

Draft Decision



Access arrangement by Central Ranges Pipeline Pty Ltd for the Central Ranges Pipeline

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Abbreviations and glossary of terms

Access arrangement	arrangement for access to a pipeline provided by a pipeline owner/operator that has been approved by the regulator
ACCC	Australian Competition and Consumer Commission
ACQ	Annual Contract Quantity
APA	Australian Pipeline Trust
(the) Association	Central Ranges Natural Gas and Telecommunications Association Incorporated
Central Ranges Towns	defined in the access arrangement as Tamworth, Gunnedah, Mudgee, Dunedoo, Coolah, Gulgong, Quirindi, Werris Creek, Coonabarabran and Gilgandra
(the) Code	National Third Party Access Code for Natural Gas Pipeline Systems
Covered pipeline	pipeline to which the provisions of the Code apply
CPI	Consumer Price Index
CRPPL	Central Ranges Pipeline Pty Ltd
Europacific	Europacific Consortium which consisted of Europacific Corporate Advisory, Country Energy, Colonial First State and Jasdell
GJ	gigajoule
GST	Goods and Services Tax
I&C	Industrial and Commercial
IPART	Independent Pricing and Regulatory Tribunal
kPa	kilopascals
MDQ	maximum daily quantity
MHQ	maximum hourly quantity
PJ	petajoule
TJ	terrajoule

Summary

This document provides the ACCC's draft decision under section 2.13(b) of the *National Third Party Access Code for Natural Gas Pipeline Systems* on a proposed access arrangement by Central Ranges Pipeline Pty Ltd (CRPPL) for the Central Ranges Pipeline, and the reasons for the ACCC's decision.

CRPPL was selected as the successful tenderer to construct and operate this pipeline in a process approved by the ACCC under the terms of the *National Third Party Access Code for Natural Gas Pipeline Systems* (the Code). The tender process resulted in the approval of a number of tender outcomes, including the reference tariffs that may be charged until 2019. Subsequently, CRPPL submitted the proposed access arrangement to the ACCC for approval.

The ACCC is required by the Code to approve the proposed access arrangement if it contains the tender outcomes and if all the other elements of the proposed access arrangement satisfy the principles set out in sections 3.1 to 3.20 of the Code.

The ACCC considers that the proposed access arrangement does not accurately reflect the tender outcomes approved in its final approval request decision. Nor do the remaining elements fully satisfy the requirements of the Code. Consequently, in the draft decision the ACCC proposes not to approve the proposed access arrangement. The ACCC considers that thirteen amendments to the proposed access arrangement are necessary before the proposed access arrangement can be approved.

During the assessment process, the ACCC has discussed with CRPPL these deficiencies in the proposed access arrangement and CRPPL has agreed to make the required amendments.

1. Introduction

Background

On 3 January 2003 the Central Ranges Natural Gas and Telecommunications Association Incorporated (the Association) applied (under section 3.21 of the *National Third Party Access Code for Natural Gas Pipeline Systems* (the Code)) for regulatory approval of a tender process in relation to the proposed supply of natural gas to the Central Ranges region of NSW. The Australian Competition and Consumer Commission (ACCC) for the transmission component of supply and the Independent Pricing and Regulatory Tribunal (IPART) for the distribution component of supply carried out a parallel public consultation process which included advertisements in various local newspapers and the release of an issues paper calling for submissions. The ACCC and IPART approved their respective tender approval requests.

Subsequently, the Association conducted a competitive tender for the supply of natural gas to the Central Ranges region of NSW. The successful tender, announced on 19 November 2003, was made by the Europacific Consortium which consisted of Europacific Corporate Advisory, Country Energy, Colonial First State and Jasdell. The service provider has now been formally incorporated as Central Ranges Pipeline Pty Ltd (CRPPL). Europacific Corporate Advisory put the tender package together. Country Energy is to be the operator of the Central Ranges Pipeline. Jasdell is managing the construction of the pipeline. CRPPL is owned by Sun Super and three funds managed by Colonial Funds Management.

On 19 May 2004 the ACCC approved the final approval request lodged in regard to the proposed transmission pipeline (and IPART approved the final approval request lodged in regard to the proposed distribution pipeline). Under sections 1.21 and 3.34 of the Code the pipeline became a covered pipeline on this date.

The pipeline's service provider was required to submit an access arrangement (and access arrangement information) within 90 days after the ACCC's final approval request decision (see section 2.2(a) of the Code). In this case, lodgement was required by 17 August 2004.

The service provider was subsequently granted five extensions of time to the lodgement date by the ACCC and IPART. These were necessary due to delays in CRPPL acquiring the pipeline licence from APT Pipelines Pty Ltd and subsequent preparation of the access arrangement and access arrangement information. These were lodged with the ACCC on 23 August 2005.

The task for the ACCC when considering the proposed access arrangement is to determine that the elements of the proposed access arrangement that were outcomes of the tender process are 'as determined in accordance with the tender process and approved by the Relevant Regulator' (section 3.34(b) of the Code). The elements of the access arrangement that have not been covered by the tender outcomes are to be assessed by the ACCC under the Code as with any other proposed access arrangement.

Under the Code, the ACCC is required to:

- inform interested parties that it has received the proposed access arrangement and the associated access arrangement information (parties were notified by letter on 24 August 2005)
- publish a notice in a national daily paper which at least; describes the covered pipelines to which the access arrangements relate; states how copies of the documents may be obtained; and requests submissions by a date specified in the notice (the notice was inserted in the *Australian Financial Review* on 26 August 2005, as well as the *Land* and several local papers in the Central Ranges area. The notice called for submissions by 23 September 2005)
- after considering submissions received, issue a draft decision which either proposes to approve the access arrangement or proposes not to approve the access arrangement and states the amendments (or nature of the amendments) which would have to be made to the proposed access arrangement in order for the ACCC to approve them
- after considering additional submissions, issue a final decision that either approves or does not approve the access arrangement (or amended access arrangement) and states the amendments (or nature of the amendments) which have to be made to the access arrangement (or amended access arrangement) in order for the ACCC to approve them, and
- if the amendments are satisfactorily incorporated in the amended access arrangement, issue a final approval. If the ACCC is satisfied that the amended access arrangement either substantially incorporates the amendments specified or otherwise address to its satisfaction the matters which led it specifying the amendments in its final decision, either approve or not approve the amended access arrangement. In any other case, the ACCC must draft and approve its own access arrangement.

Consultation

CRPPL consulted with the ACCC in the preparation of the proposed access arrangement. The ACCC assisted CRPPL in interpreting the requirements and process set out in the Code. Subsequent to lodgement, the ACCC has sought clarification from CRPPL on various aspects of the proposed access arrangement. This has resulted in an understanding that some changes are necessary to meet the requirements of the Code. Additional changes are proposed, with the agreement of CRPPL, to increase the clarity of the access arrangement. Where relevant, this draft decision acknowledges this consultation at specific points.

At the same time, the ACCC has liaised with IPART with a view to ensure regulatory consistency.

The ACCC has also engaged Sleeman Consulting Pty Ltd to provide advice on some technical areas of the proposed access arrangement, including the terms and conditions.

The ACCC received one submission on the proposed access arrangement, from Australian Pipeline Trust, by the due date. This submission notes that the proposed terms and conditions are broadly consistent to those for the Central West Pipeline. More generally it endorses the tender outcomes of a 15 year access arrangement period

and a real weighted average cost of capital of 11.955 per cent as being appropriate for a greenfield pipeline.

The ACCC calls for interested parties to make submissions in response to this draft decision. Submissions are due by Friday 18 November 2005.

The ACCC prefers that all written submissions be publicly available to foster an informed, transparent and robust consultative process. Accordingly, submissions will be treated as public documents unless otherwise requested. Parties wishing to submit confidential information are asked to provide both confidential and non-confidential versions of their submission. All non-confidential submissions will be placed on the AER's website.¹ Any information for which confidentiality is claimed will be dealt with under sections 7.11-7.13 of the code. Please supply submissions in electronic format compatible with Microsoft Word to the review email address crp@acc.gov.au. In addition, one original signed document should be mailed to the postal address below:

Mr Warwick Anderson
Acting General Manager
Access Branch
ACCC, GPO Box 3648
Sydney NSW 2001

A copy of the Final Decision documents will be sent to all parties who make a submission. The default form of distribution is to email the copy. If you would prefer to receive a hard copy, please indicate this in writing when you lodge your submission and indicate the postal address to which it should be sent.

Similarly, if you do not make a submission but wish to receive copies of the decisions, please send details of your request to the above email or postal address. Non-confidential versions of submissions, any consultancy reports, further information from CRPPL and other relevant material will also be placed on the AER's website. If you wish to receive automatic advice of additional information being added, please subscribe to the "email alert" facility on the right hand side of the relevant page or pages of the AER's site (<http://www.aer.gov.au>).

Please contact Alex Ralston on (02) 9230 9161, or at the above email address, if you have any questions on this matter.

Scope of assessment

As a result of the use of a competitive tender process for the pipeline, under section 3.34 of the Code the assessment of the access arrangement will not cover certain aspects that would otherwise be assessed (the tender outcomes). The tender outcomes

¹ The enabling legislation to transfer the ACCC's current functions in gas to the AER has yet to be enacted. However, for administrative simplicity, all ACCC documents relating to the gas transmission regulation function have been included on the AER website.

are not subject to regulatory assessment until the revisions commencement date of 1 July 2019. For the pipeline the tender outcomes are:²

- reference tariffs
- elements of the reference tariff policy that determine how reference tariffs will change during the initial access arrangement period
- the revisions commencement date, and
- additional revenue policy.

The practical implication of this is that the ACCC's assessment of the access arrangement will not include the following elements:

- tariff related items (initial capital base, costs, revenues, demand, rate of return, reference tariffs)
- analysis of some of the usual access arrangement information items
- some or all of the reference tariff policy, and
- an assessment of the revisions commencement date.

The task for the ACCC when considering the proposed access arrangement is to determine that these elements are 'as determined in accordance with the tender process and approved by the Relevant Regulator' (section 3.34(b) of the Code).

The elements of the access arrangement that have not been covered by the tender outcomes are to be assessed by the ACCC under the Code. The ACCC may approve an access arrangement only if it is satisfied that the access arrangement would contain the elements and satisfy the principles set out in sections 3.1 to 3.20 of the Code, which are summarised below. An access arrangement cannot be opposed solely on the basis that the access arrangement would not address a matter that section 3 of the Code does not require it to address. Subject to this limitation, the ACCC has a broad discretion in accepting or opposing revisions to an access arrangement.

An access arrangement, or a revised access arrangement, must include the following elements:

- a policy on the service or services to be offered which includes a description of the service(s) to be offered
- a reference tariff policy and one or more reference tariffs. A reference tariff operates as a benchmark tariff for a particular service and provides users with a right of access to the specific service at the specific tariff. Tariffs must be determined according to the reference tariff principles in section 8 of the Code
- terms and conditions on which the service provider will supply each reference service

² Tender documentation, p. 36, Final approval request decision p. 29.

- 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 users' priorities in obtaining access to spare and developable capacity on a pipeline
- an extensions and expansions policy to determine the treatment of an extension or expansion of a pipeline under the Code
- a date by which revisions to the arrangement must be submitted to the ACCC, and
- a date by which the revisions are intended to commence.

In considering whether an access arrangement complies with the Code, section 2.24 of the Code requires the ACCC to take into account the following factors:

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

2. Services policy

2.1 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 or prospective users. The policy must allow for one or more services that are likely to be sought by a significant part of the market, as well as allowing for any service or services that in the relevant regulator's opinion should be included in the services policy.

To the extent that is practicable and reasonable, the service provider should also make available only those elements of a service required by a user or prospective user and where requested, apply a separate tariff for each element of service.

2.2 Proposed access arrangement

The services policy as outlined in the proposed access arrangement consists of four reference services and a negotiated service. The reference services are

- a Special Contract Transportation service
- a Contract Transportation service
- an I&C Transportation service,³ and
- a Domestic Transportation service.

These services will be provided to users (typically retailers) but are distinguished on the basis of the final customers' annual volume. The main difference between these services is the applicable reference tariff. The reference services and the negotiated non reference service are described below.

Special Contract Transportation service

This service is for the transportation of gas, to be used by a special contract customer whose annual gas use exceeds 1 PJ at one delivery point, through the pipeline to a delivery point(s) with tariffs charged on the basis of throughput (\$ per GJ of throughput). Under the terms and conditions for this service, users will need to specify a level of Annual Contract Quantity (ACQ) which would reflect their annual gas requirements. The user is required to make a minimum payment equivalent to the charge for delivering at least 80 per cent of the ACQ. There are also charges for overruns and daily variances, if they occur when the contracted capacity of the pipeline reaches 85 per cent of capacity. Further, there is a charge for gas balancing. The minimum term of the service is one year and the user may elect longer terms up until the revisions commencement date.

³ 'I&C' is an abbreviation used by CRPPL for 'Industrial and Commercial'.

It is a condition of this service that the distribution network service provider, who provides the connection of the user to the pipeline and is responsible for metering, provides the pipeline service provider with monthly meter data which will be used as the basis of billing this service.

Contract Transportation service

This service is for the transportation of gas to be used by a contract customer whose annual gas use exceeds 10 TJ but is not more than 1 PJ. All terms and conditions of this service (other than price) are the same as those applying to the Special Contract Transportation service described above.

I&C Transportation service

The I&C Transportation service is for gas used by an I&C customer who uses not more than 10 TJ of gas a year through a single delivery point. Terms and conditions for this service are the same as those described above with the exception that there is no minimum charge applied. Meter data may be provided either monthly or quarterly for billing purposes.

Domestic Transportation service

The Domestic Transportation service is for gas used by a domestic customer (i.e. a residential customer which is not a business). Terms and conditions for the Domestic Transportation service are identical to the terms and conditions provided for the I&C Transportation service, with the exception that quarterly metering data is used for billing.

Negotiated non reference service

Where a prospective user has specific requirements that differ from those which would be satisfied by a reference service or some other services discussed in the proposed services policy, it may seek to negotiate different terms and conditions as a negotiated service.

Other key elements included in the proposed service policy are as follows.

A user seeking to obtain a reference service or a negotiated service must follow the procedures and lodge the appropriate form as set out in the proposed access arrangement⁴ in order to obtain access.

All users of a service will be required to enter into a service agreement specific to that user and that service.

A user is required to provide an estimate of its usage for each contract year at the commencement of a service agreement. This will include an estimate of its maximum hourly quantity (MHQ), its maximum daily quantity (MDQ) and its ACQ. Where gas is to be delivered to more than one delivery point then the user is to provide an

⁴ Proposed access arrangement, schedules 5A and 5B, request for service, 23 August 2005, pp. 48-50

estimate of the MHQ and MDQ at each delivery point. Similarly if gas is delivered into the pipeline at more than one receipt point, the user must provide an estimate of the MDQ at each receipt point.

The service provider is not obliged to deliver or receive a quantity of gas greater than the MDQ on any day at any delivery or receipt point, or to deliver a quantity of gas in any hour greater than the MHQ (except as an authorised overrun).

If a user withdraws gas at a delivery point greater than that delivery point's MHQ or MDQ, then an overrun is deemed to have occurred which may or may not have been authorised by the service provider. No charges will apply to overruns until the contracted capacity reaches 85 per cent of the pipeline capacity. The service provider will notify the user when this occurs and the user will be subject to paying an overrun charge. The size of the charge incurred by the user is dependent on whether the overrun is authorised or unauthorised.

2.3 Submission

The Australian Pipeline Trust (APA), the owner of the connecting Central West Pipeline, in its submission, supported the implementation of broadly consistent policies and terms and conditions on both pipelines. APA's stated reason for its support was that it would facilitate the ease of contracting for users which would in turn facilitate market development.

2.4 ACCC considerations

The differentiation of reference services based on the size and type of customer was initially proposed in the successful tender documents and approved by the ACCC in its final approval request decision.⁵ Differentiation of services and tariffs based on the class of customer was established to ensure that gas can be made available at competitive prices compared to other alternative fuels, while remaining at a level that the customer may be able to bear. The ACCC accepted this pricing differentiation was necessary for the efficient recovery of costs over the life of the pipeline, and concluded that the reference tariffs were designed to replicate a competitive market outcome (an objective of section 8.1 (b) of the Code). As the differentiation of services based on four customer classes is a tender outcome as expressed in the final approval request (which the ACCC approved), the ACCC can not amend this aspect of the services policy. However, the regulator must be satisfied that the proposed access arrangement reflects the tender outcome.

The ACCC is satisfied that the elements of the proposed services policy that were set out in the final approval request (namely the description of reference services) have been accurately reflected in the proposed access arrangement. The ACCC has reviewed the remaining elements of the proposed services policy (which are not covered by the final approval request) and considers they are, with one exception, consistent with the provisions of the Code.

⁵ ACCC Decision: final approval request for the proposed Central Ranges Pipeline, 19 May 2004, p. 19

The exception concerns the overruns provisions of the services policy.⁶ The proposed access arrangement states that ‘an overrun will have occurred if withdrawals of gas by the User at a Delivery Point exceed the Delivery Point MHQ in any hour or the Delivery Point MDQ on any day.’ This provision does not recognise that a user with multiple delivery points could take a quantity of gas that exceeds its overall MDQ without exceeding any delivery point MDQ. This is because the overall MDQ can be less than the sum of the Delivery Point MDQs.⁷ As overruns are defined only with regard to each delivery point MDQ, but not with regard to overall volumes, the service provider could deny the user delivery of gas in excess of the user’s overall MDQ because there is no mechanism by which to seek authorisation for this excess.⁸ In this situation the ACCC considers that the overrun provision would be contrary to the interests of users and prospective users (section 2.24 (f) of the Code). The following amendment is required to enable the provision to comply with the Code by defining overruns in terms of overall MDQ as well as Delivery Point MDQ. This will enable a user to then nominate a quantity higher than its overall MDQ and seek the overrun to be authorised.

Amendment 1

In order for CRPPL’s access arrangement for the Central Ranges Pipeline to be approved, CRPPL must amend the overrun provision in section 2.6 of the proposed access arrangement as stated below. The additional text required for the amendment is in bold.

‘An overrun will have occurred if withdrawals of gas by the User at a Delivery Point exceed the Delivery Point MHQ in any Hour or the Delivery Point MDQ on any Day. **An overrun will also have occurred if withdrawals of gas by the User at all Delivery Points exceed the overall MHQ in any Hour or the overall MDQ on any Day.** Overruns may be authorised or unauthorised.’

Similar amendments are required to the overrun definition in Schedule 1 (Definitions and Interpretation) and to the overrun provision in Schedule 2 (Terms and Conditions), in order for CRPPL’s access arrangement for the Central Ranges Pipeline to be approved.

Amendment 2

In order for CRPPL’s access arrangement for the Central Ranges Pipeline to be approved, CRPPL must amend the “Overrun” definition in Schedule 1 of the proposed access arrangement as stated below. The additional text required for the amendment is in bold and deleted text is struck through.

⁶ Proposed access arrangement, subsection 2.6, overruns, 23 August 2005, p. 12

⁷ For example: A user with an overall MDQ of 25 GJ has three delivery points (each with a Delivery Point MDQ of 10 GJ). On a particular day the user seeks to withdraw 9 GJ of gas from each delivery point exceeding the user’s overall MDQ by 2 GJ, but not exceeding the individual Delivery Point MDQs.

⁸ Sleeman Consulting, *Review of access arrangement and access arrangement information for the Central Ranges Pipeline*, 11 September 2005, pp. 6 & 7

‘Overrun means the withdrawal of a quantity of gas at a Delivery Point in excess of the **Delivery Point** MHQ in any Hour or in excess of the **Delivery Point** MDQ on any Day ~~for that Delivery Point~~. **An overrun will also have occurred if withdrawals of gas by the User at all Delivery Points exceed the overall MHQ in any Hour or the overall MDQ on any Day.**’

Amendment 3

In order for CRPPL’s access arrangement for the Central Ranges Pipeline to be approved, CRPPL must amend section 18 in Schedule 2 of the proposed access arrangement as stated below. The additional text required for the amendment is in bold.

‘An Overrun will have occurred if withdrawals by the User at a Delivery Point exceed the **Delivery Point** MHQ in any Hour or the **Delivery Point** MDQ on any Day. **An Overrun will also have occurred if withdrawals of gas by the User at all Delivery Points exceed the overall MHQ in any Hour or the overall MDQ on any Day.**’

The ACCC has discussed the need for these amendments with CRPPL which has agreed to make the required amendments.

3. Reference tariffs and reference tariff policy

3.1 Code requirements

The reference tariffs, additional revenue policy and elements of the reference tariff policy are tender outcomes. Consequently they are outside the scope of the ACCC's assessment. The task for the ACCC when considering approval of the proposed access arrangement is to determine that these elements are 'as determined in accordance with the tender process and approved by the Relevant Regulator' (section 3.34(b)).

Elements of the reference tariff policy which are not tender outcomes are to be assessed against the Code requirements.

In relation to reference tariffs and reference tariff policy section 8.1 of the Code states

- 8.1 A Reference Tariff and Reference Tariff Policy should be designed with a view to achieving the following objectives:
- (a) providing the Service Provider with the opportunity to earn a stream of revenue that recovers the efficient costs of delivering the Reference Service over the expected life of the assets used in delivering that Service;
 - (b) replicating the outcome of a competitive market;
 - (c) ensuring the safe and reliable operation of the Pipeline;
 - (d) not distorting investment decisions in Pipeline transportation systems or in upstream and downstream industries;
 - (e) efficiency in the level and structure of the Reference Tariff; and
 - (f) providing an incentive to the Service Provider to reduce costs and to develop the market for Reference and other Services.

The Code also specifies a number of requirements in relation to reference tariffs and reference tariff policy. These requirements are outlined below.

Reference tariff variation method

The Code states that reference tariffs may be varied within an access arrangement period through the implementation of a reference tariff variation method (section 8.3A). The reference tariff variation method is to require the service provider to give notice of a variation to the regulator (section 8.3B) which is to include the proposed variations and an explanation of how they are consistent with the reference tariff variation method (section 8.3C).

Additional revenue policy

An additional revenue policy specifies whether the additional revenue which would result if the volume of gas actually transported by the proposed pipeline exceeds a certain volume will either be retained by the service provider or returned in whole or in part to users in the form of lower charges or some other form (section 3.28(d)(ii)).

Capital base

The initial capital base for a new pipeline is to be the actual costs of those assets when they first enter service (section 8.12). The capital base at the start of the next access arrangement period is to be the capital base at the start of the preceding period, plus new facilities investment, less depreciation, less redundant capital (section 8.9).

Section 8.18 of the Code allows that where some new facilities investment does not satisfy the requirements set out in section 8.16(a), the portion of the new facilities investment that does satisfy the requirements (recoverable portion) may be added to the capital base.

Speculative investment fund and redundant capital

Section 8.19 of the Code allows the balance of the new facilities investment to be added to a speculative investment fund. This may be added to the capital base at a later stage⁹ if the type or volume of services provided using the new facility changes such that any part of the speculative investment fund would then satisfy the requirements of section 8.16(a).

A reference tariff policy may include a mechanism to remove (at the beginning of the next access arrangement period) redundant capital. This ensures assets which cease to contribute to the delivery of services are not reflected in the asset base and costs associated with declining volumes are shared between users and the service provider (section 8.27).

3.2 Proposed access arrangement

Reference tariffs

The reference tariffs contained in the proposed access arrangement (expressed in July 2003 dollars) consist of one (single zone) throughput tariff for each of the four reference services. Users of the Special Contract Transportation Service and the Contract Transportation Service will be required to pay a minimum annual bill based on 80 per cent of their annual contract quantity. Users of the other two services do not face this requirement. For all services overrun charges are payable once the contracted capacity of the pipeline exceeds 85 per cent of the pipeline's capacity.

Table 3.1: Reference tariffs

Transportation Pipeline Reference Service	Charge in \$ per GJ of throughput exclusive of GST
Special Contract Transportation Service	\$1.75
Contracts Transportation Service	\$2.50
Industrial and Commercial Transportation Service	\$5.00
Domestic Transportation Service	\$6.50

Source: CRPPL proposed access arrangement, p. 14.

⁹ During the assessment of proposed revisions to an access arrangement.

Reference tariff variation method

The reference tariff variation method in the proposed access arrangement requires the calculation each May of the reference tariffs for the following (financial) year using the latest (all capital cities) CPI index available (the March quarter) to maintain constant tariffs in real terms.¹⁰

Additional revenue policy

The additional revenue policy in the proposed access arrangement defines ‘over-recovery’ for a year as revenue, less operating expenditure, less the opening balance of the capital base multiplied by 11.955 per cent.¹¹

Where there is an over-recovery, this over-recovery (plus any interest it earned on the over-recovery) is to be used to meet one or more of the following (at the service provider’s discretion):

- under-recoveries in subsequent years (but not for any prior year under-recoveries which have been added to the capital base)
- capital expenditure required for construction of further stages of the pipeline to the Central Ranges Towns (defined in the access arrangement as Tamworth, Gunnedah, Mudgee, Dunedoo, Coolah, Gulgong, Quirindi, Werris Creek, Coonabarabran and Gilgandra)
- reduction of the capital base

Any funds not used within 10 years of an over-recovery occurring will be returned to users. Also, once the pipeline has been built to all the Central Ranges Towns, any further over-recovery will be divided evenly between users and the service provider.

Capital base

The capital base for the purposes of the access arrangement is to be the actual cost of construction of the covered pipeline.¹² Importantly, any capital expenditure incurred to supply gas to any of the ten towns that comprise the Central Ranges Towns is expenditure on the covered pipeline which was the subject of the tender and therefore automatically enters the capital base (and does not have to satisfy the requirements of section 8.16 of the Code which prescribes certain hurdles, including that such investment must be prudent). New facilities investment, which is subject to the requirements of section 8.16, consists of capital expenditure for the delivery of gas to places other than the Central Ranges Towns.

¹⁰ Proposed access arrangement p. 15.

¹¹ Note that there is no depreciation in the formula. CRPPL proposes to have zero depreciation in each of the years in the first access arrangement period. It would recover depreciation normally accruing during this time in later access arrangement periods.

¹² The initial section of the pipeline was forecast to cost \$52.9 million (final approval request, p. 25.)

There will be two calculations of the capital base.

- After the end of each (financial) year the closing balance for that year will be calculated as the opening balance of the capital base, increased by inflation, plus actual capital expenditure on the pipeline to any of the Central Ranges Towns, less redundant capital, plus any under-recovery.

The under-recovery in this calculation is defined as the capital base opening balance multiplied by 11.955 per cent,¹³ plus operating expenditure, less revenue. Effectively, this under-recovery is negative depreciation – the capital base will increase each year by the under-recovery.¹⁴

- In a second calculation to be made as part of the proposed revisions for the second access arrangement period, the 2019 figure will be calculated as in the first calculation but using the closing balance of 2018 and best estimates for the 2019 inputs. This calculation will then be adjusted for any new facilities investment that was incurred in the first access arrangement period which satisfies the section 8.16 test. The resulting capital base figure will be the opening capital base for the beginning of the second access arrangement period. The revised access arrangement is to include an adjustment to this figure for when the actual inputs for 2019 are known.

The calculation of the capital base is not to include the value of capital expenditure (either on further stages of the pipeline or on new facilities investment) which is funded by over-recoveries as a result of the operation of the additional revenue policy.

Speculative investment fund and redundant capital

CRPPL states that expenditure on capital items other than the pipeline which is the subject of the tender (that is, the pipeline to the ten Central Ranges Towns) will constitute new facilities investment. This new facilities investment may include capital expenditure which does not satisfy section 8.16 of the Code. The portion of the new facilities investment that does satisfy section 8.16 (the recoverable portion) is to be added to the capital base and the balance is to be placed in a speculative investment fund for possible inclusion in the capital base at a later date.

CRPPL has included, in the capital base calculation, the removal of redundant capital from the capital base. Redundant capital is defined as in the Code.

3.3 ACCC considerations

Reference tariffs

The ACCC is satisfied that the reference tariffs included in the proposed access arrangement are the same as the tariffs set out in the approved final approval request.

¹³ The pre-tax real weighted average cost of capital. See the final approval request p. 25.

¹⁴ It is forecast that at the end of the current access arrangement period (2019) the capital base will be approximately \$102 million in 2003 dollars (final approval request, p. 25).

Tariff variation method

The tender states that the ‘Reference Tariffs will be maintained constant’ and also that the tariffs will be ‘adjusted annually for movements in the CPI index’.¹⁵ The ACCC understands these two statements are consistent as the first is expressed in real terms. This was clarified in the final approval request which stated that a tender outcome was that tariffs would ‘be adjusted annually according to the change in the CPI’. The ACCC considers the tariff variation method in the proposed access arrangement, which increases tariffs by inflation only each year, to be an appropriate implementation of the tariff variation method expressed in the tender.

Additional revenue policy

The additional revenue policy in CRPPL’s proposed access arrangement is generally consistent with that in the approved final approval request. However there are three exceptions.

First, the additional revenue policy in the access arrangement adopts different terminology in two instances. It expresses the additional revenue in terms of ‘over-recovery’ while the final approval request uses the term ‘profit after tax’ as well as ‘over-recovery’. However, the ACCC considers that in the context of the final approval request, these two terms are used as synonyms.¹⁶

The second exception is similar to the first. The additional revenue policy in the final approval request provides one option for the use of over-recoveries to be funding ‘expansion of the Distribution pipeline’. The equivalent option in the proposed access arrangement is to fund ‘construction of the Pipeline to all the Central Ranges Towns’.¹⁷ The ACCC understands both expressions of this option to refer to future stages of the transmission pipeline which was the subject of the tender (such as laterals from the Dubbo to Tamworth pipeline). In the final approval request these are referred to as a ‘distribution pipeline’ because they will be built under an authorisation under the *Gas Supply Act 1996*. For the purposes of that regulation it is called a distribution pipeline. However for the purposes of access regulation under the Code these laterals are transmission pipelines and this has prompted the more accurate description in the proposed access arrangement. The ACCC considers that these variations in terminology are immaterial.

Third, there is also a variation in the expression of how the over-recovery will be used. The tender outcome refers to ‘provide an income subsidy’ as one of the three options for usage of over-recovery amounts¹⁸ whereas the proposed access arrangement refers to a ‘reduction of the capital base’ instead.¹⁹ While the tender documents do not define an ‘income subsidy’, the ACCC considers that it could not be considered to be the same or similar to a ‘reduction in the capital base’.

¹⁵ Tender, p. 8, 7. See also final approval request p. 23

¹⁶ See the final approval request decision pp. 26-28 which is written with this understanding.

¹⁷ Final approval request p. 24, final approval request decision p. 26

¹⁸ Final approval request p. 24, final approval request decision p. 26.

¹⁹ Proposed access arrangement p. 22.

As the additional revenue policy is a tender outcome it must be included in the access arrangement ‘as determined in accordance with the tender process and approved by the Relevant Regulator’ (section 3.34(b) of the Code). The ACCC therefore considers that the proposed access arrangement must be changed to reflect the tender outcome.

Amendment 4

In order for CRPPL’s access arrangement for the Central Ranges Pipeline to be approved, CRPPL must change section 4.9(a)(iii) by deleting ‘to reduce the Capital Base’ and inserting ‘to provide an Income Subsidy’.

The ACCC has discussed this issue with CRPPL and it has agreed to make this amendment. As noted above, the final approval request did not explain the nature of an ‘income subsidy’. The ACCC has discussed this with CRPPL which has indicated that the text in the following amendment describes an ‘income subsidy.’ For the sake of clarity, the ACCC considers that the following amendment is required. CRPPL has agreed to make the required amendment.

Amendment 5

In order for CRPPL’s access arrangement for the Central Ranges Pipeline to be approved, CRPPL must add the following paragraph at the end of section 4.9(a).

“Income Subsidy means applying an Over-recovery from providing Services to one Central Ranges Town to offset an Under-recovery from Services to any other Central Ranges Town or Towns. When the Pipeline is considered in aggregate (as it is in the above definition of Over-recovery), then any Over-recovery associated with Services to one town will automatically be applied to any Under-recovery from Services to other towns. That is, the above calculation will produce a net result. The remainder of this Section 4.9 deals with the treatment of Over-recovery for the Pipeline. Section 4.5 deals with Under-recovery for the Pipeline.”

There are two different calculations of the capital base in this proposed access arrangement. The ACCC considers an amendment is necessary to clarify that over-recoveries are calculated using the annually calculated capital base specified in section 4.5.

Amendment 6

In order for CRPPL’s access arrangement for the Central Ranges Pipeline to be approved, CRPPL must insert in section 4.9(a) of the proposed access arrangement, directly after the formula for over-recovery, the following sentence.

‘The Capital Base used is that outlined in section 4.5.’

Section 4.9(d) of the proposed access arrangement requires the service provider to give the ACCC an annual report with supporting information on over-recoveries. In subsequent discussions CRPPL agreed to this report being placed on the ACCC’s web site.

Capital base

The final approval request states that ‘The initial capital base for each pipeline [that is, transmission and distribution] is to be adjusted for any under recovery or over recovery to ensure the pipeline owners receive the tendered economic return on the pipelines.’²⁰ The ACCC considers the formula and process for the calculation of the capital base contained in section 4.5 of the proposed access arrangement will correctly capitalise under-recoveries.

However, the adjustment to the capital base for over-recoveries is not clear. The ACCC notes that while ‘over-recovery’ does not appear in the formula, the capital base is affected whenever two of the three options are employed. To make this more explicit, the ACCC requires amendment 7, which the CRPPL has agreed to make. To correct for the option in which the capital base is not adjusted, the ACCC considers an amendment to section 4.5 is necessary. It has discussed this with CRPPL which has agreed to make the change in amendment 8 below.

With respect to the use of over-recoveries to meet future under-recoveries (section 4.9(a)(i)), there is no mechanism in CRPPL’s proposed access arrangement to implement this option. Further to discussions held with CRPPL, the ACCC requires the following amendment to allow the implementation of this option.

Amendment 7

In order for CRPPL’s access arrangement for the Central Ranges Pipeline to be approved, CRPPL must add the words ‘-OR applied’ to the end of the Capital Base formula in section 4.5, and must add the following definition below that formula.

‘OR applied is the amount of over-recoveries allocated to the current year's Under-recovery from the Pipeline Construction Capital account under 4.9(a)(i).

With respect to the use of over-recoveries to fund further stages of the pipeline (section 4.9(a)(ii)), the calculation of the capital base as proposed would add in capital expenditure on further stages of the pipeline after having removed the value of the expenditure funded by over-recoveries. This is equivalent to adding all the capital expenditure to the capital base and then also adjusting the capital base for the application of the over-recoveries. To make the effect of the over-recovery on the capital base clearer the ACCC requires the following amendment.

Amendment 8

In order for CRPPL’s access arrangement for the Central Ranges Pipeline to be approved, CRPPL must:

add ‘-Capex_n OR’ at the end of the formula for the capital base in section 4.5

²⁰ Final approval request, p. 24.

delete ‘but will not include any expenditure funded pursuant to Section 4.9.’
in the definition of Capex_n

add in below the definition of Capex_n, the following definition:

‘Capex_n OR is that part of Capex_n which is funded from withdrawals of Over-recoveries from the Pipeline Construction Capital account established pursuant to Section 4.9 (a)’

With respect to the income subsidy option (section 4.9(a)(iii)), the ACCC notes that the description added to the access arrangement in amendment 5 indicates that the calculation of any under-recovery or over-recovery for the pipeline as a whole will automatically implement the netting out of various under-recoveries and over-recoveries associated with different Central Ranges Towns. The ACCC considers that, given the operation of this mechanism, there is no need for any amendment associated with this option.

Consequent to these amendments, the capital base will be adjusted for over-recoveries to ensure the service provider has the opportunity to receive the economic return in the tender.

The formula in section 4.5 also includes an element that was not in the tender: the removal of redundant capital (discussed in more detail in the next sub-section). Redundant capital will not be determined until the assessment of the proposed revised access arrangement in 2019. Consequently it is appropriate that the access arrangement acknowledge this and provide for CRPPL to make an annual estimate of redundant capital. Also, some wording needs changing to reflect another amendment required concerning the redundant capital mechanism (discussed below).

Amendment 9

In order for CRPPL’s access arrangement for the Central Ranges Pipeline to be approved, CRPPL must replace the definition of ‘Redundant Capital’ in section 4.5 with:

‘Redundant Capital_n is CRPPL’s best estimate of capital in the Pipeline made redundant in year n, according to the capital redundancy mechanism defined in section 4.8.’

It is possible that the capital base for the next access arrangement period will justify tariffs substantially greater than those that apply for the first access arrangement period. Assuming costs and volumes over the first access arrangement period are equal to those forecast, and consequently the capital base is \$102 million (in 2003 dollars) at the start of the second access arrangement period, the ACCC estimates that tariffs at the beginning of the second access arrangement period could increase by one quarter of their value at the end of the first access arrangement period.²¹ Further, if actual costs in the first access arrangement period are greater than forecast and/or actual volumes are

²¹ This estimate assumes that tariffs will increase with inflation (be constant in real terms) over the life of the pipeline.

less than forecast then the potential tariff increase for the second period will be even greater.

The ACCC notes that this possible outcome is the result of the tender outcomes (the constant real tariffs in the first access arrangement period and the capitalisation of under-recoveries) and therefore not assessable as part of the current approval process.

Speculative investment fund and redundant capital

The speculative investment fund was not a tender outcome. The ACCC considers that the speculative investment fund as expressed in this proposed access arrangement is consistent with the provisions of the Code. The ACCC has considered it against the objectives of the Code for reference tariffs and the reference tariff policy (section 8.1).

The speculative investment fund allows capital that did not pass the section 8.16 test when first assessed to enter the capital base when later assessed to pass that test. This allows a service provider to recover efficient costs (section 8.1(a)) while not distorting investment decisions (section 8.1(d)) as the service provider, assured of the opportunity to recover capital when it does pass the section 8.16 test, is encouraged to invest in the most appropriate way.

The removal of redundant capital from the capital base will help ensure that tariffs will not recover costs that are inefficient (sections 8.1(a) and (e)) and help replicate the outcome of an efficient market which would not allow a service provider to earn a return on assets (or parts of assets) not necessary to the provision of services (section 8.1(b)).

The ACCC has also considered the effect of the uncertainty associated with the removal of redundant capital on the service provider (section 8.27 of the Code).

The ACCC is unable to reflect this uncertainty in the rate of return as the rate of return is reflected in the reference tariffs which are a tender outcome and cannot be changed. However, the ACCC has considered the rate of return and has concluded that it is high enough to support the view that it already reflects the risk of redundancy.

With regard to the Code's requirement that the economic life of the assets should reflect the risk, the ACCC notes that as economic depreciation (the over-recovery calculated for the annual capital base calculation) is utilised for the current access arrangement period, no decision on asset lives has been factored into the reference tariffs. However, the access arrangement information does set out the economic lives of assets '[b]ased on the best information currently available to the Service Provider'.²² The ACCC considers that these lives are consistent with the risk of these assets becoming redundant. This matter will be considered further as part of the review of revisions at the end of the first access arrangement period.

The ACCC has concluded that the removal of redundant capital from the capital base is consistent with the provisions of the Code. However, it is not convinced that simply stating 'Redundant Capital will be dealt with in accordance with Section 8.27 of the

²² Proposed access arrangement information, 23 August 2005, p. 9

Code' constitutes a 'mechanism' as contemplated in that section. The ACCC considers that a more substantial description is appropriate. Consequently an amendment is necessary. The ACCC has discussed this with CRPPL which has agreed to the amendment below which will remove fully redundant assets and the unutilised part of partially redundant assets from the asset base.

Amendment 10

In order for CRPPL's access arrangement for the Central Ranges Pipeline to be approved, CRPPL must replace section 4.8 of the proposed access arrangement with:

Redundant Capital (Not a tender outcome)

4.8.1 The Relevant Regulator may reduce the Capital Base with effect from the commencement of the Access Arrangement Period (immediately following the conclusion of the current Access Arrangement Period) if it is of the reasonable opinion that any of the following have occurred in relation to assets comprising some or all of the Capital Base:

- a) the assets have been sold or disposed of by the service provider or the service provider has entered into a binding agreement for their sale or disposal;
- b) the assets have otherwise ceased to contribute in any way to the delivery of Services; or
- c) the volume of sales has substantially declined.

4.8.2 In determining whether to reduce the Capital Base under paragraph 4.8.1, and the amount (to be determined by the Relevant Regulator) by which the Capital Base should be reduced, the Relevant Regulator may take into account:

- a) the value at which the assets were first included in the Capital Base; and
- b) the depreciated value of the assets within the Capital Base at the time of their sale or disposal, or the time at which they ceased to contribute; and
- c) where there has been a substantial decline in the volume of sales, the depreciated optimised replacement cost of a pipeline appropriate to the transportation of the new level of sale volumes.

In the proposed access arrangement, the calculation of the capital base (during 2019) for the beginning of the next access arrangement period takes the annual capital base calculation for 2018, uses estimates for 2019 to calculate the end 2019 figure and then adds in new facilities investment which occurred in the first access arrangement period. The ACCC considers that another adjustment is warranted. The annual calculation includes an adjustment for estimated redundant capital. In the calculation for the start of the next access arrangement period it is appropriate that redundant capital estimated for each year in the first access arrangement period be replaced with the redundant capital determined during the assessment of the revised access arrangement.

Amendment 11

In order for CRPPL's access arrangement for the Central Ranges Pipeline to be approved, CRPPL must alter section 4.6 (a) of the access arrangement as stated below. The additional text required for the amendment is in bold.

- (a) the Capital Base calculated in accordance with Clause 4.5 for the Year ending June 2018, **revised on the basis of the redundant capital determined under section 4.8**, and then calculated for the Year ending June 2019 using best estimates; plus

4. Terms and conditions

4.1 Code requirements

Section 3.6 of the Code requires an access arrangement to include the terms and conditions on which the service provider will supply each reference service. The relevant regulator must be satisfied that these terms and conditions are reasonable.

4.2 Proposed access arrangement

The general terms and conditions that apply to all reference services are set out in schedule 2 of the proposed access arrangement. These terms and conditions are in addition to the terms and conditions specific to each reference service described in chapter 2 of this draft decision. The general terms and conditions are summarised below.

General

Gas balancing arrangements and operational principles as set out in schedules 3 and 4 respectively apply to all reference services.

Reference service agreement

A user must enter into a reference service agreement with the service provider before gaining access to a reference service. Each party to this agreement must perform its obligations under this agreement in a commercially reasonable manner.

Right to access

The service provider will not discriminate between prospective users on the basis of past transactions or relationships, the identity of the prospective user, the fact that the prospective user may be related to it, and the source of the gas to be transported.

Obligation to transport

Under its obligations to transport gas the service provider will receive gas from the network receipt point and deliver a thermally equivalent quantity of gas to the network delivery point up to a maximum of the MHQ in any hour. This commitment is subject to the aggregate deliveries from all users being equal to the aggregate withdrawals on any given day.

Title to and responsibility for gas

The user will warrant that it has title to gas delivered at the receipt point. However the service provider is entitled to commingle this gas with gas received into the pipeline from other users. The service provider is responsible for any gas lost from the pipeline due to its negligence or wilful default.

Upon termination of a service agreement the user is entitled to recover any quantities of gas it delivered into the pipeline but were not delivered to the user by the service

provider (net of system use gas). The user can sell this gas to another user so long as it notifies the service provider of the user's identity and the quantity of gas sold. If after 3 months the user has not recovered the undelivered gas or notified the service provider of its sale, then title of the gas passes to the service provider to be used in operational purposes.

Security for payment

The user must provide to the service provider on request: payments for all amounts owing under a service agreement; demonstration of its ability to meet all financial obligations under a service agreement; information on its credit worthiness; and a security payment for the user's performance obligations under a service agreement.

The amount and form of security will be determined by the service provider with regard to the user's credit rating, payment history and any other factors which in the service provider's opinion will have a material effect on the user's ability to meet its obligations under the service agreement. It will be proportional to the charges under the service agreement. Acceptable security payments are a refundable deposit, a bank or parent company guarantee or such other form as agreed between the user and service provider.

Gas pressure

Users will deliver gas at receipt points at pressures nominated by the service provider. Where receipt points are owned or operated by others such as the Dubbo Interconnect Station, users will have to deliver gas at pressures agreed with the other operator/owners. The service provider is required to supply gas to users at the delivery points with outlet pressures not less than 900 kPa but not greater than 1050 kPa.

Nominations

A user must provide a schedule (nomination) for each month (submitted at least 7 days prior to the first day of that month) of the daily quantities of gas to be presented at each of the users receipt and delivery points. For any given delivery point and day the user's nomination will not exceed the delivery point's MHQ or MDQ for that day, except where the service provider has authorised an overrun.

Overruns

Where a user withdraws more gas than its MHQ in any hour or its MDQ in any day at a delivery point, then an overrun has occurred. The user may request an authorised overrun from the service provider. The service provider will agree with this request except if there is insufficient capacity available, it will impinge on the service provider's ability to meet its obligations under other service agreements, or additional capital costs would be incurred in providing for the overrun.

In the event that the contracted capacity is greater than 85 per cent of the pipeline capacity the service provider will limit the availability of authorised overruns. A user will not be entitled to an authorised overrun if that user has already exceeded the MDQ for 4 days of the month or 105 per cent of MDQ on more than 12 days in the year.

If a user withdraws more than its MDQ and any authorised overrun quantity at any given delivery point for that day, then an unauthorised overrun will have occurred with the excess amount being the unauthorised overrun quantity.

System use gas and linepack

System use gas will be supplied by the users at their own cost in the proportion of each user's throughput to the total throughput of all users. The service provider will advise the users of the quantity of gas required for system use each month.

Periodically a user will also be required to supply at its cost a proportion of users' linepack determined by the service provider. The quantity supplied by the user will not exceed the ratio of the user's MDQ to the total MDQ of all users multiplied by the quantity of the users' linepack at that time. The service provider can require a user to increase its supply of linepack if the quantity it is contributing is less than 90 per cent of its proportionment.

Metering

All withdrawals at delivery points will be metered. The service provider, user and other persons as permitted by the user will have access to daily meter readings. The quantity of gas delivered will be the volume of gas delivered at the delivery point multiplied by the average heating value of gas delivered for that day. Where metering facilities fail to operate, the quantity of gas will be determined by agreement.

Metering and records

Users can inspect and audit the service provider's metering equipment used in determining amounts payable by the user, at least once each contract year. Similarly records used in determining the amounts payable can be independently audited by the user at least once each contract year and at least within 12 months after the termination of a service agreement.

Gas quality

Gas which is delivered to the receipt points by the user and gas which is delivered at the delivery points by the service provider must meet the required specifications. The service provider may direct the user to cease delivery of gas or refuse to accept the delivery of gas from a user if the gas fails to meet the specification.

Interruptions and curtailments

The service provider is required to give reasonable notice to users of any interruptions or curtailments of receipt or delivery of gas due to planned work. Any curtailment of services is to be minimised with the service provider endeavouring to undertake the planned work during periods of low aggregate demand.

In the event that immediate repairs or maintenance are required to protect the operational integrity or safe operation of the pipeline, the service provider can interrupt or curtail gas deliveries or receipts without incurring a liability. Where services are

interrupted by such an event or by Force Majeure then the downstream services will be curtailed or interrupted proportionately according to the user's nominations for the first day of interruption and the user's MDQ thereafter.

Part Periods

Fees or charges that are applied to part periods (i.e. less than the full charge reference period) are to be pro-rated to reflect the actual period.

Accounts and payments

The service provider is required to render monthly accounts showing the quantity of gas transported the previous month, the reference tariffs applicable and the total amount due for payment. Where bills are not paid within 14 days the service provider may charge interest on any outstanding amount.

Extension of term

Upon request for an extension of its service agreement term a user may continue to receive gas from a delivery point after the expiry of the term at a capacity not exceeding the MDQ and MHQ applying under the service agreement. The reference tariffs payable will be under the access arrangement in force at the time of the extension.

Force Majeure

If a Force Majeure event occurs that impacts on either the user's or service provider's ability to perform its obligations under the service agreement, then the non-performance of the party concerned will not constitute a breach of that agreement so long as reasonable endeavours are made to resolve the situation. If the non-performance of a party after a Force Majeure event continues for over a year, then the parties can consult in good faith to resolve the situation or if they can not agree then the service agreement may be terminated.

Where a user is charged based on the MDQ and the service provider is unable to perform its obligations under the service agreement due to a Force Majeure event, then the user will be charged on the highest quantity of gas available to be continuously withdrawn during that period.

Liabilities and indemnities

Under a service agreement each party will be responsible and liable for the maintenance and operation of its properties and facilities and indemnifies the other party for any claim or action arising out of them. Each party indemnifies the other in respect of any inaccuracy or misrepresentation, warranty or covenant made by it or failure to comply with provisions of the service agreement.

Liabilities will be limited to actual damages except where gas does not meet specifications, the failure of a user to take delivery of gas as required under the service agreement, or where there is an unauthorised overrun at a delivery point.

Additional service agreements

Where a user has more than one service agreement it will need to provide aggregate information for each delivery point (MHQ and MDQ) and each receipt point (MDQ) as well as aggregate ACQ and MDQ for its total requirements.

4.3 ACCC considerations

The proposed access arrangement states that the amount of security payable to the service provider by a user for the provision of services shall be proportionate to the charges under the service agreement.²³

The ACCC considers that to satisfy the requirements of the Code (that terms and conditions are reasonable), a maximum limit should be placed on the amount of security payable by specifying the proportion of the user's charges that will not be exceeded in determining this amount.

Amendment 12

In order for CRPPL's access arrangement for the Central Ranges Pipeline to be approved, CRPPL must amend clause 14(b) of the Terms and Conditions as indicated below. The additional text required by the amendment is in bold.

'The amount of security shall be proportionate to the charges under the Service Agreement **and shall not exceed the amount charged or estimated to be charged to the User over two billing periods;** and'

The ACCC notes that APA considers the terms and conditions are broadly consistent with those for the Central West Pipeline to which the Central Ranges Pipeline will be connected. The ACCC considers that with the required amendment the terms and conditions meet the requirements under section 3.6 of the Code. CRPPL has agreed to make the required amendment.

²³ Proposed access arrangement, 23 August 2005, schedule 2, security for payment 14(b), p. 37

5. Capacity management policy

5.1 Code requirements

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

5.2 Proposed access arrangement

CRPPL's proposed access arrangement states that it is a contract carriage pipeline.

5.3 ACCC considerations

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

6. Trading policy

6.1 Code requirements

Section 3.9 of the Code requires the incorporation of a trading policy into an access arrangement where the pipeline is a contract carriage pipeline. A trading policy explains the rights of a user to trade its right to obtain a service to another person and according to section 3.10 of the Code must, amongst other things, 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'); and
- with the service provider's consent, in any other case. The consent of a service provider may be withheld only on reasonable commercial or technical grounds and the trading policy must specify conditions under which consent will be granted and any conditions attaching to that consent.

Section 3.11 of the Code provides examples of transfers, other than bare transfers, that would be considered reasonable under section 3.10 of the Code. For example, it would be reasonable for the service provider to request that it should receive at least the same amount of revenue from the user should the user decide to change its delivery or receipt point.

6.2 Proposed access arrangement

Section 5 of CRPPL's access arrangement provides that users can trade rights in three circumstances. These are:

- a user may make a 'bare transfer' without the consent of CRPPL if, prior to utilising it, the transferee notifies CRPPL of the portion and nature of contracted capacity subject to the bare transfer.
- a user may make a 'substituted transfer' (which is defined as a transfer or assignment of all or part of a user's contracted capacity in which the contract between the service provider and user does not remain in effect with unaltered terms) with the prior consent of CRPPL. CRPPL's consent will only be withheld on reasonable commercial or technical grounds, and may be given subject to reasonable commercial or technical conditions.
- a user may only change the receipt point and/or delivery point(s) specified in a service agreement with the prior consent of the service provider. CRPPL's consent will only be withheld on reasonable commercial or technical grounds, and may be given subject to reasonable commercial or technical conditions.

CRPPL commits to respond to transfer requests within 14 business days. It also states that a user who has transferred capacity remains liable for all charges unless the service provider, the user and the transferee all agree otherwise.

6.3 ACCC considerations

The ACCC notes that the access arrangement for the Central Ranges Pipeline requires a trading policy to meet the minimum requirements of the Code, as the pipeline is a contract carriage pipeline. The ACCC considers that the trading policy in the proposed access arrangement accords with, sections 3.9 to 3.11 of the Code. Section 5.5 of the proposed access arrangement (which states that the user is still responsible for all charges unless all three parties agree otherwise) does no more than make explicit what is implicit in the Code.

7. Queuing policy

7.1 Code requirements

Sections 3.12 to 3.15 set out the Code's requirements for a queuing policy. An access arrangement must include a queuing policy for determining 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).

A queuing policy must be set out in 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 and of users and prospective users and generate economically efficient outcomes.

7.2 Proposed access arrangement

Where there is insufficient capacity to satisfy a user's request to obtain a service from CRPPL a queue will be formed. A queue will include all relevant requests which cannot be satisfied.

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

- its position on the queue;
- the aggregate capacity of requests which are ahead of it on the queue;
- its estimate of when capacity may become available; and
- the size of any surcharge that may apply to developable capacity.

CRPPL will update these details when the relative position of a request or the timing of available developed capacity changes.

Once on a queue, a prospective user may reduce but not increase the capacity sought in its request.

An assignment of a request can be made to a bona fide purchaser of the prospective user's business or assets subject to the service provider's prudential requirements. If a controlling interest in the shares of a prospective user is assigned to another party, the request will lapse if the assignee fails to meet the service provider's prudential requirements.

A request for service may also lapse and be removed from the queue if:

- the prospective user does not respond to CRPPL's request for confirmation of the request within the specified 14 days; or
- the prospective user notifies CRPPL that it does not want to proceed with the request.

When capacity can be made available which meets the requirements of any request in a queue, that capacity will be progressively offered to each prospective user in the queue in order of priority. CRPPL 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 a service agreement, failing which the request will lapse or lose priority to those entering into such a service agreement.

A request will not lapse in the event that there is a dispute. The request will retain its priority until the dispute is resolved in accordance with the Code. Where a queue exists, upon request by CRPPL, a prospective user must demonstrate it will have access to a supply of gas at the time it anticipates it will be offered access to the service.

7.3 ACCC considerations

The purpose of a queuing policy is to allocate spare capacity where there is insufficient capacity to satisfy the needs of all users and potential users who have requested capacity.

The ACCC notes that no comments have been raised by interested parties about the proposed queuing policy for the pipeline. Further, Sleeman Consulting provided advice that the queuing provisions are fair and reasonable.²⁴ The ACCC, after considering the queuing policy and the advice of its consultant, is satisfied that proposed queuing policy meets the requirements of the Code.

²⁴ Sleeman report, p. 8.

8. Extensions and expansions policy

8.1 Code requirements

The Code requires an access arrangement to have an extensions/expansions policy (section 3.16). The policy is to set out the methodology to determine whether any extension to, or expansion of, the capacity of the system will be treated as part of the covered pipeline (section 3.16(a)). A service provider is also required to specify how the inclusion of an extension or expansion as part of the covered pipeline will affect reference tariffs (section 3.16(b)).²⁵ In addition, if the service provider agrees to fund new facilities, an extensions/expansions policy must outline under what conditions the service provider will fund new facilities and provide a description of those new facilities (section 3.16(c)).²⁶

8.2 Proposed access arrangement

The proposed access arrangement makes clear that any construction of facilities to service the ten Central Ranges Towns is construction of the tendered pipeline and is not an extension or expansion. Consequently, it is not subject to the test in section 8.16 of the Code.

Other capital expenditure, to supply services to other than Central Ranges Towns, will constitute an extension or expansion of the pipeline. Expansions of the pipeline will be automatically covered by this access arrangement and extensions will be covered unless the service provider gives written notice to the regulator before the extension comes into service.

The extensions/expansions policy provides that, where a new facilities investment does not satisfy the tests set out in section 8.16 of the Code, the service provider may seek a capital contribution from, or apply a surcharge on, incremental users.

8.3 ACCC considerations

The extensions/expansions policy sets out a methodology to determine whether any extension to, or expansion of, the capacity of the system will be treated as part of the covered pipeline. The ACCC considers that this methodology is consistent with the provisions of the Code. Consequently, it considers that section 3.16(a) is satisfied.

The extensions/expansions policy does not directly specify how the inclusion of an extension or expansion as part of the covered pipeline will affect reference tariffs. While the policy states that reference tariffs will not change throughout the access arrangement period, this is in the context of section 7.1 of the proposed access arrangement which concerns construction of further stages of the pipeline which was the subject of the tender and therefore would not be considered to constitute an

²⁵ For example, reference tariffs may remain unchanged, but a surcharge may be levied on incremental users.

²⁶ Requirements in relation to new facilities investment are contained in sections 8.15-8.19. Further discussion is contained in chapter 3 of this document.

extension or expansion. Section 3 of the proposed access arrangement establishes that expenditure on further stages of the pipeline to the Central Ranges Towns will not change tariffs in the first access arrangement period and section 4 establishes that this type of expenditure will increase the capital base for the next access arrangement period (and therefore by implication, tariffs in future periods). As there is no clear statement concerning the effect that including an extension or expansion as part of the covered pipeline will have on tariffs, the ACCC considers that the requirements of section 3.16(b) of the Code have not been satisfied. Consequently, the ACCC proposes the following amendment.

Amendment 13

In order for CRPPL's access arrangement for the Central Ranges Pipeline to be approved, CRPPL must specify in the extensions/expansions policy how inclusion of an extension or expansion as part of the covered pipeline will affect the reference tariffs.

The ACCC has discussed this amendment with CRPPL and it has agreed to the amendment.

The service provider has made no commitment to fund any new facilities. Consequently section 3.16(c) of the Code is not relevant to the assessment of this proposed access arrangement

CRPPL proposes to be able to seek a surcharge or a capital contribution where a new facilities investment does not satisfy the requirements set out in the section 8.16 test.

9. Revisions commencement date

9.1 Code requirements

An access arrangement must have a revisions submission date and a revisions commencement date (section 3.17).

9.2 Proposed access arrangement

The revisions commencement date is 1 July 2019 and the revisions submission date is 30 September 2018.

9.3 ACCC considerations

The revisions commencement date is a tender outcome, being 1 July 2019, and the proposed access arrangement reflects this.

The proposed access arrangement includes a revisions submission date of 30 September 2018. The ACCC considers that this date is consistent with the provisions of the Code.

10. Access arrangement information

10.1 Code requirements

Section 2.2 of the Code requires a service provider of a covered pipeline to submit a proposed access arrangement together with the applicable access arrangement information to the relevant regulator. To comply with sections 2.6 and 2.7 of the Code the access arrangement information is required to contain certain information as specified in Attachment A of the Code. However, under section 3.35 of the Code, where the relevant regulator has made a decision to approve a final approval request as part of a competitive tender process for the determination of reference tariffs, the access arrangement information need not contain the information required by sections 2.6 and 2.7 of the Code, or any other information in respect of the reference tariffs.

10.2 Proposed access arrangement information

CRPPL submitted the proposed access arrangement information in conjunction with the proposed access arrangement on 23 August 2005. Brief descriptions are provided covering:

- an introduction and historical overview of the project and the tender process
- an explanation of the Code requirements and the scope of the access arrangement information
- the selection criteria for the awarding of the tender in the competitive tender process
- the methodology for determining tariffs
- an explanation of the incentives that enable the service provider to reduce the period of under-recovery and to share with users any future over-recoveries
- the transmission pipeline costs that are to be included in the initial capital base
- the assumptions on the economic life of the assets
- the committed capital works and planned capital investment
- corporate structure, overhead and marketing costs, and
- pipeline capacity, volume assumptions and construction programme.

10.3 ACCC considerations

The ACCC considers that the proposed access arrangement information satisfies the relevant section of the Code (section 3.35) where the relevant regulator has already given approval to a final approval request. The ACCC welcomes the provision by CRPPL of more information than the minimum required by the Code.

11. Draft decision

Under section 2.13(b) of the Code, the ACCC proposes not to approve CRPPL's access arrangement for the Central Ranges Pipeline in its present form. This draft decision states the amendments (or nature of amendments, as appropriate) which would have to be made in order for the ACCC to approve the proposed access arrangement.

Appendix A

Australian Pipeline Trust

Submissions

23 September 2005