

# Issues Paper

# 12345

**Access Arrangements by  
*Carpentaria Gas Pipeline Joint Venture* for  
the Ballera to Mount Isa Pipeline and  
*APT Petroleum Ltd / Interstate Pipelines Pty  
Ltd* for the  
Wallumbilla to Brisbane Pipeline**

November 2000

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## Preface

On 15 September 2000, Australian Pipeline Trust Petroleum Pipelines Ltd and Interstate Pipelines Pty Ltd and the Carpentaria Gas Pipeline Joint Venture (CGPJV)<sup>1</sup> submitted to the Australian Competition and Consumer Commission (the Commission) provisional Access Arrangements and some Access Arrangement Information for the following pipelines:

- Wallumbilla to Brisbane Pipeline (Roma to Brisbane Pipeline 'RBP'); and the
- Ballera to Mount Isa Pipeline (Carpentaria Gas Pipeline; 'CGP').

The parties requested that the Commission not circulate the provisional Access Arrangements nor commence public consultation on them for four weeks, to enable them to obtain approval from the respective Joint Venture owners of the pipelines. This process has taken longer than expected, but the Commission finally received approved Access Arrangements on 3 and 6 November 2000.

The Access Arrangements and Access Arrangement Information describe the terms and conditions on which each company will make access to its pipeline available to third parties. The Commission will assess the Access Arrangements and Access Arrangement Information against the principles in the National Third Party Access Code for Natural Gas Pipeline Systems ('National Gas Code'). The Commission is significantly restricted in its assessment of these Access Arrangements by legislative exemptions contained in the Queensland Gas Pipelines Access Law. Principally, the Commission is prohibited from reviewing the Reference Tariffs, Reference Tariff Policies and review periods for these Access Arrangements.

Interested parties are invited to make submissions to the Commission on any issues relevant to these Access Arrangements by **29 January 2001**. The issues identified in this Issues Paper are only indicative and are not meant to be exhaustive. Parties making submissions are free to identify other relevant issues for consideration by the Commission. All submissions must be in written form. Unless submissions are marked confidential, they will be placed on the public registers maintained by the Commission and the Code Registrar and made available to any person or organisation on request. If a submission contains confidential material it should be clearly marked and a non-confidential version should also be supplied. Under the National Gas Code, the Commission must not disclose confidential information except if it 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.

It would assist the Commission if four hard copies of each submission could be provided and also one copy supplied in electronic format compatible with Microsoft Word 97 for Windows. Submissions should be addressed to:

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<sup>1</sup> 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.

Copies of these Access Arrangements, Access Arrangement Information and this Issues Paper are available from the Commission's website at <http://www.accc.gov.au> (under 'Gas'). Copies in printed form or on computer disk may be obtained from the Commission by contacting Ms Hema Berry telephone (02) 6243 1274, fax (02) 6243 1205, e-mail: [hema.berry@acc.gov.au](mailto:hema.berry@acc.gov.au)

Any other inquiries should be directed to Mr David Hatfield on (02) 6243 1266.

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## Abbreviations and glossary of terms

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 National Gas Code
Access Arrangement Information	Information provided by a Service Provider to the Relevant Regulator pursuant to section 2 of the National Gas 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
COAG	Council of Australian Governments
CGJV	Carpentaria Gas Pipeline Joint Venture
CGP	Carpentaria Gas Pipeline
Commission	Australian Competition and Consumer Commission
Contract Carriage	A system of managing third party access whereby: <ul style="list-style-type: none"><li>(a) The Service Provider normally manages its ability to provide Services primarily by requiring Users to use no more than the quantity of Service specified in a contract;</li><li>(b) Users normally are required to enter into a contract that specifies a quantity of Service;</li><li>(c) Charges for use of a Service normally are based at least in part upon the quantity of Service specified in a contract; and</li><li>(d) A User normally has the right to trade its right to obtain a Service to another User.</li></ul>
Covered Pipeline	Pipeline to which the provisions of the National Gas Code apply
CPI	Consumer Price Index
Derogation	A legislative exemption from compliance with specified obligations set out in the National Gas Code
GPAL	Gas Pipelines Access Law
National Gas Code	National Third Party Access Code for Natural Gas Pipeline Systems
NCC	National Competition Council

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
Queuing Policy	A policy for determining the priority that a Prospective User has, as against any other Prospective User, to obtain access to Spare Capacity
RBP	Roma to Brisbane Pipeline
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
Reference Tariff Policy	A policy describing the principles that are to be used to determine a Reference Tariff
Revisions Commencement Date	The date upon which the next revisions to the Access Arrangement are intended to commence
Revisions Submissions Date	The date upon which the Service Provider must submit revisions to the Access Arrangement
RoE	Return on Equity
Service	A service provided by means of a Covered Pipeline including: <ul style="list-style-type: none"> <li>(a) haulage services (such as firm haulage, interruptible haulage, spot haulage and backhaul);</li> <li>(b) the right to interconnect with a Covered Pipeline; and</li> <li>(c) services ancillary to the provisions of such services,</li> </ul> but does not include the production, sale or purchasing of Natural Gas
Service 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

# 1. Introduction

## 1.1 Purpose

Chapter 2 of the *National Third Party Access Code for Natural Gas Pipeline Systems* ('the National Gas Code') specifies that the Service Provider of a gas pipeline covered by the National Gas Code is required to establish an Access Arrangement and submit it to the regulator for approval. The Service Provider is defined as 'a person who owns (whether legally or equitably) or operates the whole or any part of a Pipeline'.

The purpose of this Issues Paper is to:

- list a number of issues that the Australian Competition and Consumer Commission ('the Commission') has identified as relevant to its role in assessing the Access Arrangement and Access Arrangement Information relating to the Ballera to Mount Isa Pipeline (Carpentaria Gas Pipeline; 'CGP') and the Wallumbilla to Brisbane Pipeline (Roma to Brisbane Pipeline; 'RBP'); and
- invite interested parties to make submissions on these and other relevant issues that they consider the Commission should examine in its assessment of these Access Arrangements.

## 1.2 The current assessment process

The proposed Access Arrangements and Access Arrangement Information describe the terms and conditions on which each Service Provider will make access available to third parties during the initial Access Arrangement period. As the derogations currently stand<sup>2</sup>, the initial Access Arrangement Period for the RBP extends to 2006; the initial Access Arrangement Period for the CGP extends until 2023.

Under the National Gas Code, Service Providers have the discretion to submit revisions earlier than the scheduled review.

Under the National Gas Code, the Commission is required to:

- inform interested parties that it has received the access arrangements from Australian Pipeline Trust Pipeline Petroleum Trust Ltd Pty and Interstate Pipelines Ltd ('APT/ILP') and Carpentaria Gas Pipeline Joint Venture ('CGPJV').
- publish a notice in a national daily paper which at least describes the Covered pipeline to which the Access Arrangement relates; states how copies of the documents may be obtained; and requests submissions by a date specified in the notice;
- after considering submissions received, issue a *Draft Decision* which either proposes to approve the Access Arrangement or not to approve the Access Arrangement and states the amendments (or nature of the amendments) which have to be made to the Access Arrangement in order for the Commission to approve it. Submissions will be sought again following release of the Commission's draft decision;

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<sup>2</sup> See Chapter 2 for a description of the derogations.

- after considering any additional submissions, issue a final decision that either approves or does not approve the Access Arrangement (or revised access arrangement) and states the amendments (or nature of the amendments) which have to be made to the Access Arrangement (or revised access arrangement) in order for the 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.

It is important to note that under s.58 of the *Gas Pipelines Access (Queensland) Act 1998*, the Reference Tariffs and Reference Tariff Policy for these Access Arrangements have been determined by the Queensland Minister and cannot currently be reviewed in this process. This is discussed in more detail in Chapter 2 below.

### **1.3 Key issues**

The Commission has identified a range of issues (refer to Chapters 4 and 5 in particular) which are likely to be relevant to its assessment of the proposed Access Arrangements and for which it invites comments. Key issues that the Commission will focus on during its assessment include:

- the impact of the derogated review period on the non-tariff elements of the proposed Access Arrangements;
- whether the limited provision of Access Arrangement Information is appropriate;
- terms and conditions on which Reference Services are to be provided; and
- Revisions and Commencement dates.



## 2. Regulatory framework

### 2.1 Relevant legislation and regulatory bodies

The main legislation and relevant documents regulating access to the Queensland gas transmission industry are:

- the National Gas Code, under which transmission service providers are required to submit access arrangements to the Commission for approval;
- the *Gas Pipelines Access (South Australia) Act 1997*;<sup>3</sup> and
- the *Gas Pipelines Access (Queensland) Act 1998*.

Code Bodies and Appeals Bodies in Queensland with respect to transmission pipelines are:

- the Commission – Regulator and Arbitrator;<sup>4</sup>
- the National Competition Council – Code Advisory Body;
- the Commonwealth Minister – Coverage Decision Maker;
- the Federal Court – judicial review; and
- the Australian Competition Tribunal – administrative appeal.

### 2.2 Queensland Derogations

In 1997 the Queensland Government was a signatory to the Natural Gas Pipelines Access Agreement – a COAG Intergovernmental Agreement to implement the National Third Party Access Code for Natural Gas Pipeline Systems. In accordance with this agreement, the Queensland Government passed the *Gas Pipelines Access Act (Queensland) 1998*, which came into effect on 19 May 2000.

The *Gas Pipelines Access Act (Queensland) 1998* applies the GPAL (comprising the National Gas Code and the legal framework for its operation) in Queensland, as well as regulations governing issues of specific relevance to Queensland such as the nomination of regulatory bodies. In addition, the *Gas Pipelines Access Act (Queensland) 1998*, makes a number of amendments to the *Petroleum Act (Queensland) 1923* and the *Gas Act (Queensland) 1965* in an attempt to create a regulatory framework consistent with the National Gas Code.

The *Gas Pipelines Access Act (Queensland) 1998* established a number of derogations from the National Gas 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 National Gas Code. This means that the Reference Tariffs are non-reviewable for extended periods of time – over 20 years for the Carpentaria Gas Pipeline ('CGP').

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<sup>3</sup> South Australia acted as 'lead legislator' for the national gas access legislation.

<sup>4</sup> The Commission is also Regulator and Arbitrator with respect of transmission pipelines in the other States and Territories with the exception of Western Australia.

As a result of these legislative arrangements, the Service Providers of the following four pipelines are obliged to submit Access Arrangements in accordance with the National Gas Code as varied by the derogations.

<b>Pipeline</b>	<b>Service Provider</b>
PPL2 Wallumbilla to Brisbane Pipeline	Australian Pipeline Trust
PPL24 Ballera to Wallumbilla Pipeline	Epic Energy
PPL 30 Wallumbilla to Gladstone via Rockhampton Pipeline	Duke Australia Operations
PPL41 Ballera to Mt Isa Pipeline	Australian Pipeline Trust

These Access Arrangements were due on Thursday 17 August 2000. In accordance with this obligation, Duke and Epic submitted Access Arrangements for the Wallumbilla to Gladstone via Rockhampton and the Ballera to Wallumbilla Pipelines respectively. The Commission invited comment on these proposed Access Arrangements in an earlier Issues Paper (September 2000). With respect to the Wallumbilla to Brisbane Pipeline and the Ballera to Mt Isa Pipeline the Service Provider wrote to the Commission on 17 August 2000, indicating that the Access Arrangements would be lodged on or before 15 September 2000. As set out previously, while provisional Access Arrangements were lodged on 15 September 2000, it was only on 3 and 6 November 2000 that the joint venture owners of the CGP and RBP submitted 'approved' Access Arrangements.

## **2.3 Certification of the Queensland Gas Access Regime**

On 25 September 1998, the Queensland Premier applied to the National Competition Council (NCC) to certify the 'effectiveness' of the Queensland Third Party Access Regime for Natural Gas Pipelines (the Queensland Regime). If a service is certified as effective, it cannot be declared for access under Part IIIA of the *Trade Practices Act 1974*.

The Commission understands that the NCC is unlikely to recommend that the Queensland Regime, in its current state, be certified as effective. This is fundamentally because of the impact of the derogations.

### **2.3.1 National Competition Council Process**

In considering the effectiveness of the Queensland Regime, the NCC must apply the relevant principles in the Competition Principles Agreement. The NCC will make a recommendation to the Commonwealth Minister. The Commonwealth Minister then decides whether or not to certify the Queensland Regime as effective.

If the Commonwealth Minister does not certify the Queensland Regime as effective this would not effect the Commission's consideration of the Access Arrangements, but would expose these pipelines to the possibility of declaration under Part IIIA of the *Trade Practices Act 1974*. Were this to occur, unsatisfied access seekers may notify access disputes to the Commission for binding arbitration. In such circumstances, the Commission would not be bound by the Reference Tariffs established by the Queensland Minister in the derogations.

The Commission was asked by the NCC to advise it on whether the Queensland Gas Pipeline Access Regime as it applies to four pipelines, previously derogated by the Queensland Government, is broadly consistent with the National Gas Code. Specifically the NCC requested that the Commission assess the relevant tender processes undertaken by Queensland against those established in the National Gas Code. If they were inconsistent, the Commission was then asked to determine whether the Reference Tariffs in the respective Access Principles were broadly consistent with the pricing parameters set out in section 8 of the National Gas Code.

The Commission found that the tendering process conducted by the Queensland Government to determine Access Principles for the Wallumbilla to Gladstone via Rockhampton; Ballera to Mt Isa and Ballera to Wallumbilla pipelines were significantly inconsistent with the Competitive Tender provisions in the National Gas Code. Principally the Commission found:

- a fundamental conflict inherent in the tendering process for the Wallumbilla to Gladstone via Rockhampton pipeline – with this pipeline being privatised and the Access Principles determined simultaneously;
- there was not the same degree of separation between the party running the tender processes and the party providing independent oversight and assessment as is required under the National Gas Code;
- that the selection criteria for both the Ballera to Mt Isa and Ballera to Wallumbilla pipelines were designed to result in the successful tender being selected principally on the basis that it would deliver the lowest sustainable tariffs to users generally over the economic life of the proposed pipeline. Rather, the primary selection criteria set out by the Queensland Government was the delivered price of gas – incorporating a gas commodity price and transportation components.

The Commission then estimated the Return on Equity (RoE) for the derogated pipelines. For the Ballera to Wallumbilla and Ballera to Mt Isa pipelines the RoEs were estimated to fall within a reasonable range. In the case of the Wallumbilla to Gladstone via Rockhampton pipeline, the estimated RoE was at the high end of a reasonable range. Finally, for the Wallumbilla to Brisbane Pipeline the estimated RoE was higher than could reasonably be expected in the circumstances and may be inconsistent with the pricing principles of the National Gas Code.

In addition to these RoE issues the Commission also expressed concern at the lack of provision of Access Arrangement Information and the significant length of most non-review periods. The public version of the Commission's report to the NCC can be viewed at <http://www.ncc.gov.au> under 'Gas'.

The NCC's assessment of the Queensland Government's application for certification of its Gas Pipeline Access Regime as effective is a separate process from the Commission's consideration of these Access Arrangements under that regime. Nevertheless, the two processes are clearly related because of the potential for the former to result in changes to the latter.

The Commission understands that the NCC have identified a number of elements of the derogations that may need to be amended before it could recommend that the Queensland Gas Pipeline Access Regime be certified as effective. These include the exemptions from information disclosure (AAI), the derogated tariffs (which for some of the pipelines result in estimated rates of return that are inappropriate), the length of some of the review periods and revenue sharing mechanisms. If the derogations were to be amended, the Commission expects that some elements of the current Access Arrangements that are unable to be reviewed may become subject to review or amendment.

### 3. Criteria for assessing access arrangements

The Commission may approve an Access Arrangement only if it is satisfied that the Access Arrangement contains the elements and satisfies the principles set out in sections 3.1 to 3.20 of the National Gas Code, which are summarised below. An Access Arrangement cannot be opposed on the basis that it does not address a matter that section 3 of the National Gas Code does not require it to address. Notwithstanding, the Commission has a broad discretion in accepting or opposing an Access Arrangement.

An Access Arrangement must include the following elements:

- **Services Policy** which must include a description of one or more Services that the Service Provider will offer to Users and Prospective Users;
- **Reference Tariffs and Reference Tariff Policy**, including one or more Reference Tariffs. Tariffs are normally assessed against the Reference Tariff principles in section 8 of the National Gas Code. In this instance, however, the Reference Tariffs and Reference Tariff Policies have been derogated from the operation of the National Gas Code by Queensland legislation;
- **Terms and Conditions** on which the Service Provider will supply each Reference Service;
- a statement that the Covered Pipeline is either a Contract Carriage or Market Carriage pipeline (**Capacity Management Policy**);
- 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 Users' priorities in obtaining access to spare and developable capacity on a pipeline;
- an **Extensions/Expansions Policy** to determine the treatment of an extension or expansion of a pipeline under the National Gas Code;
- a date by which revisions to the Access Arrangement must be submitted; and
- a date by which the revisions are intended to commence.

In considering whether an Access Arrangement complies with the National Gas Code, the Commission must take into account, pursuant to section 2 of the National Gas Code:

- the legitimate business interests 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.

## **4. Wallumbilla to Brisbane Pipeline**

### **4.1 Ownership and organisational structure**

The Wallumbilla to Brisbane Pipeline, more commonly referred to as the Roma to Brisbane Pipeline ('RBP'), sources gas from four inlet stations at the gas hub at Wallumbilla, near Roma. In addition, gas is supplied from SWQ Producers via a pipeline from Ballera. Gas is transported to southern-central Queensland markets along the pipeline route and into Brisbane and south-east Queensland.

Australian Pipeline Trust Petroleum Pipelines Ltd (which operates the RBP) and Interstate Pipelines Pty Ltd ('APT/IPL') own the RBP. They are the joint Service Provider for the purposes of the proposed Access Arrangement.

The RBP was completed in 1969 and gas was transported in that year. It was Australia's first long distance onshore gas pipeline. This made Brisbane the first capital city to be supplied with natural gas. The RBP was primarily constructed to meet the energy needs of the fertiliser industry on Gibson Island. Over time the capacity of the pipeline has been increased by compression between 1981 and 1986 and through looping during 1998 to 2000.

### **4.2 Compliance with the National Gas Code**

#### **4.2.1 The content of the access arrangement**

The required contents of an Access Arrangement were listed in broad terms earlier in Chapter 3. The Commission must be satisfied that APT/IPL's proposed Access Arrangement meets the content requirements of the National Gas Code before it can approve the Access Arrangement. It must also be satisfied of the reasonableness of the terms and conditions on which Services will be offered.

#### **4.2.2 Information disclosure**

The National Gas Code requires that a proposed Access Arrangement must be supported by Access Arrangement Information. Section 2.6 specifies that Access Arrangement Information must contain such information as in the opinion of the regulator would enable Users and Prospective Users to understand the derivation of the elements in the proposed Access Arrangement and to form an opinion as to the compliance of the Access Arrangement with the provisions of the National Gas Code. Section 2.7 states that the Access Arrangement Information may include any relevant information but must include at least the categories of information described in Attachment A to the National Gas Code (reproduced at Attachment A to this *Issues Paper*).

Whilst ensuring that sufficient information is available to Users and Prospective Users, the Commission must also ensure that any information disclosed is not, in its opinion, unduly harmful to the legitimate business interests of the Service Provider, Users or Prospective Users.

APT/IPL's Reference Tariffs for capacity up to 101TJ/day are the subject of a derogation approved by the Queensland Minister for Mines and Energy. This derogation is set out in Schedule A of the Access Arrangement (the Reference Tariffs Schedule). Amongst other things,

the derogation explicitly exempts APT/IPL from the requirement to submit Access Arrangement Information (AAI) in connection with an Access Arrangement for that capacity up to 101TJ/day.

The exemption from the Code obligation to provide AAI for the RBP does not extend to services relating to capacity beyond 101TJ/day. In this instance, APT/IPL have not proposed to offer Reference Services (and hence have not proposed Reference Tariffs) for capacity beyond 101TJ/day (see Services Policy and Reference Tariffs below).

Attachment A to the National Gas Code sets out 6 categories of information which form the minimum requirements for AAI. Arguably, at least Category 5 information is not related to Reference Tariffs. Category 5 relates to information regarding System Capacity and Volume Assumptions including system capabilities and average daily and peak demand. APT/IPL have only provided Category 5 AAI.

### ***Issues for Consideration***

- (a) Is the information disclosed in the Access Arrangement and the Access Arrangement Information sufficient to enable Users and Prospective Users to understand the derivation of the elements in the proposed Access Arrangement and to form an opinion as to the compliance of the Access Arrangement with the provisions of the National Gas Code?
- (b) Is sufficient information disclosed to enable users to understand how requests for access to capacity beyond 101TJ/day will be treated?
- (c) If not, what additional information should be provided and in what form?
- (d) Should APT/IPL be required to release any additional non-tariff related Access Arrangement Information?
- (e) If so, what additional information should be provided and in what form?

#### **4.2.3 Services Policy**

Sections 3.1 and 3.2 of the National Gas 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 regulator's opinion should be included in the Services Policy.

To the extent that is practicable and reasonable, a Service Provider should make available only those elements of a Service required by Users and Prospective Users and apply a separate tariff for each element if this is requested.

APT/IPL propose to offer two transportation services under its Access Arrangement:

- Reference Service — non-interruptible transportation service for gas delivered into the RBP by or on behalf of the User through any segment of the RBP in the direction from Wallumbilla to Brisbane, including an Overrun service. This Reference Service is offered for capacity up to the first 101TJ/day of Contracted Capacity.
- Negotiated Service — a negotiated service is offered for capacity from 101TJ/day to 118.5TJ/day. In addition, agreements can be negotiated to meet the needs of a User that differ from those of the Reference Service. Should a dispute arise, it is proposed to be resolved in accordance with the dispute resolution procedures set out in the National Gas Code and associated Law.

### *Issues for consideration*

- a) Are there any other Services that are likely to be sought by a significant segment of market participants that should be included in the Service Policy? If so, please specify.
- b) Is the proposed Negotiated Service for capacity above 101TJ/day sufficient to meet the demands of access seekers?

#### **4.2.4 Reference Tariffs and Reference Tariff Policy**

The Queensland Government have determined the Reference Tariffs for services utilising capacity up to 101TJ/day through a legislative instrument (the derogation). This means that the Commission has no ability to review or vary these Reference Tariffs until the review date in 2006. The RBP, however, has been looped, such that capacity currently exceeds 101TJ/day. For this additional capacity, there is no derogation in place and the full provisions of the Code apply.

APT/IPL have proposed that services utilising this additional capacity (101-118.5TJ/day) be regarded as 'negotiated services' and as such have not proposed a reference tariff.

In addition, APT/IPL have stated that the Reference Tariff Policy for the RBP is as described in the derogation, but have proposed some additional principles (as set out in section 4 of the AA).

### *Issues for consideration*

- (a) Is the proposed 'negotiated service' for capacity between 101 and 118.5TJ/day consistent with the Code's pricing principles?
- (b) If not, how should access to this additional capacity be priced, given the derogations applying to capacity up to 101TJ/day?

#### **4.2.5 Terms and conditions**

Section 3.6 of the National Gas Code requires an Access Arrangement to include the terms and conditions on which a Service Provider will supply each Reference Service. To be approved, these terms and conditions must be considered reasonable by the regulator.

The terms and conditions upon which APT/IPL will provide transportation services are set out in the following:

- Reference Service and Negotiated Services (Schedule C of the Access Arrangement — Terms and Conditions Applying to All Reference Services); and
- The provisions of the Access Arrangement including:
  - Schedule A — Tariff Arrangement Approved by the Minister Under Section 58 of the Gas Pipelines Access (Queensland) Act 1998;
  - Schedule B — Definitions for Access Arrangement;
  - Schedule D — Connection Of Metering Facilities To The Pipeline; and
  - Schedule E — Form Of Request For Service

### ***Issues for consideration***

- a) Does the Access Arrangement clearly identify the relevant terms and conditions which enable a Prospective User to be sufficiently well informed before making a specific access request?
- b) Are the proposed terms and conditions reasonable?

#### **4.2.6 Trading Policy**

Sections 3.9 to 3.11 of the National Gas Code set out the requirements for a Trading Policy. If a pipeline is a Contract Carriage pipeline (as is proposed by APT/IPL for this pipeline), the Access Arrangement must include a Trading Policy, which explains the rights of a User to trade its right to obtain a service to another person. The Trading Policy must also allow a user to transfer capacity.

APT/IPL's Trading Policy (Section 5 of its proposed Access Arrangement) allows Users to trade or assign some or all of their rights to its contracted capacity under the Access Arrangement to another User or Prospective User.

The proposed Access Arrangement permits a Bare Transfer without consent provided the transferee gives APT/IPL prior notice that it intends to effect such a transfer. Consent may be withheld only on reasonable commercial or technical grounds, and may be given subject to reasonable commercial or technical conditions.

Aside from a Bare Transfer, a User may assign or trade all or part of its contracted capacity with the prior consent of APT/IPL. The User is required to seek the Service Provider's consent before assigning its rights and obligations to some or all of its contracted capacity. Consent may be withheld only on reasonable commercial or technical grounds, and may be given subject to reasonable commercial or technical conditions.

Users may only change Receipt and Delivery Points with the express approval of the Service Provider. Consent may be withheld only on reasonable commercial or technical grounds, and may be given subject to reasonable commercial or technical conditions.

### ***Issues for Consideration***

- a) Does the proposed Trading Policy sufficiently explain the rights of the User to trade its rights to obtain a Service to another person?
- b) Should assignment be subject to APT/IPL's consent 'on reasonable commercial grounds or conditions'?
- c) How should 'on reasonable commercial grounds or conditions' be determined?

#### **4.2.7 Queuing Policy**

Sections 3.12 to 3.15 of the National Gas Code set out the 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 National Gas Code.

The policy must set out sufficient detail to enable Users and Prospective Users to understand in advance how it will operate; to the extent reasonably possible, accommodate the legitimate



business interests of the Service Provider, Users and Prospective Users; and to the extent reasonably possible, generate economically efficient outcomes.

APT/IPL's proposed Queuing Policy is set out in section 6 of its Access Arrangement. Accordingly, a Queue will be formed when there is insufficient capacity to satisfy an access request. The Queue will also include any previous requests that were not able to be satisfied. Prospective Users will be notified regarding:

- Their position in the queue;
- The aggregate capacity sought under Requests ahead of them in the Queue;
- Estimate of when their Request may be satisfied; and
- The size of an applicable surcharge for Developable Capacity.

APT/IPL also require that a Prospective User demonstrate it has a ready source of gas at the time capacity is likely to be offered.

Available Capacity will be progressively offered to each Prospective User in the Queue; details of the terms and conditions of access will also be offered to each Prospective User. APT/IPL must receive acceptance of an offer within 30 days, or the offer will lapse.

A number of conditions govern the operation of the Queue, a Prospective User can only decrease but not increase the quantum of capacity sought. To ensure that requests are managed effectively APT/IPL may, once every three months, seek to re-organise capacity on the Queue. Importantly, a request for a Reference Service will have priority over a request for a Negotiated Service.

If a dispute is notified, the Service Request will retain its priority in the queue until a resolution has been reached as required by the National Gas Code.

#### ***Issues for Consideration***

- (a) Are there sufficient details in the proposed Queuing Policy to enable Users and Prospective Users to understand how the Queuing Policy will operate?
- (b) Does the proposed Queuing Policy accommodate the legitimate business interests of the Service Provider, Users and Prospective Users?

#### **4.2.8 Extensions/Expansions Policy**

Section 3.16 of the National Gas Code requires an Access Arrangement to include an extensions/expansions policy which sets out the method to determine which extensions and expansions will be treated as part of the Covered Pipeline and, if covered, how they will affect Reference Tariffs.

Under the proposed Access Arrangement, APT/IPL will consult with the Commission as to whether extensions to the pipeline (adding to the physical length of the pipeline system) form part of the RBP for the purposes of this proposed Access Arrangement.

If APT/IPL expand capacity in the present geographic location above 118.5 TJ/Day, the Service Provider will consult the Commission to determine:

- If the expansion should not be treated as part of the 'Covered Pipeline';

- If the expansions will be part of the ‘Covered Pipeline’ and as a consequence the Reference Tariff will remain the same, however, a levy will be applied to Incremental Users; or
- The appropriateness of re-submitting a revised Access Arrangement to the Commission.

### ***Issues for Consideration***

- (a) Does the proposed Access Arrangement sufficiently specify how extensions and expansions will affect Reference Tariffs?
- (b) Are the proposals reasonable?
- (c) Should there be specific criteria to assess whether an extension or expansion is treated as part of the covered pipeline? If so, what criteria would you suggest?

#### **4.2.9 Term and Review**

Section 3.17 of the National Gas Code states that an Access Arrangement must include a Revisions Submission Date and a Revisions Commencement Date. These terms and dates are defined in the Reference Tariffs Schedule as follows:

- Revisions Submission Date means the date by which revisions to this Access Arrangement must be submitted to the Commission, being 31 January 2006.
- Revisions Commencement Date means the date by which the revisions, once approved by the Commission, are deemed to commence, being:
  - (i) 29 July 2006 — which is the Revisions Commencement Date in the tariff derogations; or
  - (ii) the date on which the approval by the Regulator of the revisions to the Access Arrangement takes effect under the Code.

Section 3.17 also provides that the regulator may, in making its decision on an Access Arrangement require that specific major events be defined that trigger an obligation on the Service Provider to submit revisions prior to the Revisions Submissions Date.

Section 3.18 provides that the Regulator, when considering an Access Arrangement with an Access Arrangement Period greater than five years must not approve the Access Arrangement without first considering whether mechanisms should be included to address the risk on which the terms of the Access Arrangement were based and approved proving incorrect. These mechanisms may include:

- (a) requiring the Service Provider to submit revisions to the Access Arrangement prior to the Revisions Submission Date if certain events occur, for example:
  - (i) if a Service Provider’s profits derived from a Covered Pipeline are outside a specified range or if the value of Services reserved in contracts with Users are outside a specified range;
  - (ii) if the type or mix of Services provided by means of a Covered Pipeline changes in a certain way; or
- (b) a Service Provider returning some or all revenue or profits in excess of a certain amount to Users, whether in the form of lower charges or some other form.

### *Issues for Consideration*

The derogation fixes the review date as set out above (Jan 2006) and this is not currently reviewable by the Commission in its assessment of this Access Arrangement.

- (a) Should the Commission require that specific major events be defined that trigger an obligation on the Service Provider to submit revisions prior to the Revisions Submissions Date? If so, what specific major events?
- (b) Should the Commission require a mechanism be included to address the risk of forecasts on which the terms of the Access Arrangement were based and approved proving incorrect? If so, what type of mechanism?

## **5 Ballera to Mt Isa Pipeline**

### **5.1 Ownership and organisational structure**

The Carpentaria Gas Pipeline (CGP) transports gas from the producing fields at Ballera to markets in Mount Isa and along the pipeline route. The asset comprises 840 km of transmission pipeline along with associated facilities and infrastructure. Associated with CGP are the Cannington lateral, the Mount Isa Lateral and the Mica Creek metering facility.

The CGP is owned by the Carpentaria Gas Pipeline Joint Venture (CGPJV) comprising:

- Roverton Pty Ltd;
- Santos Ltd;
- Delhi Pty Ltd;
- Boral Energy Resources Ltd;
- Vamgas Pty Ltd;
- Australian Hydrocarbons Ltd; and
- Oil Company of Australia.

The CGPJV are the Service Provider for the purposes of this Access Arrangement. The operator of the pipeline is Roverton Pty Ltd.

### **5.2 Compliance with the National Gas Code**

#### **5.2.1 The content of the Access Arrangement**

The required contents of an Access Arrangement were listed in broad terms earlier in Chapter 3. The Commission must be satisfied that CGPJV's Access Arrangement meets the content requirements of the National Gas Code before it can approve the Access Arrangement. It must also be satisfied of the reasonableness of the terms and conditions on which services will be offered.

#### **5.2.2 Information disclosure**

The National Gas Code requires that a proposed Access Arrangement must be supported by Access Arrangement Information. Section 2.6 specifies that Access Arrangement Information must contain such information as in the opinion of the regulator would enable Users and Prospective Users to understand the derivation of the elements in the proposed Access Arrangement and to form an opinion as to the compliance of the Access Arrangement with the provisions of the National Gas Code. Section 2.7 states that the Access Arrangement Information may include any relevant information but must include at least the categories of information described in Attachment A to the National Gas Code (refer to Attachment A to this *Issues Paper*).

Whilst ensuring that sufficient information is available to Users and Prospective Users, the Commission must also ensure that any information disclosed is not, in its opinion, unduly harmful to the legitimate business interests of the Service Provider, Users or Prospective Users.

In support of its proposed Access Arrangement, CGPJV has only submitted information in relation to Category 5 Access Arrangement Information ('Information regarding system capacity

and volume assumptions'). The CGPJV states that it has an exemption from the obligation to provide AAI pursuant to the derogation.

### ***Issues for Consideration***

- (a) Is the information disclosed in the Access Arrangement and the Access Arrangement Information sufficient to enable Users and Prospective Users to understand the derivation of the elements in the proposed Access Arrangement and to form an opinion as to the compliance of the Access Arrangement with the provisions of the National Gas Code?
- (b) Should the CGPJV be required to release any additional non-tariff related AAI? If so, what additional information should be provided and in what form?

### **5.2.3 Services Policy**

Sections 3.1 and 3.2 of the National Gas 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 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 only those elements of a Service required by Users and Prospective Users and apply a separate tariff for each element if this is requested.

CGPJV propose to offer two transportation services under its Access Arrangement:

- Reference Service — non-interruptible transportation service for gas delivered into the CGP 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. The Reference Service is offered for capacity up to the first 175TJ/day in the pipeline.
- Negotiated Services — agreements negotiated to meet the needs of a User that differ from those of the Reference Service.

### ***Issues for Consideration***

- a) Is it appropriate for CGPJV to have only one Reference Service?
- b) Are there any other Services that should be included in the Services policy? If so, please specify.

### **5.2.4 Terms and Conditions**

Section 3.6 of the National Gas Code requires an Access Arrangement to include the terms and conditions on which a Service Provider will supply each Reference Service. To be approved, these terms and conditions must be considered reasonable by the regulator.

The terms and conditions upon which CGPJV will provide the transportation services are set out in the following:

- Reference Service and Negotiated Services (Schedule C of the Access Arrangement — Terms and Conditions Applying to All Reference Services); and
- The provisions of the Access Arrangement including:
  - Schedule A — Tariff Arrangement approved by the Minister Under Section 58 of the Gas Pipelines Access (Queensland) Act 1998;
  - Schedule B — Definitions for the Access Arrangement;
  - Schedule D — Connection Of Metering Facilities To The Pipeline; and
  - Schedule E — Form Of Request For Service

#### ***Issues for consideration***

- a) Does the Access Arrangement clearly identify the relevant terms and conditions, which enable a Prospective User to be sufficiently well informed before making a specific access request?
- b) Are the proposed terms and conditions reasonable?

#### **5.2.5 Trading Policy**

Sections 3.9 to 3.11 of the National Gas 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. This explains the rights of a User to trade its right to obtain a service to another person. The Trading Policy must also allow a User to transfer capacity.

The proposed Access Arrangement permits a Bare Transfer without the Service Provider's consent provided the transferee gives APT/IPL prior notice that it intends to effect such a transfer. Consent may be withheld only on reasonable commercial or technical grounds, and may be given subject to reasonable commercial or technical conditions.

Aside from a Bare Transfer, a User may assign or trade all or part of its contracted capacity with the prior consent of APT/IPL. The User is required to seek the Service Provider's consent before assigning its rights and obligations to some or all of its contracted capacity. Consent may be withheld only on reasonable commercial or technical grounds, and may be given subject to reasonable commercial or technical conditions.

Users may only change Receipt and Delivery Points with the express approval of the Service Provider. Consent may be withheld only on reasonable commercial or technical grounds, and may be given subject to reasonable commercial or technical conditions.

#### ***Issues for consideration***

- a) Does the proposed Trading Policy sufficiently explain the rights of the User to trade a service to another person?
- b) Should a transfer other than a Bare Transfer be subject to CGPJV's consent on reasonable commercial grounds and conditions?

### **5.2.6 Queuing Policy**

Sections 3.12 to 3.15 of the National Gas Code set out the 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 National Gas Code.

The policy must set out sufficient detail to enable Users and Prospective Users to understand in advance how it will operate; to the extent reasonably possible, accommodate the legitimate business interests of the Service Provider, Users and Prospective Users; and to the extent reasonably possible, generate economically efficient outcomes.

The CGPJV's proposed Queuing Policy is set out in section 6 of its Access Arrangement. A Queue will be formed when there is insufficient capacity to satisfy an access Request. The Queue will also include any previous requests that were not able to be satisfied. Prospective Users will be notified regarding:

- Their position in the queue;
- The aggregate capacity sought under Requests ahead of them in the Queue; and
- An estimate of when their Request may be satisfied; and
- The quantum of any surcharge levied for Developable Capacity.

Prospective Users are required to demonstrate that they have a ready source of gas at the time capacity is likely to be offered.

Available Capacity will be progressively offered to each Prospective User in the Queue; details of the terms and conditions of access will also be offered to each Prospective User. The Service Provider must receive acceptance of an offer within 30 days, or the offer will lapse.

A number of conditions relate to the operation of the Queue, a Prospective User can only decrease but not increase the quantum of capacity sought. To ensure that requests are managed effectively, CGPJV may once every three months seek to re-organise capacity on the Queue. Importantly, a request for a Reference Service will have priority over a request for a Negotiated Service.

If a dispute is notified, the Service Request will retain its priority in the queue until a resolution has been reached as required by the National Gas Code.

#### ***Issues for Consideration***

- a) Are there sufficient details in the proposed Queuing Policy that would enable Users and Potential Users to understand how the Queuing Policy will operate?
- b) Does the proposed Queuing Policy accommodate the legitimate business interests of the Service Provider, Users and Prospective Users?

### **5.2.7 Extensions/Expansions Policy**

Section 3.16 of the National Gas Code requires an Access Arrangement to include an extensions/expansions policy which sets out the method to determine which extensions and expansions will be treated as part of the Covered Pipeline and, if covered, how they will affect Reference Tariffs.

Under the proposed Access Arrangement, CGPJV will consult with the Commission as to whether extensions to the pipeline (adding to the physical length of the pipeline system) form part of the CGP for the purposes of this proposed Access Arrangement.

The proposed Access Arrangement applies to expansions for all capacity up to 175TJ/Day in its present geographic location. An expansion up to 175 TJ/Day will only occur provided that:

- In the reasonable opinion of the CGPJV sufficient gas reserves exist to cover the economic life of the expanded pipeline; and
- The User or Prospective User will utilise the expanded capacity at the current Reference Tariff.

If the CGPJV expand capacity in the present geographic location above 175 TJ/Day the Service Provider will consult the Commission to determine:

- If the expansion should not be treated as part of the ‘Covered Pipeline’; or
- Whether the expansions will be part of the ‘Covered Pipeline’ and as a result the Reference Tariff remain the same, but a surcharge will be applied to Incremental Users.; or
- The appropriateness of submitting revisions for the Access Arrangement to the Commission.

#### ***Issues for Consideration***

- a) Does the proposed Access Arrangement sufficiently specify how extensions and expansions will affect Reference Tariffs?
- b) Is it reasonable for the Service Provider to impose a Surcharge or Capital Contribution in respect of New Facilities Investment?
- c) Given the length of the Access Arrangement Period, should the approval of the Regulator be required before CGPJV can elect to not have an extension or expansion treated as part of the Covered Pipeline?

#### **5.2.8 Term and Review**

Section 3.17 of the National Gas Code states that an Access Arrangement must include a Revisions Submission Date and a Revisions Commencement Date. These terms and dates are defined in the Reference Tariffs Schedule as follows:

- Revisions Submission Date means the date by which revisions to this Access Arrangement must be submitted to the Commission, being 1 November 2022, which is also the revisions submission date in the Tariff Arrangement (derogations).
- Revisions Commencement Date means the date by which the revisions, once approved by the Commission, are deemed to commence, being:
  - (i) 1 May 2023 — which is the Revisions Commencement Date in the Tariff Arrangement (derogations); or
  - (ii) the date on which the approval by the Regulator of the revisions to the Access Arrangement takes effect under the Code.



Section 3.17 also provides that the regulator may, in making its decision on an Access Arrangement require that specific major events be defined that trigger an obligation on the Service Provider to submit revisions prior to the Revisions Submissions Date.

Section 3.18 provides that the Regulator, when considering an Access Arrangement with an Access Arrangement Period greater than five years must not approve the Access Arrangement without first considering whether mechanisms should be included to address the risk on which the terms of the Access Arrangement were based and approved proving incorrect. These mechanisms may include:

- (a) requiring the Service Provider to submit revisions to the Access Arrangement prior to the Revisions Submission Date if certain events occur, for example:
  - (i) if a Service Provider's profits derived from a Covered Pipeline are outside a specified range or if the value of Services reserved in contracts with Users are outside a specified range;
  - (ii) if the type or mix of Services provided by means of a Covered Pipeline changes in a certain way; or
- (b) a Service Provider returning some or all revenue or profits in excess of a certain amount to Users, whether in the form of lower charges or some other form.

#### ***Issues for Consideration***

In this instance, the derogation sets the length of the Access Arrangement Period by fixing the review date at 1 May 2023. This is not currently reviewable by the Commission in its assessment of this Access Arrangement. The Commission understands however, that the extended duration of this Access Arrangement is one aspect of the derogation that the NCC is seeking to have the Queensland Government change.

An important subsidiary effect of having the non-review period determined in the derogation until 2023 is that once the Commission approves the non-tariff elements of the Access Arrangement, they also cannot be reviewed again before 2023 – unless the Service Provider applies to have them varied. Normally, non-tariff elements are reviewed every five years – even where tariffs are fixed for longer periods.

- (a) Should the Commission require that specific major events be defined that trigger an obligation on the Service Provider to submit revisions prior to the Revisions Submissions Date? If so, what specific major events?
- (b) Should the Commission require a mechanism be included to address the risk of forecasts on which the terms of the Access Arrangement were based and approved proving incorrect? If so, what type of mechanism?

# Attachment A

## INFORMATION DISCLOSURE BY A SERVICE PROVIDER TO INTERESTED PARTIES

Pursuant to section 2.7 the following categories of information must be included in the Access Arrangement Information.

The specific items of information listed under each category are examples of the minimum disclosure requirements applicable to that category but, pursuant to sections 2.8 and 2.9, the Relevant Regulator may:

- allow some of the information disclosed to be categorised or aggregated; and
- not require some of the specific items of information to be disclosed,

if in the Relevant Regulator's opinion it is necessary in order to ensure the disclosure of the information is not unduly harmful to the legitimate business interests of the service provider or a user or Prospective user.

### Category 1: Information Regarding Access & Pricing Principles

- Tariff determination methodology
- Cost allocation approach
- Incentive structures

### Category 2: Information Regarding Capital Costs

- Asset values for each pricing zone, service or category of asset
- Information as to asset valuation methodologies - historical cost or asset valuation
- Assumptions on economic life of asset for depreciation
- Depreciation
- Accumulated depreciation
- Committed capital works and capital investment
- Description of nature and justification for planned capital investment
- Rates of return - on equity and on debt
- Capital structure - debt/equity split assumed
- Equity returns assumed - variables used in derivation
- Debt costs assumed - variables used in derivation

### Category 3: Information Regarding Operations & Maintenance

- Fixed versus variable costs
- Cost allocation between zones, services or categories of asset & between regulated/unregulated
- Wages & Salaries - by pricing zone, service or category of asset
- Cost of services by others including rental equipment
- Gas used in operations - unaccounted for gas to be separated from compressor fuel
- Materials & supply
- Property taxes

### Category 4: Information Regarding Overheads & Marketing Costs

- Total service provider costs at corporate level
- Allocation of costs between regulated/unregulated segments
- Allocation of costs between particular zones, services or categories of asset

### Category 5: Information Regarding System Capacity & Volume Assumptions

- Description of system capabilities
- Map of piping system - pipe sizes, distances and maximum delivery capability
- Average daily and peak demand at "city gates" defined by volume and pressure
- Total annual volume delivered - existing term and expected future volumes
- Annual volume across each pricing zone, service or category of asset
- System load profile by month in each pricing zone, service or category of asset
- Total number of customers in each pricing zone, service or category of asset

### Category 6: Information Regarding Key Performance Indicators

- Industry KPIs used by the service provider to justify "reasonably incurred" costs
- Service provider's KPIs for each pricing zone, service or category of asset