. By section 2.47 of the Code:
  - 2.47 The Relevant Regulator must not approve revisions to an Access Arrangement (or draft and approve its own revisions to an Access Arrangement) if a provision of the Access Arrangement as revised would, if applied, deprive any person of a contractual right in existence prior to the date the revisions to the Access Arrangement were submitted (or were required to be submitted), other than an Exclusivity Right which arose on or after 30 March 1995.

# **Lodgement of Access Arrangement Proposed Revisions and Access Arrangement Information**

- 29. The requirements for the lodgement of the Access Arrangement proposed revisions and the Access Arrangement Information are set out in paragraphs 21 to 33 of the Draft Decision.
- 30. The sufficiency of the Access Arrangement Information provided by GGT is discussed below in relation to each element of GGT's Proposed Revisions, where necessary.
- 31. By section 2.37A of the Code:
  - 2.37A The Service Provider may, after the date of the Draft Decision, resubmit the revisions to the Access Arrangement, amended so as to incorporate or substantially incorporate the amendments specified by the Relevant Regulator in its Draft Decision or otherwise address the matters the Relevant Regulator identified in its Draft Decision as being the reasons for requiring amendments specified in its Draft Decision.
- 32. GGT exercised the option to resubmit amended Proposed Revisions to the Access Arrangement to the Authority following issue of the Draft Decision. The most recent amended Proposed Revisions were submitted on 22 April 2010. The Final Decision refers to GGT's amended Proposed Revisions as submitted on 22 April 2010 (Amended Proposed Revisions and Amended AAI).

# **Public Consultation**

# Requirements of the Code

- 33. The Authority must consider any submissions received by the date specified by the Authority and may, but is not obliged to, consider any submissions received after that date (section 2.37 of the Code).
- 34. Section 2.38 provides that:
  - 2.38 After considering any submissions received by the date specified by the Relevant Regulator under s2.36, the Relevant Regulator must issue a final decision that:
  - (a) if the Service Provider has not submitted amended revisions to the Access Arrangement under section 2.37A:

- (i) approved the revisions to the Access Arrangement originally proposed by the Service Provider; or
- (ii) does not approve the revisions to the Access Arrangement originally proposed by the Service Provider and, if revisions have been proposed by the Service Provider as required by the Access Arrangement, states that amendments (or nature of the amendments) which would have to be made to the revisions in order for the Relevant Regulator to approve them and the date by which the amended revisions must be submitted by the Service Provider; or

if the Service Provider has submitted amended revisions to the Access Arrangement under section 2.37A:

subject to section 2.38A, approves the amended revisions to the Access Arrangement; or

does not approve the amended revisions to the Access Arrangement and, if the revisions have been proposed by the Service Provider as required by the Access Arrangement, states the amendments (or nature of the amendments) which would have been made to the revisions in order for the Relevant Regulator to approve them and the date by which the amended revisions must be resubmitted by the Service Provider.

Section 2.38A provides that:

- 2.38A The Relevant Regulator may (in the Relevant Regulator's discretion) approve amended revisions to an Access Arrangement under section 2.38(b)(i) only if the Relevant Regulator is satisfied that the amended revisions:
- (a) incorporate or substantially incorporate the amendments specified by the Relevant Regulator in its Draft Decision; or
- (b) otherwise address to the Relevant Regulator's satisfaction the matters the Relevant Regulator identified in its Draft Decision as being the reasons for requiring the amendments specified in the Draft Decision.
- 35. This Final Decision is made in accordance with sections 2.38 and 2.38A of the Code.

# **Consultants Used by the Authority**

- 36. To assist the Authority in the preparation of this Final Decision, the Authority engaged consultants Frontier Economics and Parsons Brinkerhoff to review certain aspects of GGT's Proposed Revisions and the public submissions, and to provide advice to the Authority.
- 37. The reports produced by Frontier Economics were; "Review of Weighted Average Cost of Capital estimate proposed by Goldfields Gas Transmission", dated 17 February 2010 and; "Review of application of the New Facilities Investment Test by Goldfields Gas Transmission", dated March 2010.
- 38. The report produced by Parsons Brinkerhoff was; "Goldfields Gas Pipeline Access Arrangement Final Report", dated March 2010.

39. All three consultants' reports are available on the Authority's website (www.erawa.com.au).

# **Final Decision**

- 40. The matters discussed in this Final decision are as follows:
  - Expansions of capacity
  - Cost Allocation
  - Modelling approach
  - Draft Decision Required Amendments 1 to 45
- 41. The 45 Draft Decision Required Amendments are discussed in this Final Decision in the following manner:
  - An outline of the comments about the amendment in the public submissions, including submissions by GGT;
  - An outline of the comments about the amendment in the consultants' reports, where applicable;
  - The Authority's assessment; and
  - The Authority's Final Decision with respect to GGT's Amended Proposed Revisions to the Access Arrangement revisions as submitted on 22 April 2010.

# **Expansions of Capacity**

#### **Draft Decision**

- 42. At paragraphs 134 to 199 of the Draft Decision the Authority considered how it should take into account the costs, revenues and volumes referable to three expansions of the capacity of the GGP during the current Access Arrangement Period (Expansions of Capacity). Under the current Access Arrangement approved by the Authority, GGT was entitled to elect that the Expansions of Capacity not be treated as part of the Covered Pipeline for any purpose under the Code, and made that election.
- 43. Paragraphs 196 to 199 of the Draft Decision set out the Authority's Draft Decision as to the Expansions of Capacity in the following terms:
  - 196. While the Authority recognises GGT's elections to exclude the Expansions of Capacity from the Covered Pipeline, the Authority considers that the effect of GGT's election to treat the Expansions of Capacity as not being part of the Covered Pipeline is that GGT is not subject to the access obligations that apply to Reference Services by reason of Coverage of the GGP and, therefore, Users have no access right to demand supply of Services by virtue of the Expansions of Capacity as Reference Services at the Reference Tariff. These Expansions of Capacity total approximately 49TJ / day.
  - 197. However, the Authority considers that having regard to the relevant Code definitions and the objects and principles of the Code, that 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.

- 198. The Authority, therefore, does not accept that the capital and other costs incurred in relation to the Expansions of Capacity are to be excluded from the Total Revenue. Rather, all actual and forecast costs, revenues and volumes relating to the Expansions of Capacity must be taken into account in determining the Reference Tariff.
- 199. The Authority notes that this Draft Decision requires under paragraph 1211 that GGT's Proposed Revisions be amended such that in relation to any expansion of the capacity of the Covered Pipeline during the Access Arrangement Period, the expansion will be treated as part of the Covered Pipeline for all purposes under the Code.

# **Public submissions**

#### **GGT** submissions

- 44. In its submission dated 11 December 2009 GGT contests the Authority's Draft Decision as set out in paragraphs 196 to 199. GGT's submissions on this point are set out at paragraphs 14 to 134 in section 2 of its submission (see pages 5 to 23).
- 45. GGT summarises its submissions on this point at paragraphs 36 to 41, which are set out below for ease of reference:
  - 36. By reason of one or more of the matters discussed in this submission, the Authority has misinterpreted the Code in arriving at the Relevant Amendments, has failed to correctly identify the issues it must address in exercising its discretion to approve the revised Access Arrangement, and has otherwise acted unreasonably. As a result the Draft Decision is incorrect and the Authority would be acting in excess of its authority and jurisdiction, and would be misconceiving its functions and powers, if it were to approve its own Access Arrangement reflecting the Relevant Amendments.
  - 37 The correct conclusions are that:
  - (a) the Expansions of Capacity and the Expansion Assets developed to provide the Expansions of Capacity, do not form part of the Covered Pipeline for any purpose under the Code (refer to Submission paragraphs 49 to 51);
  - (b) the Additional Services are provided by means of the Expansions of Capacity, and not by means of the Covered Pipeline (refer to Submission paragraphs 52 to 54):
  - (c) the Code mandates that he Additional Services are not Services (refer to Submission paragraphs 55 to 64); and
  - (d) the Expansion Assets are not "otherwise used to provide Services" (refer to Submission paragraphs 65 to 66).
  - 38 The Authority's conclusion that the Additional Services are Services is incorrect because:
  - (a) it ignores s 3.16(a)(ii) of the Code (refer to Submission paragraphs 67 to 68);
  - (b) it ignores the words, intent and implications of the definition of "Covered Pipeline" (refer to Submission paragraphs 69 to 70);
  - (c) it is based on a failure to properly or correctly consider the meaning of whether a service is provided "by means of" the Covered Pipeline (refer to Submission paragraphs 71 to 79);

- (d) It may be relying on an artificial distinction between the Additional Services being provided "by virtue of" the Expansions of Capacity or "by means of" the Covered Pipeline (refer to Submission paragraphs 80 to 81); and
- (e) it contradicts, and is inconsistent with, the Authority's correct conclusions that the Expansions of Capacity are not to be treated as part of the Covered Pipeline (Ref. Draft Decision paragraph 188) and that the capital assets constructed, developed or acquired to enable GGT to provide the Expansions of Capacity do not form part of the Covered Pipeline (Ref. Draft Decision Paragraphs 187) (refer to Submission paragraphs 82 to 85).
- 39 The decision that the Expansion Assets are "otherwise used to provide Services" is incorrect for the same reasons the Authority's conclusion that the Additional Services are provided by means of the Covered Pipeline is incorrect and also because:
- (a) it is based on an incorrect construction of the definition of "New Facility" (refer to Submission paragraphs 86 to 89);
- (b) it ignores the legislative background to the introduction of paragraph (c) of the definition of "New Facility" (refer to Submission paragraphs 90 to 96); and
- (c) it makes the same errors in relation to the definition of "Capital Base" (refer to Submission paragraphs 97 to 98).
- 40 Accordingly, and contrary to the Authority's conclusions:
- (a) the Additional Services are not provided by means of the Covered Pipeline and are therefore not "Services" within the meaning of the Code;
- (b) the Expansion Assets developed by GGT to provide the Expansions of Capacity are not assets which are "otherwise used to provide Services"; and
- (c) the costs of those assets and the costs of providing Additional Services cannot be included in the calculation of the Total Revenue for the Covered Pipeline, and the volumes associated with the expansions of Capacity cannot be included in the derivation of Reference Tariffs.
- Further, the Amendments are erroneous or otherwise unreasonable because:
- (a) the Draft Decision is based on a failure to understand the scheme of the Code (refer to Submission paragraphs 99 to 104);
- (b) if correct, the Draft Decision leads to absurd outcomes (refer to Submission paragraphs 105 to 11070 (sic));
- (c) the Draft Decision fails to give effect to the approved Access Arrangement (refer to Submission paragraphs 111 to 112);
- (d) the amendments rely on incorrect conclusions in relation to consistency with the Reference Tariff Principles (refer to Submission paragraphs 113 to 118);
- (e) the regulator has failed to consider GGT's legitimate business interests (refer to Submission paragraphs 119 to 125); and
- (f) the Amendments are otherwise unreasonable (refer to Submission paragraphs 126 to 128).
- 46. In its second submission dated 22 January 2010, GGT disputes the submission dated 11 December 2009 by BHPB supporting the Authority's Draft Decision (discussed in paragraphs 47 below).
- 47. In its second submission GGT submits as follows:
  - (a) BHPB's submission incorrectly assumes that haulage services provided by means of the relevant expansion are "Services" under the Code (see paragraph 12 a.);

- (b) BHPB's submission incorrectly assumes that costs associated with expanded capacity which does not form part of the Covered Pipeline constitute 'costs in relation to the Covered Pipeline' (see paragraph 12 b.);
- (c) BHPB's submission incorrectly concludes that Services under the Code include haulage services which are capable of being provided by means of expanded capacity which the service provider has elected is not to be treated as part of the Covered Pipeline (see paragraph 12 c.);
- (d) BHPB's submission unreasonably concludes that such assets (not being New Facilities ) should be treated as part of the Capital Base or otherwise taken into account in setting Total Revenue (see paragraph 12 d.);
- (d) To the extent that BHPB's submission relies on the incorrect view that the Expansions of Capacity were to be treated as part of the Covered Pipeline, they are flawed (see paragraphs 14 to 16);
- (e) BHPB's submission incorrectly concludes that the Code does not provide for uncovered capacity (see paragraph 17);
- (f) BHPB's submission fails to recognise that the Code provides an exclusive regime for addressing whether expansions become Covered and that the Code clearly provides for service provider, under an approved Extensions/Expansions Policy, to be able to elect that capacity is not to be part of the Covered Pipeline and thus outside the Access Arrangement (see paragraph 18);
- (g) BHPB's submission proceeds on the incorrect assumption that the question before the Authority is to be answered by an assessment of the coverage criteria, and contains lengthy discussion of the test for coverage under section 1 of the Code and the circumstances in which part of a pipeline could become uncovered (see paragraphs 19 to 20); and
- (h) BHPB's submission fails to fully portray the NCC's position on the matter of Capacity, and fails to reach the proper conclusion that the NCC does recognise and endorse the distinction between covered and uncovered capacity (see paragraphs 21 to 23).

# BHPB submission

- 48. In paragraph 5.5 of its submission dated 11 December 2009, BHBP submits that the Authority's decision is consistent with submissions made by BHBP to the Authority dated 30 June 2009 as follows:
  - (a) the Authority 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 (see paragraph 5.5(ii));
  - (b) the Authority 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) (see paragraph 5.5(iii)); and
  - (c) the Authority has decided that such capital assets are used to provide Services and are to be treated as part of the Capital Base (see paragraph 5.5(iv)).
- 49. BHPB submits, further, that it supports the Authority's Draft Decision 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 (see paragraph 5.5 (v)).

#### **APIA** submission

50. In its submission dated 11 December 2009, APIA submits as follows:

APIA is concerned that the ERA Draft Decision appears to propose de facto coverage of uncovered sections of the GGT pipeline. The effect of ERA's amendments 3, 10, 11, 12 and 13 is that the actual and forecast costs, revenues and volumes relating to the uncovered expanded capacity must be used in setting the regulated tariff. This approach appears to be a de facto coverage decision on the uncovered capacity of the pipeline.

Coverage decisions are the province of the National Competition Council rather than economic regulators. There is a clear and defined process for coverage to be achieved if it is appropriate for an asset. If this process is replaced by de facto coverage decision made by economic regulators there will be an increase in uncertainty and risk. This would be likely to actively discourage investment in those jurisdictions where such practices are tolerated.

APIA has real doubt as to whether the ERA has the legal power to explicitly consider the capital costs of uncovered assets and the capacity of the uncovered pipeline for the purpose of determining reference tariffs for the covered pipeline.

APIA believes that GGT has acted appropriately in making a revised Access Arrangement proposal that relates only to the covered pipeline. APIA does not believe that the regulatory scheme of the Code supports the ERA's position that it is appropriate that costs and volumes associated with unregulated assets should be incorporated into regulatory decisions at the sole discretion of the ERA.

Overall APIA believes the ERA has misinterpreted the Code in seeking a de facto coverage of uncovered capacity and assets.

# Other submissions

51. There were no other public submissions on the question of the coverage of the Expansions of Capacity.

# Authority's assessment

- 52. The Authority has considered the comments outlined in the submissions from GGT and other parties in response to the Draft Decision, related to the Expansions of Capacity issue.
- 53. As a result of its assessment of these comments, the Authority has given further consideration to its position, as outlined in the Draft Decision.
- 54. In its Draft Decision the Authority reasoned that while the additional compressors do not form part of the Covered Pipeline and the Services that are available as a result of the additional capacity created by those compressors do not form part of the Access Arrangement, the capital costs, operating costs and capacity of the GGP as a whole should be brought to account in determining the Total Revenue and the Services to be provided using the GGP as a whole should be used to derive a Reference Tariff for the Reference Service to be provided using the Covered part of the GGP (Covered GGP).
- 55. The Authority's revised view, following its consideration of the public submissions on the Draft Decision, is that there appears to be an insufficient basis under the Code to support the position set out in the Draft Decision on this issue.
- 56. The Authority's view is that an alternative interpretation of the Code, which limits the operation of an Access Arrangement to that part of a pipeline which is the Covered Pipeline, appears to be more consistent with the relevant Code provisions.

- 57. In forming its view, the Authority has examined the context in which the term "Service" is used in the Code on the basis that it believes this to be an important issue in reaching a view on how the Expansions of Capacity should be treated in calculating a Reference Tariff for the GGP, as the Total Revenue for the Covered GGP is required to be equal to the cost of providing "all Services". The Authority considers, after reviewing relevant sections of the Code which use the term "Services", that the use of this term is consistent with an interpretation that Services relate only to those Services provided by means of the Covered GGP. Further, the Code as a whole, including the provisions which use the concept of Services, adopts a consistent approach that confines the Authority to considering the price and terms of access required for the Covered GGP only.
- 58. Accordingly, based on this revised view, the Authority considers that the approach adopted in the Draft Decision, which considered the definition of the term "Service" to include any service provided by means of the GGP as a whole on the basis that such services could not be supplied without the existence of the Covered GGP, is inconsistent with the Code.
- 59. Consequently, the Authority considers that the Code provisions require that the capital costs, operating costs and Capacity of only the Covered GGP should be brought to account in determining the Total Revenue and that the Services to be provided using only the Covered GGP should be used to derive a Reference Tariff for the GGP.
- 60. The Authority considers that the Expansions of Capacity which GGT has elected, under the current Access Arrangement, to exclude from coverage do not form part of the Covered GGP and the Authority considers that the Code does not provide it with the jurisdiction to determine a Reference Tariff for the GGP on the basis of the provision of access to the GGP as a whole.
- 61. The Authority notes that the National Gas Law, as modified under the *National Gas Access (WA) Act* 2009, provides a process (Chapter 3) whereby any person can apply to the National Competition Council (**NCC**) for any part of a Pipeline which does not form part of a Covered Pipeline to be included as part of that Covered Pipeline. Unless and until such a process occurs and results in the Expansions of Capacity becoming covered these Expansions of Capacity will not be taken into account in determining Reference Tariffs for the GGP, for the reasons set out in this Final Decision.
- 62. The Authority also notes that if in the future a coverage application is made with respect to the Expansions of Capacity and the relevant Minister accepts a recommendation by the NCC for coverage of the Expansions of Capacity, then GGT will be obliged under the National Gas Rules to submit an access arrangement for approval by the Authority. Under such an access arrangement Reference Tariffs will be set by the Authority for any Reference Services supplied by means of the Expansions of Capacity.

#### **Final Decision**

63. The Authority's method for determining Reference Tariffs is revised to ensure that the capital costs, operating costs and Capacity of only the Covered GGP should be used in determining the Total Revenue and that the Services to be provided using only the Covered GGP should be used to derive a Reference Tariff for the GGP.

64. The Authority's Final Decision requires revisions to Required Amendments 3 to 16 of the Draft Decision. These revised amendments are set out in this Final Decision.

# **Cost allocation**

# **Draft Decision**

- 65. At paragraphs 712 to 749 of the Draft Decision the Authority considered the issue of the allocation of the Total Revenue for determining Reference Tariffs. Sections 8.38 to 8.42 of the Code set out the principles relevant to this exercise. In summary, these sections of the Code provide a framework by which the Reference Tariffs reflect the costs directly incurred in providing the Reference Service, together with a share of costs that are attributable to providing the Reference Service jointly with other Services.
- 66. In considering cost allocation under the Code, it is necessary to define the Services (of which Reference Services are a sub-set) which are supplied using the Covered Pipeline, so that the costs of those Services may then be allocated to Reference and Non-Reference Services respectively. Where the Pipeline as a whole is Covered, there is no difficulty in defining these Services. However, where part of the Pipeline is Covered and part is not, there is a threshold question to be determined, namely which Services are to be included for the purpose of cost allocation.
- 67. In this case, the issue arose because of GGT's election, under the current Access Arrangement, that the Expansions of Capacity not be treated as part of the Covered Pipeline. In order to perform the cost allocation exercise under the Code, it was necessary for the Authority in the Draft Decision to decide what services supplied over the Covered Pipeline were services the costs of which were to be allocated to Reference and Non-Reference Services respectively.
- 68. GGT's Proposed Revisions as originally submitted used a narrow concept of the Total Revenue (i.e. costs) to be allocated. That is, GGT proposed that the Total Revenue be the costs of the Covered Pipeline excluding the direct costs of the Expansions of Capacity of 49 TJ/day (i.e. the direct costs of the second Paraburdoo compressor, and the Wyloo West and Ned's Creek compressor stations).
- 69. GGT then proposed that the Total Revenue be allocated as follows (see paragraph 734 of the Draft Decision):
  - the non-regulatory costs are to be allocated pro rata to the Reference Services and the Non Reference services in accordance with the Pipeline Capacity applicable to each (that is approximately 4 TJ/day for the Reference Service, being the Spare Capacity, and approximately 104 TJ/day, being the Contracted Capacity).
  - regulatory costs are to be allocated between the Reference Services and the Contracted Capacity signed since the Code commenced (so that regulatory costs in relation to pre-Code contracts fall on the Reference Service and post-Code contracts).
- 70. In the Draft Decision, the Authority did not accept GGT's proposed approach for two reasons (see paragraphs 735 to 738 of the Draft Decision). In summary:

The concepts of Services and Total Revenue adopted by GGT were narrower than the concepts of Services and Total Revenue which the Authority decided in its Draft Decision should be defined more broadly. That is, the Total Revenue should be the costs of supplying "Services" which includes all Services provided by means of the Covered Pipeline, which must include the costs of providing the Expansions of Capacity.

Even if the Authority was to accept GGT's definition of Services and Total Revenue the approach proposed by GGT did not provide cost allocations which meet the Reference Tariff principles. This was because under GGT's cost allocation approach, the joint cost of providing gas transportation, which is incurred in supplying the Reference Services, Non Reference Services and the Expansions of Capacity, are recovered disproportionately from Users of Reference Services (4 TJ/day) and the Negotiated Services (104 TJ/day). This would have the effect that Users of Reference Services and Negotiated Services, in addition to bearing the direct and shared costs of providing the Services, would also bear disproportionately the joint costs of providing Services by means of the Expansions of Capacity. On the other hand, the Users of the Services provided by means of the Expansions of Capacity would only be required to bear the direct cost of providing such Capacity and few of the shared costs of doing so.

#### **Public submissions**

#### **GGT** submissions

- 71. In its submission dated 11 December 2009, GGT contests the Authority's Draft Decision in relation to cost allocation. GGT's detailed submissions on this point are set out at paragraphs 590 to 631 at pages 99 to 104.
- 72. GGT's submissions on this point are summarised in section 8.4 (paragraphs 628 to 631 on page 104) as follows:

The Draft Decision required all costs, including regulatory costs, to be "smeared" across all capacity (including non-covered capacity), having no regard to the different Services provided or contracts in place ...

This conclusion contradicts:

- the Draft Decision's finding that the Services are different, as discussed above; and
- the Code requirement for the Service Provider to provide the Reference Service on demand, and the capacity available to provide that Service.
- GGT maintains that its allocation of regulatory costs is consistent with Section 8.38 of the Code, in that:
- Under section 3.16(a)(ii), the expanded capacity is not to be considered as part of the Covered Pipeline for any purposes under the Code;
- The capacity of the Covered Pipeline available to provide the Reference Service is approximately 4 TJ/day;
- There are no regulatory costs attributable to those contracts signed before the Code came into force, nor those contacts serviced by the (non-covered) expanded capacity
- Considering the contradictory nature of the Draft Decision conclusions and the fact that GGT's allocation of regulatory costs is consistent with the Code GGT does (sic) not accept Amendments 13 and 14.

#### Other submissions

- 73. In its submission dated 11 December 2009, BHBP addressed the issue of the definition of Services provided by means of the Covered Pipeline, and the costs to be included in the Total Revenue, having regard to the Authority's consideration of the Expansions of Capacity. BHPB's submissions on this point are discussed in this Final Decision above at paragraphs 48 to 49. To that extent, BHPB's submission is also relevant to the allocation of costs issue. Otherwise, BHPB's submission did not directly address the cost allocation issue.
- 74. In its submission dated 11 December 2009, APIA addressed the Authority's treatment of previous GGT expansions. APIA's submissions on this point are discussed in this Final Decision above at paragraph 50 to 51. To that extent, APIA's submission is also relevant to the allocation of costs issue. Otherwise, APIA's submission did not directly address the cost allocation issue.
- 75. There were no other public submissions on the question of cost allocation.

# Authority's assessment

- 76. The Authority has considered the comments outlined in the submissions from GGT and other parties in response to the Draft Decision related to the cost allocation issue.
- 77. The Authority notes that in this Final Decision it has revised its decision regarding the definition of Services and the costs to be included in the Total Revenue, in particular the costs of providing the Expansions of Capacity, for the purpose of determining the Reference Tariff (see paragraphs 42 to 64 above). As the Authority's Draft Decision on cost allocation was, in part, based upon its conclusion regarding the treatment of the costs of GGT providing the Expansions of Capacity, it is to that extent necessary for the Authority also to revise its decision on cost allocation accordingly.
- 78. In summary, the effect of the revision of the Authority's Draft Decision is that the Total Revenue (i.e. the costs of service) upon which the Reference Tariffs are to be based, as proposed by GGT, must exclude the costs of providing services utilising the Expansions of Capacity, but that otherwise all costs of providing services over the Covered Pipeline (including costs for shared services or infrastructure which are utilised to provide both Covered and Uncovered Capacity) are to be included.
- 79. Under this Final Decision, the Authority is required to identify whether or not a cost is to be regarded as a cost of providing services utilising the Covered Capacity. The Authority considers that if it can be demonstrated that a Capital or Non Capital cost would have been incurred, regardless of whether the Expansions of Capacity occurred (whether or not the Expansions of Capacity utilise the cost on a shared basis with the Covered Capacity) then that cost is to be included wholly as a cost of the Covered Capacity. The Authority's modelling for this Final Decision has been conducted accordingly.
- 80. Based on the above discussion, the Authority notes that the first of the two reasons given in the Draft Decision for rejecting GGT's proposed cost allocation, related to the coverage issue, is no longer appropriate.

- 81. The second ground on which the Authority rejected GGT's Non Capital cost allocation methodology, under the Draft Decision, was that under GGT's cost allocation approach the Non Capital costs of providing Reference and Non Reference services, on the Covered GGP are recovered disproportionately from users of Reference services.
- 82. The concern in relation to the Non Capital costs, as outlined in the Draft Decision, is that GGT's approach would have the effect that Users of Reference Services would bear a higher proportion of the Non Capital costs than would be appropriate. In particular, GGT has proposed that most of the regulatory costs would be allocated against the 3.8TJ/day of forecast spare capacity compared with the total forecast capacity for the Covered GGP of 109TJ/day. The Authority maintains the view that GGT's proposed cost allocation is not appropriate and that all Non Capital costs should be allocated equally across all capacity on the Covered Pipeline.
- 83. Therefore, the Authority does not accept GGT's proposed cost allocation methodology and maintains that Total Revenue should be allocated equally across all capacity provided by means of the Covered Pipeline, which includes all spare and contracted capacity on the GGP with the exception of the Uncovered Capacity.

#### **Final Decision**

- 84. The Authority's method for determining Total Revenue under the Draft Decision should be revised to ensure that the capital costs, operating costs and Capacity of only the Covered GGP should be used in determining the Total Revenue and that the Services to be provided using only the Covered GGP should be used to derive a Reference Tariff for the GGP.
- 85. The Authority does not accept GGT's proposed cost allocation methodology and considers that Total Revenue should be allocated across all Capacity provided by means of the Covered Pipeline which includes all spare and contracted Capacity on the GGP with the exception of the Uncovered Capacity.
- 86. The Authority's Final Decision requires revisions to Required Amendments 13 to 16 set out in the Draft Decision. These revised amendments are set out in this Final Decision.

# **Modelling Approach**

# **Draft Decision**

- 87. At paragraphs 200 to 223 of the Draft Decision the Authority considered how it should address GGT's proposal that the Reference Tariff be modelled on an annual basis.
- 88. The Authority's Draft Decision, set out at paragraph 222, was that the current approach of modelling Reference Tariffs be continued. In paragraph 223, the Authority noted the consequences of this Draft Decision:

The adjustments to GGT's Proposed Revisions required as a consequence of this decision are set out in the following sections, which deal with particular components of the calculation of the Reference Tariff. The Authority notes that all figures set out in the tables in the sections following are shown as annual figures for presentation

purposes. The Reference Tariffs, as required by the Draft Decision, have been modelled on a quarterly basis, and then these quarterly figures have been annualised for presentation purposes. The public tariff model published as Appendix 1 to this Draft Decision contains the actual quarterly numbers used and should be referred to for the definitive modelling.

# **Public submissions**

#### **GGT** submissions

- 89. In its submission dated 11 December 2009, GGT contests the Authority's Draft Decision as set out in paragraphs 222 and 223. GGT's submissions on this point are set out at paragraphs 666 to 702 in section 2 of its submission (see pages 109 to 114).
- 90. GGT submits at paragraph 667 of its submission that the Authority's justification for its Draft Decision at paragraph 222 of the Draft Decision "is flawed as it is based upon a misunderstanding of relevant provisions of the Code and is unreasonable in all the circumstances". GGT provides a summary of its submission on this point at paragraphs 672 and 673 of its submission, which is set out below:
  - 672. The Draft Decision asserts that GGT "would obtain a gain at the expense of the Users" (paragraph 219) but has provided no supporting information for this assertion.
  - 672. The conclusion that quarterly modelling is to be continued to be applied over the life of the Covered Pipeline assets installed in the period up to 31 December 1999 is incorrect and not supported by the Code because:
    - the Code does not establish a regime where, over the life of the asset, the initial investment is recovered for pipelines that existed when the Code was implemented. Instead Section 8.10 of the Code requires the regulator consider a number of different valuation methodologies and issues in determining the ICB, and section 8.11 puts an upper and lower limit on the normal outcomes of the process. Neither of these sections is consistent with the underlying position in the Draft Decision that Reference Tariffs are to be struck so that the initial investment is recovered over the life of the asset.
    - It does not give effect to section 8.4; and
    - the Authority has not considered the legitimate business interests of the GGT.
- 91. The comments summarised in paragraphs 672 to 673 of GGT's submission are then expanded in more detail in subsequent sections of GGT's submission, as indicated below.
  - Unsupported assertion (see section 9.4.1, paragraphs 674 to 676);
  - Provisions of the Code (see section 9.4.2, paragraphs 677 to 683);
  - Establishing Total Revenue (see section 9.5.1, paragraphs 684 to 687);
  - Misunderstanding of Code regarding recovery of initial investment (see section 9.6, paragraphs 688 to 693);
  - Misunderstanding about "over-recovery" (see section 9.7, paragraphs 694 to 697);

- Section 8.4 requirements for modelling (see section 9.8, paragraphs 698 to 699);
- GGT's legitimate business interests (see section 9.9, paragraphs 700 to 702).
- 92. GGT provided, as Attachment 3 to its submission, "correspondence, financial analysis and consultant reports" to demonstrate that GGT's modelling approach is sound.

#### Other submissions

- 93. In its submission dated 24 November 2009, Esperance Pipeline Co expressed its support for the Authority's Draft Decision in relation to the modelling approach. Esperance Pipeline Co submitted that the modelling approach for Reference Tariffs should be on a quarterly basis instead of an annual basis "as the latter could understate the rate of return in GGT's favour" and, therefore, result in "a higher Reference Tariff for GGP Users" (page 1).
- 94. There were no other public submissions on the question of the approach to the modelling of Reference Tariffs.

# Authority's assessment

- 95. The Authority has considered the comments outlined in the submissions from GGT and Esperance Pipeline Co in response to the Draft Decision, related to the issue of the approach to modelling Reference Tariffs.
- 96. As a result of its assessment of these comments, the Authority has given further consideration to its position, as outlined in the Draft Decision.
- 97. In its Draft Decision the Authority noted (see paragraph 212) that quarterly modelling is an exception to the general regulatory practice in Australia, where all regulators use annual modelling to determine regulated tariffs. The Authority reasoned, however, that if it approved GGT's proposed change from quarterly to annual modelling then the effect would be that GGT would recover more overall in present value terms than the initial investment over the life of the asset.
- 98. The Authority's revised view, following its consideration of the public submissions on the Draft Decision, is that there appears to be an insufficient basis under the Code to support the position set out in the Draft Decision on this issue.
- 99. The Authority's view is that an alternative interpretation of the Code under which the Initial Capital Base is considered to be a fixed value separate from any particular methodology that may have been used to determine that value, appears to be more consistent with the Code, in particular sections 8.10 and 8.11. Under this interpretation, it is not appropriate for the Authority to consider the effect of different modelling approaches on the extent of recovery of the initial investment over the life of the asset.
- 100. Accordingly, based on this revised view, the Authority considers that the approach adopted in the Draft Decision, to require Reference Tariffs to continue to be modelled on a quarterly basis, is inconsistent with the Code.

#### **Final Decision**

- 101. The Authority's method for modelling Reference Tariffs has been revised to use annual and not quarterly modelling as the basis for determining the particular components of the Total Revenue and the Reference Tariff.
- 102. The Authority's Final Decision requires revisions to Required Amendments 3 to 7 and 9 to 16 of the Draft Decision. These revised amendments, are set out in this Final Decision.

# **Draft Decision Required Amendments 1 to 45**

# Draft Decision - Amendment 1

103. Section 4.2(a) of GGT's Proposed Revisions should be amended to replace the words "will consider the development of" with the words "will offer", as follows:

Should any User or Prospective User have requirements which cannot be satisfied through a Reference Service, including for gas transportation from an inlet point other than the two Inlet Points at Yarraloola, GGT will consider the development will offer Negotiated Services to meet that person's specific requirements. Negotiated Services will be provided on the terms and conditions negotiated between GGT and the User or Prospective User.

#### **Public Submissions**

#### **GGT's Submissions**

- 104. In its submission dated 11 December 2009 GGT accepted the amendment in principle.(see paragraph 591 on page 99).
- 105. In its Amended Proposed Revisions submitted on 22 April 2010, GGT proposed that instead of providing that GGT "will offer" Negotiated Services as required by the Draft Decision, the Services Policy should provide that GGT will "negotiate in relation to providing a service ("Negotiated Service")".
- 106. In its Amended Proposed Revisions, GGT amended the wording of section 4.2(a) to:

Should any User or Prospective User have requirements which cannot be satisfied through a Reference Service, including for gas transportation from an inlet point other than the Inlet Point at Yarraloola, GGT will negotiate in relation to providing a service ("Negotiated Service") to meet that person's specific requirements. Negotiated Services will be provided on the terms and conditions negotiated between GGT and the User of Prospective User.

#### Other submissions

107. No other public submissions were received about this required amendment.

# **Authority's Assessment**

108. In the Draft Decision, the Authority expressed concern that clause 4.2(a) of the Services Policy in GGT's Proposed Revisions sought to impose on GGT, an obligation that fell short of offering a Service and thus was inconsistent with

- section 3.1 and section 3.2(a) of the Code. These concerns are set out in paragraphs 92 to 98 of the Draft Decision.
- 109. The Amended Proposed Revision by GGT in relation to clause 4.2(a) would merely impose an obligation on GGT to negotiate. As with the clause as it was originally submitted in GGT's Proposed Revisions, the amendment proposed by GGT does not impose on it an obligation to offer services.
- 110. There is no provision in the Code for an obligation to "develop" or "negotiate" services to be imposed. Indeed, the effect of allowing the amendment proposed by GGT would be that an aggrieved party may seek arbitration under clause 6 on GGT's negotiating behaviour or whether GGT has considered developing a service, neither of which is intended to be the subject of arbitration. The arbitration provisions are directed to determining the terms and conditions of services offered by the Service Provider, not to review its negotiating behaviour.
- 111. The Authority considers that in order to be consistent with the Code the Services Policy should provide an obligation on GGT to offer a Negotiated Service once agreement has been reached as to the terms and conditions of the service. On this basis GGT would not have an obligation to provide a service which it did not agree to provide.

# **Final Decision**

112. The Authority does not accept clause 4.2(a) in GGT's Amended Proposed Revisions as the proposed clause is inconsistent with sections 3.1 and 3.2 of the Code.

# **Required Amendment 1**

Section 4.2(a) of GGT's Amended Proposed Revisions of 22 April 2010 should be amended to replace the words "negotiate in relation to providing" with the words "offer" as follows:

"Should any User or Prospective User have requirements which cannot be satisfied through a Reference Service, including for gas transportation from an inlet point other than the Inlet Point at Yarraloola, GGT will negotiate in relation to providing offer a service ("Negotiated Service") to meet that person's specific requirements. the terms and conditions of which have been negotiated between GGT and the User or Prospective User."

# Draft Decision - Amendment 2

113. Section 4.2 of GGT's Proposed Revisions should be amended to insert a new sub-paragraph 4.2(c) as follows:

For the avoidance of doubt, the Negotiated Services which GGT will offer include an Interruptible Service for the haulage of gas which is subject to curtailment or interruption by GGT.

#### **Public Submissions**

#### **GGT's Submissions**

- 114. In its Amended Proposed Revision, GGT has inserted sub-sections 4.2(c) and 4.2(d). These sub-sections make provision for GGT to offer an Interruptible service and are worded as follows:
  - (c) To the extent that the Spare Capacity of the Covered Pipeline is not sufficient to meet the User's requirements in their entirety with a Firm Service, GGT will, on the User contracting to take the entire Spare Capacity as a Firm Service, offer an Interruptible Service, as a Negotiated Service, for the balance of the User's requirements in excess of that contracted as Firm Service. Should Spare Capacity become available on the Covered Pipeline, the User will be required to contract for that Spare Capacity as a Firm Service and reduce the amount of Interruptible Service accordingly.
  - (d) For the avoidance of doubt, the Interruptible Service is available only to the extent the Capacity of the Covered Pipeline is not being used by other Users taking a Firm Service.

#### Other Submissions

- 115. In its submission dated 24 November 2009, Esperance Pipeline Co expressed its support for the inclusion of an Interruptible Service which is not a Reference Service.
- 116. No other submissions were received with respect to this required amendment.

# **Authority's Assessment**

- 117. The Authority confirms its position set out in paragraphs 101 to 108 of the Draft Decision
- 118. The Authority considers that the Services Policy can impose an obligation on GGT to offer an Interruptible Service but only in circumstances where GGT has first reached agreement with the requesting party as to the terms and conditions of the Service.
- 119. The sub-sections which GGT propose to incorporate into the Revised Access Arrangement will impose on GGT an obligation to offer an Interruptible Service as a Negotiated Service if the circumstances set out in sub-section 4.2(c) apply.
- 120. This accords with the Authority's view that an Interruptible Service should be available as a Negotiated Service.

#### **Final Decision**

121. Sub-clauses 4.2 (c) and 4.2(d) as set out in GGT's Amended Proposed Revisions otherwise address, to the Authority's satisfaction, the requirements of Amendment 2 of the Draft Decision.

# Draft Decision - Amendment 3

122. In relation to the GGP Capital Base Table 2 and Table 3 of the Access Arrangement Information should be amended to reflect the values in Table 2 and Table 4 of this Draft Decision respectively.

#### **Public Submissions**

#### **GGT's Submissions**

- 123. In its submission dated 11 December 2009, GGT rejected the amendment requiring that the GGP Capital Base in Tables 2 and 3 of the Access Arrangement Information be replaced by the GGP Capital Base in Tables 2 and 4 of the Authority's Draft Decision.
- 124. GGT based its rejection of this amendment on the arguments it sets out in paragraphs 26 to 134 (see pages 5 to 25) of it's submission rejecting the Authority's position on Expansions of Capacity (discussed above at paragraphs 42 to 64).
- 125. In its Amended AAI, GGT made an amendment to the capital expenditure value in Table 2 for 2005 from \$1.4 million to \$1.5 million and an amendment to the capital expenditure value in Table 2 for 2009 from \$7.1 million to \$3.3 million.
- 126. Further, in its Amended AAI, GGT made amendments to Table 3. It amended the value at 31 December 2009 of a number of asset classes, the overall effect of which was to decrease the Capital Base from \$446.2 million to \$442.3 million.

#### Other Submissions

- 127. In its submission dated 11 December 2009, APIA asserts that required amendment 3 effectively proposes de facto coverage of uncovered sections of the GGP. It argues that decisions about coverage are made by the National Competition Council, not the economic regulator. If the Authority makes a de facto coverage decision, this increases uncertainty and risk, thereby discouraging investment. It expresses doubt about the Authority's legal power to consider capital costs of uncovered assets when determining reference tariffs for covered pipeline (section [2]).
- 128. No other submissions were received in respect of the Capital Base.

# **Authority's Assessment**

- 129. The Authority notes that GGT has amended the Capital Expenditure values set out in Table 2 of its Amended AAI.
- 130. The Authority also notes that in Table 3 of GGT's Amended AAI, the values for the asset classes in the Initial Capital Base and in the Capital Base at 31 December 2009 are very close to the values for these asset classes in the Final Decision. The total of the Final Decision values for these asset classes is \$0.3 million higher than the total value in Table 3 of GGT's Amended AAI.
- 131. In this Final Decision at paragraphs 42 to 64 above, the Authority has revised its Draft Decision in relation to the Expansions of Capacity. On this basis, the

costs of providing services by virtue of the Expansions of Capacity, including costs associated with the Capital Base, are to be excluded from the calculation of Total Revenue. Further, in its Final Decision at paragraphs 87 to 102 above the Authority has revised its Draft Decision in relation to the modelling of Reference Tariffs. On this basis, all components of Total Revenue, including the Capital Base, are to be modelled on an annual and not a quarterly basis.

- 132. As a consequence of these revisions by the Authority of the Draft Decision with respect to Expansions of Capacity and the modelling of Reference Tariffs, the Authority has reconsidered the value allocated to the Compressor Stations as at 31 December 2009 and has revised this value to \$46.0 million.
- 133. The Authority accepts the values for Capital Expenditure in Table 2 of GGT's Amended AAI.
- 134. The Authority does not accept GGT's asset values in Table 3 of the Amended AAI.

#### **Final Decision**

135. The Authority requires the capital base values by asset class in Table 3 of GGT's Amended AAI to be revised to the values shown in Table 1 of this Final Decision below.

Table 1: Authority's Required Revisions to Table 3 of GGT's Amended AAI [GGP Initial Capital Base (\$m, 31 December 2009)]

Asset class	Value in Initial Capital Base	Values at 31 December 2009
Pipeline and laterals	438.7	371.3
Main line valve and scraper stations	9.2	7.1
Compressor stations	41.6	<del>45.9</del> 46.0
Receipt and delivery point facilities	1.5	2.1
SCADA and communications	10.1	2.1
Cathodic protection	1.8	0.2
Maintenance bases and depots	7.7	6.2
Remote Accommodation	0.0	1.5
Other assets	0.4	<del>1.9</del> 2.1
Sub Total	511.1	<del>438.4</del> 438.7
Line Pack	1.1	1.1
Working capital	1.5	<del>2.8</del> 2.7
Total	513.7	4 <del>42.3</del> 442.6*

<sup>\*</sup> Minor difference compared to addition of values in table due to rounding

# **Required Amendment 2**

In relation to the GGP Capital Base, Table 3 of GGT's Amended AAI of 22 April 2010 should be amended to reflect the values set out in Table 1 of the Final Decision.

# **Draft Decision - Amendment 4**

136. In relation to the GGP Capital Base and Depreciation Table 2 of the Access Arrangement Information should be amended to reflect the values at Table 6 of this Draft Decision.

#### **Public Submissions**

- 137. In its submission dated 11 December 2009, GGT rejected the requirement to amend its Table 2 to reflect the values of Table 6 in the Draft Decision. It appended an amended Table 2 which reduced capital expenditure to \$3.5 million and changed working capital to \$0.2 million. These amendments do not reflect the values in the Draft Decision.
- 138. GGT justified its variation to the values for capital expenditure and working capital based on the deferment of expenditure on remote accommodation at Wiluna and Paraburdoo compressor stations and the Yarraloola and Ilgarari compressor work until the 2010/2011 and 2011/2012 financial years. It also noted that its values in the amended table include audited actuals to 30 June 2009 (see paragraphs 146 to 150, page 28).
- 139. GGT based its rejection of the values in Table 6 of the Draft Decision on its broader argument about uncovered capacity which is discussed at paragraphs 78 to 79 above.
- 140. In Table 2 of its Amended AAI, GGT revised a number of the values the overall effect of which was to change the closing asset value for 2005 to \$480.1 million, for 2006 to \$470.6 million, for 2008 to \$450.5 million and for 2009 to \$442.3 million.
- 141. No other public submissions were received in respect of the Capital Base and Depreciation.

# **Authority's Assessment**

142. The Authority notes that GGT has made amendments to Table 2 in its Amended AAI and that these amendments do not accord with the values required in the Draft Decision. However, as previously discussed, the Authority has revised its Draft Decision in relation to the Expansions of Capacity in this Final Decision. On this basis, the costs of providing services by virtue of the Expansions of Capacity, including the Capital Base and Depreciation, are to be excluded from the calculation of Total Revenue. Further, in its Final Decision, the Authority has also revised its Draft Decision in relation to the modelling of Reference Tariffs as previously discussed. On this basis, all components of Total Revenue, including Capital Base and Depreciation, are to be modelled on an annual and not a quarterly basis.

- 143. As a consequence of these revisions by the Authority of the Draft Decision with respect to Expansions of Capacity and the modelling of Reference Tariffs, the Authority has amended its calculations of the values for Capital Base roll forward and Depreciation.
- 144. The Authority does not consider appropriate, GGT's proposed modelling of over-depreciation accrued under the current Access Arrangement though the use of negative depreciation values over the forthcoming Access Arrangement Period. The Authority considers that it is more appropriate to provide a once-off adjustment for over-depreciation through increasing the Capital Base by \$0.4 million and adjusting the Cost of Service in the first year of the forthcoming Access Arrangement Period. This adjustment amounts to a reduction of \$0.4 million to the Total Revenue in 2010.
- 145. The Authority does not accept the values in Table 2 of GGT's Amended AAI (apart from the Capital Expenditure values as previously discussed).

#### **Final Decision**

146. The Authority requires the values in Table 2 of GGT's Amended AAI to be revised to the values shown in Table 2 of this Final Decision below.

Table 2: Authority's Required Revisions to Table 2 of GGT's Amended AAI

[GGP Capital Base roll forward 2000-2009(\$m, nominal)]	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Opening asset value	513.7	507.3	505.8	495.5	496.1	490.3	<del>480.1</del> 480.2			<del>450.5</del> 450.3
Capital expenditure	3.6	8.4	1.1	10.1	6.1	1.5	2.1	1.8	1.7	3.3
Change in working capital	0.3	0.7	-0.7	1.4	-0.7	<del>-0.2</del> -0.1	<del>0.0</del> 0.3	<del>-0.2</del> 0.0	<del>0.5</del> -0.2	0.2
Depreciation	10.4	10.6	10.8	10.9	11.2	11.4	11.6	11.9	12.1	11.6
Adjustment for over depreciation										0.4*
Closing asset value	507.3	505.8	495.5	496.1	490.3	<del>480.1</del> 480.2	<del>470.6</del> 471.0		<del>450.5</del> 450.3	<del>442.3</del> 442.6

<sup>\*</sup>refer paragraph 144 of this Final Decision

# **Required Amendment 3**

In relation to the GGP Capital Base and Depreciation, Table 2 of GGT's Amended AAI of 22 April 2010 should be amended to reflect the values in Table 2 of the Final Decision.

# **Draft Decision - Amendment 5**

147. In relation to the Forecast Capital expenditure Table 4 of the Access Arrangement Information should be amended to reflect the values in Table 8 of this Draft Decision.

#### **Public Submissions**

- 148. In its submission dated 11 December 2009, GGT rejected the requirement set out under this amendment. GGT based its rejection of this amendment on its broader argument about Expansions of Capacity discussed at paragraphs 44 to 47 above.
- 149. In its further submission dated 22 January 2010 GGT reiterated its view that investment in compressor stations and uncovered capacity is not New Facilities Investment so the services provided by that capacity are not Services under the Code (see paragraphs 61 to 65, pages 14 to 15).
- 150. In its Amended AAI, GGT revised the values for some items of Forecast Capital Expenditure set out in Table 4. The overall effect of these revisions was to change the Forecast Capital Expenditure for 2010 to \$8.7 million and for 2011 to \$9.1 million.
- 151. In its submission dated 11 December 2009, BHPB argued that GGT's daily and total throughputs are erroneous because it has not included an allowance for the increase in Services that will arise from the New Facilities Investment (section 6.6, pages 11 to 12).
- 152. No other public submissions were received in respect of Forecast Capital Expenditure.

# **Authority's Assessment**

- 153. As previously discussed, the Authority has revised its Draft Decision in relation to the Expansions of Capacity and the modelling of Reference Tariffs. On this basis, the costs of providing services by virtue of the Expansions of Capacity, including Forecast Capital Expenditure, are to be excluded from the calculation of Total Revenue. Further, all components of Total Revenue, including Forecast Capital Expenditure, are to be modelled on an annual and not a quarterly basis.
- 154. As a consequence of these revisions by the Authority of the Draft Decision with respect to Expansions of Capacity and modelling of Reference Tariffs, the Authority accepts the Forecast Capital Expenditure proposed by GGT in the Amended AAI.

#### **Final Decision**

155. The Authority accepts the Forecast Capital Expenditure as set out in Table 4 of GGT's Amended AAI.

# Draft Decision - Amendment 6

156. In relation to Working Capital, Table 7 of the Access Arrangement Information should be amended to reflect the values in Table 10 of this Draft Decision.

#### **Public Submissions**

- 157. In its submission dated 11 December 2009, GGT included an amended Table 7 but the amended values do not reflect the values of Table 10 in the Draft Decision. GGT also noted that it rejected the required amendment on the grounds that it did not accept the Authority's argument about Expansions of Capacity. GGT's rebuttal of the Authority's argument about Expansions of Capacity is set out at paragraphs 44 to 47 above.
- 158. In its table 7 of the Amended AAI, GGT revised the value for change in working capital for each year from 2010 to 2014 to \$2.0 million, -\$0.4 million, -\$0.6 million, \$0.1 million and \$0.2 million respectively.
- 159. No other pubic submissions were received with respect to Working Capital.

# **Authority's Assessment**

- 160. The Authority notes that GGT's proposed value for the Change in Working Capital in 2010 is \$0.2 million lower than that required by this Final Decision. However, the values for Change in Working Capital for the years 2011 to 2014 are the same as this Final Decision
- 161. As previously discussed, the Authority has revised its Draft Decision in relation to the Expansions of Capacity and the modelling of Reference Tariffs. On this basis, the costs of providing services by virtue of the Expansions of Capacity, including Working Capital, are to be excluded from the calculation of Total Revenue. Further, all components of Total Revenue, including Working Capital, are to be modelled on an annual and not a quarterly basis.
- 162. As a consequence of these revisions by the Authority of the Draft Decision with respect to Expansions of Capacity and modelling of Reference Tariffs, the Authority accepts the modelling methodology used by GGT in the Amended AAI for Working Capital.
- 163. The Authority has considered the average annual working capital provided by GGT in its tariff model. The Authority does not agree with the value ascribed by GGT to the average annual working capital for 2010.

# **Final Decision**

164. The Authority requires the values in the third row of Table 7 of GGT's Amended AAI to be revised to the values shown in Table 3 of this Final Decision below. In addition, the Authority requires a further row to be added to Table 7 of GGT's Amended AAI, immediately after the third row, headed "Average annual working capital" as shown in Table 3 of this Final decision below.

Table 3: Authority's Required Revisions to Table 7 of GGT's Amended AAI

[GGP Capital Base roll forward 2010-2014 (\$m, nominal)]

	2010	2011	2012	2013	2014
Change in working capital	<del>2.0</del> 2.1	-0.4	-0.6	0.1	0.2
Average annual working capital	4.8	4.3	3.8	3.9	4.1

# **Required Amendment 4**

In relation to Working Capital, Table 7 of GGT's Amended AAI of 22 April 2010 should be amended to reflect the headings and values in Table 3 of the Final Decision.

# **Draft Decision - Amendment 7**

165. In relation to Depreciation Table 6 of the Access Arrangement Information should be amended to reflect the values in Table 13 of this Draft Decision.

## **Public Submissions**

#### **GGT Submissions**

- 166. In its submission dated 11 December 2009, GGT included an amended Table 6 for Forecast Depreciation. While a number of the values have been revised, the values in the table do not reflect the values in Table 10 of the Draft Decision.
- 167. GGT does not explain why some of the values in Table 6 have been amended but it does note that the required amendment is a consequence of the Authority's decision on expansions to capacity. GGT's argument against the Authority's decision on Expansions of Capacity is set out at paragraphs 45 to 47 above.
- 168. In table 6 of its Amended AA, GGT revised a number of values for depreciation of the asset classes. The overall effect of these revisions was to change the total value for depreciation in 2011 to \$11.3 million, for 2012 to \$11.9 million, for 2013 to \$12.2 million and for 2014 to \$12.3 million.

#### Other submissions

169. No other public submissions were received with respect to depreciation.

# **Authority's Assessment**

- 170. The Authority's position on depreciation was set out in paragraphs 366 to 381 of the Draft Decision. This position was based in part on the view the Authority expressed in the Draft Decision regarding Expansions of Capacity.
- 171. As previously discussed, the Authority has revised its Draft Decision in relation to the Expansions of Capacity and the modelling of Reference Tariffs. On this

- basis the costs of providing services by virtue of the Expansions of Capacity, including Depreciation, are to be excluded from the calculation of Total Revenue. Further, all components of Total Revenue, including Depreciation, are to be modelled on an annual and not a quarterly basis.
- 172. As a consequence of these revisions by the Authority of the Draft Decision with respect to Expansions of Capacity and modelling of Reference Tariffs, the Authority has reconsidered the issue of depreciation. It has re-evaluated the value to be ascribed to the depreciation of each asset class for the years 2010 to 2014.
- 173. As discussed previously under paragraph 144, above, the Authority does not consider GGT's proposed modelling of over-depreciation accrued under the current Access Arrangement though the use of negative depreciation values over the forthcoming Access Arrangement Period to be appropriate. The Authority has made an adjustment for this over-depreciation as outlined under paragraph 144.

#### **Final Decision**

174. The Authority requires the values in Table 6 of GGT's Amended AAI to be revised to the values shown in Table 4 of this Final Decision below.

Table 4: Authority's Required Revisions to Table 6 of GGT's Amended AAI

[Forecast Depreciation (\$m, nominal)]

	2010	2011	2012	2013	2014
Pipeline and laterals	6.8	6.8	6.8	6.8	6.8
Mainline valve and scraper stations	0.2	0.2	0.2	0.2	0.2
Compressor stations	2.6	2.7	2.9	2.9	2.9
Receipt and delivery point facilities	0.1	0.1	0.1	0.1	0.1
SCADA and communications	0.3	0.3	0.5	0.7	0.7
Cathodic protection and remote accommodation	0.1	0.2	0.3	0.3	0.3
Maintenance bases and depots	0.2	0.2	0.2	0.2	0.2
Other assets	0.4	0.7	0.9	1.0	1.0
Total	<del>10.7</del> 10.8	11.3	11.9	12.2	12.3

# **Required Amendment 5**

In relation to Forecast Depreciation, Table 6 of GGT's Amended AAI of 22 April 2010 should be amended to reflect the values in Table 4 of the Final Decision.

# **Draft Decision - Amendment 8**

- 175. In relation to Rate of Return, Table 8 of the Access Arrangement Information should be amended to reflect the values in Table 15 of the Draft Decision.
- 176. Draft Decision Table 15 is reproduced below:

Parameter	Lo	Hi
Nominal Risk Free Rate (Rfn)	5.52%	5.52%
Real Risk Free Rate (Rfr)	3.05%	3.05%
Inflation Rate (I)	2.40%	2.40%
Debt Proportion (D)	60%	60%
Equity Proportion (E)	40%	40%
Cost of Debt; Debt Risk Premium (Drp) (BBB+)	2.80%	2.80%
Cost of Debt; Debt Issuing Cost (Disc)	0.125%	0.125%
Cost of Debt; Risk Margin (DRm)	2.925%	2.925%
Australian Market Risk Premium (Rp)	5.00%	7.00%
Equity Beta (Be)	0.8	1.2
Corporate Tax Rate (T)	30%	30%
Franking Credit (g)	81%	57%
Imputation Adj (G)	74.2%	80.4%
Nominal Cost of Debt (DPn)	8.45%	8.45%
Real Cost of Debt (DPr)	5.90%	5.90%
Nominal Pre Tax Cost of Equity (EPn)	10.10%	15.98%
Real Pre Tax Cost of Equity (EPr)	7.52%	13.26%
Nominal After Tax Cost of Equity (EAn)	9.52%	13.92%
Real After Tax Cost of Equity (EAr)	6.95%	11.25%

Parameter	Lo	Hi	Lo + 10%	Hi - 10%	Mid of Range		
WACC Debt; Pre-tax Officer (Market Practice or Forward Transformation)							
Nominal Pre Tax WACC (WPn)	9.11%	11.46%	9.34%	11.22%	10.28%		
Real Pre Tax WACC (WPr)	6.55%	8.85%	6.78%	8.62%	7.70%		
WACC; After-tax Vanilla							
Nominal After Tax WACC (WAn)	8.88%	10.64%	9.05%	10.46%	9.76%		
Real After Tax WACC (WAr)	6.32%	8.04%	6.50%	7.87%	7.18%		

## Nominal Risk Free Rate of Return

## **Public Submissions**

- 177. In its submission dated 11 December 2009, GGT noted that the Authority has accepted GGT's proposal to determine the risk free rate of return based on the 20 day average of the 10 year Commonwealth Government bond yield which will be updated prior to the Final Decision. GGT noted that there has been a significant increase in these yields since the beginning of 2009. GGT considered it appropriate to set the risk free rate over a 20 day period close to the Final Decision.
- 178. No other public submissions were received about the nominal risk free rate of return.

## Consultants' Advice

179. In its final report dated 17 February 2010, Frontier Economics noted that in its Draft Report dated 6 August 2009 it concluded that the appropriate method for determining the risk free rate is an average over 20 trading days shortly before the start of the regulatory control period. This method has been agreed as appropriate by the Authority, the AER and GGT and was approved by the Authority in its Draft Decision (page 3).

## **Authority's Assessment**

- 180. The Draft Decision noted that the Authority approved GGT's proposal in relation to the calculation of the nominal risk free Rate of Return.
- 181. The Authority considers the estimated nominal risk free Rate of Return should be 5.79 per cent, as at 30 April 2010.

## Forecast Inflation

- 182. In its submission dated 11 December 2009, GGT noted that there is a difference in the method used by GGT (arithmetic averaging) and the Authority (geometric averaging). GGT asserted that the arithmetic averaging is more appropriate in the circumstances but acknowledged that the method has no material impact on the inflation forecast (paragraphs 567 to 569, page 94).
- 183. In its submission supporting GGT's submission dated 11 December 2009, Synergies noted the different methodologies used by GGT and the Authority. Synergies disputed the Authority's assessment that geometric averaging is more accurate and asserted that in circumstances where observations are independent of each other, arithmetic averaging is considered more appropriate. It acknowledged that, while it views arithmetic averaging as a more appropriate method to apply when forecasting inflation, it recognised that the method used has little impact on the value of the inflation parameter (pages 56 to 57).
- 184. No other public submissions were received about the forecast inflation.

185. In its final report dated 17 February 2010, Frontier Economics noted that there is agreement that the expected inflation should be set at 2.4% but further noted there is a difference of views about the methodology used to calculate this with the difference being immaterial (section 3.8, page 27).

# **Authority's Assessment**

- 186. The Draft Decision outlined the basis for the Authority's approach to the calculation of the forecast inflation rate. Under this approach, the Authority has adopted an averaged indexed rate, which takes into account the compounding effect over 10 years, rather than the arithmetic average proposed by GGT.
- 187. The Authority confirms its view that the approach set out in the Draft Decision is appropriate. On this basis, the forecast inflation rate is 2.50 per cent, as at 30 April 2010.
- 188. The Authority also notes that GGT has acknowledged in its submission on the Draft Decision, that the difference in the method for calculation of the forecast inflation rate adopted by the Authority compared to GGT's proposed method has little impact on the inflation rate value.
- 189. The Authority is of the view that it is more appropriate to use a geometric mean in estimating the inflated inflation. This current practice is consistent with the AER and other regulators in Australia.
- 190. Based on a nominal risk free rate of 5.79 per cent and a forecast inflation rate of 2.50 per cent, the Authority estimates a real risk free rate of 3.21 per cent.

## Market Risk Premium

- 191. In its submission dated 11 December 2009, GGT submitted that the Authority has not adequately justified its decision to propose a Market Risk Premium (MRP) value in a range between 5% and 7% when the Authority's consultant, Frontier Economics adopted a range of 6% to 7%. GGT then noted that techniques used to assess MRP values are continually developing and makes specific reference to Officer and Bishop's evidence that developed a MRP value of 8% for the period 2011 to 2015 for the electricity distributors. GGT also disputed that the MRP for its Access Arrangement should be based on the approach taken by the Authority in the SWIN and other historical regulatory decisions, in part because of the changing economic climate faced by GGT. It considered any MRP value below 6% to be unreasonable but conceded that it will accept a MRP value of 6% to 7% as a long term reasonable value and noted that the mid point of this range, 6.5%, accorded with the MRP proposed by its consultant, Synergies, and the Authority's consultant, Frontier Economics (paragraphs 424 to 443, pages 73 to 75).
- 192. In its second submission dated 22 January 2010, GGT refuted submissions made by BHPB (discussed in paragraph 194 below). GGT asserted that the TED Spread reflects a range of key economic factors, the interplay of which may adversely affect one or more individual factor. It further asserted that the TED Spread is inappropriate in the Australian context and therefore should not

- be applied in Australia. GGT concluded that the current market conditions support Frontier Economics' recommendation of a MRP value of 6 to 7% (paragraphs 98 to 104, pages 24 to 25).
- 193. In its report for GGT, Synergies noted that the MRP is inherently volatile and indicated that historical estimation periods are preferred. It therefore disputed the Authority's reliance on two shorter periods. It contended that if only the longer periods had been considered, a MRP value of 6.5% to 7.3% would have been calculated. Synergies argued that the Authority had not sufficiently justified a MRP value of below 6% and that the weight of evidence favours a range of 6% to 7% (pages 15 to 16).
- 194. In its submission dated 11 December 2009, BHPB submitted that there was no basis for the upper range of the MRP and that the range value should be 5% to 6%. It argued that market stabilisation since the Frontier WACC Report has returned debt spreads and market volatility to near historical levels. BHPB referred to the TED Spread, the Reserve Bank of Australia September 2009 Financial Stability Review and the London Interbank Offered Rate to support its arguments, firstly for a MRP range of 5% to 6% and secondly, that any value higher than 6% is unreasonable (section 12, pages 22 to 24).
- 195. In its submission dated 11 December 2009, APIA argued that the Authority's justification for the MRP range of 5% to 7% is flawed because the regulatory precedents the Authority refers to predate the global financial crisis and that the AER Final Decision on Electricity Transmission and Distribution Network Service Providers Review of WACC Parameters arrived at a MRP estimate to 6.5%. It submitted that, in the current economic climate, investors are looking for a premium before committing equity capital and, as such, a MRP value of 6.5% or above is appropriate for the long term (section [5]).
- 196. In its submission dated December 2009, FIG noted that the Draft Decision adopted a MRP range of 5% to 7% with a midpoint of 6% when its consultant, Frontier Economics, recommended a range of 6% to 7% with a midpoint of 6.5%. It argued that the Authority has not justified its adoption of the range of 5% to 7% except by reference to its own Draft Decision on SWIN. It also argued that the Authority did not take account of the global financial crisis. While accepting that estimating a MRP is a matter of judgment, FIG noted that different methodologies can be used to assist in making that estimate. It argued that the Authority should use its discretion to adopt a value at the higher end of the reasonable range based on historical evidence. This would enable the Authority to set a rate of return that complies with s8.30 of the Code; that is which is commensurate with prevailing market conditions in the market for funds (pages 12 to 13).

197. In its final report dated 17 February 2010, Frontier Economics noted that GGT originally proposed a MRP of 7% but that BHPB submitted a MRP of 5.75% was more appropriate. It further noted that in its draft report dated 6 August 2009, that 6% was an appropriate estimate of MRP in normal market conditions and a range of 6% to 7% is reasonable in the current circumstances. Frontier Economics then reviewed the submissions made to the Authority in response to the Draft Decision noting that the general theme of the submissions from GGT, FIG and APIA is that current circumstances indicate the appropriateness of a higher than average MRP. It also noted that these submissions are

generally consistent with its own draft report's view that 6% to 7% was reasonable. Frontier Economics then outlined the argument submitted by BHPB that the market circumstances have changed and stabilised since the draft report; Frontier Economics, however disputed that there is clear evidence to support BHPB's conclusions. It noted continued implied volatility in global markets and that the 10 year BBB spread to Commonwealth Government Securities remains above the levels of 2005 and 2006. Frontier Economics concludes that the market has not stabilised to near historical levels and as such MRP is likely to be above its long term average level. Frontier Economics maintained its view that a range of 6% to 7% for MRP is reasonable in the circumstances (pages 3 to 6).

## **Authority's Assessment**

- 198. In its Draft Decision, the Authority considered a reasonable range of values for the Market Risk Premium to be 5 to 7 per cent.
- 199. The Authority notes that GGT's submission on the Draft Decision, outlining its view that a MRP range of 6 to 7 per cent was reasonable, set out supporting arguments similar to those in its proposal.
- 200. An estimate of MRP of 6 per cent, from the AER's view, was the best estimate of a forward-looking long term value for MRP prior to the onset of the global financial crisis under relatively stable market conditions with the assumption that there is no structural break which has occurred in the market. However, given the current unstable state of the international financial market at that time (May 2009) and taking into account the uncertainty surrounding the global economic crisis, the AER believed that a MRP of 6.5 per cent is reasonable. However, the AER also considers that:
  - "... prior to the onset of the global financial crisis, an estimate of 6 per cent was the best estimate of a forward looking long term MRP, and accordingly, under relatively stable market conditions—assuming no structural break has occurred in the market—this would remain the AER's view as to the best estimate of the forward looking long term MRP."
- 201. The Authority also observes that 6.0 per cent is the market risk premium value most commonly used by market practitioners. Surveys of market risk practice show that 47 per cent of market practitioners apply a MRP of 6.0 per cent, while 69 per cent apply a value of 6.0 per cent or less. Only 26 per cent of market practitioners apply values of MRP more than 6.0 per cent <sup>5</sup>. However, the Authority is aware that this information preceded the global financial crisis.
- 202. With five consecutive increases in the cash rate by the RBA since 7 October 2009, the current state of the Australian financial market has been significantly improved. In this regard, the recently released statement on Monetary Decision by the RBA on the 6 April 2010 states:
  - "Global financial markets are functioning much better than they were a year ago and the extraordinary support from governments and central banks is gradually being wound back." and
  - "Australia's terms of trade are rising, adding to incomes and fostering a build-up in investment in the resources sector. Under these conditions, output growth over the

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<sup>&</sup>lt;sup>5</sup> G. Truong, G. Partington and M. Peat, 'Cost of capital estimation and capital budgeting practices in Australia', *Australian Journal of Management*, Vol. 33, No. 1, June 2008, p.155.

- year ahead is likely to exceed that seen last year, even though the effects of earlier expansionary policy measures will be diminishing."
- 203. The Authority has considered the data on market returns for the periods detailed in Table 5. The Authority has had regard to the analysis by the AER in its WACC Review in May 2009. However, the Authority does not have access to the data set to the end of 2008 prepared by Associate Professor Handley, the AER's consultant on the market risk premium, on which the AER has derived its conclusions on the issue. The Authority has also had regard to its own data set with an update to the end of 2009.

Table 5: Estimates of the market risk premium over a range of different periods<sup>6</sup>

Value of Imputation credits	1958 – 2009	1980 -2009	1988 - 2009
0%	6.2	5.7	4.6
60%	6.7	6.4	5.7

- 204. Table 5 shows that the range of estimates of the market risk premium over the various periods, using the Authority's data set and including an adjustment for the value of imputation credits (60 per cent), is 5.7 per cent to 6.7 per cent.
- 205. IPART has used a market risk premium range of 5.5 per cent to 6.5 per cent in its recent determinations, such as for metropolitan and outer metropolitan bus services in December 2009, the CityRail determination, and recent determinations on prices charged by Sydney Catchment Authority and Hunter Water. IPART argues that MRP derived from a long-term historical time series remains appropriate. IPART also consider that relying on a long-term historical time series adequately takes into account any impact on excess returns of recent market events such as the global financial crisis.
- 206. The Queensland Competition Authority has also used 6.0 per cent for MRP in the Draft determination for Queensland Rail in December 2009. QCA argued that it did not lower the MRP when the market conditions at the time led some stakeholders to seek a reduction therefore increasing the MRP now would be inconsistent with its past practice that sets the MRP at a level to encourage investment over the medium term and not in response to short term market fluctuations
- 207. In the Authority's Final Decision on Proposed Revisions to the Access Arrangement for the South West Interconnected Network (SWIN), a range of market risk premium of 5% and 7%, with the mid-point value of 6%, was adopted.
- 208. With respect to BHPB's submission on the Draft Decision, the Authority notes BHPB's view, that an MRP range of 5 to 6 per cent is appropriate. This is similar to the view in BHPB's previous submission on GGT's proposal.

<sup>&</sup>lt;sup>6</sup> The adjustments for the value of imputation credits of 60 per cent have been interpolated using the values of imputation credits at 50 per cent and 65 per cent made by the AER in its WACC review, p.209. It is immaterial to make the adjustment for the value of imputation credits for one more year (from the ending year of 2008 in the AER's analysis to the ending year of 2009 as calculated using the Authority's data set).

- 209. In relation to the submissions by FIG and APIA, the Authority notes that these submissions argue for the MRP range to be in the order of 6 to 7 per cent. While the Authority recognises that there are differing views on the extent of the MRP range, the Draft Decision noted that in forming its view on an appropriate range for the MRP, the Authority had taken into account all of the evidence of realised equity premia over recent decades and market practice.
- 210. On the basis of the above analysis, the Authority is of the view that the range of estimates of market risk premium of 5 percent to 7 per cent is justified.
- 211. The Authority confirms its view, as set out in the Draft Decision, that it considers a reasonable range of values for the MRP to be 5 to 7 per cent.

## **Equity Beta**

- 212. In its submission dated 11 December 2009, GGT argued that the Authority's reliance on the beta value in electricity distribution decisions is based on an erroneous assumption that the electricity networks which serve major population centres are comparable with GGP's infrastructure and end-use market. It then set out the arguments that the first principles analysis relied upon by the Authority is a qualitative assessment and it is not possible to estimate the specific effect of each factor such as the impact of take-or-pay provisions on volume risk. This was pertinent because GGP's customer base is different from that of pipelines with a wider range of customers. GGT claimed that the better comparators for GGP were the Roma to Brisbane Pipeline and the Moomba to Sydney Pipeline. The equity beta most commonly applied to such regulated gas pipelines is 1.0.
- 213. GGT referred to the report by its consultant, Synergies, and noted that there has been a marked reduction in the average betas of mining companies than had been set out in a previous study by Synergies. This highlighted that beta estimation is inherently uncertain so the Authority should select a point estimate at the higher end of the range to account for this uncertainty.
- 214. GGT noted that in the Draft Decision, the Authority's consultant, Frontier Economics argued for more account to be taken of the beta estimates for BHPB and Rio Tinto as major customers of the GGP. GGT argued that this would not be appropriate as the contracted users are generally subsidiaries of BHPB and Rio Tinto and do not have guarantees provided by the parent company. Further, the parent companies are international, diversified resources companies without the same risk as single location or mineral type subsidiaries. Rather, the sample for assessing asset beta should include BHPB and Rio Tinto as well as average asset beta of the nickel, gold and iron ore sample mining companies. This assessment resulted in an equity beta of 1.4.
- 215. GGT concluded that the lower bound of 0.8 should be excluded because it is based on an irrelevant comparator and that the better lower bound is 1.0 which reflects the equity beta value currently ascribed to gas pipelines with diversified markets in large population centres. The upper bound should be 1.4 based on the most current market data. GGT revised its previous proposed equity beta range of 1.0 to 1.8 to 1.0 to 1.4 (pages 76 to 81).

- 216. GGT, in its second submission dated 22 January 2010, reiterated the inappropriateness of using electricity distribution and transmission WACCs which was the sole focus of the AER's WACC Report, upon which BHPB placed reliance in its submission. Further, GGT disputed BHPB's unsubstantiated reference to AGL Resources as a basis for the lower range of the equity beta. It also disputed BHPB's extraction of comments from the APA 2009 Annual Report as the basis for an equity beta because APA has a diversified asset base while in this decision, the Authority is assessing the equity beta of a single asset (page 24).
- 217. The report by GGT's consultant, Synergies, argued that if first principles analysis is used to estimate equity beta there are two potential grounds for error; firstly, that it is difficult to find appropriate comparators for the GGP and secondly, the measurement error associated with a statistical estimate. Synergies provided a detailed discussion of the problematic nature of first principles analysis which is a qualitative assessment. One factor which complicates the use of this form of analysis is the lack of relevant comparators. The most relevant comparators were the APA Group's two regulated pipelines from Roma to Brisbane and from Moomba to Sydney. The take-or-pay protection of both these pipelines' revenues was about the same level as that of GGP. Synergies then argued that, while the revenue average is about the same as for the GGP the long-term revenue risk for GGP is different from the regulated pipelines because of the risk that there will be a reduction in contracted volumes earlier than the expiration of those contracts. When these factors were taken into account, Synergies argued that a higher beta value could be justified.
- 218. Synergies then responded to issues raised by the Authority's consultant, Frontier Economics, in the Draft Decision. It addressed the concerns raised about the t-statistic, noting that the t-statistic needed to be greater than two to be reliable. Synergies presented its analysis results both with and without t-statistics of less than two (Table 1, page 25). Synergies also examined the R-squared of each estimate arguing that a low R-squared should be viewed with caution. After taking the t-statistic and R-squared into account, Synergies' calculations showed a deduction in the average betas of the sample mining companies. Synergies then set out asset betas for gas transmission and distribution firms (Table 2, page 26). It noted that little reliance could be placed on estimates in the sample with t-statistics of less than two, particularly as the sample size was itself small.
- 219. Synergies did not consider that the updated estimates (set out in its Table 2) would alter its previous conclusion that an appropriate lower bound for asset beta for gas transmission and distribution firms is 0.4. This was different from the AER's decision but Synergies justified this by noting that electricity transmission and distribution firms have a lower risk profile than gas transmission and distribution firms.
- 220. When discussing the upper bound, Synergies agreed that, while more weight can be given to BHPB and Rio Tinto, it should be limited to 50%. The other 50% should be based on the asset beta of the nickel, gold and iron ore sample excluding those with a t-statistic of less than two. Once weighted, this equated to an equity beta of 1.4, which Synergies concluded is an acceptable and logical value (pages 19 to 29).

- 221. In its submission dated 11 December 2009, BHPB concluded that the equity beta range should be 0.5 to 0.8. It submitted that GGT is not an average firm in the market as GGT is able to reduce its level of risk with contractual volumes and prices and with security bonds from customers. BHPB noted that the APA Group which has an 88% ownership interest in GGP has an equity beta of only 0.69 which reflects the fact that APA Group's key asset is natural gas infrastructure. Further, BHPB argued that six of the eight regulatory decisions discussed in the AER's WACC report had a final equity beta of less than 1.0. BHPB noted that the AER concluded that there was evidence to lower the previously adopted equity beta of 1.0. BHPB submitted that the equity beta of 1.0 was too conservative and the upper bound should be set at 0.8 as this better reflects the relatively low level of risk gas distributors face. BHPB concluded that a beta range of 0.5 to 0.8, should be adopted as this is consistent with the lowest beta for the American Company AGL Resources (pages 20 to 22).
- 222. In its submission dated December 2009, FIG argued against reducing the range of equity beta below 0.8 to 1.33 due to the relatively unique position of GGP in supplying almost all of its throughput to the mining sector. FIG relied on Frontier Economics' analysis to argue that the Australian mining sector typically had a higher level of business risk and consequently higher asset and equity betas. While GGT's risk factors may not have changed since the current Access Arrangement, FIG asserted that investors are demanding a higher rate of return for their investment. As such, it would not be logical to lower the equity beta relative to the current Access Arrangement. FIG concluded that an appropriate equity beta for the GGP is substantially above 1.0 (Pages 13 to 14).

- 223. In its Final Report dated 17 February 2010, Frontier Economics noted that GGT originally proposed an equity beta range for the GGP of 1.0 to 1.8. BHPB suggested a proposed equity beta point estimate of 0.7 and argued that GGT's analysis was inappropriate and incomplete. In its draft report dated 6 August 2009, Frontier Economics concluded an appropriate equity beta range was 0.8 to 1.2 and this advice was accepted by the Authority in the Draft Decision. Frontier Economics concluded that a lower bound of 0.8 is not unreasonably high. It based this conclusion on the AER's use of 0.8 for electricity networks, the AER's view that gas pipelines have a higher systemic risk than electricity networks and the Authority's adoption of the lower bound of 0.8 in its previous GGP decision. Frontier Economics discounted the lower bound proposed by BHPB as not being economically plausible.
- 224. Frontier Economics then reviewed the public submissions made in relation to the upper bound of 1.2. Both GGT and FIG have argued that this upper bound is too low. FIG proposed an upper bound of 1.33 and GGT had revised its upper bound down to 1.4. Frontier Economics disputed GGT's view that t-statistics of less than two should be eliminated from a calculation of beta estimates as this excludes firms with low systemic risk resulting in an upward bias in beta estimates. It maintained the view that beta estimates with t-statistics of less than TWO should not be mechanically excluded from the sample. Frontier Economics noted that, while it agrees with GGT's use of a beta estimate of 1.0 for 83% of GGP revenue it has concerns with the weighting applied to the remaining 17%. Of this 17%, 25% of weight was applied to each of BHPB and Rio Tinto with the remaining 50% weight applied

- to smaller mining firms. The mining company beta of 3.4 was seen by Frontier as too high and therefore overstating the risk of mining revenues. GGT's calculation results in an upper bound of 1.4. Frontier Economics outlined its concerns with this calculation approach and remains unconvinced that its recommended upper bound of 1.2 should be increased.
- 225. Frontier Economics then addressed the qualitative considerations submitted by GGT, particularly the take-or-pay arrangements and the volume risk it faces from mining companies. Frontier Economics noted that the take-or-pay comparison result is consistent with regulatory precedent of an equity beta of 1.0 which is the mid-point of the range it proposed in its draft report. Frontier Economics argued that the risk to volume is that it may be withdrawn during an economic downturn, rather than a risk that invoices will not be paid by BHPB or Rio Tinto subsidiaries. It then argued that as long as a mining company customer's operation is economically viable, then volume is unlikely to be withdrawn. Frontier Economics noted the lack of substantial withdrawal of volume during the present economic downturn. It therefore maintained its recommendation that the appropriate equity beta range of 0.8 to 1.2 is reasonable (pages 10 to 18).

# **Authority's Assessment**

- 226. The Draft Decision noted that the Authority considered a reasonable range of values for the equity beta to be 0.8 to 1.2, at a gearing level of 60 per cent debt to total assets.
- 227. In its submission on the Draft Decision, GGT has revised its position on the equity beta range as set out in its proposal (equity beta of 1.0 to 1.8) to an equity beta range of 1.0 to 1.4. BHPB has also revised its position in its submission from an equity beta of 0.7 to an equity beta range of 0.5 to 0.8. In its submission, FIG argued for an equity beta range of 0.8 to 1.33.
- 228. In the Draft Decision, the Authority noted that the correct approach to take in relation to equity beta is to adopt a reasonable range for values of equity beta. The Authority confirms this view.
- 229. The Authority also accepted in the Draft Decision, advice from Frontier Economics that a reasonable range for values of equity beta was 0.8 to 1.2.
- 230. The Authority considers that in ascribing a value to the equity beta, primary reliance should be placed on capital market evidence and statistical estimates of beta values, where these are available for comparable businesses.
- 231. In its 2009 WACC review for electricity transmission and distribution network service providers, with the assistance from Associate Professor Henry of the University of Melbourne, the AER established a sample of Australian businesses, comprising of gas-only network businesses, a single electricity-only network businesse, network businesses active in both electricity and gas, and utility businesses more generally. Given the limitations of available Australian data, the AER considered that gas network businesses could be

- considered as reasonable but not perfect comparators to electricity network businesses, given that both industries involve the transportation of energy.<sup>7</sup>
- 232. The AER considers that the reasonable range of the equity beta for a gas or electricity distribution network of between 0.4 and 0.7 is justified on empirical information. The AER has also considered the need for regulatory certainty and adopting a conservative approach in estimating the equity beta, commensurate with prevailing market conditions and the risks involved in providing reference services. On this basis, the AER considers that a value of 0.8 provides a best estimate of the equity beta arrived at on a reasonable basis for gas and electricity transmission and distribution networks.<sup>8</sup>
- 233. There are a substantial number of regulatory determinations for electricity and gas networks in Australia that have applied equity beta values of 1.0 and less than 1.0.9 Empirical studies of beta values have been subject to scrutiny and debate as part of regulatory processes. Over the past six years, there has been a downward trend in the beta values being applied in regulatory decisions for gas and electricity businesses.
- 234. The summary of previously adopted values of equity beta by regulators in Australia is shown in Table 6 below.

The main sample consisted of: AGL (2002 to 2005); Alinta (2002 and 2007); Alinta Network Holdings Pty Ltd (2003 to 2006); Country Energy (2002 to 2006); Diversified Utility and Energy Trusts (2003 to 2008); ElectraNet Pty Ltd (2002 to 2008); Energy Australia (2002 to 2006); Envestra Ltd (2002 to 2008); Ergon Energy Corporation (2002 to 2008); ETSA Utilities (2002 to 2008); GasNet Australia (Operations) Pty Ltd (2002 to 2007); Integral Energy (2002 to 2006); SP AusNet Group (2006 to 2008), and SPI PowerNet Pty Ltd (2002 to 2005).

See for example: Australian Energy Regulator 2009-10, Final decision: WACC review, May 2009; Jemena: Access arrangement proposal for the NSW gas networks 1 July 2010 – 30 June 2015 (Draft Decision February 2010).

Australian Energy Regulator, December 2008. Electricity transmission and distribution network service providers, Review of the weighted average cost of capital (WACC) parameters, p. 183.

Table 6: Regulatory Decisions – Equity beta in transmission determinations

Regulator (year)	Sector	Equity beta (final)
ERA (2005, Final) 10	Gas transmission	0.8-1.33
QCA (2006, Final) 11	Gas transmission	1.0
ACCC (2006, Final) 12	Gas transmission	1.0
ESC (2008, Final) <sup>13</sup>	Gas distribution	0.8 <sup>14</sup>
AER (2009, Final) <sup>15</sup>	Electricity transmission	1.0
AER (2009, Draft) 16	Gas distribution	0.8

- 235. Historically, equity betas have been set higher for regulated gas and electricity transmission businesses, compared to distribution businesses. This reflects the historical risk profiles of transmission versus distribution networks with the latter having a diversified customer base and more stable demand.
- 236. In the 2009 review of WACC parameters, the AER concluded that a beta value of 0.8 is appropriate for both transmission and distribution businesses in the National Electricity Market.<sup>17</sup> In the most recent determinations for gas networks, the AER has consistently applied an equity beta value of 0.8.<sup>18</sup> The AER noted that:

As outlined in the WACC review, empirical evidence suggests an equity beta of between 0.4 and 0.7 for both gas and electricity businesses. Setting a value for the equity beta slightly higher than the empirical estimates

Economic Regulation Authority May 2005. Final Decision on the Proposed Access Arrangement for the Goldfields Gas Pipeline.

ACCC, December 2006. Final Decision: Revised Access Arrangement by APT Petroleum Pipelines Ltd for the Roma to Brisbane Pipeline.

ACCC, December 2003. East Australian Pipeline Limited: Access Arrangement for the Moomba to Sydney Pipeline System.

<sup>&</sup>lt;sup>13</sup> ICRC, October 2004. Review of Access Arrangement for ActewAGL natural gas system in ACT, Queenbeyan and Yarrowlumla, Final decision, p.174-177.

The ESC selected a equity beta value of 0.7, then effectively adjusted the beta to 0.8 by making a transitional allowance. Essential Services Commission Appeal Panel, Decision on the Envestra Albury Appeal: E2/2008.

<sup>&</sup>lt;sup>15</sup> AER, April 2009. TransGrid transmission determination 2009–10 to 2013–14, Final decision, p.xiii.;

Australian Energy Regulator, 2009-10. Jemena: Access arrangement proposal for the NSW gas networks 1 July 2010 – 30 June 2015, p. 72 (Draft Decision February 2010). ActewAGL: Access Arrangement for the ACT Gas distribution network, p. 64 (Draft Decision November 2009). Country Energy Wagga Wagga Natural Gas Distribution Network, Access arrangement, July 2010-June 2015, p. 47 (Draft Decision November 2009).

Australian Energy Regulator, May 2009. Electricity transmission and distribution network service providers, Statement of the revised WACC parameters (transmission), Statement of the revised WACC parameters (transmission), Statement of regulatory intent on the revised WACC parameters (distribution), p. 6.

<sup>&</sup>lt;sup>18</sup> Australian Energy Regulator 2009-10. Jemena: Access arrangement proposal for the NSW gas networks 1 July 2010 – 30 June 2015, (Draft Decision February 2010). ActewAGL: Access Arrangement for the ACT Gas distribution network, (Draft Decision November 2009); and Country Energy Wagga Wagga Natural Gas Distribution Network, Access arrangement, July 2010-June 2015, (Draft Decision November 2009)

provides a return to cover uncertainty for volume risk. 19

- 237. GGT provided information on the equity betas for a number of potential comparators; including APA Group (equity beta of 0.81), Envestra (0.64) and US firms. The Authority notes that the APA Group holds an 88 per cent ownership interest in GGP, with Prime Infrastructure holding 12 per cent. In GGT's consultants report, Synergies noted that US companies were included due to the lack of Australian data. Synergies considered that US companies were only broadly comparable and given the issues with using foreign comparators, Synergies would not place any significant reliance on them.
- 238. For the purpose of this Final Decision, the equity beta could be derived from the calculated average asset betas of suitable comparators or from an asset beta value in the range associated with comparator businesses. The closest comparators would appear to be two Australian-operated companies, APA Group and Envestra, whose assets included transmission assets. The Authority was unable to identify any direct comparators for GGT.
- 239. The Authority has previously noted that while the asset and equity beta values of comparator firms provide some guidance on a reasonable range, estimated equity and asset betas are also very sensitive to the estimation methodology and the selected period. This is evidenced by the extensive range of values proposed in public submissions to regulators during their determination processes for gas and electricity assets.<sup>20</sup>
- 240. The Authority could also adopt an equity beta value, taking into account the particular characteristics of the GGP and the associated level of risk. This 'first principles' approach requires judgement on the sensitivity of GGT's returns to movements in the economy/market.
- 241. The systematic risk of an infrastructure owner does not directly equate to the systematic risk of its customers, given it is also dependent on a number of other factors, including the nature of the contractual arrangements between the infrastructure owner and customers. The Authority has consistently rejected the argument that the systematic risk of an infrastructure owner necessarily reflects the customer base.<sup>21</sup>
- 242. Contractual arrangements such as long-term take-or-pay-contracts mitigate the volume and price risks. The AER recently noted that while it accepts that gas businesses may have greater volume risk (compared to an electricity business), the degree to which volume risk represents business specific risk or systematic (market wide) risk has not yet been settled.<sup>22</sup>
- 243. Subsequent to the Draft Decision, the AER has published three decisions on Access Arrangement proposals for gas networks; the NSW gas networks,

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<sup>&</sup>lt;sup>19</sup> Australian Energy Regulator, November 2009. ActewAGL: Access Arrangement for the ACT Gas distribution network, (Draft Decision), p.63.

See for example; ACG, February 2008. Empirical evidence on proxy beta values for regulated gas distribution activities: Responses to submissions made to the Essential Services Commission, Report to Essential Services Commission of Victoria.

<sup>&</sup>lt;sup>21</sup> ERA 2008, op. cit.; ERA, July 2004. Amended Draft Decision on the Proposed Access Arrangement for the Goldfields Gas Pipeline.

<sup>&</sup>lt;sup>22</sup> Australian Energy Regulator, February 2010. Jemena: Access arrangement proposal for the NSW gas networks 1 July 2010 – 30 June 2015; p.129 (Draft Decision February 2010.

- ActewAGL and Country Energy.<sup>23</sup> The equity beta value determined in all three decisions was 0.8.
- 244. In its decision on the NSW gas networks, the AER considers that the nature of the gas industry (including the regulatory regime) means that the equity beta of a benchmark efficient service provider is likely to be significantly less than the beta of the market portfolio. This is because demand for energy is relatively inelastic, and the nature of regulated price and revenue caps further reduces fluctuation in income.
- 245. The Authority confirms its view, as set out in the Draft Decision, that a reasonable value for the lower bound of the equity beta range is 0.8.
- 246. The Authority has further considered the reasonable value for the upper bound of equity beta.
- 247. The Authority notes that the GGP pipeline has a small number of users, whose operations are primarily in the mining industry. In the Draft Decision, the Authority accepted that the average daily and total throughputs on the GGP were expected to remain constant during the forthcoming Access Arrangement Period. In response to the Draft Decision, BHPB noted in its submission that a number of expansion projects have been publicly announced by companies operating in the region serviced by the GGP.<sup>24</sup>
- 248. The Final Decision only pertains to the covered portion of the GGP capacity rather than the total capacity of this pipeline, which includes the uncovered throughput. The majority of the covered capacity involves long-term take-orpay contracts (including pre-2005 contracts) that substantially reduce the volume or price risk on the covered capacity.
- 249. The Authority considers that, with any expiration of customer contracts on the covered portion of the capacity on the GGP, it is reasonable to assume that existing customers (currently taking gas from the covered or uncovered capacity) and/or new customers, would provide continued demand for the covered capacity. Given the above, the Authority considers it reasonable to assume that there is limited volume or price risk for the covered portion of the GGP capacity. Given an assessment of the latest available information and on the basis of the above, the Authority has revised its view on the upper bound of the equity beta range. The Authority considers that a reasonable value for this upper bound is 1.0.
- 250. Therefore, the Authority considers that a reasonable range of values for equity beta is 0.8 to 1.0, at a gearing level of 60 per cent debt to total assets.

Australian Energy Regulator, 2009-10. Jemena: Access arrangement proposal for the NSW gas networks 1 July 2010 – 30 June 2015, (Draft Decision February 2010). ActewAGL: Access Arrangement for the ACT Gas distribution network, (Final Decision March 2010). Country Energy Wagga Wagga Natural Gas Distribution Network, Access arrangement, July 2010-June 2015, (Final Decision March 2010).

<sup>&</sup>lt;sup>24</sup> BHP 2009, 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, 11 December 2009.

## Debt Margin

- 251. In its submission dated 11 December 2009, GGT asserted that there is difficulty in assessing the cost of BBB debt because of a lack of liquidity in the Australian corporate bond market. Key data which used to be used in making this assessment are no longer available. The Authority and other regulators including the AER and the ACCC were said to be considering this issue and developing different assessment methods. GGT argued that the average of the three methods set out on page 84 of its submission is 445 basis points. It disputed the Authority's reliance on the second method set out on page 84 and believed that there is no one correct way to calculate the cost of ten year BBB debt. GGT therefore argued that a value of 445 basis points is a reasonable current estimate which will be updated prior to the final decision (pages 81 to 85).
- 252. In its report attached to the GGT submission dated 11 December 2009, Synergies analysed the estimated debt margin noting that since GGT submitted its Proposed Access Arrangement, a significant issue has arisen concerning the cost of debt. It noted that even the AER has had difficulty in reconciling this issue and sets out in Table 5, page 41, the debt margins applied in recent AER decisions. Synergies particularly noted the problem with a lack of market data to estimate the cost of debt for a ten year BBB which is a problem faced by both Bloomberg and CBA Spectrum databases. Synergies then outlined different options for estimating the cost of debt which were:
  - Use CBA Spectrum ten year rate (page 44);
  - Use longest published Bloomberg BBB bond yield based on next available ten year rate (pages 44 to 46);
  - Construct a yield curve from market data using some other method (page 47);
  - Use a longer term 'post commencement of GFC' average until evidence emerges of liquidity returning to the corporate bond market (pages 47 to 49);
  - Examine cost of debt for Australian issuers on other markets (such as US) (pages 49 to 51); and
  - Seek to obtain data from other forms of borrowing, such as bank debt (page 51).
- 253. Synergies set out a comparison of costs of each of these options (Table 7, page 52) noting that four of the five costs estimates are very close together. Synergies then sets out its preferred methods for calculating the cost of debt and concludes that the average of these methods (445 basis points) is reasonable within the context of recent AER Draft Decisions which all applied a debt margin of over 400 basis points (pages 38 to 54).
- 254. In its submission dated 11 December 2009, GGT proposed a value of 3.6% for debt margin on the GGP as a BBB- rated asset. However the Draft Decision supported a credit rating of BBB+ and a debt margin value of 2.8%.
- 255. GGT disputed the Authority's assessment of the notional credit rating assumption. GGT noted that it has become increasingly difficult for businesses with low investment grades to raise funds beyond five years. In its Proposed Access Arrangement, GGT proposed a notional credit rating of BBB- and remains of the view that this, or a rating no higher than BBB, was appropriate. GGT asserted that in its Draft Decision, the Authority did not justify its view that

- a notional credit rating of BBB+ was more appropriate. GGT noted that the Authority assumed a credit rating of BBB+ for Western Power and that GGT's majority owner, APA Group, has a rating of BBB. It then argued that its credit rating should be lower than both of these because it had a higher level of risk than Western Power, and APA had a portfolio of assets so is larger and more diversified and therefore less risky (pages 81 to 85).
- 256. In its report attached to GGT's submission, Synergies noted that pipeline owners and operators that it had considered in its previous report were rated BBB-, with one exception, and that these ratings still applied. Synergies argued that the Authority did not properly consider the implications of GGP's risk profile on its credit rating nor did it properly consider the evidence that most gas firms in the sample put forward have ratings of BBB-. Synergies asserted that the potential volume risk differences between gas and electricity and GGP's individual risk profile have not been properly accounted for in the Draft Decision. Synergies argued that a relevant comparator was Envestra because it owns gas network assets and has a BBB- rating. It set out the interest cover ratios for transmission utilities for Standards and Poor's (Table 3, page 38) and projected interest coverage for GGP (Table 4, page 40). Synergies argued that both of these support a rating of no higher than BBB but that it would be simplistic to rely on this data alone. Synergies argued that the APA Group rating should be ignored because the APA Group is larger and more diversified. However, the remaining three gas businesses from Synergies original sample have a rating of BBB- which provides strong support for the assertion that GGP should be rated at BBB- and no higher than BBB (pages 38 to 54).
- 257. No other public submissions were received with respect to debt margin.

- 258. In its draft report dated 6 August 2009, Frontier Economics recommended a credit rating of BBB to BBB+ based on an assumption of 60% gearing and an interest coverage ratio of 2.0. In its final report dated 17 February 2010. Frontier Economics noted that GGT had submitted a credit rating of BBB- in its Proposed Access Arrangement and BHPB (in its submission dated 30 June 2009) had submitted that the credit rating should be BBB+. It further noted that the Authority's Draft Decision concluded that 'the credit rating should not be subject to a range considered as reasonable' (Draft Decision, paragraph 489) and that the Authority specified a credit rating of BBB+. Frontier Economics then outlined the submission received from GGT in response to the Draft Decision's credit rating. GGT submitted two pieces of evidence to support its argument for a BBB credit rating. Frontier Economics accepts GGT's submission that a stand-alone credit rating for a subsidiary will be equal to or lower than that of combined group hence GGT's credit rating should be equal to or less than the BBB credit rating of APA Group, GGP's majority owner. GGT has calculated a forecast interest coverage ratio of 1.77 to 1.86 over the five-year regulatory period. The Standard and Poor's indicative rate for BBB transmission utilities of 1.5 to 2.0 is cited by GGT. Frontier Economics noted that the middle third of this range, 1.67 to 1.83 corresponds closely to GGT's submission for a pro-forma interest coverage ratio.
- 259. Frontier Economics concluded that the appropriate credit rating for GGT is BBB to BBB+. Frontier Economics reaffirmed its conclusion expressed in its draft report that there was insufficient evidence to support the conclusion that a

- BBB+ rating was reasonable. It viewed the new evidence submitted by GGT as consistent with a BBB rating (pages 18 to 20).
- 260. In its final report dated 17 February 2010, Frontier Economics noted that GGT had proposed a debt margin of 3.6% based on a 10-year corporate bond yield. In its draft report, Frontier Economics adopted the range used by the AER from Bloomberg data. This approach was adopted by the Authority in its Draft Decision. GGT made a submission in response that there has since been movement on this issue since the Draft Decision and Frontier Economics' draft report. Frontier Economics maintained the view that both the CBA Spectrum and Bloomberg provide relevant data in relation to debt margins and both should be considered. Frontier Economics noted that if the Bloomberg data is used, some extrapolation will be required and that the extrapolation methods submitted by GGT are both reasonable as would an average of the two approaches be reasonable (pages 20 to 23).

# **Authority's Assessment**

- 261. The Draft Decision noted that as GGT had expanded capacity significantly to meet increased demand under the current Access Arrangement and is currently operating at close to full capacity, there did not appear to be justification to downgrade the credit rating for the GGP as proposed by GGT.
- 262. The Authority also noted in the Draft Decision that it generally agreed with GGT that it is not appropriate to apply a range to the credit rating.
- 263. The Authority confirms its position as set out in the Draft Decision. Accordingly, the Authority considers that an appropriate credit rating for the GGP is BBB+.
- 264. In regard to the estimation of the debt margin, the Draft Decision noted that the Authority's view was that CBASpectrum estimates should not be taken into account. The Authority also noted in the Draft Decision that only limited data was available from Bloomberg.
- 265. In light of the limitations on the availability of data from Bloomberg, the advice from Frontier Economics that both CBASpectrum and Bloomberg data should be taken into account in the estimation of the debt margin and the AER view that CBA Spectrum is currently the better predictor of fair yields for Australian corporate bonds (as discussed below), the Authority has reconsidered this issue.
- 266. The Authority also notes that in some recent determinations, the AER has used estimates of debt margins from CBASpectrum on some occasions <sup>25</sup>; or the simple average of the two estimates by CBASpectrum and Bloomberg on other occasions <sup>26</sup>.
- 267. The Authority is of the view that a simple average of the two estimates can only be used where it is found that neither CBASpectrum nor Bloomberg are a better predictor using the Test of Fitness (or the Weighted Sum of Squared Errors Test). This test has been carried out by the AER in three steps: (i) define

The Australian Energy Regulator, February 2010, Jemena: Access arrangement proposal for the NSW gas networks, p.140; or November 2009, ActewAGL: Access arrangement proposal for the ACT, Queanbeyan and Palerang gas distribution network, p. 65.

<sup>&</sup>lt;sup>26</sup> The Australian Energy Regulator, November 2009, Victorian advanced metering infrastructure review.

a population of fixed interest corporate bonds to observe; (ii) observe the yields for the sample of bonds from Bloomberg and CBASpectrum; and (iii) compare the Bloomberg, CBASpectrum and an average of the two estimates by CBASpectrum and Bloomberg to the observed yields to determine which fair yield estimate more closely aligns with the observed yields from a sample of the bonds selected.

- 268. In its most recent determination in March 2010, the AER was of the view that CBASpectrum provided the best predictor of the fair yields for 10-year Australian corporate bonds.<sup>27</sup>
- 269. While the Authority is aware that there is debate on the issue of whether Bloomberg or CBASpectrum provides the more reliable estimation of fair yields for Australian corporate bonds, the Authority agrees that on the basis of the AER's analysis, CBASpectrum is the better predictor for estimating fair yields for Australian corporate bonds in the current period.
- 270. Therefore, the Authority is of the view that for the purpose of its estimate of the debt margin for BBB+ rated bonds as at 30 April 2010, CBASpectrum data should be used to derive this estimate. On this basis, the Authority considers that a reasonable debt margin is 2.83 per cent, as of 30 April 2010.

## Cost of Raising Debt

- 271. In its original Proposed Access Arrangement, GGT proposed a range for the debt raising cost of 0.125% to 0.3%. This range was rejected by the Authority in its Draft Decision in favour of an allowance of 0.125% (12.5 basis points). In its submission dated 11 December 2009, GGT revised its recommended range for debt raising costs to 0.750%. It based this proposal on confidential information provided by its majority owner APA Group and the actual costs incurred in raising debt in 2009. These both show that the credit market has tightened. Further, new Basel requirements have increased the costs of holding facility commitments. Both of these factors are expected to continue in the foreseeable future and are relied upon by GGT to estimate debt raising costs at over 75 basis points. It argued that GGT's debt raising costs will be higher than the APA Group but that GGT's costs would be higher still if it was raising debt in the market on its own.
- 273. GGT therefore stated that its revised recommended range of 0.750% is conservative (pages 85 to 86). In its submission attached to the GGT submission dated 11 December 2009, Synergies noted that there is limited publicly available data to support an estimate of the costs of debt raising but ad hoc evidence suggests that there has been a material increase in such costs since the onset of the global financial crisis. The APA Group has provided commercial in confidence information to support this claim. Based on this information, Synergies argued that the estimate for debt raising costs is over 75 basis points and that the previously proposed upper bound on 30 basis points is likely to be a significant underestimation of the actual costs which may exceed 75 basis points per annum (pages 54 to 55).

<sup>&</sup>lt;sup>27</sup> The Australian Energy Regulator, March 2010, Final Decision, Access Arrangement Proposal on Wagga Wagga natural gas distribution networks, page 43; and The Australian Energy Regulator, February 2010, Jemena: Access arrangement proposal for the NSW gas networks, p.140.

275. No other public submissions were received with respect to the cost of raising debt.

#### Consultants' Advice

276. Frontier Economics noted that its draft report considered debt insurance costs were better accommodated in the cash flow rather than as an adjustment to debt. In its Draft Decision, the Authority rejected Frontier Economics' recommendation and GGT's proposal for a ranges approach to the cost of raising debt. Frontier Economics outlined the arguments submitted by GGT before concluding that it preferred the approach of accommodating debt insurance costs in cash flows rather than as an adjustment to WACC but, as the Authority and GGT have approached debt insurance costs as an adjustment to WACC, Frontier Economics also addressed the issue on that basis also. It then reviewed available and new evidence before concluding that the 12.5 basis point per annum is a reasonable estimate of debt insurance costs (pages 23 to 27).

## **Authority's Assessment**

- 277. The Draft Decision noted that the Authority considered an allowance for debt raising costs of 0.125 per cent to be appropriate.
- 278. In its submission on the Draft Decision, GGT has commented that it considers a value of 0.75 per cent to be a reasonable allowance for debt raising costs. This represents a significant increase in the allowance put forward in GGT's proposal of 0.125 to 0.3 per cent. The principal basis outlined by GGT for its revised view on debt raising costs is the cost incurred by the APA Group in raising debt in 2009.
- 279. The advice from Frontier Economics is that the circumstances relating to the raising of debt by the APA Group were not necessarily directly comparable to the raising of debt based on an efficient benchmark firm in similar circumstances to GGT. For example, Frontier noted that the size of APA Group's debt issue was likely to have been larger and that in the market conditions of low liquidity prevailing in 2009, the debt issuance costs may have been higher for larger debt raisings. In addition, Frontier also noted that the terms of the debt raised by the APA Group are considerably shorter than the 10 year term assumed for an efficient benchmark firm.
- 280. Frontier Economics concluded that, in its view, the 0.125 per cent allowance set out by the Authority in the Draft Decision was reasonable. The Authority agrees with this view.
- 281. The Authority confirms its view in the Draft Decision that a reasonable allowance for debt raising costs is 0.125 per cent.

#### Corporate Tax Rate

- 282. GGT's submission dated 11 December 2009 noted that the Authority has accepted the proposed tax rate of 30%.
- 283. No other public submissions were received about the corporate tax rate.

284. In its final report dated 17 February 2010, Frontier Economics noted that there is agreement that the corporate tax rate should be set at 30% (page 27).

# **Authority's Assessment**

- 285. The Draft Decision noted that the Authority agreed with GGT's proposal for a corporate tax rate of 30 per cent.
- 286. The Authority confirms its position in the Draft Decision that the corporate tax rate should be set at 30 per cent

# Franking Credit Value (Gamma)

- 287. In its submission dated 11 December 2009, GGT noted that in its Access Arrangement, it proposed a gamma value of 20% which is consistent with the Frontier Economics' advised range of 0% to 40%. GGT asserted that the Draft Decision does not contain sufficient reasoning for the Authority's gamma value of 65% nor does the Authority seem to dispute Frontier Economics' GGT agreed that the Authority is not bound by Frontier Economics' views but that the Authority should seek to rationalise its decision to depart from its own consultant's recommendations. GGT asserted that the Authority cannot reject a proposal simply because the Authority prefers a different outcome which it believes better meets the Code's objectives. It further asserted that the Authority appeared to have disregarded GGT's proposal and Frontier Economics' assessment and simply adopted the same value previously used nor had it justified this decision. GGT argued that its proposal falls within the range put forward by the Authority's consultant and that the lack of reasoning in the Draft Decision made it difficult to respond. GGT also noted that the estimates of gamma are not without controversy, noting in particular the AER's electricity WACC review. When making an assumption about gamma, the relevant regulator needs to consider the proportion on tax paid distributed to shareholders as franking credits and the value a marginal investor will place on one dollar of franking credits (the 'theta' value).
- 288. GGT argued that the first of these factors, the distribution rate, should be 71% and noted that this is consistent with the market average distribution rate estimated by Hathaway and Officer, which is said to be widely applied in practice. GGT submitted that the AER's value of 100% is fundamentally flawed and should not be relied upon by the Authority. GGT then argued that the theta value range of 0.57 to 0.74 the AER used in calculating its preferred gamma value of 0.65 cannot be relied upon. GGT stated that, in calculating the lower bound for theta, AER relied on just one study with which concerns have been identified. GGT then outlined conflicting conclusions drawn from reviews of this study before noting that one of the study's original authors subsequently accepted a theta value range of 0.23 to 0.57. This author also indicated that the theta value was likely to be closer to 0.23.
- 289. GGT then outlined the arguments for the AER's upper bound for the theta value. It refuted the reliance the AER placed on a study of taxation statistics by Handley and Maheswaran. It noted that Frontier Economics was also critical of

- this study. GGT then summarised the arguments put forward by its consultant, Synergies (discussed at paragraph 292 below), before concluding that the AER's range of 0.57 to 0.81 cannot be supported.
- 290. GGT argued that the Authority has not considered in detail GGT's proposed gamma value or the assessment by Frontier Economics. GGT rejected the Authority's position and reasserted that the gamma value GGT originally proposed is consistent with recent studies of gamma (pages 86 to 94).
- 291. In its report attached to GGT's submission dated 11 December 2009, Synergies argued that there are significant problems with the Authority's gamma value. Synergies asserted that the Authority's discussion of this parameter in the Draft Decision is too limited. Synergies examined opinions about the accepted distribution rate before concluding that a rate of 71% is observed in the market and commonly applied.
- 292. In assessing the theta value, Synergies analysed the lower bound for the theta value preferred by the AER and identified concerns raised by consultants with the study upon which this value is based. It observed that there is compelling evidence for not relying on the lower bound preferred by the AER and that there is evidence to support a view that a theta of 0.23 should be included in a reasonable range of values. Synergies also outlined concerns raised about the upper bound of theta value, in particular, the methodologies used to calculate this value. It concluded that even its own study can be used to value theta but noted that this study casts doubt on the reliability of the AER study upon which the Authority has placed reliance. Synergies argued there is no basis for the Authority's increase in gamma from 50% to 65%. It concluded that, given the assessment of Frontier Economics, the proposed gamma value of 0.2 is reasonable (pages 30 to 37).
- 293. In its submission dated 11 December 2009, BHPB noted its support of the Authority's recommendation of a gamma parameter value of 57% to 81% (page 29).
- 294. In its submission dated 11 December 2009, APIA noted its fundamental concerns with the AER Decision which set a gamma value of 65%, upon which the Authority has placed reliance. These concerns were due to the limited number of studies used by the AER, problems with the single study relied on to estimate the value of franking credits from market data, the use of an unacceptable tax statistics analysis to value gamma and an assumption that there is a 100% distribution rate when the estimated market average of 71% is widely applied in practice. APIA noted that the Authority has not justified the significant variation in its gamma value from that assessed by Frontier Economics. APIA viewed that a reasonable estimate for gamma is less than 50% (section [5]).
- 295. In its submission dated December 2009, FIG noted that the Authority had ignored Frontier Economics' assessment in adopting an imputation credit value of 57% and 81%. It stated that the Authority cannot accept some of its consultant's advice such as that for equity beta and then ignore other advice such as for gamma. FIG was concerned about how the Authority has arrived at its conclusion for both the distribution rate and the theta value. It argued that the Authority should justify its decision in light of its rejection of its own consultant's assessment (pages 10 to 12).

- 296. In its Final Report dated 17 February 2010, Frontier Economics noted that GGT originally proposed a gamma value of 0.2, while in its submission BHPB proposed that a reasonable range for gamma was 0.5 to 0.65. Frontier Economics restated its argument in its draft report dated 6 August 2009 that there is no real consensus about the estimation of gamma but that there was consensus in commercial practice to make no adjustment for franking credits when estimating WACC. In the draft report, it noted the AER's move from regulatory precedent in its adoption of a gamma value of 0.65 and concluded that the AER analysis was so flawed that it should be ignored. It therefore considered GGT's estimate of 0.2 to be appropriate and within the reasonable range of 0 to 0.4.
- 297. Frontier Economics then referred to the Authority's Draft Decision to adopt the same approach as that in the SWIN decision to conclude a reasonable gamma range is 0.57 to 0.81. It noted that GGT disputes this range. It further noted that FIG proposed that the Authority should accept the range from Frontier Economics or provide detailed reasons for departing from Frontier Economics' range. It also set out the argument by APIA that a reasonable estimate for gamma is less than 50%. Frontier Economics concluded that there is no basis upon which it should depart from its view that a gamma range of 0 to 0.4 is reasonable (pages 6 to 9).

## **Authority's Assessment**

- 298. The Draft Decision noted that the Authority considered a reasonable range for the value of imputation credits (gamma) to be 0.57 to 0.81.
- 299. In its submission on the Draft Decision, GGT reiterated its view, as set out in its proposal, that the gamma value should be 0.2. BHPB, in its submission, supported the gamma range set out in the Draft Decision. The submissions from APIA and FIG supported the gamma range of 0 to 0.4 recommended by Frontier Economics.
- 300. The Authority noted in the Draft Decision that it had adopted the same approach as it had used in the Draft Decision on Proposed Revision to the Access Arrangement for the South West Interconnected Network (SWIN) and by the AER in its electricity WACC review.
- 301. The Authority disagrees with the proposed payout ratio of 0.71 from Frontier Economics. The Authority has considered the AER's discussions on the issue.
- 302. The AER has adopted a distribution rate (F) of 1.0, reflecting advice that this assumption is consistent with a standard assumption of valuation practice that all free cash flows are paid out to investors. On this basis, the AER has rejected the use of empirically-observed market-average distribution ratios.
- 303. Advice to the AER also indicates that an assumed distribution rate of 1.0 is consistent with the Officer WACC. In addition, the AER noted that the Officer WACC framework is a perpetuity framework, which includes a simplifying assumption that cash flows occur in perpetuity and are therefore fully distributed at the end of each period. The AER accepted the advice of its consultant, Associate Professor Handley, and noted that it would be inconsistent to assume that there is a full distribution of a service provider's free

cash flow but not a full distribution of the imputation credits associated with that free cash flow. The AER considers that the assumption of a zero value for retained imputation credits is inconsistent with the Officer WACC framework. The AER is also of the view that the actual payout ratio is unlikely to be significantly less than 100 per cent based on an observed payout ratio from tax statistics of 71 per cent and the assumption that retained imputation credits have a positive value.<sup>28</sup>

- 304. The Authority is aware that the AER's consultant on the issue, Associate Professor Handley, argues that the utilisation rates estimated by Handley and Maheswaran (2008) are relevant to the analysis of gamma. Handley confirms that an average utilisation rate across all investors of around 70%-80% is reported in the 2008 Handley and Maheswaran study. This represents a simple average of utilisation rates across investors, rather than a complex weighted average of utilisation rate which assumes the set of investors is indicative of the set of investors in the domestic market portfolio. As a result, Handley believes that this estimate may be interpreted as a reasonable upper bound on the value of gamma.
- 305. The Authority has considered Frontier Economics' view that average redemption rates from tax statistics should not be used to estimate the value of According to Frontier Economics, the implication of using average redemption rates to estimate theta is that the cost of capital of a firm without foreign ownership could be substantially reduced, relative to that of its peers with foreign ownership. Frontier Economics argues that such a reduction in the cost of capital would not occur because less foreign investment means a lower supply of capital and consequently an increase in the cost of capital.<sup>29</sup> However, the Authority considers that the cost of capital is determined not only by supply but also by demand and other factors such as the extent to which domestic capital can substitute foreign capital in the Australian financial market. In addition, the Authority is aware that the redemption rate used in the 2008 Handley and Maheswaran study weights domestic and foreign investors according to their presence in the Australian financial market. The Authority has adopted a domestic CAPM framework in which foreign investors in the Australian financial market are recognised to the extent that they invest in the domestic financial market. As such, a tax statistics approach can produce an indication of the upper bound estimate of the utilisation rate.
- 306. In addition, the Authority is also aware that, in its most recent Final Decision on the South Australia Distribution Determination, the AER considers that a utilisation rate of 0.65, based on an estimate from tax statistics as well as an estimate from market prices, is better than a market based estimate alone.<sup>30</sup>
- 307. In the Final Decision for the SWIN, the Authority confirmed as reasonable the gamma range of 0.57 to 0.81, based on a distribution rate of 1 in combination with a range of values for the utilisation rate of 0.57 to 0.81.

<sup>&</sup>lt;sup>28</sup> The Australian Energy Regulator, May 2010, Final Decision, South Australia Distribution Determination, 2010-11 to 2014-15, page 150

<sup>&</sup>lt;sup>29</sup> Frontier Economics, 2009, Review of Weighted Average Cost of Capital estimate proposed by Goldfields Gas Transmission, Final Draft Report prepared for the Economic Regulation Authority, page 21.

<sup>&</sup>lt;sup>30</sup> The Australian Energy Regulator, May 2010, Final Decision, South Australia Distribution Determination, 2010-11 to 2014-15, p.xxiv

- 308. The range applied by the Authority in the Final Decision for the SWIN was bounded by the 2006 study by Beggs and Skeels (producing the lower bound estimate of 0.57) and the 2008 study by Handley and Maheswaran (producing a range from 0.67 to 0.81, of which the Authority derived the upper bound estimate of 0.81).
- 309. However, a more recent study by SFG Consulting in 2009 produced an estimated lower utilisation rate of 0.37.<sup>31</sup> This study used the same data as Beggs and Skeels in 2006 (which analysed data up to 10 May 2004) but analysed a further period of 28 months of data (up to 30 September 2006). This estimate was verified by one of the authors, C. Skeels, in the 2006 study by Beggs and Skeels. Skeels concluded that:

"the only reasonable conclusion to be drawn is that the extended data set should yield more accurate parameter estimates for the 1 July 2000 onwards sub-sample than does the shorter data set."  $^{32}$ 

- 310. The Authority notes that the AER's view is that the 2009 SFG study is subject to methodological concerns. In its most recent Final Decision for South Australia Distribution Determination in May 2010, after taking account of the advice of its consultants, Professor Michael McKenzie, Associate Professors Graham Partington (University of Sydney) and Associate Professor John Handley (University of Melbourne), the AER considers that market based estimates of theta in the form of dividend drop—off studies are subject to significant concerns due to noise in the data and the likely effects of multicollinearity on the regression results. Nevertheless, the Authority notes that the AER does make use of information from dividend drop-off studies in coming to its position on a reasonable value for the utilisation rate.
- 311. Given the uncertainty about the estimates of the utilisation rate using dividend drop-off studies and tax studies, the Authority's position is to take a wide range of estimates of the utilisation rate. Overall, the Authority considers that a reasonable range for the value of gamma is 0.37 to 0.81. This range is wider than the Authority applied in the Draft Decision as it makes use of the study by SFG Consulting that became known following the Draft Decision.

#### Financial Structure

- 312. In its submission dated 11 December 2009, GGT noted that the Authority has accepted GGT's proposed capital structure of 60% (debt to total assets) (page 94).
- 313. No other public submissions were received about the financial structure.

<sup>&</sup>lt;sup>31</sup> SFG Consulting, 2009, The value of imputation credits as implied by the methodology of Beggs and Skeels (2006), page 3.

Skeels, C. 2009, A Review of the SFG Dividend Drop-Off Study. A report prepared for Gilbert and Tobin, p.11.

314. In its final report dated 17 February 2010, Frontier Economics noted that there is agreement that the assumed level of gearing should be set at 60% debt finance (page 27).

# **Authority's Assessment**

- 315. The Draft Decision noted that the Authority agreed with GGT's proposal that the appropriate debt to total assets ratio is 60 per cent and the equity to total assets is 40 per cent.
- 316. The Authority confirms its view set out in the Draft Decision, as noted above.

#### **Final Decision**

- 317. The Authority does not approve GGT's proposal in relation to the Rate of Return.
- 318. Table 8 of GGT's Amended AAI should be amended to reflect the parameter headings and values in Table 7 of this Final Decision.

Table 7: Authority's Required Revisions to Table 8 of GGT's Amended AAI

[Parameter Values for determination of a Rate of Return for the GGP]

Parameter	Lo	Hi
Nominal Risk Free Rate (Rfn)	5.79%	5.79%
Real Risk Free Rate (Rfr)	3.21%	3.21%
Inflation Rate (I)	2.50%	2.50%
Debt Proportion (D)	60.00%	60.00%
Equity Proportion (E)	40.00%	40.00%
Cost of Debt; Debt Risk Premium (Drp) (BBB+)	2.83%	2.83%
Cost of Debt; Debt Issuing Cost (Disc)	0.125%	0.125%
Cost of Debt; Risk Margin (DRm)	2.995%	2.995%
Australian Market Risk Premium (Rp)	5.00%	7.00%
Equity Beta (Be)	0.80	1.00
Corporate Tax Rate (T)	30%	30%
Franking Credit (g)	0.81	0.37
Nominal Cost of Debt (DPn)	8.75%	8.75%
Real Cost of Debt (DPr)	6.09%	6.09%
Nominal Pre Tax Cost of Equity (EPn)	10.38%	15.77%
Real Pre Tax Cost of Equity (EPr)	7.69%	12.95%
Nominal After Tax Cost of Equity (EAn)	9.79%	12.79%
Real After Tax Cost of Equity (EAr)	7.11%	10.04%

Parameter	Lo	Hi	Lo + 10%	Hi - 10%	Mid of Range		
WACC Debt; Pre-	WACC Debt; Pre-tax Officer (Market Practice or Forward Transformation)						
Nominal Pre Tax WACC (WPn)	9.40%	11.56%	9.62%	11.34%	10.48%		
Real Pre Tax WACC (WPr)	6.73%	8.83%	6.94%	8.62%	7.78%		
WACC; After-tax	WACC; After-tax Vanilla						
Nominal After Tax WACC (WAn)	9.16%	10.36%	9.28%	10.24%	9.76%		
Real After Tax WACC (WAr)	6.50%	7.67%	6.62%	7.55%	7.09%		

# **Required Amendment 6**

In relation to the Rate of Return, Table 8 of the GGT's Amended AAI of 22 April 2010 should be amended to reflect the parameter headings and values in Table 7 of the Final Decision.

# <u>Draft Decision – Amendment 9</u>

319. GGT's Proposed Revisions should be amended to adopt a nominal pre-tax Rate of Return of 10.28%

- 320. In its submission dated 11 December 2009, GGT rejected the Draft Decision amendment that required it to adopt a nominal pre-tax return of 10.28%. In particular it took issue with several of the WACC parameters which have been discussed above. If the GGT's preferred values were used in combinations with the agreed parameter values, the pre-tax nominal range is 15.1% to 11.9%. Within this range is the pre-tax nominal WACC of 14.34% proposed by GGT. GGT asserted that the Authority had not provided sufficient reasoning to substantiate its amendments as the Authority is required to do under sections 2.6, 8.6 and 8.7 of the Code. GGT outlined background information to illustrate its concerns with the Authority's decision. GGT then referred to section 8.30 of the Code and the current uncertainty and volatility in world debt and equity markets. GGT did not consider that the Authority had played proper regard to the impact of the global financial crisis (pages 68 to 72).
- 321. In its submission dated 22 January 2010, GGT rejected BHPB's argument that the Rate of Return range in the Draft Decision was set unreasonably high (see discussion at paragraph 322 below). GGT noted that BHPB had not submitted

- new material information to support its assertion and it should therefore be discounted by the Authority (page 24).
- 322. In its submission dated 11 December 2009, BHPB asserted that the nominal pre-tax WACC of 9.34% to 11.22% was too high, with the upper bound being unreasonably high. It argued that this was a result of some input assumptions, particularly market risk premium and equity beta, being inflated and unreasonable (page 20).
- 323. In its submission dated December 2009, FIG expressed concern about the adequacy of the overall rate of return. FIG considered that the rate proposed in the Draft Decision was a 0.32% reduction on the current regulated rate of return. It considered this reduction anomalous in the current economic climate. While acknowledging recent recovery in the markets, FIG argued there is not a strong case for reducing the rate of return. FIG then outlined its concerns that investors may be discouraged from investment if the regulatory regime is perceived as too risky or will only invest where the expected returns are commensurate with the level of risk. FIG concluded that there are a number of parameters in the Draft Decision where the Authority has failed to be transparent, stable and predictable. It further concluded that the GGP has to provide a competitive rate of return to encourage investment (pages 5 to 9).

# Consultants' Reports

324. In its final report dated 17 February 2010, Frontier Economics noted that there were no submissions received about the definition of "Rate of Return" nor with the corresponding definition of "Cash Flows" (page 2). Frontier Economics did not comment on the rate of return itself.

# **Authority's Assessment**

- 325. The Draft Decision noted that the Authority's view was that a reasonable range of values for the nominal pre-tax Rate of Return is 9.34 to 11.22 per cent. Based on this range, the Authority adopted the mid-point of 10.28 per cent as being appropriate for the purpose of the Draft Decision.
- 326. In its response to the Draft Decision, GGT argued for a nominal pre-tax rate of return range of 11.9 to 15.1 per cent. GGT selected the figure of 14.3 per cent, as being the most appropriate figure to adopt from within this range. BHPB, in its submission, suggested that the upper bound of the Draft Decision range (11.22 per cent) was unreasonably high. FIG, in its submission, expressed concern over the overall rate of return noting that it was 0.32 per cent lower than the value approved under the current Access arrangement (10.60 per cent)
- 327. As noted earlier, a number of the parameter values used in determining a reasonable range for the Rate of Return have been revised in this Final Decision. The parameter values adopted for the Final decision are set out in Table 7.

## **Final Decision**

328. Based on the parameter values set out in Table 7, and using the approach for calculation of a reasonable WACC range outlined in the Draft Decision, the

- Authority considers that a reasonable range of values for the nominal pre-tax Rate of Return is 9.62 to 11.34 per cent.
- 329. For the purpose of this Final Decision, the Authority believes that the mid-point of this range, being a nominal pre-tax Rate of Return of 10.48 per cent, provides GGT with a return which is commensurate with the prevailing conditions in the market for funds and the risk involved in delivering the reference service.

# **Required Amendment 7**

GGT's Amended Proposed Revisions should be amended to adopt a nominal pre-tax Rate of Return of 10.48%.

# **Draft Decision - Amendment 10**

330. In relation to Non Capital Costs, Table 10 of the Access Arrangement Information should be amended to reflect the values in Table 19 of this Draft Decision.

# Pipeline Operating and Maintenance Costs

## **Public Submissions**

#### **GGT** submissions

- 331. In its submission dated 11 December 2009, GGT noted that it was acting as a reasonable and prudent pipeline operator when it decided to not defer expenditure for an intelligent pigging program following discussions with the Technical Regulator, the Department of Mines and Petroleum (paragraphs 179 to 181, pages 32 to 33). GGT incorporated the costs of this program into Table 4-10 in its submission dated 11 December 2009 (page 57).
- 332. GGT also reiterated that it did not accept the Authority's decision with respect to uncovered capacity. It therefore rejected the amendments that require all of GGT's non-capital costs to be taken into account and not just the non-capital costs of the Covered Pipeline (paragraph 198, page 35).
- 333. On 1 April 2010 GGT provided an updated AAI and tariff model. The non capital cost forecasts included Pipeline Operating and Maintenance costs which were \$2.0 million higher than proposed in GGT's submission on the Draft Decision. GGT's explanation for this increase was that its 1 April AAI and model took account of actual costs up to 31 December 2009 rather than to 30 June 2009. GGT stated that this variation was insignificant being 1.8% higher than in its previous submission on the Draft Decision. The AAI and model provided on 22 April contained the same forecast of non capital costs as those provided by GGT on 1 April 2010.

## Other submissions

334. No other public submissions were received with respect to Pipeline Operating and Maintenance Costs.

# **Authority's assessment**

- 335. In considering Non Capital Costs, the Authority must first consider the actual cost to the Service Provider of providing the service and secondly, the way those costs are allocated.
- 336. In its Draft Decision, the Authority considered and accepted GGT's submissions with regards to proposed wages growth and the inflation rate of 2.4%.
- 337. The Authority does not accept that a \$2.0 million increase as discussed in paragraph 333 above has been sufficiently justified.
- 338. The Authority notes that in the Amended AAI, GGT has allocated operating and maintenance costs between the covered and uncovered pipeline on a marginal cost basis. The costs for uncovered Capacity have been excluded from the calculation. The costs of the Covered Pipeline have been allocated on a revenue basis and then modelled annually.
- 339. As previously discussed in this Final Decision, the Authority has revised its Draft Decision in relation to the Expansions of Capacity and the modelling of Reference Tariffs. On this basis the costs of providing services by virtue of the Expansions of Capacity, including Non Capital Costs, are to be excluded from the calculation of Total Revenue. Further, all components of Total Revenue, including Non Capital Costs, are to be modelled on an annual and not a quarterly basis.
- 340. As a consequence of these revisions by the Authority of the Draft Decision with respect to Expansions of Capacity and modelling of Reference Tariffs, the Authority accepts the costs in GGT's Amended AAI for operating and maintenance costs for the covered pipeline apart from the \$2.0 million increase in these costs as discussed above.
- 341. The Authority requires the values in the first row of Table 10 of GGT's Amended AAI under the heading "Operating & Maintenance and Administration and General" to be revised to exclude the \$2.0 million increase discussed above.

#### Corporate Overheads

- 342. GGT acknowledged that its previous table setting out the variation between Corporate Costs in 2005 and actual audited Corporate Costs for the period 2005 to 2009 was wrong and a table with revised values was included in the submission (table 4-4, page 37). It then set out the reasons why all of the years show an under-estimation of Corporate Costs, explaining that increased complexity in the business environment was not factored into the 2005 estimates. It therefore submitted that the 2005 Corporate Costs do not form a strong basis on which to base corporate costs forecasts for 2010 to 2015 (paragraphs 205 to 213, pages 37 to 39).
- 343. GGT then set out its rationale for a change in its cost allocation methodology. It stated that the change creates consistency with the majority owner, APA Group, accounting practice and internal cost allocation methodology; that the

- approach is consistent with the allocation methodology approved by the AER and ACCC; and that it is consistent with the Code and legitimate interests of service providers (paragraphs 214 to 230, pages 39 to 42).
- 344. GGT rejected the Draft Decision's requirement that GGT's corporate costs should be the corporate costs in the current Access Arrangement adjusted for inflation. Rather, GGT has based its corporate costs on the APA Group's revised budget adjusted to remove those costs with no association to the GGP (paragraphs 249 to 260, pages 44 to 46).
- 345. GGT disputed the Authority's claim that some of the full range of corporate overhead costs may not meet the prudent service provider test, arguing that all of the costs put forward by GGT are necessary to meet all of its statutory and business obligations. It asserted that its expenses are no different from those of any other prudent service provider in the gas pipeline industry and that these types of costs have been recognised by other regulators including the ACCC. It submitted that all of its corporate overhead costs would meet the prudent service provider test (paragraphs 231 to 262, pages 42 to 47).
- 346. GGT maintained that its forecast Non Capital Costs are in keeping with those of a prudent operator acting efficiently as they are similar to the benchmark established by its consultant, KPMG. It further maintained that the Draft Decision did not establish a position against GGT's forecast Non Capital Costs. While GGT did not accept the required amendment, it did recalculate the costs to ensure consistency with the required tariff modelling (paragraphs 282 to 289, page 50).
- 347. In its report submitted with the GGT submission dated 11 December 2009, GGT's consultant, KPMG, set out the approach it took to developing the cost model, in particular how Non Capital corporate costs were identified, the benchmarks that it chose, the avoidance of risks of errors and its conservative approach. KPMG noted that costs were allocated to the covered pipeline on the basis of the cost a prudent Service Provider would incur in carrying out the functions necessary to deliver a Reference Service.
- 348. The KPMG "Benchmark cost model" was constructed based on six main cost categories:
  - External relations, or business strategy and planning KPMG noted that as the GGP was near capacity, substantial future growth was not expected absent further investment, but costs would be incurred by GGT for market assessment, forecasting, identifying business opportunities, working with current customers managing government and other stakeholders, renegotiating contracts and strategic planning;
  - Finance this category included all labour, material and IT charges associated with payment processing, accounting, reporting, taxation compliance, financial planning, budgeting, auditing and payroll. KPMG noted that it did not include IT costs other than those associated with the finance function in this category;
  - Information and Communications (ICT) Systems included in this category were all costs of ICT including administering and maintaining the corporate systems, SCADA, end user products, telecommunication, hardware, data storage and computer

- systems security. KPMG based the value for this category on a percentage of revenue;
- Administrative and Executive Costs KPMG noted that good governance would require a suitably skilled board of directors and based its estimate on listed businesses with a similar capitalisation to GGT. It also included costs of a chief executive officer with executive assistant, and the costs of office administration:
- Legal Counsel, Company Secretary and Corporate Affairs –
  KPMG noted that GGT would incur internal costs associated with
  corporate regulation as well as a range of contractual matters and
  external costs associated with external legal advisers. It's
  benchmark costs model included internal corporate affairs
  expenses, office costs and consultancy costs;
- Economic regulatory management costs KPMG noted that some of these costs would be incurred by GGT's Perth office but others would be incurred by the Corporate Office, but its benchmark costs dealt only with the regulatory functions of the Corporate Office. It did not include any costs for the licence fee in this category.
- 349. KPMG also considered statutory on-costs of employment, office accommodation costs and office overhead costs.
- 350. In response to paragraphs 614 and 615 of the Draft Decision, where the Authority noted it could not approve proposed marketing costs as a Non Capital Cost without information as to the nature of the marketing costs likely to be incurred, GGT wrote to the Authority on 19 March 2010. It stated that these costs could be more accurately characterised as "Marketing and Contract Administration" and included administration of existing contracts, management of enquiries from Prospective Users for Spare Capacity and the negotiation and administration of new contracts for that Spare Capacity. GGT asserts that these marketing costs included in the calculation of the Reference Tariff relate entirely to the Covered Pipeline. It further asserted that these costs are those of a prudent Service Provider acting efficiently and in accordance with good industry practice.
- 351. GGT also noted that an allowance for superannuation is required because employers are currently required to make increased employer contributions to defined benefit schemes. GGT has relied on information provided by the superannuation funds in its submissions to the Authority. Based on the information received, GGT submitted that it needed to amend the cost sought and the time frame over which it is sought. In the first three years of this Access Arrangement period, GGT submitted that \$392,000 will be claimed in nominal terms for the Covered Pipeline share of the superannuation costs (paragraphs 267 to 279, pages 47 to 49).

#### Other submissions

352. In its submission dated 11 December 2009, APIA noted that the Authority had rejected GGT's submission on the recovery of shared corporate costs. APIA submitted that, in fact, the shared corporate costs were a necessary expense which would be incurred by a prudent Service Provider in the performance of required activities and, as such, allowance should be made for these expenses. APIA expressed concern that, unless the appropriate costs allocation methodology was used, there was a risk that shared costs would be under-

- recovered. It submitted that shared corporate costs are valid costs under the Code and the Authority's Draft Decision on this issue should be revised.
- 353. In its submission dated 11 December 2009, BHPB considered GGT's proposal that costs of its defined benefit superannuation fund be included in the operations and maintenance costs. BHPB expressed concern that as the figure provided for this cost was calculated at a very low point for financial markets; that is, 31 March 2009, the valuation may be low and result in increased projected contributions. BHPB did not dispute the inclusion of the cost but noted its contention that the value of the fund should be re-valued in light of improved financial markets since March 2009 (page 30).
- 354. No other public submissions were received with respect to Corporate Overheads.

## Authority's assessment

- 355. In its Draft Decision, the Authority noted at paragraph 593 that there was insufficient information for the Authority to be satisfied that GGT's actual corporate costs meet the prudent Service Provider test. Information provided to the Authority by GGT subsequent to the Draft Decision (in response to the Confidential Appendix to Draft Decision) has provided an appropriate level of justification for GGT's Corporate Overheads.
- 356. As previously discussed in this Final Decision, the Authority has revised its Draft Decision in relation to the Expansions of Capacity and the modelling of Reference Tariffs (paragraphs 52 to 64). On this basis, the costs of providing services by virtue of the Expansions of Capacity, including Corporate Overheads, are to be excluded from the calculation of Total Revenue. Further, all components of Total Revenue, including Corporate Overheads, are to be modelled on an annual and not a quarterly basis.
- 357. As a consequence of these revisions by the Authority of the Draft Decision with respect to Expansions of Capacity and modelling of Reference Tariffs, the Authority accepts the values used by GGT in the Amended AAI for Corporate Overheads and that these costs have been allocated to the covered pipeline on a satisfactory basis.
- 358. The Authority notes that the value allocated to Corporate Overheads in Table 10 of the Amended AAI, is the same as the median value identified by GGT's consultant, KPMG, in its benchmark cost model. The Authority further notes that the KPMG model is based only on the costs a prudent Service Provider would incur in the delivery of a Reference Service.
- 359. In the Draft Decision, the Authority considered GGT's submissions with regards to the Defined Benefit Superannuation Scheme and reduced the amount allocated to the scheme to \$0.137 million for each year of the forthcoming Access Arrangement period (paragraphs 607 to 613). The Authority notes that GGT has provided further justification about its allocation of costs to the scheme and that it has reduced the allocation to less than that required by the Authority in the Draft Decision as a result of improved financial markets. The Authority is therefore satisfied with the allocation made to the cost of the Defined Benefit Superannuation Scheme.

360. The Authority accepts the values allocated to Corporate Overhead Costs, as set out in Table 10 of GGT's Amended AAI, as those of a prudent Service Provider delivering a Reference Service.

## Asymmetric risk

### **Public Submissions**

- 361. In its submission dated 11 December 2009, GGT objected to the Authority's rejection of GGT's proposal for an asymmetric risk allowance on the basis that the Authority did not set out specific reasons as to why GGT's proposal did not meet the requirements of the Code. GGT claimed that section 8.37 of the Code allows for a Service Provider to recover all non-capital costs that would be incurred by a prudent Service Provider, acting efficiently, in accordance with accepted and good industry practice. It then argued that asymmetric risk was a cost a prudent Service Provider would incur so should be taken into account.
- 362. GGT stated that the Authority had not done enough to show why the risk to GGT was not asymmetric. It reasserted that, as a regulated business, GGT was fully exposed if there was a downturn in business but was unable to capture any upside when demand peaked and as such the risk could only be characterised as asymmetric. The risk was further able to be characterised as asymmetric because of the varied reasons, including a close of operations, placing operations on care and maintenance and business failure, which may lead to a decrease in customer demand. GGT believed that the asymmetric risk could be compensated by \$490,000.
- 363. GGT argued that the Authority gave too much weight to the opinion of BHPB in its submission. GGT indicated that BHPB relied too much on evidence of its own finances and overlooked the fact that BHPB was not itself a GGP User but rather its subsidiaries were (paragraphs 291 to 323, pages 51 to 56).
- 364. In its submission dated 11 December 2009, APIA argued that regulated entities face asymmetric risks and returns, and should therefore be compensated for the unavoidable risks it bears. APIA noted that the Authority rejected GGT's proposal for an allowance for the cost of asymmetric risk on the basis that it had not previously approved such a cost allowance and that such a cost allowance did not meet the requirements of the Code. APIA submitted that the Authority should consider the merits of GGT's arguments and not just its previous decisions. It further submitted that it believed GGT's proposal was consistent with the Code because it was the costs borne by an efficient and prudent service provider as costs resulting from the regulatory system. As such, APIA submitted, GGT should be allowed to recover an amount for asymmetric risk.
- 365. No other public submissions were received with respect to Asymmetric Risk.

## **Authority's Assessment**

366. The Authority does not accept GGT's position on Asymmetric Risk and maintains its position as set out in the Draft decision (paragraph 641) to not approve the costs proposed by GGT for Asymmetric Risk.

367. The Authority requires the values in Table 10 of GGT's Amended AAI to be revised to the values shown in Table 8 of this Final Decision below.

Table 8: Authority's Required Revisions to Table 10 of GGT's Amended AAI

[Non Capital Costs (\$m, nominal)]

	2010	2011	2012	2013	2014
Pipeline operating and maintenance costs	<del>24.4-</del> 24.2	<del>20.7</del> 20.3	<del>21.7-</del> 21.2	<del>23.5-</del> 23.0	<del>25.3-</del> 24.8
Corporate Overheads	5.8	5.8	5.8	5.9	6.0
Asymmetric Risk	<del>0.5</del> 0.0	<del>0.5</del> 0.0	<del>0.5</del> 0.0	<del>0.5</del> 0.0	<del>0.6</del> 0.0
Total Non Capital Costs	<del>30.7</del> 30.0	<del>27.0</del> 26.1	<del>28.0</del> 27.0	<del>29.9</del> 28.9	<del>31.8</del> 30.8

# **Required Amendment 8**

In relation to Non Capital Costs, Table 10 of GGT's Amended AAI of 22 April 2010 should be amended to reflect the values in Table 8 of the Final Decision.

# Draft Decision - Amendment 11

368. In relation to Total Revenue Table 1 and Table 14 of the Access Arrangement Information should be amended to reflect the values in Table 22 of this Draft Decision.

## **Public Submissions**

## **GGT's Submissions**

- 369. In its submission dated 11 December 2009, GGT rejects the Authority's required amendment on the basis that it relies on the inclusion of uncovered capacity. GGT's submission with respect to Expansions of Capacity as set out at paragraphs 45 to 47 above.
- 370. In its Amended AAI, GGT sets out revised Tables 1 and 14. In general, the values in these tables are greater than the values in the equivalent tables in the Access Arrangement Information submitted on 23 March 2009.
- 371. The effect of the revised values in Table 1 of the Amended AAI is to increase Total Revenue in each year from 2010 to 2014 by between 2% and 7%.

### Other Submissions

372. No other submissions were received with respect to Total Revenue.

## **Authority's Assessment**

373. As previously discussed in this Final Decision, the Authority has revised its Draft Decision in relation to the Expansions of Capacity and the modelling of

- Reference Tariffs. On this basis, the revenue from the provision of services by virtue of the Expansions of Capacity is to be excluded from the calculation of Total Revenue. Further, all components of Total Revenue are to be modelled on an annual and not a quarterly basis.
- 374. While the Authority has revised its Draft Decision to accept GGT's position on these two matters, there remain a number of respects in which the Authority has taken a different position in this Final Decision, with respect to components that make up the Total Revenue, so that the Total Revenue proposed by GGT is significantly more than the Total Revenue which the Authority has determined for this Final Decision. Those differences are discussed in appropriate sections of this Final Decision in relation to each relevant component of the Total Revenue.

375. Adopting the Authority's Final Decision in relation to each of the components making up the Total Revenue, the Authority requires Tables 1 and 14 of GGT's Amended AAI to be revised as shown in Table 9 of this Final decision below.

Table 9: Authority's Required Revisions to Tables 1 and 14 of GGT's Amended AAI [Total Revenue (\$m, nominal)]

	2010	2011	2012	2013	2014
Non Capital Cost	<del>30.7</del> 30.0	<del>27.0</del> 26.1	<del>28.0</del> 27.0	<del>29.9</del> 28.9	<del>31.8</del> 30.8
Over Depreciation	-0.4	0.0	0.0	0.0	0.0
Depreciation	<del>10.3</del> 10.8	11.3	11.9	12.2	12.3
Return	<del>63.4</del>	<del>63.4</del>	<del>63.1</del>	<del>61.8</del>	<del>60.5</del>
Return on Plant Value	46.0	45.8	45.5	44.7	43.7
Return on Non-Depreciable	0.4	0.6	0.6	0.5	0.5
Total Cost of Service	<del>104.4</del> 86.7	<del>101.8</del> 83.8	<del>103.0</del> 85.0	<del>103.8</del> 86.2	<del>104.6</del> 87.3

## **Required Amendment 9**

In relation to Total Revenue, Table 1 and Table 14 of GGT's Amended AAI of 22 April 2010 should be amended to reflect the headings and values in Table 9 of the Final Decision.

# Draft Decision – Amendment 12

376. Table 12 of the Access Arrangement Information setting out volume forecasts in TJ/day should be amended to include volume forecasts for the Additional Services arising from the Expansions of Capacity as set out in Table 26 of this Draft Decision.

#### **Public Submissions**

#### GGT's Submissions

- 377. In its submission dated 11 December 2009, GGT rejects the requirement to amend the Volume Forecasts to reflect the values set out in the Draft Decision. It bases this rejection on its rejection of the Authority's decision regarding Expansions of Capacity. GGT's argument against the Authority's decision regarding Expansions of Capacity is set out at paragraphs 45 to 47 above.
- 378. GGT included a revised table 12 in its submission of 11 December 2009 correcting a minor typographical error in the value for contracted capacity for 2013 to 104.04 MDQ, TJ/day.
- 379. Following receipt of a Section 41 Notice and subsequent investigation, GGT identified an error in its 2010 to 2014 Volume Forecast. It has set out a revised table taking account of the error, amounting to 1TJ/day or 0.9% of total load (pages 58 to 59).
- 380. In its submission dated 22 January 2010, GGT addressed BHPB's submission regarding Volume Forecasts (discussed below at paragraphs 384 to 386). GGT submitted that BHPB's submission is "incorrect and/or unreasonable". GGT submitted that BHPB's submission was wrong because it did not recognise that the load attributable to uncovered capacity was irrelevant to the derivation of reference tariffs. GGT maintains that its forecasts are based on its belief that utilisation of the Covered Pipeline will remain at historically high levels and the assumption that demand for commodities produced by end users will remain strong. GGT noted that the Code only requires a best estimate arrived at on a reasonable basis. GGT then set out the basis of its assumption about projected growth by specifically examining the present and future use of Users BHP Billiton Iron Ore Operations, Jabiru Metals Limited, Apex Minerals NL, St Barbara Limited and Reed Resources Limited.
- 381. GGT noted that BHPB submitted that GGT's volume forecasts should be rejected because they did not take into account investment in New Facilities. GGT reiterated that much of this investment related to compressor stations which would improve efficiency of the Covered Pipeline rather than increase the volume of gas to be transported. Further, any volume forecasts must take account of the inlet capacity of 109 TJ/day and that this means the Capacity of the Covered Pipeline will remain at 109 TJ/day for the life of the Access Arrangement period.
- 382. GGT noted that BHPB's proposed annual growth of 7.4% equated to 12.8 TJ/day which equated to substantial customer growth and BHPB had not substantiated any projects likely to proceed that would require new gas supplies. GGT also noted that BHPB's volume forecasts were based on extrapolation of historical loads which was not appropriate given GGP's customer base. Historical extrapolation was therefore not a reasonable basis for forecasting volume. GGT asserted that BHPB's Volume Forecast was not compliant with the requirements of the Code and should therefore not be considered by the Authority (pages 7 to 19).
- 383. In its Amended AAI, GGT further revised the Volume Forecasts set out in Table 12. The capacity has been revised to (109.0 MDQ TJ/day) for each year from 2010 to 2014. It has also revised upward the value for contracted capacity for

each year from 2010 to 2014. The value for available capacity has been amended for 2010, 2013 and 2014. Average daily throughput has also been amended for each year from 2010 to 2014. The values for total throughput have been revised upward for each of the 5 years.

### Other submissions

- 384. In its submission dated 11 December 2009, BHPB submits that, as the Code requires that volume forecasts must "represent best estimates arrived at on a reasonable basis", the Authority should reject GGT's forecasts as contrary to the Code, utilise the volume forecasts submitted by BHPB and request from GGT information regarding expressions of interest or negotiations that may assist in determining appropriate forecasts. BHPB submits that the Authority must use its powers under the Code to compel GGT to provide this information.
- 385. BHPB contends that publicly announced projects by itself and other mining companies indicate that there will be growth in the GGP customer base resulting in increased daily averages and total throughput, which has not been reflected in GGT's forecasts as they predict no increase in daily averages or total throughput. BHPB further contends that increases have been anticipated by GGT because of the amounts it included in its Proposed Access Arrangement for New Facilities Investment and this New Facilities Investment will clearly result in increased volume, thus rendering GGT's forecasts erroneous and unreasonable.
- 386. BHPB has set out in its submission values it considers more appropriate for a 5 year forecast. These values have been calculated by averaging 2 extrapolations one based on 5 year data and one based on 9 year data. BHPB notes that this approach allows for a modest 7.4% annual growth of contracted Capacity (pages 9 to 14).

- 387. The Authority notes that despite the revisions made by GGT, the values in its Volume Forecast table set out on page 59 of its submission dated 11 December 2009 remain significantly lower than those required in the Draft Decision.
- 388. As previously discussed in this Final Decision, the Authority has revised its Draft Decision in relation to the Expansions of Capacity and the modelling of Reference Tariffs. On this basis, the Expansions of Capacity are to be excluded from the calculation of Volume Forecasts. Further, all components, except Volume Forecasts, are to be modelled on an annual and not a quarterly basis. Volume Forecasts are required to be modelled on a quarterly basis as reference tariffs are to change every quarter where the actual quarterly inflation as measured by the CPI does not equal the forecast used in the GGT nominal model.
- 389. The Authority notes there are minor differences in Table 12 of GGT's Amended AAI and GGT's tariff model with respect to Capacity. For example, Capacity varies between 108.5 and 109.9TJ/ day in GGT's model yet GGT's Amended AAI states capacity as a constant value of 109.0 TJ/day. For the purpose of this Final Decision the Authority has used the Volume Forecasts including Capacity values in GGT's tariff model.

- 390. The Authority notes that GGT's Amended Proposed Revisions removed quarterly tariff variations by amending Clause 9.8 and Schedule 1. The model provided by GGT on 1 April 2010 included forecast quarterly volume information. However the model provided on 22 April 2010 contained only annual volume information. The annual volume information was slightly different for some customers. In the Final Decision the Authority has modelled forecast volumes quarterly based on GGT's quarterly volumes provided on 1 April 2010, with minor adjustment to reflect the updated annual figures proved by GGT on 22 April 2010.
- 391. As noted in paragraphs 433 to 440 the Final Decision has not approved GGT's proposal to change to annual tariff variations as set out in its Amended Proposed Revisions.
- 392. The Authority accepts the values for Volume Forecasts set out in GGT's tariff model as outlined in paragraph 390 of this Final Decision.
- 393. The Authority notes that the minor differences in the Capacity values between Table 12 of GGT's Amended AAI and its tariff model that should be corrected to reflect the tariff model Capacity values.

- 394. The Authority requires GGT to model revenues based on quarterly forecast volumes consistent with the Final Decision.
- 395. The Authority requires the first row of Table 12 of GGT's Amended AAI (headed 'Capacity (MDQ, TJ/day)') to be revised as shown in Table 10 of this Final Decision below.

Table 10: Authority's Required Revisions to Table 12 of GGT's Amended AAI

[Volume Forecasts TJ/day]

Forecast	2010	2011	2012	2013	2014
	<del>109.0</del>	<del>109.0</del>	<del>109.0</del>	<del>109.0</del>	
Capacity (MDQ, TJ/day)	109.9	108.6	108.5	108.9	109.0
Contracted Capacity (MDQ, TJ/day)	<del>106.13</del> 106.60	<del>104.81</del> 105.21	<del>104.73</del> 105.14	<del>105.11</del> 105.50	<del>105.15</del> 105.56
Available capacity (MDQ, TJ/day)	<del>2.87</del> 3.81	<del>4.19</del> 3.81	<del>4.27</del> 3.81	<del>3.89</del> 3.81	<del>3.85</del> 3.81
Average daily Throughput (TJ/day)	90.7	89.5	89.4	89.7	89.7
Total Annual Throughput (PJ)	33.1	32.7	32.7	32.7	32.8

# **Required Amendment 10**

In relation to volume forecasts, the first row of Table 12 of GGT's Amended AAI of 22 April 2010 should be amended to reflect the values set out in Table 10 of the Final Decision.

# Draft Decision – Amendments 13 and 16

- 396. Table 15 of the Access Arrangement Information setting out the Annual Reference Service Revenue for 2010 to 2014 should be amended to include the values set out in Table 28 of this Draft Decision.
- 397. The Access Arrangement Information should be amended to delete the forecast annual revenue to be recovered from providing the Reference Service as set out in Table 15 in the Access Arrangement Information, and to substitute the values set out in Table 31 of this Draft Decision

#### **Public Submissions**

#### GGT's submissions

- 398. In its submission dated 11 December 2009, GGT rejected these required amendments on the basis that it also rejected the Authority's position on Expansions of Capacity. GGT maintained that it "has complied expressly with Section 8.38 in calculating the portion of Total Revenue that the Reference Tariff is designed to recover." It did, however, update its forecasts for capital and operating costs and therefore amended its Annual Reference Service Revenue for 2010 to 2014 (paragraphs 629 to 637, pages 104 to 105).
- 399. In its Amended AAI, GGT further amended its proposal in relation to the Forecast Reference Service as set out in Table 15 of its Amended AAI.
- 400. Other submissions
- 401. No other submissions were received with respect to the Annual Reference Service.

- 402. As set out in paragraphs 76 to 86 of this Final Decision above, the Authority has reconsidered the issue of cost allocation in light of its conclusion regarding Expansions of Capacity. The Authority's method for allocating Total Revenue has been revised to ensure that only the capital costs, operating costs and Capacity of the Covered GGP should be used in determining the Total Revenue and only the Services to be provided using the Covered GGP should be used to derive a Reference Tariff for the GGP.
- 403. The Authority does not otherwise accept GGT's proposed cost allocation methodology, and maintains, contrary to GGT's Amended Proposed Revisions, that Total Revenue should be allocated across all Services provided by means of the Covered Pipeline, which includes all spare and contracted Capacity on the GGP with the exception of the Uncovered Capacity. The Authority's

- position is that all costs of providing Services over the Covered Pipeline are to be included in the annual Reference Service revenue on the basis that the Covered Capacity, regardless of the contracts which may be in place, is Capacity that could be the subject of a User request for a Reference Service.
- 404. The Authority has revised the values for the annual Reference Service revenue to reflect its revised decision on Expansions of Capacity and cost allocation. This revision, together with other revisions to the Authority's Draft Decision (such as the modelling approach) set out in this Final Decision, has resulted in annual revenue from Reference Services being significantly higher than GGT's Amended Proposed Revisions.

405. The Authority requires the values in Table 15 of GGT's Amended AAI to be revised as shown in Table 11 of this Final decision below. Table 11 has been derived on the basis that Total Revenue has been allocated to Reference Services (utilising the entire capacity of the Covered Pipeline).

Table 11: Authority's Required Revisions to Table 15 of GGT's Amended AAI

[Annual Revenue from Reference Tariff (\$m, nominal)]

	2010	2011	2012	2013	2014
Total Revenue	<del>4.3</del> 85.9	<del>4.4</del> 85.5	4 <del>.5</del> 85.6	<del>4.6</del> 85.8	4 <del>.7</del> 85.8

# **Required Amendment 11**

In relation to the Annual Reference Service, Table 15 of GGT's Amended AAI of 22 April 2010 should be amended to reflect the values set out in Table 11 of the Final Decision.

## Draft Decision – Amendment 14

406. The Reference Service Revenue referred to at page 13 of the Access Arrangement Information should be amended from \$15.9 million to \$367.1 million.

## **Public Submissions**

#### GGT's submissions

- 407. In its submission dated 11 December 2009, GGT rejected this amendment on the grounds that it contradicted other conclusions in the Draft Decision. GGT did not accept that Services provided by the Covered Pipeline include those services provided by additional capacity produced by uncovered compressors (paragraph 613, page 102).
- 408. In its Amended AAI, GGT revised its Reference Service Revenue to \$15.11 million.

#### Other submissions

409. No other submissions were received with respect to this amendment.

## Authority's assessment

- 410. The Reference Service revenue referred to at page 13 of GGT's Amended AAI is the present value of the annual Reference Service revenue. Required Amendment 14 of the Draft Decision required GGT to revise that value to conform to the Authority's Draft Decision regarding the annual Reference Service revenue, the modelling approach and the rate of return.
- 411. In view of the Authority's revisions to its Draft Decision, the Final Decision regarding the present value of the annual Reference Service revenue needs to be revised accordingly.

#### **Final Decision**

- 412. The Authority does not accept GGT's Amended Proposed Revisions regarding the present value of the Reference Service revenue.
- 413. The Authority requires the present value of the GGT's Reference Service revenue, as set out on page 13 of its Amended AAI, to be revised to reflect the Authority's Final Decision regarding the modelling approach, rate of return and annual Reference Service revenue. On that basis, the present value of GGT's Reference Service revenue should be \$321.0 million.

# **Required Amendment 12**

The Reference Service Revenue referred to at page 13 of the Access Arrangement Information should be amended from \$15.11 million to \$321.0 million.

# Draft Decision – Amendment 15

414. Clause 1 of the Fourth Schedule to Appendix 3 to GGT's Proposed Revisions should be amended to delete the Reference Tariff charges and substitute the Authority's Draft Decision Reference Tariff shown in Table 29 of this Draft Decision.

## **Public Submissions**

#### GGT's submissions

415. In its submission dated 11 December 2009, GGT rejected this required amendment on the basis that it also rejected the Authority's position on Expansions of Capacity. GGT submits that its calculation of Total Revenue complies with section 8.2(c) of the Code as it is attributable to the Reference Service. The value for revenue has been calculated by: "applying the Reference Tariff, adjusted quarterly to reflect movements in expected inflation, to the forecast volumes for the Reference Service, and applying a discount rate equal to a pre-tax nominal Rate of Return of 14.3%, is \$16.1 million." GGT

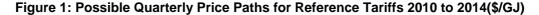
submitted that it demonstrated the Reference Tariff is set so Reference Service Revenue is in present value terms (paragraphs 639 to 645, pages 105 to 106). In GGT's Amended AAI this figure is stated to be \$15.11 million.

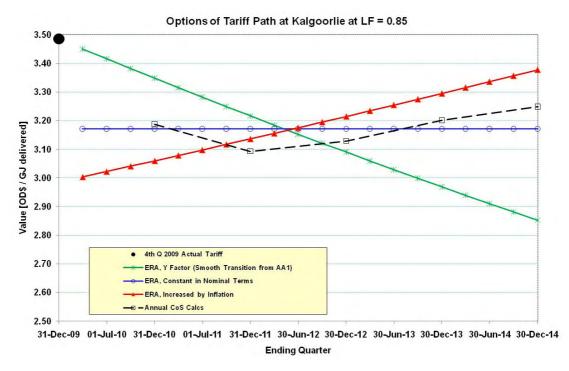
### Other submissions

416. No other submissions were received with respect to this amendment.

## **Authority's Assessment**

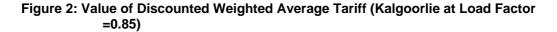
- 417. The Authority considers it preferable, wherever practicable, to determine Reference Tariffs with a smooth Price Path, including between Access Arrangements, rather than a Price Path which has significant and sudden changes in tariffs.
- 418. In this Final Decision, for the reasons set out in this decision, the Authority has decided that the revenue requirement for Reference Tariffs should be lower than was the case under the Draft Decision. Figure 3 in the Draft Decision, showing the range of quarterly price path options the Authority considered in the Draft Decision, has been amended to reflect the requirements of this Final Decision. This amended figure is shown below as Figure 1.

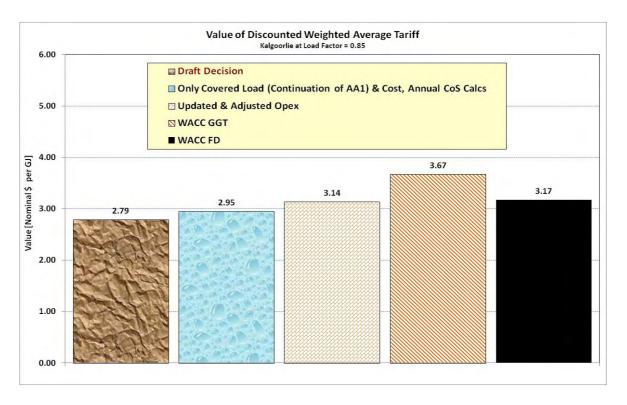




419. Under paragraph 800 of the Draft Decision, the Authority considered that in the interests of minimising the disruptive effect of step changes to the Reference Tariff over future years the Price Path should be constant in nominal terms over the Access Arrangement Period. Based on Figure 1 above, the Authority maintains this view.

420. Figure 2 shows the impact of the Authority's Final Decision on the GGP Reference Tariff. To illustrate the key tariff related decisions, the Discounted Weighted Average tariff (DWAT) of the indicative tariff at Kalgoorlie (\$/GJ, 1378km, 85% load factor) is used. The DWAT is a measure of the cost of energy transported through the GGP paid by users and it enables comparison of different costs over time illustrated in dollars of 31 December 2009. A similar figure was presented in the Draft Decision under Figure 4 showing the effect of the Draft Decision.





- 421. Figure 2 shows the Authority's Draft Decision Proposed Tariff (DWAT Equivalent) of \$2.79/GJ. The reasons for the changes in this tariff to the levels shown in the columns in Figure 2 are described below:
  - (a) \$2.79 to \$2.95/GJ Application of the Authority's Final Decision on Covered load and annual cost of service calculation using the Draft Decision WACC.
  - (b) \$2.95 to \$3.14/GJ –Application of the Authority's Final Decision on Non Capital costs.
  - (c) \$3.14 to \$3.67/GJ Application of the Authority's Final Decision except for illustrative purposes this column has used the GGT proposed WACC of 14.34% rather than the Final Decision WACC.
  - (d) \$3.14 to \$3.17/GJ Application of the Authority's Final Decision on WACC (10.48%).

422. The Authority requires clause 1 of the Fourth Schedule to Appendix 3 to GGT's Amended Proposed Revisions to be revised to delete the Reference Tariff charges and substitute the revised Reference Tariff charges shown in Table 12 of this Final Decision.

**Table 12: The Reference Tariffs Charges** 

Tariff Component	GGT's Amended Proposed Revisions <sup>33</sup>	Final Decision
Toll charge		
[\$ per GJ of MDQ]	0.345720	0.243262
Reservation		
charge		
[\$ per GJ*km of		
MDQ]	0.002126	0.001438
Throughput charge		
[\$ per GJ*km of Q]	0.000572	0.000400

# **Required Amendment 13**

Clause 1 of the Fourth Schedule to Appendix 3 to GGT's Amended Proposed Revisions of 22 April 2010 should be amended to delete the Reference Tariff charges and replaced with the Authority's Final Decision Reference Tariff charges shown in Table 12 of the Final Decision.

# Draft Decision – Amendment 17

423. The Reference Tariff Adjustment Mechanism in Schedule 1 and clause 9.8 to GGT's Proposed Revisions should be deleted.

This Schedule 1 should be replaced by Schedule 1 to GGT's Response to Issues Paper dated 29 May 2009, subject to amending the formula contained therein on the basis of this formula taking account of quarterly tariff adjustments with x being the forecast quarterly inflation rate.

The formula under clause 9.8 also needs to be amended to take account of quarterly tariff adjustments to include CPI-x in the formula with x being the forecast quarterly inflation rate.

<sup>&</sup>lt;sup>33</sup> GGT's proposed annual CPI based tariff increases. The Authority's Final Decision is that tariffs are to remain constant in nominal terms for the period of the forthcoming Access Arrangement (using an inflation rate of 2.5%).

### **Public Submissions**

### GGT's Submissions

- 424. In its submission dated 11 December 2009, GGT noted that the Draft Decision generally approved the proposed Tariff Adjustment Mechanism except for the proposed adjustment for inflation. GGT argues that the Authority's conclusion on CPI indexation is "confused" possibly because of the Authority's decision on uncovered capacity and non capital costs. In the context of this amendment, GGT addressed the rate of change of the tariff progression over the Access Arrangement period.
- 425. GGT accepted the general finding that step changes may be unavoidable but challenges the Authority's view that Total Revenue Requirement and Reference Tariffs will be lower at the start of the 2015 to 2019 Access Arrangement period than at the end of the 2010 to 2014 period, arguing that this ignores the possibility that there will be an increase in tariffs at the next period. GGT accepted the Authority's view that the disruptive effects of step changes to Reference Tariff should be minimised but is concerned that the flat nominal tariff path will lead to a significant downwards step in 2010 and upwards in 2015. Instead, GGT proposes to escalate tariffs by CPI to minimise future step changes while complying with the Code, particularly the Code's objectives in section 8.1.
- 426. GGT further submitted that by rejecting the CPI indexation, the Authority did not consider the implications for price signals being sent to Prospective Users. GGT relies on section 8.1(d) to argue that the Reference Tariff must send correct price signals; if these price signals are incorrect, inappropriate incentives may be created for Users and Potential Users. Artificially low price signals may distort investment decisions and this is particularly risky as the pipeline becomes closer to being fully compressed. GGT argues that its cost allocation methodology is better able to give appropriate price signals to Prospective Users on future costs. By indexing the Reference Tariff, GGT argues it is better able to provide meaningful price signals (pages 106 to 107).
- 427. In its submission dated 22 January 2010, GGT noted BHPB concerns (discussed at paragraphs 429 to 430 below) and acknowledged that BHPB did not have the benefit of the correction GGT made to its Tariff Adjustment Mechanism. However, GGT claimed BHPB did not understand that the regulatory cost component of the Tariff Adjustment Mechanism is calculated on a one year lag so the WACC adjustment is necessary to maintain the value of costs in present value terms and that, as the mechanism is symmetrical, any savings in regulatory costs in present value terms will pass through to Users.
- 428. GGT acknowledged that its Y Escalation Factor was incorrect in its original submission but that this has been corrected. However, it maintains its position that the Y Escalation Factor is constrained by the overall Mechanism and cannot be used to adjust the weightings which would enable GGT to increase its returns. GGT noted that the Authority has accepted both the regulatory costs component and Y Escalation Factor. GGT submits that its proposed Tariff Adjustment Mechanism complies with the Code because it allows a "smoothing" of the price path equivalent to that determined by the Cost of Service Approach (pages 32 to 33).

### Other submissions

- 429. In its submission dated 11 December 2009, BHPB submitted that the only escalation factor the inclusion of which could be justified was CPI. It notes the inappropriateness of a Reference Tariff Adjustment Mechanism as included in the Draft Decision as this may allow GGT to make a profit on its regulatory costs. If such a mechanism is to be included, then BHPB argues that the Regulatory Cost Factor should be narrowly defined so only those fully outside of GGT's control are included.
- 430. BHPB noted with concern the lack of any information or explanation about the Y Escalation Factor in the Draft Decision or GGT's submissions. It argues that the lack of supporting information from GGT means Users such as BHPB are unable to understand the derivation of the Y Escalation Factor and whether it complies with the Code's requirements. As such, BHPB submits that the Y Escalation Factor should be removed from the Reference Tariff Mechanism (pages 27 to 28).
- 431. No other public submissions were received with respect to this amendment.

- 432. Required Amendment 17 of the Draft Decision was a consequential amendment by reason of the Authority's rejection in the Draft Decision of GGT's proposal that Reference Tariffs be constant in real terms. The Authority in its Draft Decision (see paragraph 803), contrary to GGT's proposal as to the Price Path, was that Reference Tariffs should remain constant in nominal terms throughout the Access Arrangement Period, subject to adjustment where actual quarterly CPI does not equal forecast quarterly CPI.
- 433. The adjustment of individual Reference Tariff components for inflation under clause 9.8 of the GGT's Proposed Revisions as originally submitted, therefore, was inconsistent with the Authority's Draft Decision to require Reference Tariffs to be constant in nominal terms and was not accepted. Required Amendment 17 of the Draft Decision required GGT to amend clause 9.8 accordingly.
- 434. As discussed in this Final Decision (see above at paragraphs 417 to 422) the Authority has maintained its position in its Draft Decision and rejects GGT's position that Reference Tariffs should be constant in real terms as proposed by GGT.
- 435. The Authority also considers it necessary to allow for quarters of negative inflation which, while rare, do occur. In such a situation, the Authority believes that it is appropriate to allow tariffs to decrease rather than remain at the previous level. In the December 2009 version, clause 9.8 in GGT's Amended Proposed Revisions is a "ratchet up" of tariffs which is not in keeping with GGT's argument for tariffs constant in real terms.
- 436. GGT's Revised Access Arrangement removed quarterly tariff variations by amending clause 9.8 and Schedule 1. GGT explained the reason for this in its letter to the Authority of 22 April 2010 as follows: "To reduce the scope for confusion, GGT has modified its proposed amendments to the access arrangement to escalate Reference tariffs annually rather than quarterly".

- 437. The Authority notes that under the provisions of the Code, as discussed under paragraphs 667 to 672 of this Final Decision, the Authority cannot approve amendments in a resubmitted revised Access Arrangement which are not amendments made to incorporate or substantially incorporate the required amendments of the Draft Decision, unless the amendments otherwise address matters raised by the Authority in its Draft Decision.
- 438. In this case the amendments in GGT's Amended Proposed Revisions involving the removal of quarterly tariff variations by amending clause 9.8 and Schedule 1, do not incorporate or substantially incorporate the required amendments of the Draft Decision or otherwise address matters raised by the Authority in that decision.
- 439. The Authority notes that the Code does not allow it to assess the reasonableness of these amendments proposed by GGT as discussed above.

- 440. The Authority requires GGT to amend clause 9.8 of the General Terms and Conditions to its Amended Proposed Revisions and the formula in Schedule 1 of its Amended Proposed Revisions.
- 441. The Authority also requires GGT to make a consequential amendment to clause 5.3(a) of its Amended Proposed Revisions by adding a reference to clause 9.8 of the General Terms and Conditions.

# **Required Amendment 14**

Clause 9.8 of Appendix 3, clause 5.3(a) of GGT's Amended Proposed Revisions should be deleted and replaced and Schedule 1 of GGT's Amended Proposed Revisions should be revised as follows:

Insert new clause 9.8 as set out below:

"9.8 Tariffs and Charges Adjustment for Inflation

For the purpose of this clause the component charges of the Reference Tariff are to be determined as follows:

$$C_t = C_{t-1} \left[ 1 + \left( \frac{CPI_{t-2} - CPI_{t-3}}{CPI_{t-3}} \right) - K \right]$$
 where:

 $C_t$  is the relevant charge in the Quarter t in which the Billing Period occurs.

 $C_{t-1}$  is the charge for the quarter t-1.

CPI<sub>t-2</sub> is the CPI for the Quarter commencing six months prior to the commencement of Quarter *t*.

CPI<sub>t-3</sub> is the CPI for the Quarter commencing nine months prior to the commencement of Quarter *t*.

$$K = \left| 1 + \frac{R}{100} \right|^{0.25} - 1$$

R is 2.5 (the forecast annual percentage inflation rate in the Final Decision)

Revise Schedule 1 by replacing this schedule with Schedule 1 as proposed by GGT in its response to the Draft Decision of 11 December 2009, except

that the variable 'x' should be made equal to  $\frac{R}{100}$  where R is as defined

under clause 9.8 of this Amendment 14.

Replace clause 5.3(a) in the Amended Proposed Revisions as follows:

"CPI and other adjustments in accordance with the Reference Tariff" Adjustment Mechanism as described in Schedule 1 and clause 9.8 of Appendix 3; and"

# **Draft Decision - Amendment 18**

442. The definition of "imposts" in Appendix 1 to GGT's Proposed Revisions should be amended as follows:

Impost means any royalty (based on value, but not profit or otherwise), petroleum resource rent tax, environmental tax, excise, sales tax, use tax, consumption tax, levy,—impost or duty imposed by or payable to any Government Authority affecting the transportation and supply of Gas at or upstream of the Outlet Point but does not include any income taxes;

### **GGT's Amended Proposed Revisions**

443. GGT amended the definition of "imposts" in Appendix 1 to its Amended Proposed Revisions by deleting the word "impost".

### **Public submissions**

444. No public submissions were received in respect of this amended definition.

## **Authority's Assessment**

- 445. The Authority confirms its position set out in the Draft Decision at paragraphs 820 to 835.
- 446. The Authority notes that GGT has accepted the required amendment in its Amended Proposed Revisions.

### **Final Decision**

447. GGT's Amended Proposed Revisions have incorporated the requirements of Amendment 18 of the Draft Decision.

## Draft Decision – Amendment 19

448. Section 5.4(c) of GGT's Proposed Revisions should be amended to:

GGT may submit one or more Impost Notices each Year. This notice may incorporate a number of claims relating to the changes. For the purposed of Section 8.3D(b)(i) of the Code the minimum notice period for an Impost Notice is 45 25 Business Days.

# **GGT's Amended Proposed Revisions**

449. Section 5.4(c) of the Amended Proposed Revisions has been amended to provide a minimum notice period of 25 business days.

#### **Public Submissions**

450. No public submissions were received with respect of the minimum notice period for an Impost Notice.

## **Authority's Assessment**

- 451. The Authority confirms its position set out in paragraphs 831 and 834 of the Draft Decision,
- 452. The Authority notes that GGT has incorporated the required amendment in its Amended Proposed Revisions.

#### **Final Decision**

453. GGT's Amended Proposed Revisions have incorporated the requirements of Amendment 19 of the Draft Decision.

## Draft Decision – Amendment 20

454. A GGT Information Package which contains reasonable terms should be included as part of GGT's Proposed Revisions or all references to this Information Package in GGT's Proposed Revisions should be deleted and replaced with appropriate alternative provisions.

## **GGT's Amended Proposed Revisions**

- 455. In its Amended Proposed Revisions, GGT has incorporated an Information Package as Schedule 2 to the Access Arrangement.
- 456. The Information Package consists of 12 sections which set out the process for a Prospective User to make an enquiry for service, place an order, conditions precedent to making an order, amending an Order form in response to a notice of non-compliance, how an option to extend can be exercised, and variations and obligations about confidential information. It also sets out GGT's obligations to respond to an enquiry, give advice about capacity, notify a Prospective User about non-compliance and execute an agreement.

#### **Public Submissions**

457. No public submissions were received with respect to the Information Package.

- 458. The Authority confirms its position as set out in paragraphs 880 to 890 of the Draft Decision.
- 459. The Authority considers that the Information Package which is included as Schedule 2 to the Amended Proposed Revisions to the Access Arrangement addresses the concerns raised in the Draft Decision. Further, the Authority is now able to assess the appropriateness of those of GGT's proposals which rely on the terms of the GGT Information Package.
- 460. The Authority is satisfied that the Information Package incorporated by GGT in its Amended Proposed Revisions as Schedule 2 is appropriate and is satisfied that the Information Package provides Prospective Users with clarity about the process for making an application.
- 461. The Authority notes that as the Information Package is now part of the Access Arrangement, this package cannot be amended without the Authority's

- approval. This provides greater certainty about the manner in which Services are provided to Prospective Users.
- 462. The Authority notes that in paragraph 893 of its Draft Decision, it could not approve sections or appendices which contained references to the Information Package unless a GGT Information Package containing reasonable terms was incorporated into the Proposed Revisions. This issue has been resolved by GGT's submission of an Information Package which, in the Authority's opinion, contains reasonable terms.

463. GGT's Amended Proposed Revisions have incorporated the requirements of Amendment 20 of the Draft Decision.

## Draft Decision – Amendment 21

464. Section 8.1 of GGT's Proposed Revisions should be amended to read:

The terms and conditions on which the Reference Service will be provided by GGT to a Prospective User are those contained in the Service Agreement, which will be constituted by:

- (a) the Order Form executed by the Prospective User and accepted by GGT; and
- (b) the General Terms and Conditions; and.
- (c) any Conditions under clause 8.3 of this Access Arrangement.

### **GGT's Amended Proposed Revisions**

465. GGT's Amended Proposed Revisions contains an amendment to sub-section 8.1(a). This sub-section expands on what constitutes an Order Form to include all attachments to it, as documented in Items 20 and 21 of the Order Form.

## **Public Submissions**

466. No public submissions were received with respect to this amendment.

### **Authority's Assessment**

- 467. The Authority confirms its position set out at paragraphs 899 to 903 of the Draft Decision.
- 468. The Authority notes that GGT has accepted its requirement to delete subsection 8.1(c) from its Proposed Revisions.
- 469. The Authority also notes that GGT has amended sub-section 8.1(a) to provide that an Order Form includes all attachments to the Order Form. The Authority considers this amendment to be acceptable.

### **Final Decision**

470. GGT's Amended Proposed Revisions have otherwise addressed, to the satisfaction of the Authority, the requirements of Amendment 21 of the Draft Decision

# Draft Decision – Amendment 22

471. Section 8.3(a) of GGT's Proposed Revisions should be amended to make it clear whether the Conditions in section 8.3 of GGT's Proposed Revisions apply to all Services or only Reference Services.

### **GGT's Amended Proposed Revisions**

472. In its Amended Proposed Revisions, GGT has amended sub-section 8.3(a) to specify that GGT may notify a Prospective User that it is prepared to make available a Reference Service or a Negotiated Service.

#### **Public Submissions**

473. No public submissions were received with respect to this amendment.

## **Authority's Assessment**

- 474. The Authority confirms its position set out in paragraphs 905 to 908 of the Draft Decision.
- 475. The Authority notes that GGT's Amended Proposed Revisions have added subsections 8.3(a)(1) and 8.3(a)(2) to specify that the Conditions to which section 8.3 apply are a Reference Service and a Negotiated Service.

#### **Final Decision**

476. GGT's Amended Proposed Revisions have incorporated the requirements of Amendment 22 of the Draft Decision.

# **Draft Decision – Amendment 23**

477. Sub-clause 3.2 of the General Terms and Conditions to GGT's Proposed Revisions should be amended to read as follows:

If any additions or enhancements to the Pipeline which are required to provide the Service are not operational following the expiry of 12 Months from the Commencement Date the parties may:

- (a) agree to defer the date for commencement of that Service to another date; or
- (b) agree to the provision of a reduced scope of the Service which is feasible with the available Capacity; and
- (c) if either clause 3.2(a) or 3.2(b) applies, agree the charges that will apply to reflect the new date for commencement or the reduced scope for the Service. and
- (d) if the parties are unable to agree in accordance with either clause 302(a), (b) or (c) then either party may refer the matter to dispute resolution as provided for in clause 22 of the General Terms and Conditions. In the event that neither party has referred the matter for dispute resolution within 30 days after the expiry of the period of 12 months, the Service Agreement may be terminated by written notice by either party without penalty or cost to either party.

If the parties are unable to agree in accordance with either clause 3.2(a), (b) or (c) then either party may refer the matter for dispute resolution as provided for in clause 22 of the General Terms and Conditions. In the event that neither party has referred the matter for dispute resolution within 30 days after the date of expiry of the period

of 12 Months, the Service Agreement may be terminated by written notice by either party without penalty or cost to either party.

# **GGT's Amended Proposed Revisions**

478. GGT has incorporated this required amendment in its Amended Proposed Revisions.

### **Public Submissions**

479. No public submissions were received about this required amendment.

## **Authority's Assessment**

480. The Authority confirms its position as set out in paragraphs 931 to 932 of the Draft Decision.

#### **Final Decision**

481. GGT's Amended Proposed Revisions have incorporated the requirements of Amendment 23 of the Draft Decision.

# Draft Decision – Amendment 24

482. Sub -clause 4.4(c) of the General Terms and Conditions to GGT's Proposed Revisions should be amended to read:

The SQO Notice must include the following information:

- (1) the quantities of Gas required to be received at the Inlet Point;
- (2) the quantities of Gas required to be delivered at the Outlet Point;
- (3) the Gas Day the SQO is required; and
- (4) any other information <u>reasonably</u> required by GGT

### **GGT's Amended Proposed Revisions**

483. GGT has incorporated this required amendment in its Amended Proposed Revisions.

# **Public Submissions**

484. No public submissions were received about this required amendment.

### **Authority's Assessment**

485. The Authority confirms its assessment as set out in paragraphs 935 to 942 of the Draft Decision.

#### **Final Decision**

486. GGT's Amended Proposed Revisions have incorporated the requirements of Amendment 24 of the Draft Decision

# Draft Decision – Amendment 25

- 487. Sub-clause 6.1 of the General Terms and Conditions to GGT's Proposed Revisions should be amended to read as follows:
  - GGT will provide for the benefit of the User at the User's cost unless otherwise specified:
  - (a) advice in respect of engineering and planning for the connection of the User's facilities to the Pipeline;
  - (b) a remotely actuated shut off valve and a remotely actuated flow control valve at the Outlet Facilities at each Outlet Point;
  - (c) supervision of connection activities for connection to the Pipeline or to the Outlet Facilities;
  - (d) services related to the commissioning of the Outlet Facilities; and
  - (e) access to <u>reasonable</u> specified data by GGT from GGT's SCADA and other systems as determined by GGT acting reasonably.

## **GGT's Amended Proposed Revisions**

488. GGT generally incorporated this required amendment in its Amended Proposed Revisions. It revised sub-clause 6.1(e) to read:

access to data as specified by GGT acting reasonably and supplied from GGT's SCADA and other systems in a manner as determined by GGT acting reasonably

#### **Public Submissions**

489. No public submissions were received about this required amendment.

## **Authority's Assessment**

- 490. The Authority confirms its position as set out in paragraphs 968 to 969 of the Draft Decision.
- 491. The Authority maintains the view that Users do not require access to all data on GGT's systems but should have access to data that is reasonably supplied by GGT. The Authority notes that sub-clause 6.1(e) as set out in the Amended Proposed Revisions provides Users with reassurance and clarity as to the data that will be available.

## **Final Decision**

492. GGT's Amended Proposed Revisions have otherwise addressed, to the satisfaction of the Authority, the requirements of Amendment 25 of the Draft Decision

# **Draft Decision – Amendment 26**

493. Clause 6 of the General Terms and Conditions to GGT's Proposed Revisions should be amended to:

- (a) restore the provisions that are in clause 6 of the General Terms and Conditions to the current Access Arrangement which give Users and third parties the right to elect to own, operate and maintain Outlet Facilities; and
- (b) remove the references to the Second Schedule and replace them with a reference to the "technical specifications of a reasonable and prudent pipeline operator".

# **GGT's Amended Proposed Revisions**

- 494. GGT has accepted in principle that it restore many of the provisions that are in clause 6 of the General Terms and Conditions to the current Access Arrangement to give Users and third parties the right to elect to construct, own, operate and maintain Outlet Facilities.
- 495. GGT's Amended Proposed Revisions restores some of the provisions currently in clause 6 of the General Terms and Conditions but makes significant modifications to the current clause 6.4
- 496. In particular, the modifications to clause 6.4 place significant emphasis on the obligations of Users and third parties who construct, own, operate and maintain Outlet Facilities (clauses 6.4(c) and 6.4(d)). Obligations are also imposed on Users who elect for GGT to own the Outlet Facilities but for the User or third party to operate and maintain those Outlet Facilities (clause 6.4(e)) and those Users who elect for GGT to own, operate and maintain the Outlet Facilities (clause 6.4(f)). Users and third parties are:
  - Required to pay the Connection Charge (clause6.4(c)(10), 6.4(e)(1) and 6.4(f)(1));
  - Required to locate Outlet Facilities outside of the Licensed Area, adjacent to and downstream of Outlet Points (clauses 6.4(c)(1), 6.4(c)(2), 6.4(d)(1) and 6.4(d)(2));
  - To provide GGT with copies of designs (clauses 6.4(c)(3) and 6.4(d)(3));
  - To ensure the designs comply with GGT's specifications (clauses 6.4(c)(4) and 6.4(d)(4));
  - To ensure design and construction of the Outlet Facilities comply with the Fifth Schedule and with licensing obligations, laws, standards, codes and regulatory approval processes (clauses 6.4(c)(5) and 6.4(d)(5));
  - To ensure that Outlet Facilities are constructed by an approved contractor (clauses 6.4(c)(6) and 6.4(d)(6));
  - To consent to GGT's involvement in relevant reviews, studies and assessments (clauses 6.4(c)(7) and 6.4(d)(7));
  - To consent to GGT inspecting the Outlet Facilities prior to the introduction of First Gas (clauses 6.4(c)(8) and 6.4(d)(8));
  - To allow GGT unrestricted access to Outlet Facilities so that GGT can perform its obligations under the Service Agreement (clauses 6.4(c)(12) and 6.4(d)(11));

- To procure, maintain and endorse insurance policies (clauses 6.4(d)(12), 6.4(d)(13), 6.4(e)(3) 6.4(f)(5) and 6.5(f)(6)); and
- To pay GGT's reasonable costs incurred by GGT in connection with the purchase, installation and maintenance of the Outlet Facilities (clauses 6.4(e)(3) and 6.4(f)(7);
- To comply with clause 19 (clauses 6.4(c)(13), and 6.5(f)(8)
- 497. Further, clause 6.4 in GGT's Amended Proposed Revisions makes reference to a Fifth Schedule which has been added to the General Terms and Conditions. The Fifth Schedule sets out the technical requirements for Outlet Facilities.
- 498. The Amended Proposed Revisions to clause 6 restores clause 6.6, which sets out the User's responsibilities where that User elects for GGT to own operate and maintain the Outlet Facilities. Clause 6.7 sets out the provisions relating to compliance which are different from the current Access Arrangement but reflect the amended proposed revisions to clause 6.4.

### **Public Submissions**

- 499. In its submission dated 11 December 2009, GGT did not reject the required amendment but noted that substantial changes are required to incorporate the amendment. These changes are required to reflect additional legislative and statutory obligations that have been placed on GGT since the current Access Arrangement was approved in 2005 (pages 118 to 119).
- 500. BHPB submitted that it supports the Authority's Draft Decision to reject GGT's submission that it should have an exclusive right to provide outlet facilities (page 29 of BHPB Submission).

- 501. The Authority confirms its position as set out in paragraphs 968 to 977 of the Draft Decision.
- 502. However, the Authority acknowledges the increased statutory and licensing obligations faced by GGT and that these obligations should be reflected in the revised Access Arrangement.
- 503. The Authority notes that the addition of the Fifth Schedule to Appendix 3 of the General Terms and Conditions setting out the technical requirements for Outlet Facilities. The Authority accepts the Fifth Schedule as a consequence of its required amendment allowing Users and third parties to construct, own, operate and maintain Outlet Facilities.
- 504. The Authority notes that there appears to be two errors in the Amended Proposed Revisions. Clause 6.9(a) makes reference to 6.4(b)(2) but there is no such clause. It is likely that this reference should be to clause 6.9(c)(10). Clause 6.10 refers to clause 6.8 but this should be a reference to clause 6.9.

505. Clause 6 of the General Terms and Conditions to GGT's Amended Proposed Revisions should be revised to correct the referencing in clauses 6.9(a) and 6.10.

# **Required Amendment 15**

Clause 6 of Appendix 3 to GGT's Amended Proposed Revisions should be as follows:

- (a) Clause 6.9(a) should make reference to clause 6.9(c)(10) rather than clause 6.4(b)(2).
- (b) Clause 6.10 should make reference to clause 6.9 rather than clause 6.8.

# Draft Decision - Amendment 27

506. Sub-clause 9.6(e) of the General Terms and Conditions to GGT's Proposed Revisions should be reinserted and read:

GGT will rebate 95 percent of Quantity Variation Charges as defined in the Fourth Schedule in excess of GGT's direct costs and expenses associated with and arising from the User's acts or omissions which cause the overruns or imbalances to occur:

- (1) to any other User of the Reference Service not having caused the particular Quantity Variation Charges to occur; and
- (2) which rebate will be paid to non-offending Users, where relevant, at the end of each calendar year.

For the avoidance of doubt, where there is no other User of the Reference Service at the time at which the overruns or imbalance occur then this rebate mechanism will not be activated.

### **GGT's Amended Proposed Revisions**

507. GGT has accepted the requirement to amend. However, in its Amended Proposed Revisions, GGT has used the word "imbalances" rather than "imbalance" in the last sentence for consistency with the General Terms and Conditions.

## **Public Submissions**

508. BHPB submitted that it supports the Authority's Draft Decision to re-insert clause 9.6(e) into the General Terms and Conditions (page 29 of BHPB Submission).

### **Authority's Assessment**

509. The Authority confirms its position as set out in paragraphs 1002 to 1003 of the Draft Decision.

510. GGT's Amended Proposed Revisions have otherwise addressed, to the satisfaction of the Authority, the requirements of Amendment 27 of the Draft Decision.

# Draft Decision – Amendment 28

511. The minimum value for the Gross Heating Value component in the tables labelled Inlet Gas Specification and Delivery Gas Specification in the Second Schedule to the General Terms and Conditions to GGT's Proposed Revisions should be amended from 37.0 MJ/m3 to 35.5 MJ/m3.

## **GGT's Amended Proposed Revisions**

512. GGT has incorporated this required amendment in its Amended Proposed Revisions.

#### **Public Submissions**

513. BHPB submitted that it supports the Authority's decision not to accept GGT's proposed increase on the Minimum GHV Specification (BHPB Submission page 29).

## **Authority's Assessment**

- 514. The Authority confirms its position as set out in paragraphs 1008 to 1037 of the Draft Decision.
- 515. In the Draft Decision, the Authority noted BHPB's concerns about narrowing the specification of GGP in advance of the *Gas Supply (Gas Quality Specification) Bill 2009* (WA). The Authority notes that the *Gas Supply (Gas Quality Specification Act 2009* (WA) was passed by Parliament on 18 November 2009. The Authority confirms its position set out in paragraph 1034(b) that this Act is not relevant to whether GGT's proposed revision to the Minimum GHV Specification is reasonable having regard to the objectives of the Code.

### **Final Decision**

516. GGT's Amended Proposed Revisions have incorporated the requirements of Amendment 28 of the Draft Decision.

# Draft Decision – Amendment 29

517. Sub-clause 11.2(a) of the General Terms and Conditions to GGT's Proposed Revisions should be amended to read:

The Outlet Facilities installed by GGT under clause 6.2 will enable GGT to properly establish the quantity and quality of Gas delivered By GGT to the User at the Outlet Point.

Except as provided in clauses 6.4(c) and 6.4(f), the User shall install or have installed on its behalf, and GGT shall operate, at or near the Outlet Point, Outlet

Facilities necessary for GGT to be able to properly establish the quantity and quality of Gas delivered to the User at the Outlet Point.

# **GGT's Amended Proposed Revisions**

518. GGT has further amended this clause in its Amended Proposed Revisions. It has revised sub-clause 11.2(a) to read:

The Outlet Facilities installed by GGT or the User or third party under clause 6.4 will enable GGT to properly establish the quantity and quality of Gas delivered by GGT to the User at the Outlet Point.

#### **Public Submissions**

519. BHPB submitted that it supported the Authority's decision to not accept GGT's submission that it should have an exclusive right to provide Outlet Facilities. BHPB was therefore supportive of the Authority's decision not to approve the proposed sub-clause 11.2(a) of the General Terms and Conditions (page 29 of BHPB Submission).

### **Authority's Assessment**

- 520. The Authority confirms its position set out in paragraphs 1046 and 1051 of the Draft Decision.
- 521. The Authority notes that, while GGT has not complied with Required Amendment 29 in its Amended Proposed Revisions, it has nevertheless met the Authority's requirement that Users or third parties have the right to own, operate and maintain Outlet Facilities.

#### **Final Decision**

522. GGT's Amended Proposed Revisions have otherwise addressed, to the satisfaction of the Authority, the requirements of Amendment 29 of the Draft Decision.

## Draft Decision – Amendment 30

523. Sub-clause 11.3 of the General Terms and Conditions to GGT's Revision Proposal should be amended to read:

The measuring equipment comprised in the Inlet Facilities and in each of the Outlet Facilities shall comply in all respects with good pipeline industry practice the standard of a reasonable and prudent pipeline operator.

## **GGT's Amended Proposed Revisions**

524. GGT has incorporated this required amendment in its Amended Proposed Revisions.

### **Public Submissions**

525. In its submission dated 11 December 2009, BHPB submitted that it supported the Authority's decision to not accept GGT's submission that it should have an exclusive right to provide Outlet Facilities. BHPB was therefore supportive of

the Authority's decision not to approve the proposed amendment to sub-clause 11.3 of the General Terms and Conditions (page 29)

# **Authority's Assessment**

526. The Authority confirms its position set out in paragraphs 1047 and 1052 of the Draft Decision.

### **Final Decision**

527. GGT's Amended Proposed Revisions have incorporated the requirements of Amendment 30 of the Draft Decision.

## Draft Decision – Amendment 31

528. Sub-clause 11.4 of the General Terms and Conditions to the current Access Arrangement should be reinstated into the proposed clause 11 of the General Terms and Conditions to GGT's Proposed Revisions as:

Costs to be Bourne by User

The costs of installation, operation and maintenance of facilities not owned by the Owners referred to in clauses 11.1 and 11.2 shall be for the account of the User.

## **GGT Amended Proposed Revisions**

- 529. GGT has reinstated sub-clause 11.4 of the General Terms and Conditions of the Amended Proposed Revisions.
- 530. GGT has amended the title set out in the required amendment to "Costs to Be Borne by the User" which is consistent with the current Access Arrangement.

## **Public Submissions**

531. In its submission dated 11 December 2009, BHPB submitted that it supported the Authority's decision to not accept GGT's submission that it should have an exclusive right to provide Outlet Facilities. BHPB was therefore supportive of the Authority's required amendment to reinsert sub-clause 11.4 of the General Terms and Conditions (page 29).

# **Authority's Assessment**

532. The Authority confirms its position set out in paragraph 1046 of the Draft Decision.

## **Final Decision**

533. GGT's Amended Proposed Revisions have incorporated the requirements of Amendment 31 of the Draft Decision.

# Draft Decision - Amendment 32

534. Sub-clause 11.5 of the General Terms and Conditions to GGT's Proposed Revisions should be amended to read:

GGT grants to the User the right to install and maintain check metering equipment within the User's facilities or premises to enable the User to check the bulk measuring equipment located at any site provided that such check metering equipment shall not interfere in any way with any measuring equipment (or other equipment) and that the cost of installing and maintaining any such check metering equipment shall be borne by the User and such equipment shall meet the accuracies contained in the First Schedule.

# **GGT Amended Proposed Revisions**

- 535. In its Amended Proposed Revisions, GGT submitted an amended sub-clause for Check Metering, now numbered sub-clause 11.6. This sub-clause accepts Users can install check metering equipment but that the equipment cannot be installed within the Licensed Area or within GGT-owned Outlet Facilities.
- 536. The proposed sub-clause 11.6 reads:

GGT grants to the User the right to install and maintain check metering equipment subject to this equipment not being installed within the Licensed Area or within Outlet Facilities owned by GGT to enable the User to check the bulk measuring equipment located at any site provided that such check metering equipment shall not interfere in any way with any measuring equipment (or other equipment) and that the cost of installing and maintaining any such check metering equipment shall be borne by the User and such equipment shall meet the accuracies contained in the First Schedule.

#### **Public Submissions**

537. In its submission dated 11 December 2009, BHPB submitted that it supported the Authority's decision to not accept GGT's submission that it should have an exclusive right to provide Outlet Facilities. BHPB was therefore supportive of the Authority's required amendment to sub-clause 11.5 of the General Terms and Conditions (page 29).

- 538. The Authority has considered the proposed sub-clause 11.6 in GGT's Amended Proposed Revisions submitted in response to the Draft Decision.
- 539. As a result of its assessment of GGT's proposed sub-clause and the public submission, the Authority has given further consideration to its position, as outlined in the Draft Decision at paragraphs 1048 to 1049.
- 540. The Authority notes that where a User elects to construct its own Outlet Facilities, GGT's proposed sub-clause will not have an adverse effect on that Users ability to install check metering equipment. However, where a User elects that GGT own the Outlet Facilities, its ability to install check metering equipment is limited to the installation of such equipment outside the Licensed Area and the Outlet Facilities.
- 541. The Authority has considered GGT's regulatory and licensing obligations and has revised its view on the appropriateness of allowing Users to install check metering equipment in GGT-owned Outlet Facilities.

542. Accordingly, based on this revised view, the Authority considers GGT's proposal to limit where Users or third parties can build check metering equipment, to locations as described above, to be reasonable.

### **Final Decision**

543. GGT's Amended Proposed Revisions have otherwise addressed, to the satisfaction of the Authority, the requirements of Amendment 32 of the Draft Decision.

# Draft Decision – Amendment 33

544. Sub-clause 19.1 of the General Terms and Conditions to GGT's Proposed Revisions should be amended to read:

The User shall procure and maintain at its own expense throughout the Terms of the Service Agreement the following insurances with reputable insurers:

- (a) workers compensation insurances in accordance with the Workers Compensation and Rehabilitation Act 1981;
- (b) all risks property insurance to indemnify it against damage, loss or destruction of Inlet Facilities and Outlet Facilities; and
- (c) public liability insurance for an amount of not less than \$20,000,000 to indemnify it against the risk of damage, death or injury to the property or personnel of third parties.

## **GGT Amended Proposed Revisions**

- 545. In its Amended Proposed Revisions GGT has included sub-clause 19.1(b) but has excluded from the sub-clause the requirement for a User to insure Inlet Facilities on the basis that sub-clause 6.2(b) provides that Inlet Facilities cannot be owned by Users.
- 546. GGT has also amended the first sentence of this sub-clause so that it now refers to the "Terms of the Agreement" to be consistent with the defined term.

#### **Public Submissions**

547. No public submissions were received about this required amendment.

- 548. The Authority confirms its position set out in paragraphs 1087 to 1088 of the Draft Decision.
- 549. The Authority notes that "Terms of the Agreement" is a defined term and accepts that consistency within the Access Arrangement is desirable.
- 550. The Authority considers that GGT's interpretation of sub-clause 6.2(b) is a correct interpretation based on the definition of Inlet Facilities. It therefore considers that the sub-clause 19.1 set out in the revised Proposed Access Arrangement to be reasonable.

551. GGT's Amended Proposed Revisions have otherwise addressed, to the satisfaction of the Authority, the requirements of Amendment 33 of the Draft Decision.

## Draft Decision - Amendment 34

552. Sub-clause 19.2 of the General Terms and Conditions to GGT's Proposed Revisions should be amended to read:

The User shall arrange for endorsements on the policies in clauses 19.1(b) <u>and 19.1(c)</u> of the interests of the Owners and GGT such that those interests are effectively insured under those policies and for the insurers to waive rights of subrogation against them.

# **GGT's Amended Proposed Revisions**

553. This amendment has been wholly incorporated in GGT's Amended Proposed Revisions.

### **Public Submissions**

554. No public submissions were received about this required amendment.

## **Authority's Assessment**

555. The Authority notes that its required amendment is a consequence of its Required Amendment 33.

#### **Final Decision**

556. GGT's Amended Proposed Revisions have incorporated the requirements of Amendment 34 of the Draft Decision.

## Draft Decision – Amendment 35

557. <u>Sub-clause 20.7(c) of the General Term</u>s and Conditions to GGT's Proposed Revisions should be amended to read as follows:

The User shall be obliged to pay the Connection Charges for any new Outlet Facilities to be used by the New User in respect of Transferred Capacity and the administration charges that GGT would apply to any new User entering into a gas transmission agreement with GGT, in accordance with the Statement of Tariffs and Charges prevailing at the time of the transfer. The User shall ensure that any new Outlet Facilities used by the New User shall comply with the technical specifications of a reasonable and prudent pipeline operator.

## **GGT's Amended Proposed Revisions**

558. In GGT's Amended Proposed Revisions the last sentence of sub-clause 20.7(c) has been amended to read:

The User shall ensure that any new Outlet Facilities used by the New User comply with the requirements set out in clause 6.4(c)(5) of the General Terms and Conditions.

### **Public Submissions**

559. No public submissions were received in response to this amendment.

### **Authority's Assessment**

- 560. The Authority confirms its position set out in paragraph 1137 of the Draft Decision.
- 561. GGT has accepted the principle that Users have the right to own Outlet Facilities. In its Amended Proposed Revisions, GGT has reinforced that a User must comply with 6.4(c)(5) in the Amended Proposed Revisions.
- 562. GGT has addressed the Authority's concerns set out in the Draft Decision with the cross-reference to the proposed sub-clause 6.4(c)(5) set out in the Amended Proposed Revisions. GGT's amendment clarifies that Users must ensure a New User complies with sub-clause 6.4(c)(5).

#### **Final Decision**

563. GGT's Amended Proposed Revisions have otherwise addressed, to the satisfaction of the Authority, the requirements of Amendment 35 of the Draft Decision.

# **Draft Decision – Amendment 36**

564. The definition of Capacity in Appendix 1 to GGT's Proposed Revisions should be amended to correspond with the definition of Capacity in the Code, as follows:

Capacity means the capacity of the Pipeline as determined from time to time by GGT for the pipeline as configured and subject to the operating conditions in effect at the time, which is available for the transmission of Gas between an Inlet Point and an Outlet Point the measure of the potential of the Covered Pipeline as currently configured to deliver a Service between a Receipt Point and a Delivery Point at a point in time.

### **GGT's Amended Proposed Revisions**

565. GGT's Amended Proposed Revisions incorporates the required amendment except that it refers to "a" Covered Pipeline rather than "the" Covered Pipeline. This is consistent with the definition in the Code.

### **Public Submissions**

566. No public submissions were received with respect to this required amendment.

## **Authority's Assessment**

567. The Authority confirms its position set out in 1121 to 1123 of the Draft Decision.

- 568. The Authority notes that the only difference between its required amendment and the definition in GGT's Amended Proposed Revisions is that the Code definition, used in the Amended Proposed Revisions, refers to "a" Covered Pipeline whereas the required amendment refers to "the" Covered Pipeline. This is a necessary consequential change having regard to the fact that the Code definition applies to many Covered Pipelines whereas the definition under the required amendment to GGT's Proposed Revisions will only apply to one; that is, the GGP.
- 569. The Authority considers that for the sake of clarity, the definition of Covered Pipeline be taken from the Code and repeated in the Amended Proposed Revisions to the Access Arrangement.

570. GGT's Amended Proposed Revisions have otherwise addressed, to the satisfaction of the Authority, the requirements of Amendment 36 of the Draft Decision.

## Draft Decision – Amendment 37

571. Section 9 of GGT's Proposed Revisions should be amended to include an additional section 9.2 to read as follows:

For the avoidance of doubt, the same terms as those set out in clause 20 of the General Terms and Conditions, which are confined to Reference Services, will apply to a transfer or assignment of Capacity in the Covered Pipeline by Users of a Non-Reference Service.

# **GGT's Amended Proposed Revisions**

- 572. GGT's Amended Proposed Revisions contain an amended section 9.1 and a new 9.2 to clarify a User's rights to transfer or assign a Reference Service (section 9.1) and a User's rights to transfer or assign a Negotiated Service (section 9.2).
- 573. The effect of the amended section 9.1 and the new section 9.2 is that transfers or assignments of Capacity by Users of Reference Services are subject to the Trading Policy, while transfers of Capacity by Users of Non-Reference Services (i.e. Negotiated Services) must be "in accordance with the terms and conditions negotiated between GGT and the User where such terms and conditions must comply with Section 3.10 of the Code"

#### **Public Submissions**

574. No public submissions were received with respect to this required amendment.

# **Authority's Assessment**

575. The Authority notes that section 3.10 of the Code requires an Access Arrangement to contain a Trading Policy being a policy explaining the rights of a User to trade its rights to obtain a Service to another person. The word "Service" is defined in a way (see section 3.10) to mean Reference Services or Non-Reference Services. Sections 9.1 and 9.2 in GGT's Amended Proposed Revisions address in a reasonable manner, the requirement to have a Trading

- Policy which extends to both Reference Services (i.e the Firm Service) and Negotiated Services.
- 576. The Authority has also considered whether or not it is acceptable for, as GGT have set out in section 9.1 and 9.2 of the Amended Proposed Revisions, the terms and conditions of the Trading Policy as they are to apply to Negotiated Services, to be negotiated, rather than being subject to the Trading Policy set out in the Access Arrangement. The Authority considers that this is acceptable because, in the event of a dispute, the Arbitrator under section 6 will have a rational basis for determining the rights of the parties. This is because the proposed clause 9.2 requires the trading terms and conditions to comply with the principles set out in section 3.10 of the Code. The Arbitrator may determine a dispute by reference to those principles, even if the trading terms and conditions do not strictly comply.

577. GGT's Amended Proposed Revisions have otherwise addressed, to the satisfaction of the Authority, the requirements of Amendment 37 of the Draft Decision.

## **Draft Decision – Amendment 38**

578. Sub-section 7.2 of GGT's Proposed Revisions should be amended to include the following section 7.2(e):

For the purpose of sub-clause 7.2(d) above a Prospective User is only obliged to bear those costs of the Investigations that are reasonably incurred.

### **GGT's Amended Proposed Revisions**

579. In GGT's Amended Proposed Revisions, sub-section 7.2(e) has been amended so that the text of the required amendment has been added to sub-section 7.2(e).

## **Public Submissions**

580. No public submissions were received in respect of this required amendment.

### **Authority's Assessment**

581. The Authority notes that the required amendment has been incorporated by GGT in its Amended Proposed Revisions.

### **Final Decision**

582. GGT's Amended Proposed Revisions have incorporated the requirements of Amendment 38 of the Draft Decision.

# Draft Decision – Amendment 39

583. Sub-section 7.2 of GGT's Proposed Revisions should be amended to include the following section 7.2(i):

Where a Prospective User bears the costs of an Investigation GGT must provide that Prospective User with an itemisation of the costs incurred by GGT as soon as reasonably practicable following the completion of the Investigations and prior to a Prospective User being obliged to pay those costs.

# **GGT's Amended Proposed Revisions**

584. In its Amended Proposed Revisions, GGT has added section 7.2(i) as required by the amendment.

## **Public Submissions**

585. No public submissions were received in respect of this required amendment.

# **Authority's Assessment**

- 586. The Authority confirms its position set out in paragraphs 1165 to 1167 of the Draft Decision.
- 587. The Authority notes that its required amendment has been incorporated by GGT in its Amended Proposed Revisions.

#### **Final Decision**

588. GGT's Amended Proposed Revisions have incorporated the requirements of Amendment 39 of the Draft Decision.

# Draft Decision – Amendment 40

589. Appendix 2.1 to GGT's Proposed Revisions should be amended so that Paragraph 16 reads as follows:

Signify by ticking appropriate box below whether or not the Prospective User is prepared to contribute to the <u>reasonable</u> costs of GGT undertaking Investigations and the provision of Developable Capacity as referred to in clause 1.5(b)(2) in the GGT Information Package.

and to insert a new paragraph immediately following the above paragraph as follows:

Signify by ticking appropriate box below whether or not the Prospective User is prepared to contribute to the reasonable costs of GGT providing Developable Capacity as referred to in clause 1.5(b)(2) in the GGT Information Package.

# **GGT's Amended Proposed Revisions**

- 590. GGT's Amended Proposed Revisions included an amendment to paragraph 16 of appendix 2.1 (Enquiry Form) and added paragraph 17 to the same appendix.
- 591. Paragraph 16 incorporates part of the required amendment by including the work "reasonable" as required. The section in the GGT Information Package has been changed to reflect amendments made to the Information Package. The words "understanding that such an indication is not binding on the Prospective User" have been added to the end of the paragraph.

592. Paragraph 17 incorporates in part, the required amendment. This paragraph applies to the costs of providing Developable Capacity. The wording is similar to paragraph 16 as amended with inclusion of the word reasonable and the words "understanding that such an indication is not binding on the Prospective User" added to the end of the paragraph.

#### **Public Submissions**

593. No public submissions were received with respect to this required amendment.

## **Authority's Assessment**

594. The Authority notes that GGT has accepted the amendment and made some additional minor amendments to the relevant items in Appendix 2.1. The Authority considers that paragraphs 16 and 17 of GGT's Amended Proposed Revisions are reasonable.

#### **Final Decision**

595. GGT's Amended Proposed Revisions have otherwise addressed, to the satisfaction of the Authority, the requirements of Amendment 40 of the Draft Decision.

# Draft Decision – Amendment 41

596. Paragraph 22 of Appendix 2.2 to GGT's Proposed Revisions be amended to read as follows:

Signify by ticking appropriate box below whether or not the User is prepared to contribute to the <u>reasonable</u> costs of GGT undertaking Investigations referred to in clause 1.5(b)(2) of the GGT Information Package.

# **GGT's Amended Proposed Revisions**

597. GGT's Amended Proposed Revisions include an amended paragraph 22 in Appendix 2.2. The amendment includes the word "reasonable" before the word "costs". The clause to which this paragraph is cross-referenced has been amended to "1.3(b) or 1.4(a)"

### **Public Submissions**

598. No public submissions were received with respect to this required amendment.

- 599. The Authority confirms its position set out in paragraphs 1165 to 1169 of the Draft Decision.
- 600. The Authority notes that GGT has accepted the principle that Users should only be required to meet costs reasonably incurred.
- 601. The Authority also notes that paragraph 22 is cross referenced to paragraph 1.3(b) and 1.4(a) in GGT's Information Package. The updated Information package is discussed at paragraphs 459 to 462 above. Paragraphs 1.3(b) and 1.4(a) of the updated Information Package do not refer to the costs of

- Investigations. The Authority suggests that this cross reference should be to paragraph 1.1(k).
- 602. The Authority is otherwise satisfied with paragraph 23 of Appendix 2.2 in GGT's Amended Proposed Revisions.

603. Paragraph 22 of Appendix 2.2 to GGT's Amended Proposed Revisions should be revised to correct the cross referencing to GGT's Information Package.

# **Required Amendment 16**

Paragraph 22 of Appendix 2.2 to GGT's Amended Proposed Revisions should be amended by cross referencing paragraph 22 to paragraph 1.1(k) in GGT's Information Package rather than paragraphs 1.3(a) and 1.4(a).

# Draft Decision - Amendment 42

604. Paragraph 23 of Appendix 2.2 to GGT's Proposed Revisions be amended to read as follows:

Signify by ticking appropriate box below whether or not User is prepared to contribute to the reasonable costs of GGT providing Developable Capacity as referred to in clause 1.5(b)(2) of the GGT Information Package.

## **GGT's Amended Proposed Revisions**

605. In its Amended Proposed Revisions, GGT amended paragraph 23 of Appendix 2.2. The amendment is worded as required by the Authority but the clause of the GGT Information Package has been amended to 1.4(e).

## **Public Submissions**

606. No public submissions were received with respect to this required amendment.

#### **Authority's Assessment**

- 607. The Authority confirms its position set out in paragraphs 1165 to 1169 of the Draft Decision.
- 608. The Authority notes that GGT has accepted the principle that Users should only be required to meet costs reasonably incurred.
- 609. The Authority also notes that paragraph 23 is cross referenced to paragraph 1.4(e), in GGT's Information Package. The updated Information package, discussed at paragraphs 454 to 463 above, does not contain a paragraph 1.4(e). The Authority suggests that this cross reference should be to paragraph 1.1(k).

610. The Authority is otherwise satisfied with paragraph 23 of Appendix 2.2 in GGT's Amended Proposed Revisions.

#### **Final Decision**

611. Paragraph 23 of Appendix 2.2 to GGT's Amended Proposed Revisions should be revised to correct the cross referencing to GGT's Information Package.

# **Required Amendment 17**

Paragraph 23 of Appendix 2.2 to GGT's Amended Proposed Revisions should be amended by cross referencing paragraph 23 to paragraph 1.1(k) in GGT's Information Package rather than paragraph 1.4(e).

# Draft Decision - Amendment 43

612. The definition of Prospective User in GGT's Proposed Revisions should be amended to correspond with the definition of Prospective User in the Code as follows:

Prospective User means a person who seeks access to the Covered Pipeline for the purpose of transporting Gas or who is reasonably likely to seek to enter into a contract for a Service and includes a User who seeks or may seek to enter into a contract for an additional Service.

# **GGT's Amended Proposed Revisions**

613. In its Amended Proposed Revisions GGT amended the definition in Appendix 1, incorporating the Authority's required amendment.

## **Public submissions**

614. No public submissions were received in respect of this amendment.

## **Authority's Assessment**

- 615. The Authority confirms its position as set out in paragraphs 1151 to 1153 of the Draft Decision.
- 616. The Authority notes that GGT's Amended Proposed Revisions incorporates its required amendment.

#### **Final Decision**

617. GGT's Amended Proposed Revisions have incorporated the requirements of Amendment 43 of the Draft Decision.

## Draft Decision - Amendment 44

618. Sub-sections 10.2 and 10.3 of GGT's Proposed Revisions should be deleted and replaced with the following sub-sections 10.2, 10.3 and 10.4:

## 10.2 Application of Arrangement to Pipeline Extension/Expansion

## If GGT expands the Capacity of the Covered Pipeline, GGT will elect

- (a) that the expanded capacity will be treated as part of the Covered Pipeline for the purposes of this Access Arrangement and GGT will exercise its discretion to submit proposed revisions to the Access Arrangement under section 2 of the Code; or
- (b) that the expanded capacity will not be treated as part of the Covered Pipeline for the purposes if this Access Arrangement and that GGT will lodge a separate Access Arrangement for such expanded capacity; or
- (c) that the expansion will not be covered, subject to GGT notifying the Regulator of this fact prior to the expansion coming into operation.
- GGT may at any time, change an election made under clause 10.2(c) to an election made under clause 10.2(a).
- 10.3 Pipeline Extension/Expansion and Tariffs
- (a) Pipeline extension or expansions which GGT elects to cover under clause 10.2 will result in no change to the Reference Tariff applied to a User when those extensions or expansions have been fully funded by that User's capital contributions except to contribute to GGT's non-capital costs in connection with those extensions and expansions, Any change to the Reference Tariffs may occur only pursuant to the process in Section 2 of the Code foe revisions to Reference Tariffs.
- (b) Incremental Users as defined in the Code which have not made capital contributions towards Incremental Capacity as defined in the Code which they use and which had been funded by others will be liable to pay surcharges as allowed for in Section 8 of the Code.
- (c) Pipeline extensions or expansions funded by GGT and which GGT elects to cover under clause 10.2 may result in the application of surcharges as allowed for in Section 8 of the Code subject to GGT providing written notice to the Regulator, and the Regulator approving the same, in accordance with section 8.25 of the Code.
- 10.2 Application of Arrangement to Pipeline Extension

If GGT extends the Pipeline, GGT will elect:

- (a) that the extension will be treated as part of the Pipeline for the purposes of the Access Arrangement and GGT will exercise its discretion to submit proposed revisions to the Access Arrangement under Section 2 of the Code; or
- (b) that the extension will not be treated as part of the Pipeline for the purposes of this Access Arrangement and that GGT will lodge a separate Access Arrangement for such extension; or
- (c) that the extension will not be covered, subject to GGT notifying the Regulator of this fact prior to the extension coming into operation.

# 10.3 Application of Arrangement to Pipeline Expansion

If GGT expands the Capacity of the Covered Pipeline the expanded Capacity will be treated as part of the Covered Pipeline for all purposes under the Code.

- 10.4 Pipeline Extension/Expansion and Tariffs:
- (a) Pipeline extension or expansions that are covered under either clause 10.2 or clause 10.3 as the case may be will result in no change to the Reference Tariff applied to a User when those extensions or expansions have been fully funded by that User's capital contributions except to contribute to GGT's non-capital costs in connection with those extensions and expansions. Any change to Reference Tariffs may occur only pursuant to the process in Section 2 of the Code for revisions to Reference Tariffs.
- (b) Incremental Users as defined in the Code which have not made capital contributions towards Incremental Capacity as defined in the Code which they use and which has been funded by others will be liable to pay for surcharges as allowed for in Section 8 of the Code.
- (c) Pipeline extensions or expansions funded by GGT which are covered under clause 10.2 or 10.3 as the case may be may result in the application of surcharges as allowed for in Section 8 of the Code subject to GGT providing written notice to the Regulator, and the Regulator approving the same, in accordance with Section 8.25 of the Code.

## **Public submissions**

#### **GGT** submissions

- 619. In its submission dated 11 December 2009 GGT disagrees with the Authority's Draft Decision as set out in Required Amendment 44, and its reasoning at paragraphs 1183 to 1214 of the Draft Decision.
- 620. GGT's submissions on this point are set out at paragraphs 332 to 366 in section 6 of its submission (see pages 60 to 65).
- 621. In its submission (see paragraph 337), GGT acknowledged that the Extensions/Expansions Policy submitted with GGT's Proposed Revisions did not include a policy with respect to Coverage of Extensions (as opposed to Expansions). GGT also noted that it accepted the Authority's required amendment that the Extensions/Expansion Policy should provide for GGT to elect whether extensions should be considered part of the Covered Pipeline.
- 622. In relation to coverage of Expansions, in its submission dated 11 December 2009, GGT did not accept the Authority's required amendment. The required amendment was that the Extensions/Expansion Policy should provide for coverage of all further expansions of the Covered Pipeline during the forthcoming Access Arrangement Period. Contrary to the Draft Decision, GGT's revised Extensions/Expansions Policy retained a policy for expansions which gave GGT the right to elect whether or not an expansion will be covered.
- 623. GGT gave a number of reasons why it submitted that the Authority's required amendment should not be accepted, as summarised below:

- An Extensions/Expansions Policy as required by Required Amendment 44 would not provide a "method" as required by section 3.16 of the Code to determine whether expansions are to be Covered or not Covered because it provide for "blanket" coverage of all expansions (see paragraph 341).
- The revised Extensions/Expansions Policy is Code compliant, and in those circumstances the Authority has no discretion to reject the proposal and substitute its own preferred policy (see paragraphs 345 to 346).
- As the revised Extensions/Expansions Policy is within the range of choice reasonably open and consistent with section 3.16 of the Code, and must be approved by the Regulator (see paragraph 348).
- The Authority has not demonstrated a market power basis for requiring blanket coverage, and the fact that the pipeline is not operating at or near capacity does not provide such a basis (see paragraphs 349 to 354).
- The Authority is not the coverage body and the Expansions policy required by Required Amendment 44 involves the Authority acting beyond its role as an access regulator and crossing over into acting as a coverage regulator, which is the role of the NCC (see paragraphs 355 to 357).
- The Authority's approach side-steps the explicit process under the Code for determining Coverage (see paragraphs 358 to 362).
- The Authority's approach is inconsistent with the policy intent of the Ministerial Council on Energy, which is that expansions should not automatically be covered (see paragraphs 363 to 366).

#### Other submissions

- 624. In its submission dated 11 December 2009, BHPB supported the Authority's amendments to the Extensions/Expansions Policy under the Draft Decision (see paragraph 4.1 at page 5, and paragraph 5.5 at page 8).
- 625. In its submission dated 11 December 2009, APIA expressed concerns regarding the Authority's approach as reflected in Required Amendment 44 (see section 3 of the submission). In summary, APIA expressed doubts that the Authority has the legal power to mandate that future expansions and extensions of the GGP be covered. APIA believes, rather, that section 3.16 of the Code gives the service provider discretion on the content of the policy and the only issue for the Authority is to assess whether the service provider's proposal complies with the Code. APIA's conclusion (see final page of submission) was that "the coverage status of future GGP expansions should be at the election of the GGP".
- 626. In its submission dated 24 November 2009 Esperance Pipeline Co. submitted as follows:
  - GGP's Access Arrangement provides for an Extensions/Expansions Policy that is associated with capacity only, not the extension to, or expansion of, the Covered Pipeline itself which is outlined under the National Third Party Access Code (Code). The Authority's decision to amend GGT's Extensions/Expansions Policy is to be commended.
- 627. There were no other public submissions on Required Amendment 44.

## **Authority's Assessment**

628. Section 3.16 of the Code requires an Access Arrangement to include an Extensions/Expansions Policy which sets out a method to be applied to

- determine whether an extension or expansion should be treated as part of the Covered Pipeline.
- 629. The Authority may only approve an Access Arrangement if it is satisfied that the Access Arrangement would contain the elements and satisfy the principles set out in sections 3.1 to 3.20 of the Code.
- 630. This means that the Authority is required to consider whether the method proposed by GGT is appropriate and in doing so must make a judgment guided by the section 2.24 factors. The Authority considers that it is appropriate and necessary for it to consider whether the method proposed by GGT is appropriate and, if not, to consider what other method would be appropriate.
- 631. The Authority does not, therefore, accept the submissions made by GGT and APIA to the effect that it is not within the Authority's legal power to require GGT's expansions policy to provide for all such expansions to be covered. In the Authority's view, if it is satisfied that the method proposed by the service provider is not appropriate having regarding to the section 2.24 factors, the Authority has a duty to require a revision which will provide an appropriate method to determine coverage.
- 632. The Authority maintains its position, for the reasons set out in paragraphs 1192 to 1213 of the Draft Decision, that GGT's proposed expansions policy is not appropriate, having regard to the section 2.24 factors and, that a method whereby all expansions during the forthcoming Access Arrangement Period are to be covered would be appropriate.
- 633. The Authority notes that although GGT has accepted (refer paragraph 621 above) part of Amendment 44 of the Draft Decision relating to its Extensions Policy, GGT's Amended Proposed Revisions have not incorporated this requirement.

634. The Extensions/Expansions Policy in GGT's Amended Proposed Revisions providing for GGT to elect whether or not extensions or expansions during the forthcoming Access Arrangement period will be covered does not meet the requirements of Amendment 44 of the Draft Decision and is therefore not approved by the Authority. The Authority requires that GGT's Amended Proposed Revisions be amended in accordance with the requirements set out in Amendment 18 of this Final Decision.

# **Required Amendment 18**

Sub-sections 10.2 and 10.3 of GGT's Amended Proposed Revisions should be deleted and replaced with the following sub-sections 10.2 and 10.3. Subsection 10.3 of GGT's Amended Proposed Revisions should be renumbered as Sub-section 10.4

"10.2 Application of Arrangement to Pipeline Extension

If GGT extends the Pipeline, GGT will elect:

- (a) that the extension will be treated as part of the Covered Pipeline for the purposes of this Access Arrangement and GGT will exercise its discretion to submit proposed revisions to the Access Arrangement under Section 2 of the Code; or
- (b) that the extension will not be treated as part of the Covered Pipeline for the purposes of this Access Arrangement and that GGT will lodge a separate Access Arrangement for such extension; or
- (c) that the extension will not be covered, subject to GGT notifying the Regulator of this fact prior to the extension coming into operation.
- 10.3 Application of Arrangement to Pipeline Expansion

If GGT expands the Capacity of the Pipeline the expanded Capacity will be treated as part of the Covered Pipeline for all purposes under the Code."

# Draft Decision - Amendment 45

635. Section 3 of GGT's Proposed Revisions be amended to read as follows:

## 3.1 Term

This Access Arrangement comes into effect on the Effective Date. The Access Arrangement Period or term of the Access Arrangement will is intended to expire on the Revisions Commencement Date.

Review of Access Arrangement

In accordance with Section 3.17 of the Code:

- (a) the Revisions Submission Date is 1 July February 2014; and
- (b) the intended Revisions Commencement Date is the later of 1 January 2015 and the date a revised Access Arrangement replacing this Access Arrangement approved by the Regulator takes effect.

# 3.3 Delay

In the event that the Access Arrangement Proposed Revisions in relation to the Access Arrangement Period next following this Access Arrangement (Next Access Arrangement) does not come into effect on or before the intended Revisions

Commencement Date this Access Arrangement will not expire until the date on which the Regulator specifies that the Next Access Arrangement comes into effect.

## 3.4 Trigger Event

- (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.
- (a) 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.

## **GGT's Amended Proposed Revisions**

- 636. In GGT's Amended Proposed Revisions section 3.1 has been amended so that the Term "is intended to expire" on the Revisions Commencement Date.
- 637. Section 3.2 of the Amended Proposed Revisions now sets out that the Revisions submission Date is 1 January 2014 and that the intended Revisions Commencement Date is 1 January 2015.
- 638. Section 3.3 has been added to the Amended Proposed Revisions. This section is identical to the required amendment except that it includes the words "or before" before "the Intended Revisions Date" and the words "after the Revisions Commencement Date" before the words "on which the Regulator specifies".

## **Public Submissions**

## **GGT** submissions

639. In its submission dated 11 December 2009, GGT did not comment on the revisions to clauses 3.1, 3.2 and 3.3 of the Access Arrangement as set out in Required Amendment 45. However, GGT challenged the requirement to include a trigger event mechanism in clause 3.4 of the Access Arrangement.

- 640. GGT's submissions on this point are set out in section 6.8 at paragraphs 367 to 387 (see pages 65 to 67). The contentions made by GGT include the following:
  - The trigger event mechanism is inappropriate because the trigger event is tied to the capacity of the GGP as a whole, and not just the Covered part of the GGP (paragraph 367 to 369).
  - In relation to future expansions the trigger event assumes that future Expansions of Capacity will be Covered, however, GGT has argued elsewhere that if the Authority's Final Decision requires this it will be invalid (paragraphs 370 to 375).
  - The Authority has not had regard, or has not had sufficient regard, to the section 8.1 factors in deciding to impose the trigger event mechanism (paragraphs 376 to 378).
  - The Code in section 3.16(b) requires for the consequences of an expansion to be addressed on Reference Tariffs to be addressed in a particular way, and GGT's Proposed Revisions address this requirement adequately, so the imposition of the trigger event mechanism will unnecessarily duplicate the Code and Access Arrangement provisions (see paragraphs 379 to 381).
  - The Authority justifies the trigger mechanism by reference to a demand load forecasting error but that the impact of the potential error is insufficient to justify an additional regulatory requirement (see paragraphs 382 to 384).
  - In its Second Submission dated 22 January 2010 GGT commented upon BHPB's submission on this point (see below). GGT's submissions are set out in paragraphs 77 to 81 of its Second Submission.
  - In its submission GGT rejected BHPB's alternative submission that if a trigger mechanism is to be imposed then it should be based on a difference between the forecast and actual contracted capacity not in excess of 5%.
  - GGT's rejected BHPB's approach on two grounds. First, GGT submitted that it
    would constrain the effectiveness of the incentive mechanism. Secondly, it
    would be ineffective because the volumes of capacity that the trigger mechanism
    should govern (i.e. uncontracted but Covered capacity) are so small that it could
    never be triggered.

## Other submissions

- 641. In section 7 of its submission dated 11 December 2009, BHPB opposed the inclusion of a trigger event mechanism as required by the Authority in Required Amendment 45. Alternatively BHPB supported a trigger mechanism different to that required by the Authority.
- 642. BHPB submitted that the inclusion of a trigger event mechanism based upon above forecast volume is likely to have the effect of restricting the ability of the Access Arrangement to achieve the objectives in section 8.1 of the Code. Further, BHPB submitted that the inclusion of the trigger event could operate as a disincentive to the proper and efficient operation and expansion of the GGP for reasons including that there is a significant incentive for GGT to underestimate forecast contracted Capacity.
- 643. BHPB submitted that the preferable approach to address the risk of underforecasting of volumes was for the Authority to accept BHPB's alternative volume forecasts set out in section 6 of its submission.
- 644. Finally, BHPB submitted that if the Authority rejects BHPB's proposed volume forecasts, a Trigger Event mechanism that discourages forecast under-

- estimates is necessary. BHPB submits that the appropriate Trigger Event should be based on a variance between forecast contracted capacity and actual contractual capacity. Such a variance should not be in excess of 5% of forecast contract Capacity as first, 5% is material and secondly, any Trigger Event outside 5% variance from forecast is likely to be a significant detrimental behaviour modifier (see paragraph 7.5 of the BHPB submission).
- 645. In its submission dated 11 December 2009, APIA expressed concerns regarding the Authority's approach as reflected in Required Amendment 45 regarding the Trigger Event mechanism (see section 3 of the submission).
- 646. In summary, APIA had concerns about the inclusion of this mechanism because it seems linked to the larger issue of the treatment of current and future expansions and whether these expansions should be covered. Further, APIA considered that GGT had submitted a Code-compliant extensions and expansions policy which should be accepted by the Authority. APIA considered that the extensions and expansions policy is the appropriate place to deal with coverage of expansions and a trigger event mechanism to deal with the expansion of capacity is superfluous.
- 647. There were no other public submissions on the Extensions/Expansions Policy or Required Amendment 45.

# **Authority's Assessment**

- 648. The Authority notes that GGT has incorporated the amendment required to section 3.1 of the Access Arrangement as required by the Authority's Draft Decision.
- 649. The Authority also notes that GGT has incorporated the amendment required to section 3.2 with a small change to 3.2(a). GGT's Amended Proposed Revisions sets out a Revisions Submissions Date of 1 January 2014 rather than 1 February 2014 as required by the Authority's Draft Decision. The Authority is satisfied with this amendment.
- 650. In relation to the amendment required to section 3.3 of the Access Arrangement, this was based upon the Authority's reasoning at paragraph 1242 of the Draft Decision. In that paragraph the Authority considered that specific provision should be made to address any delay in approval of revisions to the Access Arrangement to the effect that if approval is not given prior to the intended Revisions Commencement Date, then the Access Arrangement will not expire until the date specified by the Authority as the date upon which the next following revisions to the Access Arrangement are to take effect. While section 3.3 of GGT's Amended Proposed Revisions does not fully incorporate the requirements of Amendment 45 as set out in the Draft Decision, the Authority considers that section 3.3 as proposed by GGT in the Amended Proposed Revisions otherwise addresses, to the satisfaction of the Authority, the requirements relevant to this matter under Amendment 45 of the Draft Decision.
- 651. In relation to the requirement under Amendment 45 to include a Trigger Event Mechanism in section 3.4 of the Access Arrangement, the Authority in its Draft Decision decided that if future volumes exceed the forecast volume by 10% or more then that event will require GGT to submit revisions to the Access Arrangement. Section 3.17 of the Code provides that the Authority may, in

- making its decision on an Access Arrangement, if it considers it necessary having regard to the objectives in section 8.1 of the Code, specify major events that trigger such an obligation.
- 652. In its Draft Decision, the Authority has reasoned that there may be substantial increases in future demand relative to forecasts. The Authority noted that this has been the past experience and that in view of this experience it is appropriate for the Authority to require a Trigger Event to be included in the forthcoming Access Arrangement.(see paragraphs 1252 to 1254 of the Draft Decision).
- 653. In this Final Decision, at paragraphs 76 to 86 above, the Authority has revised its decision in relation to the Expansions of Capacity so that only the costs referable to the Covered GGP will be taken into account in determining Reference Tariffs. This means that the issue of an increase in volumes above forecast volumes can only be considered in relation to the Covered Capacity and the costs of that Capacity.
- 654. The Authority notes that its Final Decision (Required Amendment 18) is that any future expansions of the Covered GGP during the forthcoming Access Arrangement Period will be covered.
- 655. The Authority maintains its position as set out in the Draft Decision that a materiality threshold of 10% should be required before an obligation to lodge revisions is triggered. The Authority considers that this is an appropriate balance between incentives for GGT to expand the GGP and the interests of Users where an unexpected expansion renders existing Reference Tariffs materially different to the underlying cost of service.
- 656. The Authority maintains its view in the Draft Decision that, for the reasons set out in paragraphs 1243 to1259 of the Draft Decision, the most appropriate method of defining the trigger is the making of a pipeline licence application to increase the licensed capacity.
- 657. The Authority notes that the required Trigger Event in the Draft Decision was an increase above expected capacity of the whole GGP of 10%. In view of the Authority's reasoning above it is appropriate that the 10% increase should be an increase above, forecast capacity of the Covered GGP. The Covered GGP presently has a Capacity of 109 TJ/day and so the appropriate trigger hurdle is 120 TJ/day.

- 658. The Authority does not accept GGT's submissions that a Trigger Event should not be specified.
- 659. GGT's Amended Proposed Revisions should incorporate section 3.4, as required under Required Amendment 45 of the Draft Decision, revised to take account of a reduction in the materiality threshold for the Trigger Event from 173 TJ/day to 120 TJ/day.

# **Required Amendment 19**

Section 3 of GGT's Amended Proposed Revisions should be amended by adding a new sub-section 3.4 to read as follows:

# "3.4 Trigger Event

- (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 Covered capacity of the GGP (as measured at the GGP Inlets) beyond 120 TJ/day."

# **Other Matters**

## **GGT's Amended Proposed Revisions**

- 660. In its Amended Proposed Revisions, GGT has included amendments to the definition of Force Majeure in Appendix 1 and amended clauses 18.1 and 18.2 in Appendix 3. These amendments were not included in GGT's Proposed Revisions submitted on 23 March 2009.
- 661. In its Amended Proposed Revisions, GGT amended the definition of Force Majeure term in Appendix 1. The definition now expressly states that force majeure does not include:
  - a lack of finance; change in market conditions for transportation, purchase or sale of gas; User's inability to purchase, extract or otherwise obtain Gas for transportation; and where the User is not the person consuming the Gas at or downstream of the Outlet Point, the inability of that person to take Gas;
- 662. The effect of this amended definition is to limit the range of situations to which the Force Majeure clause of the General Terms and Conditions will apply.

- 663. Further, in Appendix 3 of the Amended Proposed Revisions, GGT has amended clauses 18.1 and 18.2.
- 664. Clause 18.1 has been amended by deleting clause 18.1(c)(2) and adding clause 18.2(d). The effect of this change is to separate the provision setting the maximum amount for which one party may be liable to the other and the provision that a party will not be liable for the other party's losses to the extent that the other party's liability or loss is attributable to the negligence of that other party. Clause 18.1(c) applies notwithstanding anything provided in the Service Agreement but this same condition has not been imposed in clause 18.1(d).
- 665. Clause 18.2 has been amended so that the Liable Party is not liable to the other party for any direct or indirect loss or damage incurred or suffered by a third party (clause 18.2(a)(1)). The effect of this change is to exclude third party losses that are incurred either directly or indirectly. As a result of this change, a User, and not the pipeline owner, will bear a third party's loss or damage in the event that the pipeline owner is the Liable Party.
- 666. GGT provided the Authority with some information in support of these amendments.

## **Authority's Assessment.**

- 667. Clause 2.37A of the Code makes express provision for a Service Provider to resubmit an Access Arrangement incorporating or substantially incorporating the amendments specified in the Draft Decision. The Service Provider can also "otherwise address the matters the Relevant Regulator identified in its Draft Decision as being the reasons for requiring the amendments specified in the Draft Decision."
- 668. The Regulator can then approve the resubmitted revised Access Arrangement (s2.38(b)(i)) or not approve it and state the amendments required (s2.38(b)(ii)).
- 669. The Regulator may approve the revised Access Arrangement under s2.38(b)(i) only if the Regulator is satisfied that the amended revisions incorporate or substantially incorporate the required amendments (s2.38A(a)), or otherwise address the matters raised by the Regulator (s2.38A(b)) in its Draft Decision.
- 670. There is no provision in the Code for a Regulator to approve a revised Access Arrangement with amended revisions which are outside of the requirements set out in the Code as outlined above.
- 671. The Authority notes that the above amendments in GGT's Amended Proposed Revisions do not incorporate or substantially incorporate the required amendments of the Draft Decision. Further, the Authority did not raise any other matters in the Draft Decision to which GGT's amendments respond which could provide a basis for the Authority to consider these amendments.
- 672. The Authority notes that the Code does not allow it to assess the reasonableness of the amendments.

- 673. The Authority does not approve the amendments to the definition of Force Majeure in Appendix 1 of GGT's Amended Proposed Revisions.
- 674. The Authority does not approve the amendments to clause 18 in Appendix 3 of GGT's Amended Proposed Revisions.

# **Required Amendment 20**

GGT's amendment to the definition of Force Majeure in Appendix 1 of its Amended Proposed Revisions of 22 April 2010 should be amended so that the definition is the same as that set out in Appendix 1 to GGT's Proposed Revisions to the Access Arrangement submitted on 23 March 2009.

# **Required Amendment 21**

GGT's amendments to sub-clauses 18.1 and 18.2 of Appendix 3 of its Amended Proposed Revisions of 22 April 2010 should be amended so that sub-clauses 18.1 and 18.2 are the same as those set out in Appendix 3 to GGT's Proposed Revisions to the Access Arrangement submitted on 23 March 2009

# **APPENDICES**

# **Appendix 1 – Authority's Reference Tariff Model**

A public version of the full Reference Tariff Model will be published on the Authority's website as soon as possible. The model summary page is presented below for convenience.

GGT	Γ, Post_AA2_MMS_Model		All Data Entries are Denoted as:	10.065
			WACC Updated as at:	30-Apr-10
Ref;	2 3	4	7	8
Mod	lelling Results		Modelling Results	
5				
6	Re-calculated Regulatory Asst Base as at 3	31/12/2009 [m\$ OD]	]	
7	Asset Value	438.7391		
8	Non Depreciable	3.8233		
9	Closing RAB Value	442.5624		
10				
11	Closing Regulatory Asset Base as at 31/12/	/2014 [m\$ OD]		
12	Asset Value	406.741		
13	Non Depreciable	5.189		
14	Closing RAB Value	411.929		
15	Present Value of Cost of Service [m\$ as at	31/12/2009]		
16	Opex	106.642		
17	Over Depreciation AA1	-0.387	Discounted Weighted Average Tariff [\$ per	GJ of Q]
18	Depreciation	43.423	AA1 DWAT at Kalgoorlie	2.99
19	Return on Assets	169.383	AA2 DWAT at Kalgoorlie	3.17
20	Return on Non-Depreciable	1.957	AA2 vs AA1 DWAT	106%
21	Cost of Service	321.018	Cost at Kalgoorlie [\$ per GJ of Q]	
22	Present Value of Tariff Revenue [m\$ as at 31/12/2009]		First Quarter of 2010	3.17
23	Toll charge	36.275	Fourth Quarter of 2014	3.17
24	Reservation charge	231.775	First Quarter 2010 Tariffs [\$ OD]	
25	Throughput charge	52.968	Toll charge [\$ per GJ of MDQ]	0.243262
26	Revenue	321.018	Reservation charge [\$ per GJ*km of MDQ]	0.001438
27	Check	OK	Throughput charge [\$ per GJ*km of Q]	0.000400
28	Present Value of Net Cash Flow [m\$ as at 31/12/2009]		Forth Quarter 2014 Tariffs [\$ OD]	
29	Revenue	321.018	Toll charge [\$ per GJ of MDQ]	0.243262
30	Over Depreciation AA1	0.387	Reservation charge [\$ per GJ*km of MDQ]	0.001438
31	Opex	-106.642	Throughput charge [\$ per GJ*km of Q]	0.000400
32	Capex	-21.211	WACC	
33	Non Depreciable Variation	-1.287	Nominal	10.48%
34	Opening Assets	-442.562	Real	7.78%
35	Closing Asset	250.296	Nominal Internal Rate of Return	
36	Net Cash Flow	-	Nominal IRR	10.48%
37	Check	OK	Check	OK