



Australian
Competition &
Consumer
Commission

Final Decision

Access arrangement for the Dawson Valley Pipeline

22 August 2007

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Contents

Abbreviations and glossary	iii
Summary	v
Draft decision	v
Final decision	v
Key issues	vi
1. Introduction	1
1.1 Access arrangement	1
1.2 Criteria for assessment	2
1.3 The Dawson Valley Pipeline.....	3
1.4 Role of the AER	4
1.5 Approach	4
2. Reference tariff method	5
2.1 Reference tariff methodology	5
2.2 Other.....	6
3. Capital base	7
3.1 Initial capital base	7
3.2 Other.....	10
4. Rate of return	11
4.1 Introduction	11
4.2 Proposed amendments.....	11
4.3 Response to draft decision	12
4.5 Conclusion	13
5. Revenue elements	15
5.1 Non-capital costs.....	15
5.2 Revenue.....	18
5.3 Other.....	19
6. Reference tariffs	20
6.1 Tariff path	20
6.2 Tariff variation policy	21
6.3 Other.....	23
7. Non tariff elements.....	25
7.1 Trading policy	25
7.2 Queuing policy	26
7.3 Extensions and expansions policy.....	27
7.4 Other.....	28

8. Key performance indicators and access arrangement information 30
8.1 Key performance indicators 30
8.2 Access arrangement information 31
9. Final decision 34
Appendix A: Submissions in response to the draft decision 35
Appendix B: Pipeline map 36

Abbreviations and glossary

AA	access arrangement
AAI	access arrangement information
ACCC	Australian Competition and Consumer Commission
AER	Australian Energy Regulator
Alinta	Alinta Limited
Anglo Coal	Anglo Coal (Dawson) Limited, Anglo Coal (Dawson Management) Pty Ltd and Mitsui Moura Investment Pty Ltd
CAPM	capital asset pricing model
code	National Third Party Access Code for Natural Gas Pipeline Systems
covered pipeline	pipeline to which the provisions of the code apply
CPI	consumer price index
CSM	coal seam methane
DAC	depreciated actual cost
DBNGP	DBNGP (WA) Transmission Pty Limited
DJV	Dawson Joint Venture (Anglo Coal (Dawson) Limited and Mitsui Moura Investment Pty Ltd)
DORC	depreciated optimised replacement cost
DVP	Dawson Valley Pipeline
GJ	gigajoule
ICB	initial capital base
km	kilometres
KPI	key performance indicators
m	million
MDQ	maximum daily quantity
Minter Ellison	Minter Ellison Lawyers (for Anglo Coal)
Molopo	Molopo Australia Limited
Multinet	Multinet Gas
NERA	NERA Economic Consulting
NPV	net present value

ORC	optimised replacement cost
PJ	petajoule (equal to 1 000 000 GJ)
RCC	Ross Calvert Consulting Pty Ltd
service provider	The owner or operator of the whole, or any part, of the pipeline or proposed pipeline
TJ	terajoule (equal to 1 000 GJ)
Unidel	Unidel Group Pty Ltd
WACC	weighted average cost of capital
WASCA	WA Supreme Court of Appeal

Summary

On 5 February 2007 Anglo Coal (Dawson) Limited, Anglo Coal (Dawson Management) Pty Ltd and Mitsui Moura Investment Pty Ltd submitted a proposed access arrangement for the Dawson Valley Pipeline (DVP) to the Australian Competition and Consumer Commission (ACCC) for approval under the *National Third Party Access Code for Natural Gas Pipeline Systems* (code).

The DVP became a covered pipeline when the code came into effect in Queensland in 2000. However, no access arrangement had been approved when coverage was revoked later that year.

On 10 May 2006 the Minister for Industry, Tourism and Resources determined that the DVP should again be a covered pipeline. The current approval process by the ACCC is the first assessment of an access arrangement for the DVP.

The DVP was constructed in 1996 and transports gas 47 km from coal seam methane (CSM) gas fields in the Dawson Valley in central Queensland to the Wallumbilla to Gladstone via Rockhampton Pipeline (Queensland Gas Pipeline). The pipeline is six inches in diameter and currently has a nominal maximum capacity of 30 TJ/day (approximately 11 PJ per year).

The Dawson Joint Venture (DJV) owns the DVP and the associated CSM fields and is currently the only user of the pipeline. Until recently the Lowell-Helm Joint Venture, which owned the nearby Mungi gas field and the surrounding exploration permits, was also a user of the pipeline. This gas is now sold to the DJV.

Draft decision

After considering Anglo Coal's proposals and submissions from interested parties, the ACCC made a draft decision proposing that it not approve the proposed access arrangement in its original form. The draft decision document set out the amendments (or nature of the amendments) which the ACCC considered necessary for the proposed access arrangement to be approved.

Interested parties were invited to make written submissions on the draft decision by close of business (COB) Friday, 8 June 2007. The ACCC received submissions from the service provider and three interested parties. The service provider also submitted a revised access arrangement on 23 July 2007.

Final decision

The ACCC has considered the issues raised in submissions as well as the revised access arrangement. It has made a final decision to approve the revised access arrangement.

This final decision document sets out the ACCC's considerations of the issues raised in response to the draft decision and its assessment of the revised access arrangement. This access arrangement will come into effect on 5 September 2007.

Key issues

Initial capital base

Anglo Coal proposed an initial capital base (ICB) calculated at 1 July 2006, that was based on a depreciated optimised replacement cost (DORC). In the draft decision the ACCC proposed to accept this methodology. It considered that the DORC approach was more likely to satisfy the requirements of the code than the alternatives of depreciated actual cost (DAC) or sale price. The ACCC proposed that the ICB be calculated at 1 July 2007 to better coincide with the likely commencement of the initial access arrangement period. Accordingly, the ACCC proposed an amendment in the draft decision for Anglo Coal to set the ICB at \$7.600m.

The revised access arrangement has incorporated this amendment. The ACCC also received submissions relating to certain aspects of the ICB assessment carried out in the draft decision. While the ACCC has considered the issues raised in these submissions, it has concluded that the ICB proposed in the draft decision remains appropriate for the DVP.

Non-capital costs

In the draft decision, the ACCC assessed Anglo Coal's allocation methodology and concluded that it was not consistent with the requirements of the code and was unlikely to provide a reasonable estimate of the joint costs attributable to the DVP. The ACCC compared the proposed non-capital costs with available information for other Australian pipelines and concluded that the proposed costs greatly exceeded those that would be expected of an efficient pipeline operator. Accordingly, the draft decision included a proposed amendment to reduce the total benchmark non-capital costs for the DVP to \$300 000 (at 1 July 2006).

In response to the draft decision, Anglo Coal submitted that the small size of the DVP resulted in it lacking scale economies and proposed that total non-capital costs should be four per cent of ORC (\$366 760 at 1 July 2006).

The ACCC has considered this response and has concluded that Anglo Coal has addressed its reasons for the draft decision proposed amendment with reference to the particular operating circumstances of the DVP. The ACCC has concluded that the total non-capital costs incorporated in the revised access arrangement satisfy the relevant code requirements.

Rate of return

The draft decision noted that Anglo Coal's approach to determining a rate of return using the Capital Asset Pricing Model (CAPM), including its selection of parameter values, was generally consistent with the relevant code principles but proposed that up to date market values be incorporated where relevant in the access arrangement. The

ACCC is satisfied that the revised access arrangement incorporates the parameter values and rate of return set out in the draft decision.

The ACCC also received submissions in response to the draft decision concerning the methodology employed to determine the risk free rate and to forecast inflation. This matter is also relevant to other regulated infrastructure and the ACCC is participating in a review covering these issues which is expected to be finalised some time after the completion of the current assessment process.

1. Introduction

1.1 Access arrangement

On 5 February 2007 Anglo Coal (Dawson) Limited, Anglo Coal (Dawson Management) Pty Ltd and Mitsui Moura Investment Pty Ltd submitted a proposed access arrangement for the Dawson Valley Pipeline (DVP) to the Australian Competition and Consumer Commission (ACCC) for approval under the *National Third Party Access Code for Natural Gas Pipeline Systems* (code). An access arrangement describes the terms and conditions under which a service provider will make access to the services of the pipeline available to third parties.

Section 2 of the code specifies that the service provider of a gas pipeline covered by the code is required to propose an access arrangement and submit it to the regulator for approval.

In assessing such a proposed access arrangement, the code specifies that the regulator must:

- inform interested parties that it has received the proposed access arrangement and the associated access arrangement information
- publish a notice in a national daily newspaper which at least:
 - describes the covered pipeline to which the access arrangement relates
 - states how copies of the documents may be obtained, and
 - requests submissions by a date specified in the notice.
- after considering submissions received, issue a draft decision that either proposes to approve the access arrangement or proposes not to approve the access arrangement and states the amendments (or nature of the amendments) that would have to be made to the access arrangement for the regulator to approve it
- provide a copy of the draft decision to the service provider, any person who made a submission and any other person who requests a copy, and request submissions from those persons by a specified date
- after considering additional submissions, issue a final decision that either approves or does not approve the access arrangement (or revised access arrangement) and states the amendments (or nature of the amendments) which have to be made to the access arrangement (or revised access arrangement) in order for the regulator to approve it
- if the amendments specified in the final decision are satisfactorily incorporated in the access arrangement, issue a further final decision (referred to as a final approval) to approve the revised access arrangement. If not, the regulator must draft and approve its own access arrangement addressing the specified amendments.

After granting two extensions of time for the lodgement of the access arrangement under s. 7.19 of the code, the ACCC received the proposed access arrangement and accompanying access arrangement information on 5 February 2007.¹ These documents were made public via the Australian Energy Regulator (AER) website and the public register held by the Code Registrar. Interested parties were notified that the ACCC had received the proposed access arrangement and were invited to make submissions. The ACCC published a notice in the *Australian Financial Review* and the *Courier Mail* on 16 February 2007 inviting submissions from interested parties.

On 23 May 2007 the ACCC made its draft decision that it proposed not to approve the proposed access arrangement in its original form and called for submissions on the draft decision. The submissions subsequently received are listed in Appendix A to this final decision. Anglo Coal also submitted a revised access arrangement on 23 July 2007. To provide time for full consideration of the revised access arrangement, the assessment period was extended by two months, to 5 October 2007, as permitted by s. 2.22 of the code.²

1.2 Criteria for assessment

The regulator may approve a proposed access arrangement only if it is satisfied that the access arrangement contains the elements and satisfies the principles set out in ss. 3.1 to 3.20 of the code, which are summarised below. An access arrangement cannot be opposed solely because the access arrangement as proposed does not address a matter that s. 3 of the code does not require it to address. Subject to this, the regulator has a broad discretion in accepting or not accepting an access arrangement.

An access arrangement must include a policy on the service (or services) to be offered which includes a description of the service(s) to be offered. The policy must include one or more services that are likely to be sought by a significant part of the market and any service(s) which in the regulator's opinion should be included in the policy. To the extent practicable and reasonable, users and prospective users must be able to obtain those portions, or elements, of the service(s) that they require, and the policy must allow for a separate tariff for an element of a service if requested.

An access arrangement must also contain one or more reference tariffs. A reference tariff operates as a benchmark tariff for a particular service and provides users with a right of access to the specific service at the specific tariff. Tariffs must be determined according to the reference tariff principles in s. 8 of the code.

In addition to these two elements, an access arrangement must include the following:

- terms and conditions on which the service provider will supply each reference service

¹ The scheduled lodgement date was 8 August 2006, three months after coverage became effective. The first extension of the lodgement date was to 6 November 2006 and the second to 5 February 2007.

² As required, a public notice of the time extension was placed in the *Australian Financial Review* on 3 August 2007.

- a statement of whether a contract carriage or market carriage capacity management policy is applicable
- for a contract carriage pipeline, a trading policy that enables a user to trade its right to obtain a service to another person
- a queuing policy to determine users' priorities in obtaining access to spare and developable capacity on a pipeline
- an extensions and expansions policy to determine the treatment of an extension or expansion of a pipeline under the code
- a date by which revisions to the arrangement must be submitted, and
- a date by which the revisions are intended to commence.

In considering whether an access arrangement complies with the code, a regulator must take into account, pursuant to s. 2.24 of the code, the following factors:

- the legitimate business interests and investment of the service provider
- firm and binding contractual obligations of the service provider or other persons (or both) already using the covered pipeline
- the operational and technical requirements necessary for the safe and reliable operation of the covered pipeline
- the economically efficient operation of the covered pipeline
- the public interest, including the public interest in having competition in markets (whether or not in Australia)
- the interests of users and prospective users, and
- any other matters that the regulator considers are relevant.

1.3 The Dawson Valley Pipeline

The Dawson Valley Pipeline (DVP) transports gas 47 km northward from coal seam methane (CSM) gas fields in the Dawson Valley in central Queensland to the Wallumbilla to Gladstone via Rockhampton Pipeline (Queensland Gas Pipeline). It was constructed in 1996. The pipeline is six inches in diameter and currently has a nominal maximum capacity of 30 TJ/day (approximately 11 PJ per year).³

³ Given the constraints of current equipment attached to the pipeline, the actual maximum flow of the DVP is 22-24 TJ/day. Anglo Coal submission (response to Molopo), 13 April 2007, p. 2.

A map of the DVP (identified as PPL26) and its surrounds is set out at Appendix B to this final decision document.

The Dawson Joint Venture (DJV) is currently the only user of the pipeline. Until recently the Lowell-Helm Joint Venture,⁴ which owned the nearby Mungi gas field and the surrounding exploration permits, was also a user of the pipeline. The gas is now sold to the DJV.

The DJV comprises the owners of the pipeline: Anglo Coal (Dawson) Limited and Mitsui Moura Investment Pty Ltd (Mitsui). The current owners purchased the transmission assets in March 2006. The key assets purchased were the DVP and interests in two petroleum leases (including CSM production facilities) and two authorities to prospect.⁵

The service providers of the DVP are Anglo Coal (Dawson) Limited and Mitsui as owners and Anglo Coal (Dawson Management) Pty Ltd as operator. All obligations set out in the access arrangement are imposed on the pipeline operator. For the purposes of this final decision the service providers have generally been referred to as ‘Anglo Coal’. The lawyers Minter Ellison act on behalf of the service providers in relation to the DVP access arrangement.

1.4 Role of the AER

The ACCC has prepared this final decision in consultation with the Australian Energy Regulator (AER). The ACCC is currently the regulator of natural gas transmission pipelines under the code (except for WA). However, relevant Australian governments have agreed that this function will be undertaken by the AER, along with regulation of natural gas distribution pipelines, in the near future.

1.5 Approach

Chapters 2 to 8 of this final decision provide the ACCC’s considerations on issues of concern identified in the draft decision, and on the responses by Anglo Coal and other interested parties to the draft decision. While these chapters in part provide summaries of the ACCC’s earlier assessment, the draft decision document should be referred to for the ACCC’s full assessment.

The ACCC’s final decision is set out in chapter 9.

⁴ The Lowell-Helm Joint Venture comprised of Lowell Petroleum NL (a subsidiary of Molopo Australia Ltd) and Helm Energy-Australia, LCC. Molopo recently purchased the Bowen Basin CSM interests of Helm Energy-Australia. Molopo, *Agreement signed to double Molopo’s share of QLD CBM assets*, 24 July 2007, viewed 31 July 2007 <http://www.molopo.com.au/2007_asx_.html>.

⁵ National Competition Council, *Dawson Valley Pipeline: Application for coverage under the national gas code by Molopo Australia Limited: supplementary advice*, 31 October 2005, p. 3.

2. Reference tariff method

Chapter 3 of the draft decision assessed the reference tariff policy, the reference tariff methodology and incentives. Apart from the reference tariff methodology, there were no proposed amendments, or submissions received, on any of these topics. The reference tariff methodology is discussed below.

2.1 Reference tariff methodology

2.1.1 Introduction

Anglo Coal stated in its proposed access arrangement that the reference tariff is derived from an application of the net present value (NPV) methodology. In its draft decision, the ACCC concluded that the total revenue calculation in Anglo Coal's revenue model actually used the cost of service methodology.⁶ The ACCC considered that in order to fully satisfy the requirements of s. 8.4 of the code, the access arrangement and access arrangement information should accurately describe the method used to determine the total revenue in the revenue model. Accordingly, the ACCC proposed an amendment to the reference tariff policy.

In addition, the ACCC's draft decision concluded that Anglo Coal had not accurately described the method of varying the reference tariff as set out in the proposed access arrangement, in its reference tariff policy.⁷ Accordingly, in order to fully satisfy the requirements of s. 8.3 of the code, the ACCC proposed an amendment such that the reference tariff policy would accurately reflect the reference tariff variation methodology set out in the access arrangement.

2.1.2 Proposed amendments

Proposed amendments 1 and 2 (reproduced below) expressed the ACCC's draft decision noted above.

Proposed amendment 1

In order for the DVP access arrangement to be approved, Anglo Coal must amend the reference tariff policy to state that the total revenue is calculated according to the cost of service methodology.

⁶ ACCC, *Draft decision: access arrangement for the Dawson Valley Pipeline*, 23 May 2007, p. 14.

⁷ *ibid.*, p. 15.

Proposed amendment 2

In order for the DVP access arrangement to be approved, Anglo Coal must amend the reference tariff policy (section 5 of the access arrangement) to state that the reference tariff may be varied during an access arrangement period through the application of a combination of the price path, reference tariff control formula and trigger event adjustment approaches.

2.1.3 Response to draft decision

As anticipated in the draft decision, Anglo Coal has incorporated these proposed amendments in the revised access arrangement and access arrangement information.

No other response was received concerning these proposed amendments or any other aspect of the reference tariff methodology.

2.1.4 Conclusion

The ACCC has reviewed the relevant aspects of the revised access arrangement. It considers that the proposed amendments relating to the reference tariff methodology have been appropriately incorporated in Anglo Coal's revised access arrangement and access arrangement information.

Accordingly, the ACCC concludes that this aspect of the revised access arrangement meets the requirements of ss. 8.3 and 8.4 of the code.

2.2 Other

Chapter 3 of the draft decision also assessed the proposed reference tariff policy and incentives. In the draft decision, the ACCC concluded that these two aspects of the proposed access arrangement complied with the relevant code requirements.

The ACCC's assessment for this final decision confirms that the reference tariff policy and the incentive mechanism included in the revised access arrangement are consistent with the code's requirements.

3. Capital base

Chapter 4 of the draft decision assessed the initial capital base (ICB), new facilities investment, forecast capital expenditure, capital redundancy and depreciation. Apart from the initial capital base, there were no proposed amendments, or submissions received, on any of these topics.

3.1 Initial capital base

3.1.1 Introduction

Anglo Coal proposed an ICB equal to its depreciated optimised replacement cost (DORC) estimate of \$7.641m (as at 1 July 2006). In the draft decision the ACCC considered that DORC was more likely to satisfy the requirements of the code than the alternatives of depreciated actual cost (DAC) and sale price and was satisfied that this was the most appropriate methodology to establish the ICB for the DVP. It considered that the DORC should be expressed in July 2007 dollars to better coincide with the start of the initial access arrangement period. Accordingly, the ACCC proposed that the ICB be set at \$7.600m at 1 July 2007.

3.1.2 Proposed amendments

Proposed amendment 3 (reproduced below) expressed the ACCC's draft decision noted above.

Proposed amendment 3

In order for the DVP access arrangement to be approved, Anglo Coal must set the ICB at \$7.600m at 1 July 2007.

3.1.3 Response to draft decision

Anglo Coal has incorporated this proposed amendment in the calculation of the reference tariffs in the revised access arrangement.

In addition, the ACCC received submissions regarding the ICB from the service provider and DBNGP Transmission Pty Limited (DBNGP). The issues raised in these submissions are addressed in turn below.

Anglo Coal's consideration of s. 8.10 factors

After noting that Anglo Coal's proposed ICB is based on DORC, the draft decision stated that Anglo Coal did not comment on the other factors in s. 8.10 of the code.⁸

⁸ *ibid.*, p. 20.

Anglo Coal submitted that it discussed the limitations of other approaches in its confidential supporting information of 5 February 2007.⁹

The ACCC acknowledges that Anglo Coal briefly commented on DAC (s. 8.10(a)) and sale price (s. 8.10(j)) in addition to stating that it considered the s. 8.10 factors and had found ‘significant limitations with the use of any approach other than DORC’.¹⁰

Applicability of s. 2.24

DBNGP has submitted that the correct application of the WA Supreme Court of Appeal decision¹¹ requires the factors in s. 2.24 of the code to be more central to the regulator’s assessment of an access arrangement than they were in the ACCC’s methodology for establishing the ICB for the DVP.¹²

The ACCC disagrees with this interpretation. In that decision the Court took the view that, whenever ss. 8.10 and 8.11 of the code require discretion to be exercised, ‘it is s8.1, rather than s2.24(a) to (g), which is intended by the Code to guide the Regulator in the establishment of the initial capital base’.¹³ The Court also stated that the ss. 2.24(a) to (g) factors should be considered in exercising the discretions provided in the last paragraph of s. 8.1.¹⁴ However, these discretions only arise where the objectives in ss. 8.1 (a) to (f) conflict in their application to a particular reference tariff determination. In determining the ICB for the DVP the ACCC’s s. 8.1 assessment did not identify conflicts that required resolution through the application of s. 2.24.

Reliance on the DBNGP access arrangement draft decision

DBNGP has submitted that the WA Supreme Court of Appeal decision found that the determinations contained in the Independent Gas Pipelines Access Regulator in Western Australia’s (WA regulator) draft decision on the DBNGP access arrangement (insofar as they relate to reference tariffs and the ICB) were affected by errors of law and should not be relied on in subsequent decisions.¹⁵

The ACCC’s draft decision on the DVP only refers to the WA regulator’s DBNGP draft decision in its discussion on asset valuation practices in the UK and US. It acknowledged the conclusion that there is no international best practice for such valuations.¹⁶ The ACCC considers that even if there were errors of law in parts of the WA regulator’s decision they would not taint the analysis of other parts of the decision for the purposes of the DVP decision. The WA Supreme Court of Appeal decision

⁹ Anglo Coal submission, 8 June 2007, p. 3.

¹⁰ Anglo Coal, *Confidential supporting information*, 5 February 2007, p. 3.

¹¹ *Re Dr Ken Michael AM; ex parte Epic Energy (WA) Nominees Pty Ltd & Anor* [2002] WASCA 231.

¹² DBNGP submission, 12 June 2007, p. 2.

¹³ [2002] WASCA 231, par. 84.

¹⁴ *ibid.*, par. 85 and repeated at par. 136.

¹⁵ DBNGP submission, p. 3.

¹⁶ Draft decision, pp. 27-28.

noted that there was no submission to it stating that there was an error in the regulator's assessment of international best practice.¹⁷

Construction costs

In the draft decision, the ACCC noted that pipeline construction costs are currently higher (in real terms) than they have been for some time and suggested that as

the ORC may be an input into a pipeline's ICB (which cannot be revalued at a later date), caution should be exercised in placing too much weight on short-term increases in construction costs that may not be sustained over the medium to long term.¹⁸

DBNGP responded with three points:¹⁹

- using a unit cost per inch per kilometre for the purposes of comparing pipeline construction costs is an overly simplistic methodology
- DBNGP's market intelligence suggests costs are not likely to reduce to early 2000 levels, if at all in the medium term, and
- it is appropriate to take into account short term increases in costs (if there are any) as pipeline developers are not able to delay construction of new pipelines or expansions to existing pipelines: they must meet demand when it arises or risk losing customers to competitors (that is, alternative energy sources).

The ACCC has considered the points raised by DBNGP and makes the following comments. First, the ACCC is aware of the limitations of using unit cost measures for assessing pipeline construction costs. Its consultant, Unidel, identified some of these prior to the draft decision. In relation to the DVP, the ACCC concluded that the unit cost measure assessment and the consultant's report on the proposed ORC provided it with sufficient assurance to conclude that the proposed ORC was reasonable. Second, while DBNGP stated that the cost increases are not short term, it did not provide any of its 'market intelligence' for the ACCC to assess. Third, the ACCC acknowledges the need for infrastructure operators to respond to demand when it arises or is anticipated. Moreover, it accepts that a prudent operator may even advance construction of capacity in anticipation of demand and or higher construction costs. The ACCC, however, is not assessing new construction to meet new demand but is setting the ICB for existing assets.

As the ACCC decided to accept Anglo Coal's proposed ORC in the draft decision, it has not undertaken further analysis of changes in unit construction costs for this final decision.

¹⁷ [2002] WASCA 231, par. 167.

¹⁸ Draft decision, p. 33.

¹⁹ DBNGP submission, pp. 3-5.

3.1.4 Conclusion

The ACCC has reviewed the revised revenue model provided by Anglo Coal. It has concluded that the proposed amendment relating to the ICB has been appropriately implemented and that the resulting reference tariffs in the revised access arrangement reflect compliance with the proposed amendment.

After considering the issues raised in submissions in relation to the ICB, the ACCC does not find any reason to adjust the ICB that has been incorporated in the revised access arrangement. It is satisfied that the revised ICB satisfies the requirements of s. 8 of the code.

3.2 Other

Chapter 4 of the draft decision also assessed the capital cost items of new facilities investment, forecast capital expenditure, capital redundancy and depreciation. In the draft decision, the ACCC concluded that the new facilities investment policy, forecast capital expenditure and the capital redundancy policy proposed by Anglo Coal complied with the relevant code requirements. The depreciation schedule included in the draft decision reflected the effects of other proposed amendments.

The assessment for this final decision confirms that these elements of the revised access arrangement meet the requirements of the code.

4. Rate of return

Chapter 5 of the draft decision assessed the rate of return, which is discussed below.

4.1 Introduction

Anglo Coal adopted a weighted average cost of capital (WACC) approach in determining the appropriate rate of return for the DVP. The capital asset pricing model (CAPM) was used to calculate the return on equity required for its WACC calculation. Anglo Coal proposed a post tax nominal WACC of 8.86 per cent and a nominal return of equity of 11.74 per cent.²⁰

In the draft decision, the ACCC concluded that the values attributed to a number of the proposed CAPM parameters (including equity beta, market risk premium, debt to equity ratio, corporate tax rate and value of imputation credits) were consistent with relevant provisions of the code.²¹ However, the ACCC considered that Anglo Coal's estimate of the risk free rate, the rate of inflation and the cost of debt margin should be revised with up to date market data. This approach was consistent with past regulatory practice and resulted in a rate of return that satisfied s. 8.30 of the code.

The ACCC's draft decision proposed that a nominal return on equity of 11.97 per cent and a nominal vanilla WACC of 9.08 per cent be incorporated in the access arrangement.

4.2 Proposed amendments

Proposed amendment 4 (reproduced below) expressed the ACCC's draft decision noted above.

Proposed amendment 4

In order for the DVP access arrangement to be approved, Anglo Coal must incorporate the parameter values included in Table 5.2 in its access arrangement. A nominal vanilla WACC of 9.08 per cent must be used as the rate of return.

²⁰ Proposed AAI, p. 6.

²¹ Draft decision, pp. 44-45.

Table 4.1: Draft decision CAPM parameters and WACC

Parameter		
Nominal risk free rate	r_f	5.97%
Real risk free rate	rr_f	2.70%
Inflation	f	3.19%
Debt to equity ratio	D:E	60:40
Cost of debt margin	DM	1.18%
Nominal cost of debt	r_d	7.15%
Corporate tax rate	T_c	30.0%
Value of imputation credits	γ	50.0%
Market risk premium	MRP	6.0%
Equity beta	β_e	1.0
Cost of capital		
Nominal return on equity	r_e	11.97%
Nominal vanilla WACC		9.08%

Source: ACCC, Draft decision, p. 47.

4.3 Response to draft decision

Anglo Coal has incorporated this proposed amendment in the revised access arrangement. The specified rate of return has also been incorporated in Anglo Coal's revised revenue model appropriately.

Three submissions were received in response to the draft decision concerning the determination of the risk free rate. These are discussed below.

Determining the risk free rate

Consistent with Anglo Coal's proposed access arrangement and previous regulatory practice, the ACCC used the 10 year Commonwealth Government bond rates in the draft decision to estimate the risk free rate and inflation. Three submissions received in response to the draft decision raised concerns about this approach.

Anglo Coal submitted that it was 'aware that a body of thought exists that the yield on Commonwealth Government securities (including bonds) as a proxy for the risk free rate of capital is downward biased'.²² However, it did not provide any comment on how this may effect the conclusions in the draft decision.

Submissions from Multinet and Alinta made reference to new research undertaken by NERA Economic Consulting (NERA) on this matter and provided reports by NERA as

²² Anglo Coal submission, 8 June 2007, p. 4.

supporting documentation to their submissions. In its submission, Multinet stated that it 'is concerned that the issues that it (and the other Victorian gas distribution businesses) is raising in its Access Arrangement review, are very significant and require a broader consideration.'²³ Multinet further stated that it supports NERA's conclusions and has submitted this research not only for the ACCC to consider with regard to the DVP access arrangement, but for broader consideration for other infrastructure that the ACCC regulates.

In its submission, Alinta provided some discussion on the conclusions of the two NERA reports it provided to the ACCC.²⁴ It submitted that the ACCC needs to address the risk free rate issue as it affects the rates of returns and allowable revenues earned by all regulated businesses generally. With regard to NERA's first report Alinta stated that 'it is demonstrated that there is a relative downward bias of 20 basis points between the yields on real and nominal 10 year CGS [Commonwealth Government securities]'.²⁵ Alinta further stated that in NERA's second report it is demonstrated 'that the absolute bias on the true risk free rate in the yield on nominal bonds is 66 basis points and using indexed bonds underestimates the real cost of equity in the order of 86 basis points'.²⁶

The ACCC is aware of the NERA reports which have been raised elsewhere, including in submissions to the recent Powerlink revenue cap decision. In this decision, the AER stated that it had commenced an investigation to review the conclusions of the NERA study. The ACCC agrees with Multinet and Alinta that the matters raised have implications for broader consideration and is participating in the investigation with the AER. As noted by the AER, transparency and fairness require a proper investigation of this matter and should also provide for stakeholders' comments before departing from a well established methodology for estimating the risk free rate and forecasting inflation from observed yields.²⁷ This investigation is expected to be completed some time after the finalisation of the current access arrangement process.

While Anglo Coal has made reference to the NERA reports, it has not sought to incorporate NERA's findings in its revised access arrangement.

4.5 Conclusion

The ACCC considers that proposed amendment 4 has been appropriately implemented by Anglo Coal. The draft decision CAPM parameters and WACC have been incorporated in Anglo Coal's revised revenue model appropriately. As Anglo Coal has accepted the values of the CAPM parameters and WACC as determined in the draft decision, a further update of these values in the final decision is not required.

²³ Multinet submission, 8 June 2007, p. 1.

²⁴ NERA, *Bias in indexed CGS yields as a proxy for the CAPM risk free rate*, March 2007 and NERA, *Absolute bias in (nominal) Commonwealth Government securities*, June 2007.

²⁵ Alinta submission, 12 June 2007, p. 2.

²⁶ *ibid.*

²⁷ AER, *Decision: Powerlink Queensland transmission network revenue cap 2007-08 to 2011-12*, 14 June 2007, pp. 104-105.

Accordingly, the ACCC concludes that this aspect of the revised access arrangement meets the requirements of s. 8 of the code.

As noted above, the investigation into the issues raised by NERA concerning the risk free rate will conclude after this final decision is released. This does not preclude Anglo Coal from seeking to implement any new or amended approach to the calculation of the risk free rate that may be adopted by the ACCC and AER. As permitted by s. 2.28 of the code, a service provider is able to lodge revisions to an access arrangement at any time.

5. Revenue elements

Chapter 6 of the draft decision assessed the following revenue elements: non-capital costs, inflation, volumes, revenue and revenue modelling. Apart from non-capital costs and total revenue, there were no proposed amendments, or submissions received, on any of these topics. The non-capital costs and revenue are discussed below.

5.1 Non-capital costs

5.1.1 Introduction

Sections 8.36 and 8.37 of the code allow for the recovery of all non-capital costs that a prudent service provider, acting efficiently and in accordance with accepted and good industry practice to achieve the lowest sustainable cost, would incur in providing the reference service.

Anglo Coal proposed non-capital costs totalling \$651 000 for 2006-07. It proposed that this be escalated by CPI for each subsequent year of the access arrangement period.²⁸

The ACCC found that the direct costs appeared reasonable. However, after consideration of submissions from interested parties, the views of consultants and particular key performance indicator (KPI) information, the ACCC was not satisfied that the proposed indirect costs were reasonable. Based on the information available to it, the ACCC concluded that an amount of \$137 000 (for 2006-07) for indirect non-capital costs would satisfy the relevant code requirements. This brought the total non-capital costs to \$300 000 for 2006-07.²⁹

5.1.2 Proposed amendments

Proposed amendment 5 (reproduced below) expressed the ACCC's draft decision noted above.

Proposed amendment 5

In order for the DVP access arrangement to be approved, Anglo Coal must include total non-capital costs of \$300 000, with indirect costs (overheads) of \$137 000 (for 2006-07) in its calculation of total revenue.

5.1.3 Response to draft decision

Anglo Coal has only partly implemented this proposed amendment. It raised two issues in relation to non-capital costs in its submission. These are addressed in turn below.

²⁸ Proposed AAI, p. 7.

²⁹ Draft decision, pp. 54-56.

Marketing and regulatory costs

First, in response to the ACCC's comment in the draft decision that it did not specify marketing or regulatory costs in its non-capital cost information, Anglo Coal stated that it 'did not include estimates for marketing expenses or regulatory costs'.³⁰ Anglo Coal noted that it intends to engage external consultants to perform marketing functions for the DVP. It has proposed that 'an additional amount of \$25,000 should be included in the forecast non-capital costs'.³¹ Similarly, it has proposed the addition of \$20 000 to total non-capital costs to recover regulatory costs.³²

Ross Calvert Consulting Pty Ltd (RCC) has reviewed these revised forecast non-capital costs. It noted that in regard to its initial assessment:

No allowance was made for either marketing or regulatory expenses in the previous recommendation of \$300,000 per annum because the service provider had not identified any such costs in the original Access Arrangement Information.³³

While initial regulatory costs are higher than ongoing costs, RCC has noted that service providers may average the total costs over the access arrangement period. If that is the case, then RCC has concluded that an amount of \$20 000 for regulatory costs would be reasonable.³⁴

RCC has noted that while the forecast demand included in the proposed access arrangement did not anticipate any new users of the DVP, there is a 'reasonable prospect' that new contracts may emerge during the initial access arrangement period. In any event, there may be some contract management matters relating to the forecast demand. Consequently, RCC has concluded that the revised amount of \$25 000 would be reasonable for marketing related activities for the DVP.

Indirect costs

Second, in relation to indirect costs, Anglo Coal noted the ACCC's view that economies of scale and scope would be limited for the DVP and then stated that in its view, 'there are no efficiencies of scale for the DVP'.³⁵ It submitted that a total non-capital costs as a percentage of ORC measure of four per cent would be a more appropriate 'rule of thumb' to use for the DVP. This would result in an amount of \$203 760 allocated to indirect costs (assuming \$163 000 for direct costs).³⁶

³⁰ Anglo Coal submission, p. 2.

³¹ *ibid.*

³² *ibid.*, p. 3.

³³ RCC, *Dawson Valley Pipeline non capital costs*, 3 August 2007, p. 2.

³⁴ *ibid.*

³⁵ Anglo Coal submission, p. 3.

³⁶ *ibid.*

Anglo Coal also submitted that ‘in the current environment of high employment and high wages, the allocated amount of \$137,000 for indirect costs is manifestly inadequate and unsustainable’.³⁷

In the revised access arrangement information and revenue model subsequently submitted on 23 July 2007, Anglo Coal incorporated an amount of \$378 441 for total non-capital costs (for 2007-08).

The ACCC acknowledges Anglo Coal’s comment that the DVP is significantly shorter than the ‘small’ pipelines used in the KPI analysis. The DVP is 47 km long. The Central West Pipeline is 255 km; the Riverland Pipeline is 237 km; and the Mildura Pipeline is 149 km. The analysis undertaken by the ACCC’s consultant, RCC did take this into account in concluding that total non-capital costs of \$300 000 (for 2006-07) would be more appropriate than the \$651 000 proposed.³⁸

RCC has reviewed Anglo Coal’s 8 June 2007 submission. RCC has concluded:

When these additional amounts are added to the amount previously proposed in the Draft Decision for Non Capital Costs the revised total amount is \$345,000 per annum. This compares with a total amount of \$367,000 sought by the service provider in its revised Access Arrangement documentation. The difference of \$22,000 per annum is not considered material in circumstances.³⁹

RCC has concluded that acceptance of the revised total non-capital costs of \$367 000 would not be inconsistent with the relevant code provisions.

After considering Anglo Coal’s submission and the recommendations of RCC, the ACCC has concluded that the DVP is likely to exhibit a sufficient lack of economies in its operation relative to the comparator pipelines to warrant a greater allowance for non-capital costs than it proposed in the draft decision. Further, it considers that using a measure of total non-capital costs of four per cent of ORC as proposed by Anglo Coal would be reasonable for forecast total non-capital costs for the initial access arrangement period for the DVP. Forecast total non-capital costs in future access arrangement periods can be established with reference to past actual cost information as well as relevant KPI information.

No submissions from interested parties were received in regard to non-capital costs.

5.1.4 Conclusion

The ACCC has reviewed the revised revenue model and has confirmed that an amount of \$378 441 for 2007-08 total non-capital costs has been correctly incorporated in the model. The revised non-capital costs are also set out in section 4 of the revised access arrangement information.

³⁷ *ibid.*, p. 8.

³⁸ RCC, *Report on Dawson Valley Pipeline access arrangement and access arrangement information*, April 2007, p. 15.

³⁹ RCC report, 3 August 2007, p. 2.

Accordingly, the ACCC concludes that the revised total non-capital costs (of \$378 441 for 2007-08) addresses its reasons for proposing amendment 5 in the draft decision and satisfies the requirements of ss. 8.36 and 8.37 of the code.

5.2 Revenue

5.2.1 Introduction

The code provides that total revenue can be calculated by one of three methodologies. Anglo Coal applied a cost of service approach.⁴⁰

Total revenue is determined by various elements: return on assets, depreciation and non-capital costs. Each of these revenue elements was assessed and any consequent proposed amendments were set out in the relevant chapters of the draft decision. As noted in chapter 6 of the draft decision, implementation of various proposed amendments would result in lower total revenue for the DVP compared to that proposed by Anglo Coal.

5.2.2 Proposed amendments

Proposed amendment 6 (reproduced below) expressed the ACCC's draft decision noted above.

Proposed amendment 6

In order for the DVP access arrangement to be approved, Anglo Coal must revise its proposed revenue consistent with this draft decision.

5.2.3 Response to draft decision

Anglo Coal has stated that it accepts proposed amendment 6.⁴¹ However, as discussed earlier in this chapter, the revised access arrangement does not incorporate the allowance for non-capital cost proposed in amendment 5. Consequently, the revised total revenues submitted by Anglo Coal are not consistent with those anticipated in the draft decision.

No submissions from interested parties were received in regard to total revenue.

5.2.4 Conclusion

As discussed in section 5.1 of this final decision, the ACCC has concluded that the revised total non-capital costs submitted by Anglo Coal do satisfy the relevant code criteria.

⁴⁰ Anglo Coal has altered certain aspects of the access arrangement information to describe the reference tariff methodology accurately. This is discussed in chapter 2 of this final decision.

⁴¹ Anglo Coal submission, p. 4.

The calculation of total revenue in the DVP revenue model has been reviewed. The ACCC is satisfied that the appropriate revenue elements have been incorporated in the model. The revised total revenue for the DVP for the initial access arrangement period is set out in the table below.

Table 5.1: Total revenue, 2007-08 to 2015-16

	\$ million								
	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
Return on assets	0.690	0.697	0.705	0.712	0.719	0.725	0.732	0.737	0.743
Depreciation	-0.083	-0.081	-0.078	-0.075	-0.072	-0.069	-0.065	-0.061	-0.057
Non-capital costs	0.378	0.390	0.403	0.416	0.429	0.443	0.457	0.471	0.486
Total revenue	0.985	1.007	1.030	1.052	1.076	1.099	1.123	1.148	1.173
Smoothed total revenue	0.962	0.992	1.024	1.057	1.090	1.125	1.161	1.198	1.236

Source: Anglo Coal revised revenue model.

The ACCC is satisfied that the proposed amendments relevant to total revenue set out in the draft decision have been implemented, or the reasons for the amendments have been otherwise addressed.⁴² Accordingly, the ACCC has concluded that the revised total revenue for the DVP (as set out above in Table 5.1) for the initial access arrangement period is consistent with s. 8 of the code.

5.3 Other

Chapter 6 of the draft decision also assessed inflation, volumes and revenue modelling.

The draft decision noted that the forecast inflation rate was to be altered according to up to date information. The draft decision's forecast inflation rate was set out with other CAPM parameters in table 5.3 of the draft decision.⁴³

The draft decision concluded that the forecast volumes for the initial access arrangement period were appropriate and consistent with the code's requirements.

Following the draft decision, Anglo Coal submitted a revised revenue model as well as its revised access arrangement. The ACCC has concluded that the amendments proposed in the draft decision have been appropriately implemented in the revised revenue model.

The assessment for this final decision confirms that these other revenue elements of the revised access arrangement meet the relevant code requirements.

⁴² See chapter 2 and section 5.1 of this final decision.

⁴³ See table 4.1 of this final decision.

6. Reference tariffs

Chapter 7 of the draft decision assessed the cost allocation and tariff structure, the tariff path, tariff variation policy and reference tariff principles. Apart from the tariff path and tariff variation policy, there were no proposed amendments, or submissions received, on any of these topics. The tariff path and tariff variation policy are discussed below.

6.1 Tariff path

6.1.1 Introduction

Anglo Coal proposed that the reference tariff for the year ending 30 June 2007 be \$0.406/GJ of MDQ/day (excluding GST). In the draft decision, the ACCC noted that Anglo Coal's proposal was inconsistent with the timing of the approval of the access arrangement. It proposed that the initial reference tariff should be for the year ending 30 June 2008.⁴⁴

The ACCC also considered that the initial reference tariff should reflect the lower total revenue as proposed in the draft decision and consequently proposed an amendment to alter this tariff.

6.1.2 Proposed amendments

Proposed amendment 7 (reproduced below) expressed the ACCC's draft decision noted above.

Proposed amendment 7

In order for the DVP access arrangement to be approved, Anglo Coal must amend the description of the reference tariff (section 4.1 of the access arrangement) to state that the reference tariff for the reference service for the year ending 30 June 2008 is \$0.306/GJ of MDQ/day (excluding GST).

6.1.3 Response to draft decision

Anglo Coal has partly adopted the proposed amendment and has incorporated it in the revised access arrangement. It has accepted that the initial reference tariff should be for the year ending 30 June 2008, but has not adopted the amount of the tariff proposed by the ACCC. The revised access arrangement includes an initial reference tariff of \$0.329/GJ of MDQ/day (excluding GST) for the year ending 30 June 2008. This revised initial tariff reflects Anglo Coal's inclusion of higher revised total non-capital costs than proposed in the draft decision.

No submissions from interested parties were received in regard to the tariff path.

⁴⁴ Draft decision, p. 67.

6.1.4 Conclusion

As discussed in section 5.1 of this final decision, the ACCC has accepted Anglo Coal's revised non-capital costs as meeting the relevant objectives of s. 8 of the code. The revised total non-capital costs have increased the total revenue to be recovered by the reference tariff compared with that proposed in the draft decision. The resulting initial reference tariff is \$0.329/GJ of MDQ/day (excluding GST).

The ACCC has reviewed the revised revenue model. It has concluded that the revised non-capital costs have been incorporated in the DVP revenue model correctly. It has found that the calculation of the initial reference tariff is correct. The reference tariff path has been set out in section 2 of the revised access arrangement information.

Accordingly, the ACCC has concluded Anglo Coal has addressed the reasons for proposed amendment 7 of the draft decision appropriately. The revised initial reference tariff satisfies the requirements of the code.

6.2 Tariff variation policy

6.2.1 Introduction

Anglo Coal proposed that the reference tariff would be varied annually using a CPI-X formula with the initial adjustment to the reference tariff to be effective from 1 July 2007. However, as noted above and in the draft decision, this timing is inconsistent with the expected completion of the access arrangement approval process. Accordingly, the ACCC proposed an amendment to alter the date of this adjustment to 1 July 2008.⁴⁵

Also, Anglo Coal's proposed price path mechanism did not set out the process that is to be followed at each annual tariff variation and if a specific event occurs. In the draft decision, the ACCC proposed two amendments which outline the procedures to be followed to vary tariffs in accordance with the proposed reference tariff variation method.⁴⁶ These proposed amendments were in accordance with ss. 8.3B to 8.3H of the code and are consistent with the processes included in previous ACCC approved access arrangements.

6.2.2 Proposed amendments

Proposed amendments 8, 9 and 10 (reproduced below) expressed the ACCC's draft decision noted above.

⁴⁵ *ibid.*, p. 69.

⁴⁶ *ibid.*, pp. 70-71.

Proposed amendment 8

In order for the DVP access arrangement to be approved, Anglo Coal must amend the description of the reference tariff (section 4.1 of the access arrangement) to state that:

‘On 1 July 2008 and on 1 July each year thereafter, the reference tariff will be adjusted as follows:’

Proposed amendment 9

In order for the DVP access arrangement to be approved, Anglo Coal must include the following provisions in section 4 of the access arrangement:

- Anglo Coal must provide a notice to the regulator of its proposed revised reference tariff in accordance with the reference tariff formula at least 30 days business days prior to 30 June for each year of the access arrangement period
 - this notice must specify that the proposed variations to the reference tariff applies from 1 July of the relevant year
 - the regulator will assess the proposed reference tariff provided by Anglo Coal and determine if they comply with the relevant CPI-X formula. The regulator will publish its decision at least 10 business days before 1 July of each year of the access arrangement period.
 - if the regulator does not provide a notice at least 10 business days before 1 July, the regulator will be taken to have approved the revised reference tariff, which will come into effect on 1 July of the relevant year
 - in the period before 10 business days prior to 1 July (the assessment period), the regulator may request additional information if it considers that such information will assist its assessment. This will extend the relevant assessment period by the number of days commencing on the day on which the regulator gave notice to Anglo Coal and ending on the day on which Anglo Coal submits the required information.
 - the regulator may grant an extension on application by Anglo Coal of any of the time periods associated with this process.
-

Proposed amendment 10

In order for the DVP access arrangement to be approved, Anglo Coal must include the following provisions in section 4 of the access arrangement:

- for each year of the access arrangement period Anglo Coal must provide written notice to the regulator that a specified event has either occurred or not occurred. If

such an event has occurred, Anglo Coal must notify the regulator as to the scope of the financial impact, how the claim is consistent with the trigger event adjustment mechanism, the proposed variations to the reference tariff and an effective date for the changes. The notification must also include all relevant supporting information to substantiate Anglo Coal's proposal.

- Anglo Coal must submit only one pass through notice a year, which must be submitted at least 50 business days prior to 30 June. This notice may incorporate a number of pass through claims or may specify that none of the specific events defined in the reference tariff policy have occurred.
 - in the period before 10 business days prior to 1 July (the assessment period), the regulator may request additional information if it considers that such information will assist its assessment. This will extend the relevant assessment period by the number of days commencing on the day on which the regulator gave notice to Anglo Coal and ending on the day on which Anglo Coal submits the required information.
 - the regulator will provide its decision at least 10 business days before 1 July of each year of the access arrangement period.
 - if the regulator does not provide a decision at least 10 business days before 1 July, the regulator will be taken to have approved the revised tariffs, which will come into effect on 1 July of the relevant year
 - the regulator may grant an extension on application by Anglo Coal of any of the time periods associated with this process.
-

6.2.3 Response to draft decision

Anglo Coal has incorporated these proposed amendments in the revised access arrangement.

No submissions were received on the draft decision concerning these proposed amendments or other aspects of the tariff variation policy.

6.2.4 Conclusion

The ACCC has reviewed the relevant aspects of the revised access arrangement. It has concluded that the proposed amendments noted above have been appropriately incorporated at sections 4.9, 4.10 and 4.11 of the revised access arrangement.

Accordingly, the ACCC has concluded that the relevant requirements of s. 8 relating to tariff variation policy of the code are satisfied.

6.3 Other

Chapter 7 of the draft decision also addressed the proposed cost allocation methodology and reference tariff principles. The assessment for this final decision

confirms that these aspects of the revised access arrangement meet the relevant s. 8 code requirements.

7. Non tariff elements

Chapter 8 of the draft decision assessed the following non tariff elements: services policy, terms and conditions, capacity management policy, trading policy, queuing policy, extensions and expansions policy and review of the access arrangement. The draft decision included proposed amendments relating to the trading, queuing and extensions and expansions policies. In addition, the draft decision identified certain alterations to the terms and conditions that Anglo Coal had indicated it would make.

The trading, queuing and extensions and expansions policies are discussed below.

7.1 Trading policy

7.1.1 Introduction

A trading policy is required to be included in an access arrangement for a contract carriage pipeline. It must allow for users to transfer the rights to obtain a service and set out the relevant conditions under which such a transfer may occur.

The draft decision noted that the proposed trading policy largely followed the provisions of s. 3.10 of the code and was consequently largely compliant with the code's requirements. However, the ACCC did note that the phrase 'reasonable commercial or technical grounds' used in the proposed trading policy was not defined. The ACCC considered that inclusion of a definition for this term would assist users in understanding the process of trading and assigning capacity and changing delivery and receipt points on the DVP.

7.1.2 Proposed amendments

Proposed amendment 11 (reproduced below) expressed the ACCC's draft decision noted above.

Proposed amendment 11

In order for the DVP access arrangement to be approved, Anglo Coal must amend its trading policy to specify that in relation to a transfer or assignment of capacity, reasonable grounds for a rejection of a request may be:

- a failure of a transferee to satisfy the service provider of its credit worthiness, and
- if acceptance of the request would have a material adverse impact upon the service provider's revenue stream.

In addition, the trading policy must specify that in relation to changing a user's receipt or delivery point, reasonable grounds for a rejection may be:

- where a reduction in the amount of the service provided to the original delivery point will not result in a corresponding increase in the service provider's ability to provide that service to the alternative delivery point, and
 - if acceptance of the request would have a material adverse impact upon the service provider's revenue stream.
-

7.1.3 Response to draft decision

As anticipated in the draft decision, Anglo Coal has implemented this amendment in section 6 of the revised access arrangement.

No submissions from interested parties relating to the trading policy were received.

7.1.4 Conclusion

The ACCC has reviewed the relevant aspects of the revised access arrangement. It considers that the proposed amendment relating to the trading policy has been appropriately incorporated in Anglo Coal's revised access arrangement.

Accordingly, the ACCC concludes that the revised access arrangement satisfies the requirements of ss. 3.9 to 3.11 of the code.

7.2 Queuing policy

7.2.1 Introduction

A queuing policy is to set out a policy for determining the priority that a prospective user has to obtain access to the spare and developable capacity of the pipeline and to seek dispute resolution (under s. 6 of the code).

While the proposed queuing policy was found to be broadly consistent with the requirements of the code, the draft decision noted that the phrase 'reasonable commercial or technical grounds' was not defined. The ACCC considered that inclusion of a definition for this term would assist users in understanding the grounds upon which their access request could be rejected by Anglo Coal.

7.2.2 Proposed amendments

Proposed amendment 12 (reproduced below) expressed the ACCC's draft decision noted above.

Proposed amendment 12

In order for the DVP access arrangement to be approved, Anglo Coal must amend its queuing policy to specify that reasonable grounds for rejecting an access request may be:

- a failure of a transferee to satisfy the service provider of its credit worthiness, and
- if acceptance of the request would have a material adverse impact upon the service provider's revenue stream.

In addition, the queuing policy is to specify timeframes for the relevant actions undertaken under the queuing policy.

7.2.3 Response to draft decision

As anticipated in the draft decision, Anglo Coal has implemented this amendment in section 7 of the revised access arrangement.

No submissions relating to the queuing policy were received from interested parties in response to the draft decision.

7.2.4 Conclusion

The ACCC has reviewed the relevant aspects of the revised access arrangement. It considers that the proposed amendment relating to the queuing policy has been appropriately incorporated in Anglo Coal's revised access arrangement.

Accordingly, the ACCC concludes that the revised access arrangement satisfies the requirements of ss. 3.12 to 3.13 of the code.

7.3 Extensions and expansions policy

7.3.1 Introduction

An extensions and expansions policy is to set out the method to determine whether any extension to, or expansion of, the system's capacity will be treated as part of the covered pipeline for the purposes of the code. The policy is also required to specify the impact on reference tariffs of treating an extension or expansion as part of the covered pipeline.

The ACCC's draft decision identified two key issues with the proposed extensions and expansions policy. First, the policy did not specify the impact that an extension to the DVP would have on reference tariffs. Second, the policy did not incorporate a mechanism to provide notification to the regulator of any expansions or extensions to

the DVP that may come into service. As a general principle, the regulator should be alerted to the commissioning of extensions and expansions to aid in its role.

7.3.2 Proposed amendments

Proposed amendments 13 and 14 (reproduced below) expressed the ACCC's draft decision noted above.

Proposed amendment 13

In order for the DVP access arrangement to be approved, Anglo Coal must specify how an extension that is to be treated as part of the covered pipeline will affect the reference tariff.

Proposed amendment 14

In order for the DVP access arrangement to be approved, Anglo Coal must specify that it will notify the regulator of the commencement of services provided through an expansion or extension to the DVP within 30 business days of the commencement of those services.

7.3.3 Response to draft decision

As anticipated in the draft decision, Anglo Coal has implemented these amendments in section 8 of the revised access arrangement. In addition, and as discussed in the draft decision, Anglo Coal also clarified when the policy would apply to expansions of the DVP.⁴⁷

No submissions from interested parties were received in relation to the extensions and expansions policy.

7.3.4 Conclusion

The ACCC has reviewed the relevant aspects of the revised access arrangement. It considers that the proposed amendments relating to the extensions and expansions policy have been appropriately incorporated in Anglo Coal's revised access arrangement.

Accordingly, the ACCC concludes that the revised access arrangement satisfies the requirements of s. 3.16 of the code.

7.4 Other

Chapter 8 of the draft decision also addressed services policy, terms and conditions, capacity management policy and the review of the access arrangement. It concluded

⁴⁷ *ibid.*, p. 91.

that the services and capacity management policies of the proposed access arrangement were in compliance with the code. The ACCC has concluded for this final decision that these policies, as included in the revised access arrangement, remain consistent with the code.

The draft decision noted, where relevant, that certain minor changes to the terms and conditions would be made by Anglo Coal following discussions with the ACCC as part of the assessment process. The ACCC has reviewed the revised terms and conditions and is satisfied that the minor changes have been incorporated as anticipated in the draft decision. It concludes that the revised terms and conditions meet the requirements of s. 3.6 of the code.

In the draft decision, the ACCC concluded that the revisions submission date and the revisions commencement date meet the code requirements. It was also satisfied with the inclusion of a trigger event. However, the ACCC noted that the proposed dates did result in an initial access arrangement period of approximately nine years. The ACCC stated that if Anglo Coal preferred to alter the dates to result in an expected access arrangement period of ten years then this would also satisfy the requirements of the code.⁴⁸ Anglo Coal has elected to not alter the revisions submission date and revisions commencement date from those it originally proposed. The ACCC is satisfied that these dates remain consistent with the code.

⁴⁸ *ibid.*, p. 93.

8. Key performance indicators and access arrangement information

Chapter 9 of the draft decision assessed the key performance indicators (KPIs) and the access arrangement information which are discussed below.

8.1 Key performance indicators

8.1.1 Introduction

In its proposed access arrangement information Anglo Coal provided comparative information and a single performance indicator (non-capital costs per 1000 km) for a number of pipelines including the DVP. In providing this information Anglo Coal submitted that ‘given the differences between the pipelines (with respect to size, length, capacity, usage, compression levels, remoteness, etc) it is difficult to draw any conclusions based on this data’.⁴⁹ It was further stated by Anglo Coal that ‘it is considered that the DVP’s non-capital costs are relatively fixed and would not vary with throughput or with an increase in pipeline length. As such, the short length of the DVP results in the pipeline exhibiting relatively high non-capital costs per km of length.’⁵⁰

In its draft decision, the ACCC recognised the limitation of KPI information as noted by Anglo Coal but considered that the information can still provide a useful guide in benchmarking operating performance across pipelines.⁵¹ Of the proposed KPI information, the ACCC’s consultant considered that two pipelines (the Victorian gas transmission system and the Parmelia Pipeline) were inappropriate comparators for the DVP. When compared to the remaining four pipelines (Riverland, Mildura, Central West and Tubridgi) the ACCC considered that the DVP compared poorly on the only performance indicator proposed by Anglo Coal.⁵²

The ACCC agreed with the assessment of its consultant that ‘the DVP non-capital costs are excessive by comparison with other pipelines’.⁵³

However, it considered that Anglo Coal’s proposed KPI was of limited value as it gave no weight to pipeline diameter (a proxy for pipeline capacity). A better performance indicator would be the ratio of non-capital costs to ORC.⁵⁴ This measure ‘eliminates the bias against short pipelines which is inherent in a comparison based on pipeline

⁴⁹ Proposed AAI, p. 9.

⁵⁰ *ibid.*, p. 10.

⁵¹ Draft decision, p. 98.

⁵² *ibid.*, p. 99.

⁵³ RCC report, April 2007, p. 19.

⁵⁴ Draft decision, p. 100.

length'.⁵⁵ The ACCC considered that with the inclusion of this measure, Anglo Coal would satisfy its obligation to provide KPIs in its access arrangement information.⁵⁶

8.1.2 Proposed amendments

Proposed amendment 15 (reproduced below) expressed the ACCC's draft decision noted above.

Proposed amendment 15

In order for the DVP access arrangement to be approved, Anglo Coal must incorporate the performance indicator non-capital cost as a percentage of ORC, in its access arrangement information.

8.1.3 Response to draft decision

Anglo Coal has accepted this proposed amendment and has incorporated it in the revised access arrangement information. It has also removed references to the Victorian gas transmission system and the Parmelia Pipeline. The DVP's KPIs have been recalculated to reflect the revised non-capital costs of \$367 000 (for 2006-07).⁵⁷

No submissions were received on the draft decision concerning this proposed amendment or KPIs.

8.1.4 Conclusion

The ACCC has reviewed the relevant aspects of the revised access arrangement information. It considers that the proposed amendment relating to KPIs has been appropriately incorporated in Anglo Coal's revised access arrangement information and as such meets the concerns expressed in the draft decision.

Accordingly, the ACCC has concluded that the revised access arrangement information provides relevant information regarding KPIs and satisfies this aspect of the code's access arrangement information requirements.

8.2 Access arrangement information

8.2.1 Introduction

Anglo Coal submitted access arrangement information in support of its proposed access arrangement. In its draft decision, the ACCC considered that the proposed access arrangement information was only partly compliant with s. 2.7 of the code.⁵⁸ A number of items described in Attachment A to the code were assessed as not being included in

⁵⁵ RCC report, April 2007, p. 18.

⁵⁶ Draft decision, p. 100.

⁵⁷ Revised AAI, p. 10.

⁵⁸ Draft decision, p. 102.

the access arrangement information. Without amendment the ACCC considered that the access arrangement information would not contain such information that would enable users and prospective users to understand the derivation of the elements in the proposed access arrangement and to form an opinion as to the compliance of the access arrangement with the provisions of the code.⁵⁹

In order to fully comply with ss. 2.6 and 2.7 of the code, the ACCC considered that Anglo Coal should amend its access arrangement information to include the omitted items identified in the draft decision and to amend its access arrangement information so that it is consistent with other amendments proposed in the draft decision.

8.2.2 Proposed amendments

Proposed amendment 16 (reproduced below) expressed the ACCC's draft decision noted above.

Proposed amendment 16

In order for the DVP access arrangement to be approved, Anglo Coal must incorporate the items listed below in its access arrangement information. Anglo Coal must also amend its access arrangement information so that it is consistent with the other amendments proposed in this draft decision.

- accumulated depreciation,
 - allocation of operation and maintenance costs between regulated and unregulated,
 - gas used in operations,
 - allocation of overhead and marketing costs between regulated and unregulated,
 - map of piping system,
 - average daily and peak demand, and
 - system load profile by month
-

8.2.3 Response to draft decision

Anglo Coal has incorporated the identified information in the revised access arrangement information.

No submissions were received on the draft decision concerning the proposed amendment noted above or any other aspect of the access arrangement information.

⁵⁹ *ibid.*, pp. 102-103.

8.2.4 Conclusion

The ACCC has reviewed the revised access arrangement information. It considers that this amendment has been appropriately incorporated in Anglo Coal's revised access arrangement information and as such meets the concerns expressed in the draft decision.

Following Anglo Coal's response to the proposed amendments 15 and 16, the ACCC has concluded that the revised access arrangement information addresses the concerns raised in the draft decision sufficiently. Accordingly, the ACCC considers that the revised access arrangement information satisfies ss. 2.6 and 2.7 of the code.

9. Final decision

Under s. 2.16(b)(i) of the code, the ACCC has decided to approve the revised access arrangement as submitted on 23 July 2007.

This access arrangement will take effect on 5 September 2007.

Appendix A: Submissions in response to the draft decision

Anglo Coal and Mitsui Moura Investment Pty Ltd	8 June 2007
Multinet Gas	8 June 2007
Alinta Limited	12 June 2007
DBNGP (WA) Transmission Pty Limited	12 June 2007
DBNGP (WA) Transmission Pty Limited (confidential)	12 June 2007

Appendix B: Pipeline map

