

# 125

## Final Approval

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

11 September 2002

**File No:**  
C2000/1179

**Commissioners:**  
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# 1. Background

On 3 November 2000 the Carpentaria Gas Pipeline Joint Venture (CGPJV) submitted its proposed access arrangement for the Ballera to Mount Isa Pipeline, commonly known as the Carpentaria Gas Pipeline (CGP), to the Australian Competition and Consumer Commission (the Commission) for approval. 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.

The CGP is the subject of a Queensland Government derogation that prevents the Commission from reviewing the reference tariffs and related areas of the access arrangement until the revisions submissions date. Therefore, a significant proportion of the typically contentious aspects of an access arrangement were not open to Commission consideration. In particular, the Commission was constrained from any assessment of reference tariffs or reference tariff policy.

The Commission's assessment of the proposed access arrangement has been conducted in accordance with the requirements set out in the Code and has been based on information provided by CGPJV and interested parties. The consultation and assessment process undertaken by the Commission has included:

- release of the Draft Decision (pursuant to s. 2.13 of the Code) on the proposed access arrangement on 15 August 2001, in which the Commission proposed ten amendments to be made in order for the access arrangement to be approved;
- release of the Final Decision (pursuant to s. 2.16 of the Code) on 16 January 2002, in which the Commission required nine amendments to be made in order for the access arrangement to be approved.

Following the release of the Commission's Final Decision, CGPJV was originally given until 28 February 2002 to submit its revised access arrangement. The Commission later extended this date to 31 May 2002. Prior to lodging its revised access arrangement, CGPJV submitted to the Commission an outline of the proposed amendments to its access arrangement. CGPJV adopted this course of action as it wished to seek some indication from the Commission that the amendments complied with the Commission's Final Decision. Following on-going discussions with Commission staff, CGPJV submitted the revised access arrangement itself to the Commission in August 2002.

This Final Approval assesses CGPJV's revised access arrangement and relies in part upon the facts and analysis set out in the Commission's Final Decision. The Final Approval document should be read in conjunction with that decision.

## 2. CGPJV’s revised access arrangement

### 2.1 Assessment

Having received the revised access arrangement, the Commission is obliged under section 2.19 of the Code to issue a further final decision (which is this Final Approval). The Commission has assessed CGPJV’s revised access arrangement and found that CGPJV has incorporated the amendments specified in the Final Decision to the Commission’s satisfaction. Accordingly, the Commission approves the revised access arrangement submitted by CGPJV.

A brief discussion follows of each of the amendments contained in the Commission’s Final Decision and how CGPJV has addressed these amendments. In many cases the amendments were first proposed by the Commission in its Draft Decision and CGPJV responded positively to the proposed amendments in its submission in response to the Draft Decision.

#### 2.1.1 Reference tariff and reference tariff policy

##### 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.

In its original access arrangement CGPJV proposed to include in the reference tariff policy additional provisions relating to adjustment of the capital base to take account of new facilities investment. However, legal advice provided to the Commission indicated that the approved 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. Following release of the Commission’s Draft Decision CGPJV agreed to make this amendment and has done so in its revised access arrangement.

#### 2.1.2 Terms and conditions

##### Amendment A3.1

In order for CGPJV’s access arrangement for the CGP to be approved, CGPJV’s access arrangement must be amended by deleting all references to its standard Access Agreement.

In its original access arrangement, CGPJV stated that it ‘will provide services on the terms and conditions set out in its standard Access Agreement for the service **from time to time**’ [emphasis added].

The Commission was concerned that CGPJV would be able to effectively change the terms and conditions of access by amending its Standard Access Agreement over time without reference to the Commission. In its revised access arrangement CGPJV deleted the words ‘from time to time’. The access arrangement now provides that CGPJV will provide services on the terms and conditions set out in an access agreement and the terms and conditions of access agreements will be consistent with the access arrangement. The Commission considers that CGPJV’s amendment addresses the Commission’s concerns which were raised in its Final Decision.

### **Amendment A3.2**

In order for CGPJV’s access arrangement for the CGP to be approved, CGPJV must amend its terms and conditions to state that, subject to other provisions in the access arrangement, CGPJV will be obliged to transport and deliver gas nominated by the user on each day up to the user’s MDQ.

The Commission was concerned that, while CGPJV’s proposed access arrangement stated that CGPJV was under no obligation to transport gas on behalf of a user in excess of that user’s maximum daily quantity (MDQ), there was no explicit provision stating CGPJV’s obligation to transport gas up to the user’s MDQ. Accordingly, CGPJV revised its terms and conditions as follows (clause 9 of Schedule C):

Subject to other provisions of this Access Agreement including the limitation on CGPJV’s obligation to receive or deliver gas up to the User’s MDQ, the provisions of section 2 of Schedule A and also subject to the User’s compliance with its obligations in relation to Line Pack, balancing, Nominations and delivery of gas into the pipeline at the minimum pressure:

- (a) on any Day CGPJV will receive, transport and deliver the quantity of gas nominated by the User for that Day, up to the User’s MDQ; and
- (b) except pursuant to an Overrun Service, CGPJV will not be obliged on any Day:
  - (i) to deliver at any of the User’s Delivery Points a quantity of gas greater than the Delivery Point MDQ for that Delivery Point; or
  - (ii) to receive at any of the User’s Receipt Points a quantity of gas, excluding the User’s share of Users’ Linepack, greater than the Receipt Point MDQ for that Receipt Point.

### 2.1.3 Queuing policy

#### *Treatment of confidential information*

##### **Amendment A3.3**

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, cannot require a prospective user to divulge to CGPJV any commercially sensitive information (such as location of the gas supply or the identity of the supplier). CGPJV may require that such information be provided to an independent person mutually agreed to by the CGPJV and the prospective user and who undertakes to keep the information confidential. The independent person's costs shall be borne by the prospective user.

This amendment reflects the Commission's concern that the requirement to demonstrate sufficient gas supplies as originally proposed by CGPJV may have forced prospective users to unnecessarily reveal commercially sensitive information to CGPJV. This concern is heightened because the South West Queensland Gas Producers have a significant ownership stake in the CGP and would have access to this information. Hence the amendment allowed for prospective users to be given the option of providing the information to an independent party.

To address this issue, CGPJV has amended its terms and conditions by including the following clause (clause 6.5):

If CGPJV requests a Prospective User to demonstrate that it will have access to gas, and this will require the Prospective User to provide to CGPJV commercially sensitive information regarding the Prospective User's arrangements for access to gas, the Prospective User may either:

- provide such information to CGPJV on the basis that the information is confidential and commercially sensitive in which case CGPJV will keep that information confidential as required by the Code, or
- provide such information to an independent person mutually agreed by CGPJV and the Prospective User, and CGPJV will rely on certification by that independent person as to the Prospective User's access to a supply of gas at the time it is anticipated that the Prospective User will be offered access to the Service.

The independent person must undertake to keep the information confidential. The Prospective User must pay the independent person's costs.

## *Priority of services*

### **Amendment A3.4**

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, subject to a prospective user seeking the reference service at the reference tariff having priority over a prospective user seeking the reference service at a tariff less than the reference tariff.

The Commission was concerned that prospective users who sought a service other than a reference service would be in jeopardy of losing their place in the queue to a seeker of the reference service. The Commission considered that this was an important issue in this instance as apart from the reference service the only other service offered by CGPJV was a negotiated service. In response to the Final Decision CGPJV has amended its access arrangement by deleting the clause that states that the reference service has priority over negotiated services and inserting the following clause (clause 6.4):

A Request for a Reference Service will have priority over a Request for the same Service at a tariff less than the Reference Tariff. Otherwise, the priority of a Request for any service depends on its priority date.

The priority date of a request for service is the date that a completed request is received by CGPJV. Hence the priority of requests for services will be in accordance with the order in which completed requests are received by CGPJV, with reference services having no greater priority than negotiated services except as provided for above. CGPJV's proposed amendment recognises that a service provider should not be obliged to offer a reference service to a prospective user at a tariff lower than the reference tariff.

## **2.1.4 Extensions and expansions policy**

### *Extensions*

### **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 state that, while the capacity of the pipeline is below 175TJ/day, the service provider cannot levy a surcharge on incremental users on an extension that is to be considered part of the covered pipeline.

The access arrangement as originally proposed by CGPJV did not describe how an extension to the CGPJV would affect reference tariffs, which is a requirement of the Code (section 3.16(b)). The Final Decision amendment was included to overcome this omission. The tariff arrangement approved by the Minister does not include provision for surcharges to be levied on augmentations to the pipeline (which would normally be

allowed under the Code). As the tariff arrangement approved by the Minister represents the tariff policy in its entirety for the purposes of the access arrangement, the Commission is unable to approve a surcharge on extensions to the pipeline if CGPJV intends that the reference service is to apply.

In response to the Final Decision, CGPJV stated that the derogated tariffs reflect the costs of the CGP in its current configuration and compression requirements up to 175TJ/day. Therefore, according to CGPJV it would be unreasonable for the derogated tariffs to apply to any extension.

The Commission recognises that CGPJV is entitled to recover the costs of extensions and that current reference tariffs may not cover those costs. Under the Code a service provider would normally have the option of applying a surcharge to the reference tariff to incremental users in these circumstances. In the case of the CGP, however, this option is not available to CGPJV as it would be inconsistent with derogated tariff arrangement. To address this issue CGPJV has amended its proposed access arrangement as follows (clause 7.1):

Where an extension is Covered and is subject to this Access Arrangement, access through that extension will be offered as a Negotiated Service at a negotiated tariff.

Furthermore, the revised access arrangement states that the reference tariff will apply for transport to the extension's off-take point from the mainline. The amendments satisfy that part of the Code which requires the service provider to specify how an extension will affect reference tariffs – in the case of the CGP a user will be charged the reference tariff to the extension off-take point and a negotiated tariff for the extension (in the event that the extension forms part of the covered pipeline). If an extension forms part of the covered pipeline and a dispute arises between CGPJV and a prospective user, the parties may refer the matter to the Commission under the Code's dispute resolution provisions.

### ***Expansions***

#### **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, cannot require a prospective user to divulge to CGPJV any commercially sensitive information. CGPJV may require that such information be provided to an independent person mutually agreed to by the CGPJV and the prospective user and who undertakes to keep the information confidential. The independent person's costs shall be borne by the prospective user.

The rationale for this amendment is similar to Amendment 3.3 mentioned above. In its revised access arrangement CGPJV has added the following clause (clause 7.2):

If CGPJV requests a Prospective User to demonstrate the existence of reserves as outlined above, and if such demonstration will require the Prospective User to provide to CGPJV commercially sensitive information regarding such reserves, the Prospective User may either:

- provide such information to CGPJV on the basis that the information is confidential and commercially sensitive in which case CGPJV will keep that information confidential as required by the Code, or
- provide such information to an independent person mutually agreed by CGPJV and the Prospective User, and CGPJV will rely on certification by that independent person as to the existence of sufficient proven reserves to cover the economic life of the expanded Pipeline.

The independent person must undertake to keep the information confidential. The Prospective User must pay the independent person's costs.

### **Amendment A3.7**

In order for CGPJV's access arrangement for the CGP to be approved, CGPJV must amend section 7.3 of its extensions and expansions policy by deleting the clause that reads:

that the expansion will form part of the covered pipeline and that Reference Tariffs will remain unchanged but a Surcharge will be levied on Incremental Users as permitted under the Access Code.

The rationale for this amendment was to remove any inconsistency between the extensions and expansions policy and the derogation. The derogation is framed in such a manner that the reference service and reference tariff are not available to expansions above the nominal capacity of 175TJ/day. The clause as originally proposed by CGPJV would be inconsistent with the derogation as it implies that the reference service would be available. Moreover, CGPJV is not permitted to add to the derogated tariff arrangement by including a provision in the access arrangement that would allow CGPJV to levy a surcharge. CGPJV has deleted the above clause.

#### **2.1.5 Review and expiry of the access arrangement**

In its Final Decision the Commission required the following amendment to the review and expiry provisions of the access arrangement.

### Amendment A3.8

In order for CGPJV's access arrangement for the CGP to be approved, the Commission requires CGPJV to include 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, such as the interconnection of another pipeline with the CGP and the introduction of a significant new gas supply source to one of the CGPJV's markets.

Pursuant to section 58 of the *Gas Pipelines Access (Queensland) Act 1998*, and for so long as that section remains in effect, a review of this access arrangement as a result of one of these major events occurring cannot result in revisions to those parts of the access arrangement that are taken to be approved under that section.

The Commission required this amendment in view of the long lead time (May 2023) before the first review of the access arrangement, as set out in the derogation. The amendment also recognises that if an early review of the access arrangement is triggered only those elements that have not been derogated will be subject to review.

CGPJV has revised its access arrangement by inserting the following clause (clause 8.4):

If:

- (a) a Specified Event as defined below occurs, and
- (b) the Specified Event substantially changes the types of Services that are likely to be sought by the majority of Users, or has a substantial effect on the direction of the flow of gas in the Pipeline,

CGPJV will submit to the Regulator proposed revisions to the non-tariff elements of this Access Arrangement. Such revisions will reflect the impact on those non-tariff elements of the Specified Event. CGPJV will submit such proposed revisions within three months of the occurrence of the Specified Event.

Pursuant to section 58 of the *Gas Pipelines Access (Queensland) Act 1998*, and for so long as that or a substituted provision is in effect:

- (a) revisions to this Access Arrangement as a result of a Specified Event occurring can not result in revisions to those parts of this Access Arrangement which are taken to be approved under that section; and
- (b) the Regulator does not have power to approve revisions which would affect the Tariff Arrangement before the Revisions Commencement Date.

“Specified Event” means:

- (i) the interconnection of another pipeline with the CGP (other than an extension to the CGP),
- (ii) the introduction of a significant source of gas supply to the market served by the CGP.

### **3. Final Approval**

For the reasons expressed in this Final Approval and in the Commission's Final Decision, pursuant to section 2.19 of the Code, the Commission approves CGPJV's revised access arrangement for the CGP.

The access arrangement commences on 1 October 2002.

This Final Approval document and the revised access arrangement are available on the Commission's website: <http://www.accc.gov.au>.