

Draft Decision

Access Arrangement proposed by the Carpentaria Gas Pipeline Joint Venture for the Ballera to Mount Isa Pipeline

Date: 15 August 2001

File No:
C2000/1179

Commissioners:
Fels
Bhojani
Cousins
Jones
Martin

Contents

Abbreviations and glossary of terms	iii
Executive Summary.....	vi
1. Introduction.....	1
1.1 Background	1
1.2 Invitation to make submissions.....	2
1.3 Consultative process and relevant documents	3
1.3.1 Regulatory framework.....	4
1.3.2 Certification of the Queensland Gas Access Regime.....	5
1.4 Duration of CGP access arrangement	6
1.5 Criteria for assessing an access arrangement	6
1.6 Draft decision.....	7
2. Reference tariff elements	8
2.1 Reference tariff and reference tariff policy.....	8
2.1.1 Code requirements.....	8
2.1.2 CGPJV's proposal.....	8
2.1.3 Submissions by interested parties.....	10
2.1.4 Commission's considerations	11
3. Non-tariff elements.....	13
3.1 Services policy.....	13
3.1.1 Code requirements.....	13
3.1.2 CGPJV's proposal.....	14
3.1.3 Submissions by interested parties.....	15
3.1.4 Commission's considerations	16
3.2 Terms and conditions.....	17
3.2.1 Code requirements.....	17
3.2.2 CGPJV's proposal.....	17
3.2.3 Submissions by interested parties.....	19
3.2.4 Commission's considerations	20
3.3 Capacity management policy.....	22
3.3.1 Code requirements.....	22
3.3.2 CGPJV's proposal.....	22
3.3.3 Submissions by interested parties.....	23
3.3.4 Commission's considerations	23
3.4 Trading policy.....	23
3.4.1 Code requirements.....	23
3.4.2 CGPJV's proposal.....	23
3.4.3 Submissions by interested parties.....	23
3.4.4 Commission's considerations	25
3.5 Queuing policy.....	28
3.5.1 Code requirements.....	28
3.5.2 CGPJV's proposal.....	28
3.5.3 Submissions by interested parties.....	29
3.5.4 Commission's considerations	30

3.6	Extensions and expansions policy	31
3.6.1	Code requirements	31
3.6.2	CGPJV's proposal	32
3.6.3	Submissions by interested parties.....	33
3.6.4	Commission's considerations	35
3.7	Review and expiry of the access arrangement.....	38
3.7.1	Code requirements	38
3.7.2	CGPJV's proposal	39
3.7.3	Submissions by interested parties.....	39
3.7.4	CGPJV's response to the issues paper.....	40
3.7.5	Commission's considerations	41
4	Information provision.....	44
4.1	Information provision.....	44
4.1.1	Code requirements	44
4.1.2	CGPJV's proposal	45
4.1.3	Submissions by interested parties.....	45
4.1.4	Commission's considerations	45
5	Draft decision.....	46
Appendix A: Submissions from interested parties		47

Abbreviations and glossary of terms

ACCC	Australian Competition and Consumer Commission
Access arrangement	Arrangement for third party access to a pipeline provided by a pipeline owner/operator and submitted to the relevant regulator for approval in accordance with the Code
Access arrangement information	Information provided by a service provider to the relevant regulator pursuant to section 2 of the Code
Access arrangement period	The period from when an access arrangement or revisions to an access arrangement takes effect (by virtue of a decision pursuant to section 2) until the next revisions commencement date
Bare transfer	When the terms of a contract with a service provider are not altered as a result of transfer or assignment of capacity rights
BHP	BHP Minerals Pty Ltd
CGP	Carpentaria Gas Pipeline
CGPJV	Carpentaria Gas Pipeline Joint Venture
Code	<i>National Third Party Access Code for Natural Gas Pipeline Systems</i>
Commission	Australian Competition and Consumer Commission
Contract carriage pipeline	A system of managing third party access whereby: <ul style="list-style-type: none">■ the service provider normally manages its ability to provide services by requiring users to use no more than the quantity of service specified in a contract;■ users normally are required to enter into a contract that specifies a quantity of service;■ changes for use of a service are normally based at least in part upon the quantity of service specified in a contract; and■ a user normally has the right to trade its right to obtain a service to another user.
Covered pipeline	Pipeline to which the provisions of the Code apply
CPI	Consumer Price Index
CS Energy	CS Energy Limited

Derogation	A legislative exemption from compliance with specified obligations set out in the Code
End user	A person who acquires or proposes to acquire natural gas from a user or prospective user
Ergon	Ergon Energy Gas Pty Ltd
GJ	Gigajoule
GPAL	Refers to <i>Gas Pipelines Access (Queensland) Law</i> or <i>Gas Pipelines Access Law</i>
Haulage	A term applied to the service provided by the operator or owner of a gas pipeline transmission system. Also described in the industry as ‘transmission’ or ‘transportation’ or gas
MCPS	Mica Creek Power Station
MDQ	Maximum Daily Quantity
MHQ	Maximum Hourly Quantity
MIM	MIM Holdings Limited
NCC	National Competition Council
PJ	Petajoule (equal to 1 000 000GJ)
PCML	Pasminco Century Mine Ltd
Prospective user	A person who seeks 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
QCA	Queensland Competition Authority
Queuing policy	A policy for determining the priority that a prospective user has, as against any other prospective user, to obtain access to spare and developable capacity
Reference service	A service which is specified in an access arrangement and in respect of which a reference tariff has been specified in that access arrangement
Reference tariff	A tariff specified in an access arrangement as corresponding to a reference service and which has the operation that is described in sections 6.13 and 6.18 of the Code
Reference tariff policy	A policy describing the principles that are to be used to determine a reference tariff

Revisions commencement date	The date on which the next revisions to the access arrangement are intended to commence
Revisions submissions date	The date on which the service provider must submit revisions to the access arrangement
Santos	Santos Ltd
Service	A service provided by means of a covered pipeline including: <ul style="list-style-type: none"> (a) haulage services (such as firm haulage, interruptible haulage, spot haulage and backhaul); (b) the right to interconnect with a covered pipeline; and (c) services ancillary to the provisions of such services, but does not include the production, sale or purchasing of natural gas
Services policy	A policy detailing the service or services to be offered
Service provider	The person who is the owner or operator of the whole or any part of the pipeline or proposed pipeline
Shipper	An alternative term generally used in this Draft Decision to describe an existing user of the CGP
SWQ	South west Queensland
TJ	Terajoule (equal to 1 000 GJ)
TPA	<i>Trade Practices Act 1974</i>
User	a person who has a current contract for a service or an entitlement to a service as a result of an arbitration

Executive Summary

Introduction

On 3 November 2000 the Carpentaria Gas Pipeline Joint Venture (CGPJV) submitted to the Australian Competition and Consumer Commission (the Commission) for approval its proposed access arrangement for the Ballera to Mount Isa Pipeline, commonly known as the Carpentaria Gas Pipeline (CGP). The application was made under section 2.2 of the *National Third Party Access Code for Natural Gas Pipeline Systems* (the Code). The access arrangement describes the terms and conditions on which CGPJV proposes to make access to services provided by the CGP available to third parties.

Under section 58 of the *Gas Pipelines Access (Queensland) Act 1998*, some elements of the access arrangement, notably the reference tariff and reference tariff policy, reference service and review date, have been determined by the Queensland Government for the initial access arrangement period and cannot be reviewed by the Commission. Consequently, the Commission has jurisdiction to require amendments to the access arrangement with respect to the other non-tariff elements only.

The Commission proposes not to approve CGPJV's access arrangement for the CGP in its present form. Pursuant to section 2.13 of the Code, this Draft Decision states the amendments (or nature of the amendments) that would have to be made to the proposed access arrangement in order for the Commission to approve it. The proposed amendments are brought together at the end of this Executive Summary.

Reference tariff and reference tariff policy

The reference tariff and reference tariff policy for the CGP access arrangement have been derogated by the Queensland Government. Consequently, they are not subject to review by the Commission in its consideration of this access arrangement. The Tariff Arrangement approved by the Minister (derogated tariff arrangement) contains one reference tariff for one reference service and applies up to the first 175TJ/day of capacity.

As well as the derogated tariff arrangement, CGPJV is proposing to include in the reference tariff policy additional provisions relating to adjustment of the capital base to take account of new facilities investment. Legal advice provided to the Commission, however, indicates that the derogated tariff arrangement represents the reference tariff policy in its entirety. The Commission understands, therefore, that CGPJV is unable to add to the reference tariff policy in the manner proposed. Accordingly, the Commission proposes an amendment that the additional clauses be deleted.

Services policy

CGPJV proposes to offer two transportation services: a reference service; and a negotiated service. The reference service, a non-interruptible transportation service, is described in the derogated tariff arrangement. The Queensland derogation prevents the Commission from approving additional reference services, which have been requested

by some interested parties. The Commission would, however, be entitled to require the services policy to include additional, non-reference services if it considered appropriate to do so.

Nevertheless, the Commission does not propose to require CGPJV to amend its access arrangement to include in its services policy any additional services. Since these services could only be included as non-reference services, some negotiation between CGPJV and the prospective user as to the terms and conditions would be necessary. Any additional services required by prospective users, such as backhaul or an interruptible service, could be settled with CGPJV as a negotiated service, as contained in the access arrangement. In the event of a dispute, the prospective user has recourse to the dispute resolution provisions of the Code.

Terms and conditions

The proposed access arrangement states that CGPJV will provide services on the terms and conditions set out in its standard Access Agreement for the service from time to time. The standard Access Agreement does not form part of the proposed access arrangement. The Commission is concerned that this provision may effectively allow CGPJV to make unilateral changes to its standard Access Agreement, and hence the approved non-tariff terms and conditions of access, without reference to the Commission.

To protect the integrity of the access arrangement process, the Commission proposes an amendment to the access arrangement. The Commission proposes that CGPJV either submit its standard Access Agreement as part of the access arrangement, or alternatively, that it be made clear that prospective users have a right to access the reference service subject only to the terms and conditions contained in the access arrangement (this would not prevent prospective users voluntarily agreeing to variations to these terms and conditions).

Trading policy

Some interested parties have requested that CGPJV specify the ‘reasonable commercial and technical grounds’ on which it would withhold its consent to the transfer (other than a ‘bare transfer’) of contracted capacity to another user. However, CGPJV’s proposal mirrors the provisions of the Code, and there is no obligation on the part of the service provider to include additional criteria specifying what constitutes ‘reasonable commercial and technical grounds’. In the event of a dispute, the parties have the option of seeking commercial arbitration or court action.

Notwithstanding the limitations of the Code, the Commission sees merit in the proposal to further define ‘reasonable commercial and technical grounds’. Such an approach may reduce the potential for disputes to arise. Accordingly, while the Commission cannot mandate that CGPJV amend the access arrangement to specify objective criteria defining ‘reasonable commercial and technical grounds’, it encourages CGPJV to do so.

Queuing policy

One provision of CGPJV's queuing policy is that a prospective user in a queue must demonstrate that it will have access to a supply of gas at the time it is anticipated that access to the service will be offered. The Commission considers that the requirement to demonstrate sufficient gas supplies as currently worded is likely to force prospective users to unnecessarily reveal commercially sensitive information. This concern is heightened because the SWQ Producers have a significant ownership stake in the CGP and would have access to this information. The Commission believes that written confirmation from a prospective user that it has sufficient gas supplies available should be sufficient for CGPJV.

CGPJV's proposed access arrangement provides for a request for a reference service to have priority over a request for a negotiated service. The Commission has some sympathy with the view that a prospective user's position in the queue should not be placed in jeopardy if the prospective user wishes to negotiate a service other than the reference service. Accordingly, the Commission proposes that the reference service and negotiated services have equal priority. The Commission considers it particularly relevant in this instance as the proposed access arrangement contains only one specific service, the reference service, and hence negotiated services may conceivably become quite common. The amendment proposed by the Commission would not deprive CGPJV of the right to provide the reference service at the reference tariff.

Extensions and expansions policy

CGPJV's proposed access arrangement provides that CGPJV will consult with the Commission regarding whether or not an extension of the CGP, or expansion beyond capacity of 175TJ/day, will be treated as part of the covered pipeline. However, there is no obligation on the part of CGPJV to seek the Commission's consent.

For expansions up to 175TJ/day, CGPJV requires evidence of sufficient proven reserves before committing to expanding the pipeline.

The Commission proposes a number of amendments to CGPJV's extensions and expansions policy:

- CGPJV should seek the consent of the Commission prior to including an extension as part of the covered pipeline;
- CGPJV should specify how an extension that is to be treated as part of the covered pipeline will affect reference tariffs;
- in satisfying itself that sufficient proven reserves exist, CGPJV should not require a prospective user to provide any information that the prospective user reasonably believes may be commercially detrimental to it to reveal;
- CGPJV should specify objective thresholds at which it will expand capacity up to 175TJ/day; and
- any expansion of capacity beyond 175TJ/day is to be considered as part of the covered pipeline unless the Commission agrees otherwise. This amendment

acknowledges the potential for market power when capacity is full and the opportunity for monopoly rents to be extracted if the expansion is unregulated.

Review and expiry of the access arrangement

As the revisions submission date, 1 November 2022, and revisions commencement date, 1 May 2023, are prescribed in the derogation the Commission has no ability to review these dates. A further consequence of the derogation is that, having approved the non-tariff elements of the access arrangement in this process, the Commission will not then be entitled to review the non-derogated elements of the access arrangement again prior to the revisions submission date.

Given the uncertainty arising from the extended duration of the access arrangement period, the Commission proposes that specific major events be defined in the access arrangement which would trigger a review of the access arrangement prior to the revisions submissions date. While an early review would have no implications for the derogated reference tariff and reference tariff policy, since the Commission has no power to review these prior to the year 2023, the Commission would not be similarly constrained with respect to the non-tariff elements which have not been derogated.

Proposed amendments

The Commission proposes the following amendments to the access arrangement.

Proposed amendment A2.1

In order for CGPJV's access arrangement for the CGP to be approved, the additions to the reference tariff policy must be removed so that it accurately reflects the Tariff Arrangement approved by the Minister.

Proposed amendment A3.1

In order for CGPJV's access arrangement for the CGP to be approved, CGPJV must either:

- submit its standard Access Agreement as part of the access arrangement and undertake to submit proposed changes to the Commission for approval in accordance with section 2.28 the Code. The Commission may, pursuant to section 2.33 of the Code, approve the proposed revisions without public consultation if the revisions are not material and will not affect the reference tariff or reference service; or
- amend the access arrangement so that it is clear that prospective users have a right to access the reference service (given available capacity) subject only to those terms and conditions set out in the approved access arrangement.

Proposed amendment A3.2

In order for CGPJV's access arrangement for the CGP to be approved, section 6.5 of the proposed queuing policy must be amended such that CGPJV, in seeking that a prospective user demonstrate that it will have access to a supply of gas at the time it is anticipated it will be offered access to the service, can only seek written confirmation from the prospective user that the necessary supply arrangements are in place. No commercially sensitive information (such as location of the gas supply or the identity of the supplier) can be required to be divulged.

Proposed amendment A3.3

In order for CGPJV's access arrangement for the CGP to be approved, CGPJV must amend its queuing policy to provide that:

- the reference service and negotiated services have equal priority; and
- no provision of the queuing policy diminishes CGPJV's right to provide the reference service at the reference tariff (plus a surcharge in relation to developable capacity beyond 175TJ/day if applicable).

Proposed amendment A3.4

In order for CGPJV's access arrangement for the CGP to be approved, section 7.1 of the proposed extensions and expansions policy must be amended such that CGPJV must seek the approval of the Commission prior to electing that an extension will form part of the covered pipeline for the purposes of the access arrangement.

Proposed amendment A3.5

In order for CGPJV's access arrangement for the CGP to be approved, section 7.1 of the proposed extensions and expansions policy must be amended to specify how any extension which is to be treated as part of the covered pipeline will affect reference tariffs.

Proposed amendment A3.6

In order for CGPJV's access arrangement for the CGP to be approved, section 7.2 of the proposed extensions and expansions policy must be amended such that CGPJV, in seeking to satisfy itself that sufficient proven reserves exist to cover the economic life of the expanded pipeline, will not require the prospective user to provide any information that the prospective user reasonably believes may be commercially detrimental to it to reveal.

Proposed amendment A3.7

In order for CGPJV's access arrangement for the CGP to be approved, section 7.2 of the proposed extensions and expansions policy must be amended to set out objective thresholds at which CGPJV will expand the capacity of the pipeline up to 175TJ/day.

Proposed amendment A3.8

In order for CGPJV's access arrangement for the CGP to be approved, CGPJV must amend its extensions and expansions policy to the effect that, at the time it comes into operation, any expansion of capacity beyond 175TJ/day is to be considered part of the covered pipeline unless at that time the Commission agrees that the expansion should not be covered.

Proposed amendment A3.9

In order for CGPJV's access arrangement for the CGP to be approved, the Commission requires CGPJV to include in the access arrangement a list of specific major events that will trigger a review of the non-tariff elements of the access arrangement that do not form part of the Tariff Arrangement approved by the Minister.

1. Introduction

1.1 Background

On 3 November 2000 the Carpentaria Gas Pipeline Joint Venture (CGPJV)¹ submitted to the Australian Competition and Consumer Commission (the Commission) for approval its proposed access arrangement for the Ballera to Mount Isa Pipeline, commonly known as the Carpentaria Gas Pipeline (CGP). The application was made under section 2.2 of the *National Third Party Access Code for Natural Gas Pipeline Systems* (the Code).

The CGP transports gas from the fields at Ballera in south west Queensland to Mount Isa in north west Queensland. It was constructed to meet the energy needs of the mining industry in north west Queensland and carries gas to mines and power generation facilities. Construction of the CGP commenced in 1997 following a bidding process and was completed in 1998. AGL was successful in obtaining the development rights for the pipeline through Roverton Pty Ltd, at that time a subsidiary of AGL.

On 13 June 2000, AGL floated its gas pipeline assets through the Australian Pipeline Trust, which owns 70 per cent of the CGP and 100 per cent of the lateral to Cannington. The other parties to the joint venture are the SWQ Producers.²

The access arrangement describes the terms and conditions on which CGPJV proposes to make access to services provided by the CGP available to third parties. The Commission has made this Draft Decision³ in accordance with the provisions of the Code and based on information supplied by CGPJV and submissions from interested parties. The Commission invites submissions in response to this Draft Decision.

Under section 58 of the *Gas Pipelines Access (Queensland) Act 1998*, some elements of the access arrangement, notably the reference tariff and reference tariff policy, reference service and review date, have been determined by the Queensland Government for the initial access arrangement period and cannot be reviewed by the Commission. Consequently, the Commission has jurisdiction to require amendments to the access arrangement with respect to the other non-tariff elements only. Many of the issues raised in the submissions related to matters over which the Commission currently has no jurisdiction as a result of the derogation imposed by the Queensland

¹ Comprising: Roverton Pty Ltd; Santos Ltd; Delhi Petroleum Pty Ltd; Boral Energy Resources Ltd; Vamgas Pty Ltd; Australian Hydrocarbons Ltd and Oil Company of Australia. Roverton is the operator of the CGP.

² APT offer document, *Buried Treasure*, May 2000, p. 33. The 'SWQ Producers' is a reference to the producers of gas in the Cooper Basin of south west Queensland.

³ The proposed access arrangement initially lodged by CGPJV and placed on the Commission's website contained errors in the numbering of provisions. An amended version of the proposed access arrangement has subsequently been placed on the Commission's website, however many submissions referred to provisions that had incorrect numbering. References in the Commission's Draft Decision are to the amended version. For amended version of the access arrangement, please refer to: <http://www.accc.gov.au/gas/fs-gas.htm>

Government. The Queensland Government would have to amend its legislation before the Commission would have any authority to require amendments to the access arrangement in relation to the derogated elements.

1.2 Invitation to make submissions

Pursuant to section 2.13 of the Code, this Draft Decision states the amendments (or nature of the amendments) that would have to be made to the proposed access arrangement in order for the Commission to approve it. This Draft Decision identifies, for the benefit of CGPJV and third parties, the issues that need to be resolved before the Commission makes a final decision whether to approve the access arrangement proposed by CGPJV.

The Commission will consider carefully responses by CGPJV and third parties, and may seek to follow up particular issues with CGPJV and other interested parties during the remaining public consultation period. Contact details for enquiries to the Commission are given below.

Please forward submissions to the Commission by close of business on 21 September 2001. To ensure that the Commission and CGPJV have an adequate opportunity to consider the submissions only nominal extensions of time will be granted.

Please forward submissions in electronic and paper form to:

File reference: C2000/1179
Ms Kanwaljit Kaur
Acting General Manager
Regulatory Affairs – Gas
Australian Competition and Consumer Commission
P O Box 1199
DICKSON ACT 2602

e-mail submissions to: david.hatfield@acc.gov.au

Enquiries: Mr David Hatfield
Tel: 02 6243 1266
Fax: 02 6243 1205
ACCC website: www.acc.gov.au

Public submissions will be forwarded to CGPJV for response. Submissions will be available publicly on public register files maintained by the Code Registrar and Commission. Once all submissions are received, public submissions will be available from the Commission's website.

If you include information that is of a confidential or commercially sensitive nature in your submission, it should be clearly marked as such. Under section 7.12 of the Code, the regulator (the Commission) must not disclose such information to any person nor to the Code Registrar. However, information may be disclosed if the Commission is of the opinion that disclosure would not be unduly harmful to the legitimate business

interests of the service provider, a user or a prospective user. Therefore, if you wish to claim confidentiality or commercial sensitivity, please explain your reasons and identify the legitimate business interests that would be harmed by public disclosure of the information.

If you claim confidentiality for part of a submission, please provide separate hard copies and electronic versions of the submission in 'public' and 'confidential' formats.

In naming electronic documents a useful convention to follow is:

Public [or Confid] company name [day month year].

For example: 'Public Gasgen 150201.doc'.

To avoid potential confusion over the date of electronic versions of submissions and covering letters, please avoid using templates that automatically update each time the document is opened.

The remainder of this introduction includes:

- a description of the current assessment process and the steps to final approval of an access arrangement for the CGP;
- a description of the regulatory framework for the Queensland gas pipeline industry;
- a summary of the criteria for assessing an access arrangement under the Code; and
- the Commission's Draft Decision.

1.3 Consultative process and relevant documents

The Code sets out the following public consultation process applicable to the Commission as regulator. The Commission must:

- inform interested parties that it has received the access arrangement;
- publish a notice in a national daily newspaper that describes the covered pipeline to which the access arrangement relates, states how copies of the application documents can be obtained and requests submissions by a date specified in the notice;
- publish notices in a national daily newspaper of extensions to the date by which a final decision on the access arrangement is due;
- after considering submissions received, issue a draft decision that either proposes to approve the access arrangement or proposes not to approve the access arrangement. The Commission must state the amendments (or the nature of the amendments) that have to be made to the access arrangement in order for the Commission to approve it. The Commission must seek submissions following release of the draft decision;

- after considering any additional submissions and a revised access arrangement (if submitted), 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) that have to be made to the access arrangement (or revised access arrangement) in order for the Commission to approve it; and
- if the amendments are satisfactorily incorporated in a revised access arrangement, issue a final approval. If not, the Commission must draft and approve its own access arrangement for the CGP.

In November 2000 the Commission published an advertisement in the Australian Financial Review to advise that it had received CGPJV's proposed access arrangement. The advertisement invited submissions from interested parties in response to an issues paper released at that time. Submissions were received from BHP Minerals Pty Ltd (BHP), CS Energy Limited (CS Energy), Ergon Energy Gas Pty Ltd (Ergon), MIM Holdings Limited (MIM), Pasminco Century Mine Ltd (PCML) and Santos Ltd (Santos). CGPJV also responded to the issues paper. The submissions raised many issues including the following concerns:

- the access arrangement offers only one reference service, although many other services may be demanded between now and the end of the access period;
- the service provider may withhold consent in response to a request by a user to change receipt or delivery points on 'reasonable commercial or technical grounds', but these are not specified in the access arrangement;
- the service provider may elect whether an expansion of capacity beyond 175TJ/day or an extension is treated as part of the covered pipeline;
- there are no stated threshold levels of capacity that trigger the installation of compressors on the CGP up to capacity of 175TJ/day; and
- the access arrangement expires in 2023, an excessive period of time, and there are no triggers for a review of either the tariffs or the non-tariff elements of the access arrangement.

1.3.1 Regulatory framework

The main legislation regulating access to gas transmission services in Queensland is outlined below.

Gas Pipelines Access (Queensland) Act 1998

This Act is referred to as the *Gas Pipelines Access Law* (GPAL). The GPAL governs the conduct of pipeline service providers and other interested parties in respect of access and regulatory issues, dispute resolution and administrative processes. In addition, the GPAL amends the *Petroleum Act 1923* (Queensland) and the *Gas Act 1965* (Queensland) in an attempt to create a regulatory regime consistent with the Code.

Gas Pipelines Access (Queensland) Act 1998 – Derogations

The GPAL establishes a number of derogations from the Code. In particular, section 58 of the Act provides that the reference tariffs for several transmission pipelines were to be approved and gazetted by the Queensland Minister for Mines and Energy rather than complying with the access pricing principles, and related regulatory process, in the Code. Consequently, the reference tariffs are non-reviewable for an extended period of time – in the case of the CGP in excess of 20 years.

The National Third Party Access Code for Natural Gas Pipeline Systems (the Code)

The Code requires, among other things, service providers of gas transmission to submit access arrangements to the Commission for approval. Pipelines that were covered by the Code when it was implemented are obliged to lodge access arrangements. The CGP came into operation after the Code was implemented and is deemed to be a covered pipeline under the Code pursuant to section 57 of the GPAL.

Gas Pipelines Access (South Australia) Act 1997

In accordance with the Natural Gas Pipelines Access Agreement, South Australia was the lead legislator in implementing the national gas access legislation.

Regulatory institutions

The regulatory institutions with responsibility for administering the Queensland legislation with respect to transmission pipelines are:

- the National Competition Council (NCC) – coverage advisory body;
- the Commonwealth Minister – coverage decision maker;
- the Commission – relevant regulator and relevant arbitrator;⁴
- the Australian Competition Tribunal – merits review body; and
- the Federal Court – judicial review.

The Queensland Competition Authority⁵ (QCA) is regulator and arbitrator in Queensland with respect to distribution (reticulation) pipelines.

1.3.2 Certification of the Queensland Gas Access Regime

On 25 September 1998, the Queensland Premier applied to the NCC for certification of the ‘effectiveness’ of the Queensland Third Party Access Regime for Natural Gas Pipelines. The Commonwealth Minister decides whether such regimes are ‘effective’ based on recommendations from the NCC.

⁴ The Commission is also regulator and arbitrator with respect to transmission pipelines in the other States and territories with the exception of Western Australia.

⁵ *Queensland Competition Authority Act 1997*.

Should the Commonwealth Minister certify the regime as effective, then the services subject to the regime cannot be declared for access under Part IIIA of the *Trade Practices Act 1974* (TPA). In the event of the regime not being certified as effective, then the Commission's considerations would not be affected. However, in this case the pipeline would be exposed to the risk of being declared under Part IIIA of the TPA. Were this to occur, unsatisfied access seekers may notify access disputes to the Commission for binding arbitration. In arbitrating such an access dispute, the Commission would not be bound by the reference tariffs established by the Queensland Minister in the derogations. The Commission would operate under Part IIIA of the TPA rather than the Code to determine a tariff in these circumstances.

1.4 Duration of CGP access arrangement

As established in the derogations, the revisions submission date for the review of CGPJV's access arrangement is 1 November 2022.

1.5 Criteria for assessing an access arrangement

The Commission may approve a proposed access arrangement only if it is satisfied that it contains the elements and satisfies the principles set out in sections 3.1 to 3.20 of the Code. Those principles are summarised below. The regulator cannot reject a proposed access arrangement on the basis that the arrangement does not address a matter that section 3 of the Code does not require it to address. Otherwise, the Commission has broad discretion within the terms of the Code in approving an access arrangement.

An access arrangement must include a policy on the service or services to be offered, including 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 other service(s) that, in the Commission's opinion, should be included in the policy. To the extent practicable and reasonable, users and prospective users must be able to obtain only those elements of a service that they require, and the policy must allow for a separate tariff for an element of a service so requested.

An access arrangement must contain one or more reference tariffs. A reference tariff operates as a benchmark for negotiation of terms of supply of a particular service and provides users with a right of access to the specific service at that tariff.

An access arrangement must also include the following elements:

- terms and conditions on which the service provider will supply each reference service;
- a statement of whether a contract carriage or market carriage capacity management policy is applicable;
- a trading policy that enables a user to trade its right to obtain a service (on a contract carriage pipeline) to another person;

- a queuing policy to determine a user's priority in obtaining access to spare and developable capacity on a pipeline;
- an extensions and expansions policy to determine the treatment under the Code of an extension or expansion of a pipeline;
- 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, the regulator must (pursuant to section 2 of the Code) take into account:

- 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 Commission considers are relevant.

1.6 Draft decision

The Commission proposes not to approve the access arrangement for the CGP submitted by CGPJV in its current form. Pursuant to section 2.13, the proposed amendments that must be incorporated in a revised access arrangement for it to be approved (under section 2.16) are set out in the relevant sections of this Draft Decision and in the Executive Summary.

Chapter 2 of this Draft Decision describes the reference tariff and reference tariff policy that has been determined by the Queensland Minister.

Chapters 3 set out the Commission's analysis of the mandatory non-tariff elements of the access arrangement, including: the services policy; terms and conditions; capacity management policy; trading policy; queuing policy; extensions and expansions policy; and review and expiry of the access arrangement.

Chapter 4 examines the provision of access arrangement information.

Chapter 5 states the Commission's Draft Decision.

2. Reference tariff elements

2.1 Reference tariff and reference tariff policy

2.1.1 Code requirements

Sections 3.3 to 3.5 of the Code require an access arrangement to include a reference tariff for at least one service that is likely to be sought by a significant part of the market and other services for which the Commission considers a reference tariff should be included. An access arrangement must also include a policy describing the principles that are to be used to determine a reference tariff (a reference tariff policy). The reference tariff and reference tariff policy should comply with the reference tariff principles in section 8 of the Code.

The reference tariff and reference tariff policy for the CGP, however, have been derogated by the Queensland Government. Consequently, they are not subject to review by the Commission in its consideration of CGPJV's proposed access arrangement.

2.1.2 CGPJV's proposal

CGPJV is proposing a reference tariff for one service (non-interruptible forward haul) in accordance with the Tariff Arrangement approved by the Minister (derogated tariff arrangement). The reference tariff is described in section 1 of Schedule A of the proposed access arrangement and applies to capacity up to 175TJ/day. Where the term of an access agreement for a reference service extends beyond the revisions commencement date, the tariffs payable under the access agreement will be the reference tariff then payable for a comparable service, or as otherwise agreed.

The Base Tariff Rates are set out in Schedule A – Attachment A1 and replicated in Table 2.1 of this Draft Decision. Under the terms of the derogated tariff arrangement, the Base Tariff Rates increase each quarter by 75 per cent of the Consumer Price Index (CPI) (clause 1.2.4).

The derogated tariff arrangement provides for an adjustment to tariffs for contracts with a term of less than 15 years. For these users, tariffs will increase by two per cent for each year that the term of the contract is less than 15 years.

The derogated tariff arrangement also provides that if a user takes delivery of less than the Minimum Quantity⁶ in any year, the service provider will be entitled to charge the reference tariff as if the user had taken delivery of the Minimum Quantity in that year (clause 1.2.5(a)). Clause 1.2.5(a) does not apply to the Principal Foundation User in relation to its Initial Capacity Reservation. In the event that the Principal Foundation User takes delivery of less than 17PJ in any year, the service provider will be entitled to

⁶ Minimum Quantity is defined as the higher of 90 per cent of the contracted quantity or 90 per cent of the Highest Average Quantity of Gas (Schedule A – Attachment A3).

charge the reference tariff as if the Principal Foundation User had taken delivery of 17PJ in that year (clause 1.2.5(b)).

The derogated tariff arrangement also provides for an adjustment to tariffs in accordance with a user's load factor. A user's tariff in any quarter will be determined in accordance with the following formula:

$$\text{Arq} = \text{Rq} \times \frac{\text{Load Factor}}{1.2}$$

where:

Arq = the tariff rate for the relevant quarter

Rq = the adjusted base tariff rate for the relevant quarter, and

Load Factor is defined as the average of the three highest quantities of gas delivered to the user during the year divided by the Average Daily Quantity of Gas for that year.

Under this formula users with poor load factors will pay higher tariffs relative to users with efficient load factors. The formula, therefore, acts an incentive to encourage users to improve their load factors, which in turn would lead to a more efficient use of the pipeline.

The structure of the reference tariff is often referred to as a 'postage stamp' tariff, in that the tariff is not distance-based. A user at Mt Isa will pay the same tariff as a user along the pipeline and closer to the receipt point (given the same volume assumptions). Furthermore, the tariff is a one-part tariff, based on contracted capacity, in contrast with two-part tariffs (a capacity and commodity charge) which are often applied to gas pipelines.

The derogated tariff arrangement (clause 1.3.5) provides that the service provider is not entitled to recover from users by way of charges:

- the cost of constructing any capital improvements to the pipeline to increase capacity up to 175TJ/day; or
- the cost of compressor fuel used in the operation of the pipeline except where gas is delivered into the pipeline by or on behalf of a user at a pressure less than 14 800kPa.

The derogated tariff arrangement also includes provisions for overrun charges and imbalance charges. These provisions are discussed in section 3.2, 'Terms and conditions', of this Draft Decision.

As well as the derogated tariff arrangement, CGPJV is proposing to include in the reference tariff policy additional provisions relating to adjustment of the capital base to take account of new facilities investment (Clause 4 of the access arrangement).

Table 2.1: Base tariff rates for the CGP as at 30 September 1994

Access Agreement	Amount
(a) Access Agreements between the Service Provider and the Principal Foundation User entered into prior to completion.	80 cents/GJ The Principal Foundation User may take delivery of up to 105% of the Initial Capacity Reservation at a Base Tariff Rate determined in accordance with this paragraph (a). If the Principal Foundation User takes delivery of more than 105% of the Initial Capacity Reservation, the Base Tariff Rate of 96 cents/GJ will apply in relation to the excess.
(b) Access Agreements entered into prior to Completion other than those referred to in paragraph (a) of this Attachment where the User elects to be treated as a Foundation User	Between 86 cents and 96 cents/GJ with the precise Base Tariff Rate being determined by the formula: Base Tariff Rate - $[96 - (F-25)/2]$ cents/GJ Where: F: = the number of petajoules of gas transported through the Pipeline in a particular Year for all Users PROVIDED THAT if less than 25 petajoules of gas are transported through the Pipeline in a particular Year for all Users, F will be 25 for the purpose of calculating the Base Tariff Rate and if more than 45 petajoules of gas are transported through the Pipeline in a particular Year for all Users, F will be 45 for the purpose of calculating the Base Tariff Rate. The User may take delivery of up to 105% of the User's Contracted Annual Quantity at a Base Tariff Rate determined in accordance with this paragraph (b). If the User takes delivery of more than 105% of the Users Contracted Annual Quantity, the Base Tariff Rate of 96 cents/GJ will apply in relation to the excess.
(c) All other Access Agreements	96 cents/GJ

Source: Access arrangement, p. 23.

2.1.3 Submissions by interested parties

CS Energy raised some concerns that the reference tariff policy may place some users at a competitive disadvantage. CS Energy's concerns include:

- lower tariffs for foundation users place subsequent users at a disadvantage;
- higher tariffs for shorter term contracts (less than 15 years) disadvantage smaller users; and
- the lack of reference services (only one reference service with one reference tariff) will mean greater reliance on negotiated services at potentially lower tariffs, which would disadvantage users of reference services.

CS Energy proposed that all negotiated services should be reviewed by an independent third party for their impact on the forecasted revenue that served as the basis for the regulated tariffs. Additionally, CS Energy proposed that a profit sharing policy be implemented so that the revenue from negotiated services does not lead to a windfall for the service provider.

PCML questioned why CGPJV should be entitled to earn additional revenue from negotiated services or other reference services. According to PCML the setting of the reference tariff should provide CGPJV with a full and adequate return on its investment.

CS Energy proposed that zonal pricing be implemented to assist each user to calculate its cost and benefit for trading a contracted service to another user. CS Energy stated that different tariffs between mainline and laterals would assist in a proper allocation of costs to the appropriate end user. CS Energy noted that, as the costs of the Cannington lateral are unknown, a third party would not be able to effectively cost the use of that lateral.

While recognising that review of reference tariffs is outside the Commission's jurisdiction, PCML expressed the view that the adjustment to tariffs for contracts of less than 15 years duration was onerous. Furthermore, without being specific, PCML suggested that some overlap existed between clause 1.2.5 (tariffs calculated on Minimum Quantity) and clause 1.2.6 (adjustment for load factor) which could lead to unintended results.

2.1.4 Commission's considerations

Due to the derogation by the Queensland Government for this pipeline's access arrangement, the Commission is unable to review the reference tariff until the end of the access arrangement period, which is given as the revisions commencement date of 1 May 2023. Consequently, the issues raised by interested parties in relation to the reference tariff and reference tariff policy are outside the Commission's jurisdiction for the initial access arrangement period.

With regard to the additional provisions proposed by CGPJV in relation to new facilities investment, legal advice provided to the Commission indicates that the derogated tariff arrangement represents the reference tariff policy in its entirety. The Commission understands, therefore, that CGPJV is unable to add to the reference tariff policy in the manner proposed. The proposed provisions per se would not normally be inconsistent with the Code. Nevertheless, because CGPJV does not have the power to modify the reference tariff policy, the Commission proposes an amendment that the additional provisions be removed from the access arrangement. In any case these provisions would unlikely have any practical effect. They relate to adjustments to the capital base to take account of new facilities investment, yet a value for the initial capital base has not been established for the initial access arrangement (it does not form part of the derogated tariff arrangement). In effect, a value for the capital base will not be established until the commencement of the next access arrangement period.

Proposed amendment A2.1

In order for CGPJV's access arrangement for the CGP to be approved, the additions to the reference tariff policy must be removed so that it accurately reflects the Tariff Arrangement approved by the Minister.

CS Energy's proposal for zonal pricing is inconsistent with the 'postage stamp' tariff described in the derogated tariff arrangement, which the Commission has no authority to review for the initial access arrangement period. A user may negotiate with CGPJV for a distance-based tariff as part of a negotiated service, however CGPJV is under no obligation to agree to such a request.

The Commission notes the comments by CS Energy and PCML regarding tariffs and revenue relating to negotiated services and CS Energy's proposal for a profit-sharing mechanism. The derogated tariff arrangement contains no provision for a profit-sharing mechanism and the Commission has no power under the derogation to require an amendment to the access arrangement to include such a mechanism.

CS Energy expressed concern that the negotiation of tariffs (under a negotiated service) less than the reference tariff would place users of the reference service at a competitive disadvantage. The Code, however, envisages that some users will negotiate terms and conditions (including tariffs) outside the provisions of the Code. The Code does not limit the terms and conditions on which a service provider and user may reach agreement.

Some interested parties proposed that the access arrangement should contain other reference services for which a reference tariff would be charged. However, due to the nature of the derogation which prohibits any modifications to the reference tariff policy, the Commission is unable to required the inclusion of additional reference services. This issue is discussed in detail in Chapter 3 of this Draft Decision under 'Services policy'.

3. Non-tariff elements

In this chapter the mandatory non-tariff elements of the proposed access arrangement for the CGP are assessed for compliance with the Code. The Code requirements are outlined for each mandatory element, followed by a summary of the service provider's proposal, the issues raised in submissions, CGPJV's response to submissions and the Commission's considerations. Where relevant these are followed by amendments that the Commission proposes be made for the access arrangement to be approved. All amendments are replicated in the Executive Summary.

Section 3 of the Code establishes the minimum content of an access arrangement, which includes the following mandatory non-tariff elements:

- a services policy that must contain at least one service that is likely to be sought by a significant part of the market;
- terms and conditions on which the service provider will supply each reference service;
- a capacity management policy to state whether the covered pipeline is a contract carriage or market carriage pipeline;
- in the case of a contract carriage pipeline, a trading policy which refers to the trading of capacity;
- a queuing policy which defines the priority that users and prospective users have to negotiate capacity where there is insufficient capacity on the pipeline;
- an extensions and expansions policy which determines whether or not an extension or expansion of a covered pipeline would be treated as part of the covered pipeline for the purposes of the Code; and
- a review date by which revisions to the access arrangement must be submitted and a date on which the revisions are intended to commence.

3.1 Services policy

3.1.1 Code requirements

Sections 3.1 and 3.2 of the Code require an access arrangement to include a services policy, which must include a description of one or more services that the service provider will make available to users and prospective users. The policy must contain one or more services which are likely to be sought by a significant part of the market, and any service or services that in the relevant regulator's opinion should be included in the services policy.

To the extent that it is practicable and reasonable, a service provider should make available those elements of a service required by users and prospective users and, if requested, apply a separate tariff to each.

3.1.2 CGPJV's proposal

CGPJV proposes to offer two transportation services under its access arrangement:

- a reference service: non-interruptible transportation service for gas delivered into the pipeline by or on behalf of the user through any length of the pipeline in the direction from south west Queensland to Mount Isa, including an overrun service; and
- a negotiated service: agreements negotiated to meet the needs of a user that differ from those in the reference service.

Reference service

The reference service for the pipeline is described in the derogated tariff arrangement and is offered for capacity up to the first 175TJ/day of the pipeline.

Negotiated service

Where a prospective user has special needs that differ from those which would be satisfied by the reference service, the prospective user may seek to negotiate different terms and conditions with CGPJV, hence as a negotiated service. Should a dispute arise, CGPJV purports that it will be resolved in accordance with the dispute resolution procedures in the GPAL and the Code, unless the parties agree otherwise.

Access and requests for service

Clause 1.3 of the proposed access arrangement outlines the procedures for a user or prospective user to request or gain access to a service from CGPJV. For a prospective user to obtain access to a service a request must be lodged and the prudential requirements set by CGPJV must be met. The prudential requirements are detailed below. The prospective user may have only one active request for a given tranche of capacity to a particular delivery point, with the minimum level of detail required in this request being that which is detailed in Schedule E of the access arrangement. Should the request be incomplete, CGPJV will advise the prospective user of the deficiency. If the request is amended within seven days, the priority of this request will depend on the date on which CGPJV first received the request. Otherwise, the priority will depend on the date on which CGPJV receives the completed request.

CGPJV proposes that within 30 days of receiving a completed request it will advise the prospective user whether capacity is available, whether there is a queue for that capacity and the price. There will be no queue if there is sufficient capacity to meet a request for service. Should there be insufficient capacity to satisfy a request, a queue will be formed and the queuing policy (outlined in section 6 of access arrangement) will apply. A request will lapse unless the prospective user has either entered into an access agreement for a reference service or a negotiated service, or commenced bona fide negotiations, within 30 days of CGPJV advising that capacity is available.⁷

⁷ A request for service will not lapse in the event of a dispute being notified under the Code until that dispute has been resolved in accordance with the Code.

Prudential requirements

CGPJV's proposes that its prudential requirements must be met in order for a prospective user to obtain a service from CGPJV. These prudential requirements, which are listed in clause 1.3 of the proposed access arrangements, are:

- the prospective user must be a resident in, or have a permanent establishment in, Australia;
- the prospective user must not be under external administration as defined in the Corporations Law or under any similar form of administration in any other jurisdiction; and
- the prospective user may be required to provide reasonable security in the form of a parent company guarantee, a bank guarantee or similar security. The nature and extent of the security will be determined having regard to the nature and extent of the obligations of the prospective user under the access arrangement.

3.1.3 Submissions by interested parties

Many submissions stated that is inappropriate for CGPJV to offer only a single reference service. Given that the proposed access arrangement will result in there being no ability to require another reference service or reference tariff until the year 2023, the following suggestions for additional reference services have been proposed:

- pressure service: a mechanism that sets a tariff for a pressure service should be included, which takes into consideration the obligations of CGPJV to expand the pipeline under the proposed access arrangement.
- CS Energy suggested that the access arrangement should declare how it will treat requests for pressure exceeding its declared minimum and the impact that this service could have on users and prospective users. Additionally, it should indicate how such a pressure service could impact on the queuing policy, the timing of any compressor installations or looping and the treatment of pressure service costs;
- interruptible service: a transparent interruptible service should be made available given that this service is available on most pipelines;
- backhaul service: a tariff should be published for this service due to the real possibility of alternative gas supplies from the Timor Sea and PNG;
- a per kilometre service: both BHP and CS Energy suggested a per kilometre service. CS Energy proposed that the tariff could be structured to give a capacity reservation charge for a firm forward haul relative to the distance from receipt and delivery points with a separate throughput charge based on distance transported;
- spot tariff: in CS Energy's opinion spot tariffs should be allowed as a regulated tariff as there could be more gas producers and more gas pipeline users in the future, thus more flexible tariffs would decrease the costs for the end user; and
- overrun and imbalance policy: designated for an 'essential service' user.

3.1.4 Commission's considerations

In light of the comments from interested parties regarding the provision of additional services and given that the access arrangement cannot be reviewed until 2023 – an extensive period of time in which many new developments could take place – the Commission sought legal advice as to whether the Commission can require the inclusion of additional reference services.

The Commission has received legal advice that it cannot require the inclusion of additional reference services. Of relevance is section 58(3) of the GPAL, which states:

The approved tariff arrangement is taken to be approved under the Gas Pipeline Access Law as the reference tariff and the reference tariff policy for the access arrangement to be submitted under the law for the pipeline until the revisions commencement date for the access arrangement.

As the derogated tariff arrangement provides for only one reference service and reference tariff, any amendment to the access arrangement that required CGPJV to include additional reference services, with associated reference tariffs, would appear to contravene section 58(3) of the GPAL. The Commission, however, would be entitled to require the services policy in the access arrangement to describe additional services, but these would have to be included as non-reference services, as no additional reference tariff can be set for a pipeline that is subject to a derogated tariff arrangement under the GPAL.

In discussion with users, they indicated their preference for the Commission to act upon this advice. That is, to require the inclusion in the access arrangement of additional services as non-reference services.

In view of the legal advice provided to the Commission, the Commission sought the advice of the Queensland Government on possible options to address the limitations of the derogated tariff arrangement. The Queensland Office of Energy replied that it did not consider that additional reference services were required. It noted that the access arrangement provides for a 'negotiated service' which would cover any additional services sought by users. The Office of Energy also noted that in the event of a dispute over terms and conditions, a prospective user has recourse to the dispute resolution provisions of the Code. The Office of Energy stated that it does not consider that it would be appropriate for the Queensland Government to amend the derogation. It stated that:

... it was intended that the derogations would preserve the outcomes of effective regulatory processes undertaken at the time of granting pipeline licences.⁸

CGPJV's service policy satisfies section 3.2 of the Code as it contains one service that is likely to be sought by a significant part of the market. The Commission does not propose to require CGPJV to amend its access arrangement to include in its services policy any additional services. Since these services could only be included as non-reference services, some negotiation between CGPJV and the user as to terms and conditions would still be necessary. Any additional services required by users, such as backhaul or an interruptible service, could be settled with CGPJV as a negotiated

⁸ Queensland Office of Energy letter to the Commission, 25 June 2001, p. 1.

service, as contained in the access arrangement. In the event of a dispute, the prospective user has recourse to the dispute resolution provisions of the Code.

Moreover, the Commission does not consider that the inclusion of additional non-references services is an imperative at the current time. This may change over time, however, as new developments in the gas industry occur, such as a pipeline from Timor Sea to Mt Isa. This may become a crucial issue with respect to the CGP access arrangement, particularly as the derogation provides that the access arrangement will not be reviewed until the year 2023. For this and other reasons the Commission is proposing an amendment to the access arrangement to the effect that CGPJV must specify major events that will trigger a review of the non-tariff elements of the access arrangement. This proposal is considered in more detail in section 3.7 of this Draft Decision.

With respect to BHP's and CS Energy's proposal for a 'per kilometre service' with an accompanying distance based tariff, such a tariff would be inconsistent with the 'postage stamp' tariff provided for in the derogated tariff arrangement. The addition of a per kilometre service would essentially be a variation to the reference tariff which, in view of the derogation, is outside the jurisdiction of the Commission.

3.2 Terms and conditions

3.2.1 Code requirements

Section 3.6 of the Code requires an access arrangement to include the terms and conditions on which a service provider will supply each reference service. These terms and conditions must be reasonable according to the relevant regulator's assessment.

3.2.2 CGPJV's proposal

CGPJV proposes that it will provide services on the terms and conditions set out in its standard Access Agreement for the service from time to time. CGPJV also proposes that the terms and conditions of access will be consistent with the access arrangement, including the derogated tariff arrangement in Schedule A and the terms and conditions described in Schedule C. The terms and conditions contained in Schedule A form part of the derogation and therefore the Commission has no ability to review those terms and conditions. The remaining terms and conditions, which are set out in Schedule C, are subject to approval by the Commission in accordance with the Code.

In its proposed access arrangement, CGPJV submits that it will not discriminate between prospective users in the provision of services on the basis of:

- past transactions or relationships with any one or more of the owners of the pipeline;
- the identity of the prospective user; or
- the prospective user being a related party of any one or more of the owners of the pipeline.

Following is a summary of the key aspects of the terms and conditions covered in Schedule A (the derogated tariff arrangement) and Schedule C of the access arrangement.

Overrun charges (Schedule A, clause 1.3.7)

Overrun charges may apply if on any day a user takes delivery of a quantity of gas that exceeds the user's contracted capacity. Authorised overruns will be charged at the same rate as the Base Tariff Rate, whereas unauthorised overruns will be charged at twice the Base Tariff Rate. No overrun charges will apply if:

- the total quantity of gas transported for all users is less than 82TJ/day, in which case no overrun charges will be levied; or
- the overrun was caused by CGPJV without the user's prior approval.

Imbalance charges (Schedule A, clause 1.3.8)

CGPJV and the user are obliged to cooperate in good faith to minimise or eliminate any imbalance. Should an imbalance exist at the end of any given month, the user must rectify the imbalance in the subsequent month. If the user fails to take corrective action during that month, the service provider may adjust the user's receipts and deliveries over that subsequent month. If an imbalance still remains at the end of that subsequent month, the service provider may charge the user an imbalance charge pursuant to clause 1.3.8.4.

Conditions relating to gas (Schedule A, clause 2.2.1)

The reference service is subject to the conditions that (a) the gas entering the pipeline must conform to specifications in Attachment 2, (b) CGPJV has the right to commingle gas, (c) users must deliver gas into the pipeline at the receipt location at a pressure of 14 800kPa and (d) the service provider will provide a minimum pressure of 2000kPa at the inlet to delivery locations.

Linepack (Schedule A, clause 2.2.3)

CGPJV shall provide a fixed quantity of gas to form part of the linepack and users shall supply the remainder of the linepack at their own cost. CGPJV shall determine as necessary the quantity of gas required for the linepack and then advise users of the quantity of gas that they will be required to supply. A user's share of linepack is the ratio of the user's contracted quantity to total contracted quantity multiplied by the total quantity of linepack less the quantity supplied by CGPJV.

Nominations and variations (Schedule C, clauses 37 and 38)

Where a user requests in advance an increase (decrease) in the quantity of gas to be delivered from a delivery point, CGPJV will increase (decrease) the quantity of gas to be delivered from that point provided that:

- it does not impact on the receipt or delivery of gas for or on behalf of other users; and

- the linepack supplied by the user does not fall below (exceed) that linepack which CGPJV reasonably determines is the minimum (maximum) linepack required to be supplied by the user during that day for the pipeline.

Liabilities and indemnities (Schedule C, clause 24)

Liability will be limited to actual damages and will not extend to consequential or indirect loss except for delivery of non-specification gas to a receipt point, or due to negligence or wilful default of CGPJV. If the quantity withdrawn at a delivery point is greater than MHQ in any hour, or greater than MDQ in any day where the circumstances outlined in 1.3.7.1 (a) of Schedule A apply, then liability does include consequential or indirect loss.

Interruptions and curtailments (Schedule C, clause 26)

When emergency repairs or maintenance are required, or when necessary to protect the operational integrity or safe operation of the pipeline, CGPJV can curtail or interrupt receipts and deliveries without incurring liability.

3.2.3 Submissions by interested parties

Both Ergon and PCML's submissions indicated that the access arrangement does not clearly identify the relevant terms and conditions, which would enable prospective users to be sufficiently well informed before making a specific access request.

Ergon noted that the format of the access arrangement, whereby terms and conditions are dispersed throughout the numerous schedules, means that it is difficult to fully assess the requirements and obligations of a user or prospective user. Ergon suggested a comprehensive 'terms and conditions' schedule, which incorporates all necessary aspects of an access arrangement within the one document.

Conditions relating to gas

Both MIM and PCML found it unsatisfactory that a minimum delivery pressure of 2000kPa should be provided for in the derogated tariff arrangement. The major delivery point at the Mica Creek Power Station (MCPS), where 67 per cent of the capacity is disposed, requires a minimum pressure of 3000kPa. They stated that if the pressure at the MCPS delivery point falls from 3000kPa to 2000kPa then the capacity of the pipeline increases by only 2TJ/day. According to MIM and PCML this gives much scope for confusion and obfuscation when the pipeline is close to maximum capacity. CS Energy stated that if a pressure service were part of the access arrangement then this contractual ambiguity would not occur.

Linepack

CS Energy stated that a lack of information makes it unclear what detailed terms and conditions will apply for the day to day administration of the pipeline. For example, the method to be used by CGPJV for determining the amount of linepack to be provided is not stated or how the day-to-day administration of linepack is to be effected, creating uncertainty and potential conflict between users and CGPJV.

BHP stated that Schedule C implies that users are to provide linepack. According to BHP, the means by which the provisions are to be implemented should be clarified, to the effect that:

- differences between nominations, scheduled deliveries and receipt point allocations do not affect the transporter's firm obligation to transport gas up to the MDQ; and
- differences between nominations and deliveries are managed by the shipper to ensure that linepack is maintained against the target linepack.

Liability and indemnities

BHP noted what it considers to be an inconsistency in clause 24 of Schedule C, Liability and Indemnities. This clause specifies that there is no limitation upon consequential loss in the case of delivery of non-specification gas to a receipt point, however, in the case of a delivery point, liability only applies to CGPJV where there has been negligence or wilful default by CGPJV.

Interruptions and curtailments

BHP submitted that the rights to interrupt and curtail should be expressed in such a manner that it may not be construed as relieving the transporter from liability where the interruption or curtailment constitutes a breach of the transporter's obligation to transport.

3.2.4 Commission's considerations

The terms and conditions of access can be found in two sections of the access arrangement: included in the provisions that form part of the derogation; and as part of those provisions that are subject to approval by the Commission in the normal course of its assessment of the access arrangement under the Code. While the Commission considers that structuring the terms and conditions in this manner is a sensible policy for regulatory purposes, a comprehensive schedule of terms and conditions may be more useful for users and prospective users. CGPJV has agreed to produce such a document.

Some of the concerns raised by interested parties, such as MIM and PCML's comments that a minimum pressure of 2000kPa is inadequate, relate to matters contained in the derogation and are not subject to review by the Commission. Moreover, the minimum pressure at individual delivery points would seem to be essentially a contractual matter between the parties involved.

The proposed access arrangement states that CGPJV will provide services on the terms and conditions set out in its standard Access Agreement for the service **from time to time**. The standard Access Agreement does not form part of the proposed access arrangement. The Commission is concerned that this provision may effectively allow CGPJV to make unilateral changes to its standard Access Agreement, and hence to the approved non-tariff terms and conditions of access, without reference to the Commission.

To protect the integrity of the access arrangement process, the Commission proposes an amendment to the access arrangement. The Commission proposes that CGPJV either

submit its standard Access Agreement as part of the access arrangement, or alternatively, that it be made clear that prospective users have a right to access the reference service subject only to the terms and conditions contained in the access arrangement (this would not prevent prospective users voluntarily agreeing to variations to these terms and conditions).

Proposed amendment A3.1

In order for CGPJV's access arrangement for the CGP to be approved, CGPJV must either:

- submit its standard Access Agreement as part of the access arrangement and undertake to submit proposed changes to the Commission for approval in accordance with section 2.28 the Code. The Commission may, pursuant to section 2.33 of the Code, approve the proposed revisions without public consultation if the revisions are not material and will not affect the reference tariff or reference service; or
- amend the access arrangement so that it is clear that prospective users have a right to access the reference service (given available capacity) subject only to those terms and conditions set out in the approved access arrangement.

Overrun and imbalance charges

These provisions form part of the derogated tariff arrangement and are therefore not subject to review by the Commission.

Linepack, nominations and variations

While the derogated tariff arrangement requires that CGPJV provide a fixed quantity of linepack, and users provide the remainder, no guidance is provided as to the method for calculating CGPJV's proportion of linepack. As the linepack provisions are contained in the derogated tariff arrangement, the Commission is not entitled to require CGPJV to make any amendments. Nevertheless, the Commission encourages CGPJV to clarify how it intends to implement in practice its obligations under the derogated tariff arrangement with respect to the supply of linepack.

Some interested parties proposed that CGPJV be required to include provision in its trading policy for the trading of linepack. The Commission doubts that it can require such an amendment to the trading policy for reasons set out in section 3.4 of this Draft Decision. Nevertheless, the Commission considers that, given each user is required to supply a portion of the linepack, the inclusion of a mechanism in the terms and conditions allowing users to trade linepack could assist in the management of nominations and imbalances, and allow users to minimise imbalance charges. CGPJV has indicated to the Commission that the provisions of the access arrangement do not prevent the trading of linepack. On the other hand, users maintain that nothing in their contracts allows them to do so.

The Commission does not support either of the two amendments proposed by BHP with respect to the nominations and variations provisions. Firstly, BHP suggested that

the provisions be clarified so that differences between nominations, scheduled deliveries and receipt point allocations should not affect the transporter's firm obligation to transport gas up to the MDQ. The Commission notes that one of the conditions on which CGPJV will agree to any variation in quantities delivered is that the receipt or delivery of gas on behalf of other users is unaffected. The Commission does not consider that the access arrangement provisions relieve CGPJV of any obligations under existing contracts. If a dispute arises, this a contractual matter between the parties involved.

Secondly, BHP suggested that differences between nominations and deliveries should be managed by CGPJV to ensure that linepack is maintained against the 'target' linepack. The Commission notes that the access arrangement provides for use of linepack to accommodate variations provided that linepack is maintained within a reasonable range.

Liabilities and indemnities

BHP suggested that there is a lack of symmetry in liability between users and CGPJV with respect to consequential loss due to the use of non-specification gas. No limitations are placed on users delivering gas into the pipeline at a receipt point, yet CGPJV's liability for delivery of non-specification gas at a delivery point is limited to negligence or wilful default of CGPJV. The Commission considers that CGPJV's proposal is reasonable and reflects the lack of control that CGPJV, as the transporter but not the owner of the gas, has over gas entering the pipeline.

Interruptions and curtailments

The Commission does not agree with BHP's assertion that the provisions relating to interruptions and curtailments could be construed as relieving CGPJV of any contractual obligations to deliver gas. Clauses 25 to 27 of Schedule C of the proposed access arrangement describe quite specific conditions under which an interruption to, or curtailment of, services may take place. Those conditions are planned work on the pipeline, protection of the integrity or safe operation of the pipeline, compliance with any applicable laws and regulations, emergency situations and force majeure. Failure of CGPJV to fulfil its obligations under any contract is a contractual matter between the parties involved.

3.3 Capacity management policy

3.3.1 Code requirements

Section 3.7 of the Code requires that an access arrangement include a statement that the covered pipeline is either a contract carriage pipeline or a market carriage pipeline.

3.3.2 CGPJV's proposal

CGPJV submits that for the purpose of section 3.7 of the Code, the pipeline is a contract carriage pipeline.

3.3.3 Submissions by interested parties.

No comments were received on this issue.

3.3.4 Commission's considerations

As the access arrangement includes a statement that the CGP is a contract carriage pipeline, it satisfies the requirements of section 3.7 of the Code.

3.4 Trading policy

3.4.1 Code requirements

Sections 3.9 to 3.11 of the Code set out the requirements for a trading policy. If a pipeline is a contract carriage pipeline, which CGPJV proposes for the CGP, the access arrangement must include a trading policy that explains the rights of a user to trade its right to obtain a service to another person. The trading policy must allow a user to transfer capacity:

- without the service provider's consent, if the obligations and terms under the contract between the user and the service provider remain unaltered by the transfer (a bare transfer);
- with respect to a bare transfer, the trading policy may require the transferee to notify the service provider prior to utilising the traded portion of the contracted quantity and of the nature of the contracted quantity, but not require any other details; and
- with the service provider's consent in any other case (including a change of receipt or delivery point by a user). Consent may be withheld only on reasonable commercial or technical grounds and the trading policy may specify conditions under which consent will be granted and any conditions attached to that consent.

3.4.2 CGPJV's proposal

The proposed trading policy submitted by CGPJV permits a bare transfer without the consent of CGPJV, provided that prior to utilising it, the transferee notifies CGPJV of the portion of contracted capacity subject to the bare transfer and of the nature of the contracted capacity subject to the bare transfer.

A user may only transfer or assign all or part of its contracted capacity other than by way of a bare transfer, or vary a receipt or delivery point, with the prior consent of CGPJV. CGPJV may withhold its consent on reasonable commercial or technical grounds only, and may give its consent subject to reasonable commercial or technical conditions.

3.4.3 Submissions by interested parties

In their submissions, interested parties raised the following broad issues, which are discussed in detail below, in respect of CGPJV's trading policy:

- notifying CGPJV of the portion and nature of a bare transfer;
- withholding of consent on reasonable commercial and technical grounds, which may be given subject to reasonable commercial or technical conditions; and
- changing of receipt and/or delivery points with the consent of CGPJV.

Ergon queried why a transferee must reveal commercially sensitive information to the service provider regarding the portion and nature of the contracted capacity that is subject to a bare transfer.

Several submissions stated that it is unreasonable to have a requirement that consent may be withheld on reasonable commercial or technical grounds without prescribing any objective criteria for those grounds. PCML and CS Energy contended that CGPJV should only withhold consent on reasonable **technical** grounds and conditions, and not on **commercial** grounds or conditions, whether reasonable or otherwise. MIM proposed that consent may only be withheld by CGPJV for proven technical reasons and/or if the assignee does not display the technical or financial capability in assuming the user's obligations. BHP submitted that the commercial grounds on which consent may be withheld should relate only to the prospects for satisfactory financial and other performance of contractual obligations by a prospective user to whom an assignment is sought. Santos contended that it is inappropriate for the service provider to be the sole adjudicator of 'reasonable commercial grounds' on trading issues, especially where the service provider's return may be maximised by refusing a shipper's trading request. Such a situation places the service provider in a clear conflict of interest.

MIM stated that a user should be able to transfer contracted capacity at a receipt point or delivery point without the prior consent of CGPJV provided the terms are unaltered by the assignment. PCML considers that a user should be free to access uncontracted, or unused, capacity at alternative receipt points or delivery points. Moreover, a user should be free to transfer contracted capacity at a receipt point or delivery point to other users. Santos argued that to encourage free and open access, CGPJV should not be entitled to impose charges for additional receipt points, or restrict a shipper's utilisation of its full MDQ capacity. CS Energy stated that the trading of a delivery or receipt point should be subject to a specific test or require a published mechanism as it can have serious effects on other users and the ability of the service provider to meet its physical transportation needs.

According to Santos, a competitive trading policy must provide current and new shippers the ability to:

- receive gas through any producer inlet run, which supports the principle of shippers being able to receive gas from multiple sources of production;
- undertake linepack transfers between any shipper in the CGP, without consent being required;
- automatically deliver gas to any delivery point while the shipper is within its MDQ, provided it does not put at risk other shippers' deliveries; and

- follow an agreed mechanism that permits shippers to incorporate additional receipt and delivery points under their gas transportation agreements, including those cases where the revised transportation route is longer.

All of the above suggestions are intended to enhance competition and reduce the service provider's ability to increase revenue by reducing and/or eliminating trading in the pipeline.

Santos⁹ and BHP¹⁰ proposed the following amendments to the trading policy:

- A. Permit a line pack transfer between shippers by way of notice to the Service Provider, without consent being required. As a result of this transaction, no shipper shall fall below 90% of its target line pack. The shipper's own line pack in the CGP and trading line pack is a book adjustment at no cost to the Service Provider.
- B. The Service Provider shall provide access to additional Receipt or Delivery Points without consent being required, where the shipper satisfies the following conditions:
 - i) The aggregate of the varied Receipt or Delivery Point maximum daily quantities (MDQs) does not exceed the aggregate of the shipper's Receipt or Delivery Point MDQs prior to the inclusion of the additional Receipt or Delivery Point.
 - ii) It is technically feasible, within the constraints of the Service Provider's contractual obligations to receive or deliver the varied MDQs at the specified Receipt/Delivery Points.
 - iii) The shipper makes all appropriate arrangements with its customers as a result of the variation nominated.
 - iv) The Service Provider will not, as a result of such a variation, incur any additional capital cost, which it would not otherwise have incurred, or will be required to advance the time at which capital costs would otherwise have been required. In the event that a new Receipt or Delivery Point is required, an agreement by the requesting party to indemnify the Service Provider for the additional costs (both capital and operating) will suffice to ensure that the Service Provider will not incur any additional capital costs.
 - v) As a result of the variation, and where the transportation distance is equal to or less than previously provided under the shipper's transportation contract, the shipper will pay the same amount of revenue to the Service Provider. Where the transportation distance is increased, the shipper will provide additional revenue in accordance with the Service Provider's Access Arrangement to satisfy the incremental transportation distance.

In the circumstances where the shipper does not satisfy all of the above requirements, then the Service Provider based on reasonable commercial and technical grounds will require consent. The ACCC should adjudicate any situation where the User believes that the Service Provider has rejected its request on unreasonable grounds.

3.4.4 Commission's considerations

CGPJV's trading policy is consistent with the Code and the wording of its trading policy broadly follows the wording of the Code.

⁹ Santos submission for the Roma to Brisbane Pipeline, 29 January 2001, pp. 5-6.

¹⁰ BHP and Santos propose similar amendments to the trading policy, however the wording does differ slightly between submissions. The wording quoted here is that as proposed by Santos. Refer to BHP submission, 29 January 2001, p. 4.

Bare transfer

The Commission notes the concerns of CS Energy that the requirement that users notify CGPJV of the portion and nature of the capacity to be traded may result in the provision of commercially sensitive information. While the wording of the access arrangement mirrors the Code provisions, the Code goes on to state that the trading policy must not require any other details regarding the transaction to be provided to the service provider. This implies that while some basic information should sensibly be provided to the service provider to enable it to meet the transportation needs of the transferee, there is a presumption that the amount of information the service provider may seek is limited.

The Commission considers that the concern arises primarily due to potential differences in interpretation of the word ‘nature’ in the Code. While the Code provides no guidance as to what constitutes the ‘nature’ of the capacity transfer in this context, the Commission interprets this to mean the type of service, level of capacity traded and the relevant receipt and delivery points.

Other transfers

The Commission notes the proposals from some interested parties that CGPJV should detail its ‘reasonable commercial and technical grounds’. However, CGPJV’s proposal mirrors the provisions of the Code, and there is no obligation on the part of the service provider to include additional criteria specifying what constitutes ‘reasonable commercial and technical grounds’.

Prospective users have the ability under the Code to enter into transportation contracts that allow the user to transfer capacity with the consent of the service provider and that consent may only be withheld on ‘reasonable commercial and technical grounds’. If a prospective user is unable to enter a contract with such a provision, it can notify a dispute and the arbitrator can require the service provider to enter into a contract with such a provision. Once a prospective user signs a transportation contract and becomes a user it no longer needs the protection of the Code in this matter, since it has an enforceable contract with the service provider. Where a user believes that a service provider has withheld consent on unreasonable grounds, it can pursue that matter under contract law – typically through commercial arbitration in the first instance, with recourse to court action if necessary.

Notwithstanding the limitations of the Code, the Commission does not believe that the service provider’s discretion in this situation is unfettered and sees merit in the proposal to further define ‘reasonable commercial and technical grounds’. While the Commission cannot mandate that CGPJV amend the access arrangement to specific objective criteria defining ‘reasonable commercial and technical grounds’, it encourages CGPJV to do so. Although under the current proposal the parties have the option of seeking commercial arbitration or court action in the event of a dispute, the Commission considers that such disputes could be avoided by setting out objective criteria in the access arrangement by which the service provider will be bound when deciding whether to consent to a proposal to trade capacity or vary receipt and delivery points.

Arbitration under the Code

The Commission is also concerned that there is some misunderstanding of its powers under the Code to arbitrate disputes. Section 6.1 of the Code provides that:

If a Prospective User and a Service Provider are unable to agree on one or more aspects of access to a Service the Prospective User or Service Provider may notify the Relevant Regulator in writing that a dispute exists. A Prospective User or Service Provider may not give a notice to the Relevant Regulator under this section unless an Access Arrangement has been accepted by the Relevant Regulator (or the Relevant Regulator has drafted and approved its own Access Arrangement) with respect to the Covered Pipeline concerned.

Part Four of the GPAL sets out procedures for an arbitration that is notified under the Code. Section 6.1 is the only provision of the Code that authorises parties to notify a dispute to an arbitrator.

The Commission has received legal advice to the effect that, as section 6.1 of the Code only refers to prospective users, it is only prospective users that have the power to notify a dispute under the Code. This means that a user of a pipeline under a contract will not be able to notify a dispute under section 6 of the Code where a dispute arises between the user and the service provider in the context of that contract.

This highlights the importance for users to ensure that their contracts for access to services contain all of the necessary terms and conditions, including those relating to their rights to trade capacity. Although the access arrangement sets out the minimum terms and conditions upon which prospective users are entitled to access, the user has the right to waive these rights or vary them by agreement with the service provider. It is the user's responsibility to ensure that the provisions of the access arrangement that operate to their benefit are incorporated into their contract and are therefore enforceable through the usual commercial avenues.

Linepack trading

The provisions of the Code relating to a service provider's trading policy do not specifically require that an access arrangement include a policy in relation to the trading of linepack. The Commission has some doubts that it can require a service provider to require an amendment to the access arrangement to include such a policy. It is doubtful that linepack would be classified as a service under the Code. Firstly, it is not a service being provided by the service provider and, secondly, it is a supply of a quantity of gas, which is specifically excluded from the definition of 'service' under the Code. Moreover, the Commission may not require an access arrangement to address a matter which the Code does not require the access arrangement to address (section 2.24 of the Code).

Nevertheless, as discussed earlier in section 3.2.4 of this Draft Decision, the Commission notes CGPJV's comment that the proposed access arrangement does not preclude linepack trading and the Commission encourages CGPJV to facilitate such trading as appropriate.

3.5 Queuing policy

3.5.1 Code requirements

Sections 3.12 to 3.15 set out the Code requirements for a queuing policy. An access arrangement must include a queuing policy that determines the priority given to users and prospective users for obtaining access to a covered pipeline and for seeking dispute resolution under section 6 of the Code. The purpose of a queuing policy is to allocate spare capacity and developable capacity where there is insufficient capacity to satisfy the needs of all users and potential users that have requested capacity.

A queuing policy must contain sufficient detail to enable users and prospective users to understand in advance how it will operate. It must also, to the extent reasonably possible, accommodate the legitimate business interests of the service provider, of users and prospective users, and must generate economically efficient outcomes.

3.5.2 CGPJV's proposal

CGPJV proposes that where there is insufficient capacity to satisfy all requests for service, a queue will be formed. The queue will include all relevant requests that cannot be satisfied. Where an offer has been made in response to a request received prior to formation of the queue, that request will take first position in the queue.

At the time a request is placed in a new or existing queue, CGPJV will advise the prospective user of:

- its position in the queue;
- the aggregate capacity sought under requests which are ahead of it on the queue;
- its estimate of when capacity may become available; and
- the amount of any surcharge levied for developable capacity, if applicable.

The prospective user may reduce, but not increase, the amount of capacity sought in a request that is in a queue. Also, upon request from CGPJV, a prospective user in a queue must demonstrate that it will have access to a supply of gas at the time it is anticipated that access to the service will be offered. When the position of a request changes in a queue or where the timing of availability of a new tranche of developable capacity changes, CGPJV will provide revised information to the prospective user.

To ensure that requests are managed effectively, CGPJV may once every three months seek confirmation from a prospective user that it wishes to continue with its request in the queue. If a prospective user fails to respond within 14 days the request will lapse. A prospective user should advise CGPJV if it does not wish to proceed with the request, which will then lapse. Any lapsed request will be removed from the queue and priority will be lost. However, in the event of a dispute being notified under the Code, a request will not lapse and will retain its priority in a queue until that dispute has been resolved in accordance with the Code.

A prospective user may only assign a request on a queue to a bona fide purchaser of the prospective user's business and/or assets, subject to CGPJV's prudential requirements. A request may lapse if, on assignment of a controlling interest in the shares of the prospective user, the assignee fails to provide a guarantee as required by CGPJV or to meet CGPJV's prudential requirements.

When capacity becomes available that capacity will be progressively offered to each prospective user in the queue in order of priority (notwithstanding that such capacity is not sufficient to meet the needs of that prospective user). CGPJV will advise each of those prospective users of its plans to make capacity available, and the terms and conditions on which the capacity will be available.

A prospective user will have 30 days after an offer is made to enter into an access agreement which may be conditional on CGPJV entering into access agreements with other prospective users. Failing this, the request will lapse or lose priority to those entering into such an access agreement (upon that agreement becoming unconditional).

The priority date of a request is the date a completed request is received by CGPJV. Where CGPJV determines that two or more requests relate to the same tranche of capacity for the same delivery point, all those requests will have the priority date of the earliest request.

Priority of services

CGPJV's proposed access arrangement provides for a request for a reference service to have priority over a request for a negotiated service.

3.5.3 Submissions by interested parties

In their submissions Ergon and BHP opposed the inclusion of clause 6.5 which requires a prospective user to demonstrate, upon request, that it has agreements in place for access to a supply of gas at the time it is anticipated that access to the service will be offered. According to Ergon this information is commercially sensitive. Additionally, Ergon stated that it can see no public benefit in such a requirement to provide this information to a service provider.

MIM and BHP stated that the policy of a reference service having priority over a negotiated service is too restrictive given that there is only one reference service offered for such a long-term access arrangement. BHP asserted that this priority could lead to serious distortions in future utilisation of the CGP. MIM proposed that a discretionary element be introduced which addresses the relative merits, and time frames, of each requested service. According to CS Energy, CGPJV should be required to justify the priority of the reference service over negotiated services. CS Energy stated that a prospective user who is prepared to pay for increased line pressure should be able to maintain its position in the queue. Thus, as long as the same opportunities are available for all potential users, there is no need for this restrictive provision.

Ergon asserted that competition can be stifled if a pipeline's capacity is fully contracted yet not fully utilised. To ensure that available capacity can be accessed, it is their view that the queuing policy should include a mechanism whereby users who do not fully

utilise their contracted capacity sufficiently should be required to surrender that capacity if there are prospective users queuing to obtain access.

3.5.4 Commission's considerations

The Commission agrees with Ergon and BHP that the requirement to demonstrate sufficient gas supplies as currently worded is likely to force prospective users to unnecessarily reveal commercially sensitive information. This concern is heightened because the SWQ Producers have a significant ownership stake in the CGP and would have access to this information. The Commission believes that written confirmation from a prospective user that it has sufficient gas supplies available should be sufficient for the service provider.

Proposed amendment A3.2

In order for CGPJV's access arrangement for the CGP to be approved, section 6.5 of the proposed queuing policy must be amended such that CGPJV, in seeking that a prospective user demonstrate that it will have access to a supply of gas at the time it is anticipated it will be offered access to the service, can only seek written confirmation from the prospective user that the necessary supply arrangements are in place. No commercially sensitive information (such as location of the gas supply or the identity of the supplier) can be required to be divulged.

The Commission considers that CGPJV's proposal that the reference service has precedent over a negotiated service is consistent with the broad intent of the Code if the only condition in contention is the price of access. A service provider is entitled to receive, and a prospective user is entitled to pay, the reference tariff for a reference service. The service provider should be under no obligation to offer the reference service to a prospective user at a tariff less than the reference tariff. Similarly, a prospective user should not be entitled to 'jump the queue' by offering to pay a tariff higher than the reference tariff. While offering scarce capacity to the highest bidders would be an effective means of clearing the queue, it may result in monopoly rents to the service provider and be inconsistent with the Code's pricing principles.

The situation is not as straight-forward where a prospective user genuinely wishes to negotiate some variation to the terms and conditions contained in the access arrangement that may also justify a variation in price. CS Energy for one is concerned that a prospective user's position in the queue may be placed in jeopardy if the prospective user wishes to negotiate a service other than the reference service. The Commission has some sympathy with this viewpoint and proposes that the reference service and negotiated services have equal priority. The Commission considers it particularly relevant in this instance as the proposed access arrangement contains only one specific service, the reference service, and hence negotiated services may conceivably become quite common.

The amendment proposed by the Commission would not deprive CGPJV of the right to provide the reference service at the reference tariff. In the event of a dispute either party, CGPJV or a prospective user, may refer the matter to the Commission for

arbitration. If the sole subject of a dispute is the tariff, the Commission must determine that the reference tariff will apply (subject to sections 6.18 to 6.21 of the Code).

Proposed amendment A3.3

In order for CGPJV's access arrangement for the CGP to be approved, CGPJV must amend its queuing policy to provide that:

- the reference service and negotiated services have equal priority; and
- no provision of the queuing policy diminishes CGPJV's right to provide the reference service at the reference tariff (plus a surcharge in relation to developable capacity beyond 175TJ/day if applicable).

The Commission notes Ergon's submission in regard to establishing a mechanism in the queuing policy whereby existing users would surrender their contracted, but unused, capacity should a prospective user in a queue require access. The Commission considers that there is good sense in an access arrangement providing for relinquishment and reallocation of capacity. In a competitive transmission market any capacity released or surrendered by a shipper would be available for resale by the service provider (if the shipper itself does not deal with it).

The Commission does not consider it appropriate, however, that the access arrangement should provide for the mechanism described by Ergon. While the Code requires a user to make details available about the quantity, type and timing of unutilised contracted capacity to any person who requests this information, the Code imposes no obligation on the part of the user to relinquish any unutilised contracted capacity.

CGPJV's proposed access arrangement does provide some safeguards to ensure the bona fides of prospective users and to discourage hoarding of capacity. Firstly, prospective users are required to provide confirmation that they have access to a supply of gas. Secondly, CGPJV is entitled to levy tariffs on 90 per cent of the contracted quantity, even if actual throughput is below this level. The underlying rationale is that it costs a great deal to reserve pipeline capacity but not use it, creating a significant incentive for shippers to relinquish or trade unused capacity. In the event that a shipper contracted for capacity that it did not intend to use, the pipeline company could sell that capacity on an interruptible basis anyway. Further, such conduct would likely be in breach of the hindering access prohibition described in the GPAL.

3.6 Extensions and expansions policy

3.6.1 Code requirements

Section 3.16 of the Code requires an access arrangement to have an extensions and expansions policy. The policy is to set out the method to be applied to determine whether any extension to or expansion of the capacity of the pipeline will be treated as part of the covered pipeline. A service provider is also required to specify the impact on reference tariffs of treating an extension or expansion as part of the covered

pipeline.¹¹ In addition, an extensions and expansions policy must outline the conditions on which the service provider will fund new facilities and provide a description of those new facilities.

3.6.2 CGPJV's proposal

Extensions of the pipeline

In the event that CGPJV undertakes a geographical extension to the pipeline it will elect, after consultation with the Regulator, whether the extension forms part of the pipeline for the purposes of the access arrangement.

Expansion of capacity up to 175TJ/day

CGPJV will undertake an expansion of capacity up to a maximum capacity of 175TJ/day upon the request of a user or prospective user if:

- there are, in the reasonable opinion of CGPJV, sufficient proven reserves to cover the economic life of the expanded pipeline; and
- the user or prospective user commits to the use of the expanded capacity at the reference tariff.

The reference tariff for the pipeline will apply for all capacity up to 175TJ/day. Under the terms of the derogated tariff arrangement (clause 1.3.5(a)), CGPJV is not entitled to recover from users by way of charges the cost of constructing any capital improvement to the pipeline to increase the capacity of the pipeline up to 175TJ/day.

Expansion of capacity beyond 175TJ/day

In the event that CGPJV expands the capacity of the pipeline in its present geographical location above 175TJ/day, CGPJV will elect after consultation with the Commission how to treat the expansion. For example, CGPJV may elect that:

- the expansion will not be treated as part of the covered pipeline;
- the expansion will form part of the covered pipeline and that the reference tariff will remain unchanged but a surcharge will be levied on the incremental users as permitted under the Code; or
- CGPJV will submit revisions to the access arrangement pursuant to section 2.28 of the Code.

¹¹ For example, reference tariffs may remain unchanged, but a surcharge may be levied on incremental users.

3.6.3 Submissions by interested parties

Whether an extension/expansion forms part of the covered pipeline

CS Energy noted that there is no definition of the term ‘geographic extension to the pipeline’, thus the circumstances in which CGPJV would be required to refer the issue to the regulator may be unclear.

Ergon is concerned that CGPJV has the option, after consultation with the Commission, to elect not to treat any geographical extension or an expansion beyond 175TJ/day as part of the covered pipeline, potentially allowing the service provider to set unregulated tariffs. According to Ergon this could prevent access to some key infrastructure from being subject to Code requirements. Ergon asserted that the access arrangement should require coverage of each extension and expansion to be considered on a case-by-case basis and that the methodology by which coverage is determined be clearly specified and subject to public consultation. PCML stated that the consent of the Commission should be required before CGPJV elects to not have an extension or expansion treated as part of the covered pipeline. BHP has a different interpretation of the Code, suggesting that the Code requires that consent from the regulator must be sought for extensions or expansions beyond 175TJ/day.

Further, Ergon proposed that there should be greater detail provided on how CGPJV would determine the impact that an extension or expansion would have on the reference tariff. For example, an ‘economic feasibility test’ could be applied to determine if the prevailing tariff structure will apply to an extension or whether a surcharge will be levied on incremental users.

Expansion of capacity up to 175TJ/day

BHP disputed that an obligation to undertake an expansion should be dependent upon demonstration of proven reserves to cover the economic life of the expanded pipeline, as stipulated by clause 7.2(2) of the access arrangement. BHP stated that CGPJV has an unsatisfactory record in servicing its customers due to contracted capacity being at full capacity. BHP suggested that the terms and conditions of service be amended to require that the transporter install additional compression (at its own expense, but only up to a maximum capacity limit of 175TJ/day), if during any four days in any month, the transporter has been required to deliver in excess of 95 per cent of the installed capacity of the CGP.

MIM and PCML submitted that CGPJV appears to be seeking to substantially qualify its obligation under the derogated tariff arrangement, pursuant to Section 7.2 of the proposed access arrangement. MIM submitted that Section 7.2(2) should be deleted and replaced with:

CGPJV will undertake an expansion of capacity of the Pipeline up to a maximum capacity of 175TJ/day on the request of a User or Prospective User if that User or Prospective User commits, or has committed, to the use of capacity in excess of the current capacity of the pipeline at the Reference Tariff.¹²

¹² MIM submission, 29 January 2001, p. 6.

CS Energy expressed the view that allowing CGPJV to have sole discretion to determine how and when to expand the capacity of the pipeline may result in CGPJV extracting monopoly rents, cause disruption to the smooth functioning of the pipeline and cause gas customers financial and/or operational difficulties.

CS Energy understands that CGPJV intends to increase capacity up to 175TJ/day in stages by adding five compressors progressively, but noted that the access arrangement provides no guidance as to the threshold levels that would trigger installation of each compressor. In CS Energy's opinion, the criteria for triggering an expansion of capacity should be explicit in the access arrangement. CS Energy stated:

The Service Provider should declare the impact of one compressor on the capacity of the Pipeline or the increase in capacity for each of the declared compressors that would be contemplated in setting the overall Revenue targets for the pipeline. It is desirable that this be incorporated into the Access Principles to stop the possibility of over-contracting of pipeline capacity by the CGPJV based on optimum usage or diversification of maximum loads rather than peak demands.¹³

CS Energy also suggested that, when setting the threshold quantities, consideration should be given to factors such as variations in load, worst conditions in terms of cleanliness, and highest expected gas temperatures. Further, CS Energy proposed that penalties should apply if CGPJV does not install new compressors when demand exceeds capacity.

MIM and PCML have interpreted clause 1.3.5(a) of the derogated tariff arrangement as implying that CGPJV will automatically expand the capacity of the pipeline, in increments and by the addition of compression, up to 175TJ/day as and when that capacity is required.

It is unclear to both MIM and PCML that CGPJV has discharged its obligations to expand the capacity of the pipeline with their apparent reluctance to install the first compressor on the pipeline. 'This is despite a general view among the current users of the pipeline that the contracted capacity is now at or greater than pipeline capacity'.¹⁴ MIM and PCML listed the incidents that are the foundation of their concern:

- on a number of occasions distillate has had to be used at the MCPS at significant cost to the shippers and other power offtakers although total deliveries from the pipeline appear to be less than 96TJ/Day;
- the failure to receive gas at Ballera within contract limits has led to a reduction in individual shippers' linepack and the threat of curtailment of deliveries; and
- at least one shipper appears to have incurred costs due to the inability of the pipeline to receive gas at Ballera within contract limits.

MIM, PCML and Santos are of the view that the reference tariff and the 175TJ/day limit have been set with the intention of compressors being installed. Therefore they believe that it would be inappropriate for CGPJV to seek additional capital

¹³ CS Energy submission, 29 January 2001, p. 11.

¹⁴ MIM submission, 29 January 2001, p. 5.

contributions from shippers in relation to the service. The parties desire that the precise terms on which CGPJV committed to the addition of compression in discussion with the Queensland Government be clarified.

According to Santos, under CGPJV's access arrangement and pipeline licence with the Queensland Government, CGPJV is obliged to pay for additional compression expansion as required by the market. To be consistent with the Roma to Brisbane Pipeline, Santos stated that CGPJV should be obliged to install additional capacity when contracted capacity for firm transportation service exceeds the current capacity of the pipeline.

3.6.4 Commission's considerations

BHP has interpreted the Code as requiring a service provider to seek the regulator's approval whether to include or exclude and extension or expansion as part of the covered pipeline. While this is included in the Code as an example of a 'method' for the purposes of section 3.16(a), it is by no means exhaustive – alternative 'methods' may be approved by the regulator as appropriate.

Extensions to the pipeline

Although the proposed access arrangement provides that CGPJV will consult with the Commission regarding whether or not an extension of the CGP will be treated as part of the covered pipeline, there is no obligation on the part of CGPJV to seek the Commission's consent. Hence CGPJV is not obliged to act on the advice of the Commission, but for all intents and purposes has sole discretion to determine in the first instance whether an extension should form part of the covered pipeline. If CGPJV elects not to include an extension as part of the covered party, any person can apply to the NCC (under sections 1.2 and 1.3 of the Code) to have the pipeline declared a covered pipeline under the Code. In the event that CGPJV elects that an extension should be part of the covered pipeline, it should be required to seek the Commission's approval to do so.

Proposed amendment A3.4

In order for CGPJV's access arrangement for the CGP to be approved, section 7.1 of the proposed extensions and expansions policy must be amended such that CGPJV must seek the approval of the Commission prior to electing that an extension will form part of the covered pipeline for the purposes of the access arrangement.

Section 3.16(b) of the Code requires a service provider to specify how an extension that is to be treated as part of the covered pipeline will affect reference tariffs. This issue has not been addressed by CGPJV in its proposed access arrangement. In the case of the CGP, because of the derogation, the reference tariff cannot be altered as a result of an extension to the pipeline. CGPJV's extensions and expansions policy, however, should specify the manner by which tariffs will be determined, such as the levying of a surcharge under sections 8.25 and 8.26 of the Code.

Proposed amendment A3.5

In order for CGPJV's access arrangement for the CGP to be approved, section 7.1 of the proposed extensions and expansions policy must be amended to specify how any extension which is to be treated as part of the covered pipeline will affect reference tariffs.

CS Energy noted that no definition of the term 'geographic extension' is provided in the access arrangement. Although no definitions of 'extension' and 'expansion' of a pipeline are listed in the Code, the Commission interprets a geographic extension as any new section of a pipeline that enables gas to be delivered to a location to which gas had not previously been delivered via that pipeline. With respect to the CGP this would include an extension beyond Mt Isa, and any spur and lateral off the CGP. The Commission interprets the addition of compressors and looping of a pipeline as expansions of capacity.

Expansion of capacity up to 175TJ/day

The derogated tariff arrangement provides that the reference tariff will apply to all capacity up to 175TJ/day.¹⁵ Therefore, CGPJV is unable to recover the costs of expansions up to this level through a surcharge on incremental users or by way of capital contributions. CGPJV's proposal that it will expand capacity if in its opinion sufficient reserves exist to cover the economic life of the expanded pipeline (at reference tariffs) reflects this restriction.

Nevertheless, some interested parties have questioned the legitimacy of this proposed provision, suggesting instead that the derogated reference tariff was predicated on the premise that the pipeline would be expanded when demand requires it.

The Commission has two concerns with CGPJV's proposed policy. Firstly, the Commission is concerned that, in seeking to satisfy itself that sufficient reserves exist, CGPJV may require prospective users to unnecessarily reveal commercially sensitive information regarding gas supplies. A feasible option may be for CGPJV to obtain confirmation of the adequacy of reserves from an independent expert, without the unnecessary disclosure of any information which may have the potential to be commercially harmful to the prospective user.

Secondly, the Commission does not consider that the provision adequately reflects the commitment made in the Access Principles (submitted to the QLD Government as part of the tender process) that the pipeline would be expanded as required. The Commission considers that CGPJV should set objective criteria that would trigger expansion of the pipeline. The Commission proposes two amendments to address these concerns.

¹⁵ CGPJV states that the current maximum delivery capability is 98TJ/day (access arrangement information p. 5).

Proposed amendment A3.6

In order for CGPJV's access arrangement for the CGP to be approved, section 7.2 of the proposed extensions and expansions policy must be amended such that CGPJV, in seeking to satisfy itself that sufficient proven reserves exist to cover the economic life of the expanded pipeline, will not require the prospective user to provide any information that the prospective user reasonably believes may be commercially detrimental to it to reveal.

Proposed amendment A3.7

In order for CGPJV's access arrangement for the CGP to be approved, section 7.2 of the proposed extensions and expansions policy must be amended to set out objective thresholds at which CGPJV will expand the capacity of the pipeline up to 175TJ/day.

Expansion of capacity beyond 175TJ/day

The Commission considers that CGPJV's policy in relation to expansions of capacity beyond 175TJ/day allows CGPJV too much discretion in determining whether the expansion should be treated as part of the covered pipeline. While CGPJV proposes that it consult the Commission, it is under no obligation to follow the Commission's advice.

In the event that CGPJV elects not to treat an expansion as part of the covered pipeline, application can be made to the NCC by any person (under sections 1.2 and 1.3 of the Code) for the expansion to be declared a covered pipeline under the Code. Nevertheless, the fact that a pipeline requires expansion to satisfy demand may be an indication that the service provider has market power and the opportunity to extract monopoly rents if unregulated. These circumstances would be inconsistent with section 2.24(d) of the Code¹⁶ (the economically efficient operation of the covered pipeline), section 2.24(e) (the public interest) and section 2.24(f) (the interests of users and prospective users). This issue may become pertinent to the CGP in view of the significant period of time before the access arrangement is reviewed in 2023. Accordingly, the Commission proposes an amendment to the access arrangement to the effect that any expansion of capacity beyond 175TJ/day is to be considered part of the covered pipeline unless the Commission agrees otherwise.

¹⁶ Section 2.24 of the Code sets out the factors that the Commission must take into account in assessing a proposed access arrangement.

Proposed amendment A3.8

In order for CGPJV's access arrangement for the CGP to be approved, CGPJV must amend its extensions and expansions policy to the effect that, at the time it comes into operation, any expansion of capacity beyond 175TJ/day is to be considered part of the covered pipeline unless at that time the Commission agrees that the expansion should not be covered.

The extensions and expansions policy satisfies section 3.16(b) of the Code with respect to expansions beyond 175TJ/day in that it describes how the expansion will affect reference tariffs. One of the options proposed by CGPJV is that 'a Surcharge will be levied on incremental users as permitted under the Code.'¹⁷ Explicit in the provisions of the Code (section 8.25) is that any surcharge proposed by CGPJV would require the approval of the Commission.

3.7 Review and expiry of the access arrangement

3.7.1 Code requirements

Section 3.17 of the Code requires an access arrangement to include a date on which the service provider must submit to the regulator a revised access arrangement (revisions submission date) and a date upon which the revisions are intended to commence (revisions commencement date).

In deciding whether these two dates are appropriate, the regulator would normally have regard to the objectives contained in section 8.1 of the Code. Having done so, the regulator may require an amendment to the proposed access arrangement to include earlier or later dates. The regulator may also require that specific major events be defined as triggers that would oblige the service provider to submit revisions before the revisions submission date (section 3.17(ii)).

An access arrangement period accepted by the regulator may be of any duration. However, if the period is greater than five years, the regulator would normally consider whether mechanisms should be included to address the potential risk that forecasts, on which terms of the proposed access arrangement are based, subsequently prove to be incorrect (section 3.18 of the Code). The Code provides examples of such mechanisms for guidance. Thus a regulator could consider triggers for early submission of revisions based on:

- divergence of the service provider's profitability or the value of services reserved in contracts from a specified range; or
- changes to the type or mix of services provided.

¹⁷ Access arrangement, p. 12.

The regulator could require a service provider to return to users some or all revenue or profits in excess of a certain amount.

Finally, the revisions commencement date is not a fixed date. The date is subject to variation at the time the regulator approves the revisions pursuant to section 2.48 of the Code. This section states in part:

Subject to the Gas Pipelines Access Law, revisions to an access arrangement come into effect on the date specified by the Relevant Regulator in its decision to approve the revisions (which date must not be earlier than either a date 14 days after the day the decision was made or ... the Revisions Commencement Date).

3.7.2 CGPJV's proposal

The revisions submission date, 1 November 2022, and revisions commencement date, 1 May 2023, are prescribed in the derogation. In its access arrangement CGPJV proposes that the revisions will commence from the revisions commencement date or the date on which the approval of the regulator to the revisions to the access arrangement takes effect, whichever is the later.

3.7.3 Submissions by interested parties

Several interested parties raised concerns about the duration of the access arrangement period and that the provisions of the access arrangement, including the non-derogated elements, would not be reviewed before 1 May 2023.

PCML stated that should the review date not be changed from 1 May 2023 then it be imperative that major events trigger revisions to the proposed access arrangement. Several submissions listed specific major events that could trigger an obligation on the service provider to submit revisions prior to the revisions submission date. They include:

- development of a new pipeline as an alternative or complement to the existing pipeline;
- variation (from forecast) in revenue from the pipeline of more than 10 per cent;
- variation (from forecast) in total gas demand of more than 10 per cent;
- a new receipt point on the CGP;
- a significant 'negotiated service', for example, pressure service, backhaul arrangement;
- interconnection with a covered pipeline;

- aggregate contracted MDQs reaching 140TJ/day (80 per cent of 175TJ/day). This would provide time for users to canvass and discuss a new access arrangement to be submitted by CGPJV to cover expansions beyond 175TJ/day;¹⁸
- gas becoming available on the CGP at receipt points (including Mount Isa) other than Ballera;
- demand exceeding 175TJ/day;
- oscillation between the physical flow direction along the CGP, leading to the need to stabilise tariffs between forward haul and backhaul tariffs; and
- any substantial demand for a service other than a reference service.

Ergon proposed that the conditions should specify (in accordance with clause 3.18 of the Code) that any excess revenue or profit would be returned to users.

As the reference tariff is fixed by the derogated tariff arrangement, BHP does not support the inclusion of a trigger to address the risk of forecasts being incorrect. However, upon inclusion of additional reference services, either now or upon revision, the reference tariff determined for these services should be reviewed at least every five years to address the risks of the forecasts on which they were based proving incorrect. BHP stated that the existing derogation would not inhibit such a provision, so long as the provision does not apply to the existing, derogated reference service.

3.7.4 CGPJV's response to the issues paper

CGPJV submitted that requiring the inclusion of trigger events, or an adjustment mechanism, would be inappropriate:

- if the nature of the revisions arising from a trigger event were such that the derogation would be maintained, or if the adjustment mechanism did not operate to revise tariffs during the period of the derogation, there would appear to be little benefit in undertaking a review. In this case, CGPJV submits that such a requirement would be inappropriate and contrary to the public interest; or
- alternatively, if the Commission sought to require inclusion of a trigger event or an adjustment mechanism which resulted in revisions to the tariffs prior to November 2022, the Commission would be seeking to act in a manner inconsistent with the GPAL. The intent and effect of the derogations is clearly identified in the Intergovernmental Agreement:

...the tariff and tariff-related sections of the existing access principles for the [pipelines] are to be rewritten as reference tariffs (and reference tariff policy) for reference services to conform, as

¹⁸ To ensure this, MIM submitted that clause 7.3 of the access arrangement should be amended to give the Commission the discretion as to the treatment of the expansion as a covered pipeline or otherwise. Furthermore, MIM submitted that clause 7.3 (second dot point) should be deleted and that in accordance with clause 7.3 (third dot point) CGPJV should submit revisions to the access arrangement pursuant to section 2.28 of the Code.

close as possible to the National Access Code, while preserving the existing tariff principles embodied in the original access arrangements.

...

reference tariffs (and reference tariff policy) will be those taken from the existing access principles... These will not be subject to public and ACCC scrutiny until the nominated review date expressed in the individual access arrangements.

(Intergovernmental Agreement, Annexure I).¹⁹

CGPJV contended that if the Commission believes that the possibility of change to the derogation warrants inclusion of a trigger event or similar, this is inconsistent with the Commission's role in approving the derogated access arrangement under the GPAL. Since any change to the derogation could only be effected by legislation, any change to the derogated tariff arrangement should be effected through clear legislative intent, rather than by artificial means such as inclusion of a review event or adjustment mechanism.

3.7.5 Commission's considerations

Section 58(4) of the *Gas Pipelines Access (Queensland) Act 1988* states:

The revisions submission date and the revisions commencement date mentioned in the reference tariff policy are taken to be the revisions submissions commencement date for the access arrangement to be submitted under the Gas Pipelines Access Law for the pipeline.

As the revisions submissions date and revisions commencement date have been derogated by the Queensland Government, the Commission has no ability to review these dates under section 3.17(i) of the Code.

One effect of the derogation is to remove the ability of the Commission to review the derogated tariff arrangement prior to the revisions commencement date. A further consequence of the derogation, and perhaps unintended, is that the non-tariff elements of the access arrangement which are subject to approval by the Commission, would also not be reviewed again until the revisions commencement date, 1 May 2023.

In Annex 1 to the 1997 *Natural Gas Pipelines Agreement*, which relates to jurisdictional derogations, the provisions in relation to Queensland, state:

The Access Arrangement including the rewritten tariff and tariff-related sections of the existing access principles will be submitted to the ACCC, in accordance with the Code, under the following conditions:

- reference tariffs (and reference tariff policy) will be those taken from the exiting access principles and will be included in the deeming provision of the Queensland Access Legislation. These will not be subject to public and ACCC scrutiny until the nominated review date expressed in the individual access arrangements

¹⁹ Agility Management Pty Ltd's response, on behalf of CGPJV, to the *Issues Paper*, 31 January 2001, p. 2.

- non-tariff related matters will be submitted to the ACCC for consideration by the ACCC in the normal matter
- other derogations required to achieve these outcomes will be included in the Queensland Access legislation.

From this extract it is clear that it was the intention of the Queensland Government that the reference tariff and reference tariff policy would not be subject to scrutiny by the Commission, but the same cannot be said for the non-tariff elements that are subject to approval by the Commission ‘in the normal manner’. Normally this would mean that the Commission would have the right to approve or not approve the revisions submissions date. However, the way in which the derogation is framed prevents the Commission from approving a submissions revisions date for the non-derogated elements that is different to the revisions submission date that forms part of the derogation.

Although the revisions submission date is set in accordance with the derogation, section 2.28 of the Code makes provision for revisions to be lodged in other circumstances. Application for an early review of an access arrangement may be made pursuant to sections 3.17(ii) and 3.18 of the Code. Those provisions enable the Commission to require an access arrangement to provide for early revision by defining certain mechanisms that would trigger a review of the access arrangement prior to the revisions submission date.

In light of the breadth of the derogation the Commission sought legal advice on the applicability of sections 3.17 (ii) and 3.18 with respect to the proposed access arrangement for the CGP. Section 3.18 of the Code provides for a review of the access arrangement if the forecasts on which the terms of the proposed access arrangement are based subsequently prove to be incorrect. Counsel has advised the Commission that, since the Commission’s approval will not be based on any forecasts, section 3.18 does not apply.

Section 3.17(ii) allows the Commission to require that the access arrangement define specific major events that trigger an obligation on the service provider to submit revisions prior to the revisions submission date. Counsel has advised the Commission that the derogation, while preventing the Commission from exercising its power under section 3.17(i) of the Code, does not have the effect of displacing the whole of section 3.17(ii). The Commission would be within its rights to require specific major events to be defined in the access arrangement which would trigger a review of the access arrangement prior to the revisions submissions date. It is important to note that such a review would have no implications for the derogated reference tariff and reference tariff policy, since the Commission has no power to review these prior to the year 2023. The Commission, however, would not be similarly constrained with respect to the non-tariff elements which have not been derogated.

In its response to the Commission’s Draft Decision on the Wallumbilla to Gladstone pipeline, the Queensland Government argued that section 3.17(ii) only relates to reference tariffs and reference tariff policy. Therefore, according to the Queensland Government, section 3.17(ii) has no relevance to the derogated Queensland pipelines. The Queensland Government’s conclusion is based on the requirement in section 3.17 that the Commission must have regard to the objectives set out in section 8.1 of the

Code (which relates to reference tariffs and reference tariff policy) when considering inclusion in an access arrangement of specific events triggering a review. Council has advised the Commission, however, that the objectives are so generic in their content (with one exception) that they can be readily applied to elements in the access arrangement other than the reference tariff and reference tariff policy.

Given the uncertainty arising from the extended duration of the access arrangement period, the Commission proposes that CGPJV include in the access arrangement for the CGP a list of specific major events that it considers should trigger a revision of the non-tariff elements of the access arrangement that do not form part of the derogated tariff arrangement. The Commission considers that this list should include the interconnection of another pipeline with the CGP, and the introduction of a significant new gas supply source to one of the markets served by the CGP.

A possible outcome of a future review may be that circumstances have not changed materially since the access arrangement was first approved and revisions to the non-tariff elements may not be warranted. There is a significant period of time to the revisions submission date in 2023, however, during which time circumstances may change significantly to justify revisions to the non-tariff elements. CGPJV has expressed the view to the Commission that trigger mechanisms are unnecessary because users enter into long term contracts. In these circumstances a review of the access arrangement would not affect existing contracts. While the Commission acknowledges this viewpoint, it also notes that new contracts would be affected by any revisions to the access arrangement.

Proposed amendment A3.9

In order for CGPJV's access arrangement for the CGP to be approved, the Commission requires CGPJV to include in the access arrangement a list of specific major events that will trigger a review of the non-tariff elements of the access arrangement that do not form part of the Tariff Arrangement approved by the Minister.

4 Information provision

4.1 Information provision

4.1.1 Code requirements

In conjunction with its proposed access arrangement, a service provider would normally be required to submit access arrangement information containing at least the categories of information described in Attachment A to the Code (a summary of which is shown in Box 4.1).

The access arrangement information should contain sufficient information that, in the opinion of the relevant regulator, would enable users and prospective users:

- to understand the derivation of the elements in the proposed access arrangement described in sections 3.1 to 3.20 of the Code; and
- to form an opinion as to the compliance of the access arrangement with the provisions of the Code (section 2.6).

Box 4.1: Summary of Attachment A information

The information required is divided into six categories:

Category 1: access and pricing principles

Tariff determination methodology; cost allocation approach; and incentive structures.

Category 2: capital costs

Asset values and valuation methodology; depreciation and asset life; committed capital works and planned capital investment (including justification for); rates of return on equity and debt; and debt/equity ratio assumed.

Category 3: operations and maintenance costs

Fixed versus variable costs; cost of services by others; cost allocations, for example, between pricing zones, and cost categories.

Category 4: overheads and marketing costs

Costs at corporate level; allocation of costs between regulated and unregulated segments; cost allocations between pricing zones, services or categories of asset.

Category 5: system capacity and volume assumptions

Description of system capabilities; map of piping system; average and peak demand; existing and expected future volumes; system load profiles and customer numbers.

Category 6: key performance indicators

Indicators used to justify 'reasonably incurred' costs.

In the case of the CGP, the derogated tariff arrangement states that:

For so long as the Service Provider's Service Policy consists of the Reference Service described herein, and the Reference Tariff described herein continues to apply to that Reference Service, the Service Provider shall not be required to prepare an Access Arrangement Information in connection with the Access Arrangement under which the Reference Service and Reference Tariff are offered.

4.1.2 CGPJV's proposal

CGPJV has submitted access arrangement information with respect to Category 5 of Attachment A to the Code, but has refrained from submitting any information with respect to Categories 1 to 4 and Category 6.

4.1.3 Submissions by interested parties

A theme of the submissions is that the information disclosed by CGPJV in their access arrangement information is insufficient to users and prospective users to understand how reference tariffs were initially derived and how negotiated services will be priced in future.

BHP noted that under section 2.7 of the Code, the categories of information described in Attachment A to the Code must be made available, but Attachment A does not limit what information is to be made available. In its submission BHP disputed the legal basis for the claim that CGPJV is exempted from the requirements of the Code in this regard. MIM contended that as the derogated tariff arrangement cannot be reviewed until 2023, it would not be unreasonable for CGPJV to be required to make disclosure of all categories in Attachment A.

With only one reference service, for which a postage stamp tariff is offered, and a revisions commencement date of 1 May 2023, BHP stated that it is impossible to be confident that the categories of information described in Attachment A to the Code will remain sufficient. Due to this length of time, BHP proposed that CGPJV should be obliged to make available in future further information which is determined as appropriate by the Commission having regard to the circumstances prevailing at that time.

4.1.4 Commission's considerations

CGPJV's proposal is in accordance with the derogation which exempts CGP from providing access arrangement information in relation to the reference tariff. The information described in Categories 1 to 4 and Category 6 of Attachment A to the Code is of a financial nature and would normally be used by the Commission and interested parties to assess compliance of the reference tariff with the principles outlined in section 8 of the Code. The Commission also considers that there is significant merit in the provision of access arrangement information to enable more informed negotiation for non-reference services. In this case, however, the CGPJV has an explicit exemption from the obligation to submit most of the access arrangement information described in Attachment A.

5 Draft decision

Pursuant to section 2.13(b) of the Code, the Commission proposes not to approve CGPJV's proposed access arrangement in its present form.

The amendments or the nature of amendments that would have to be made in order for the Commission to approve the proposed access arrangement are recorded in this Draft Decision.

Appendix A: Submissions from interested parties

Pasminco Century Mine Ltd, 22 January 2001

Ergon Energy Gas Pty Ltd, 29 January 2001

BHP Minerals Pty Ltd, 29 January 2001

CS Energy Limited, 29 January 2001

MIM Holdings Limited, 29 January 2001

Santos Ltd, 2 February 2001