

# Final Decision



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

7 December 2005

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**Commissioners:**  
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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
(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
CRPPL	Central Ranges Pipeline Pty Ltd
Europacific	Europacific Consortium which consisted of Europacific Corporate Advisory, Country Energy, Colonial First State and Jasdell
IPART	Independent Pricing and Regulatory Tribunal
MDQ	maximum daily quantity
MHQ	maximum hourly quantity

## Summary

This document provides the final decision by the Australian Competition and Consumer Commission (ACCC) under section 2.16(b) of the *National Third Party Access Code for Natural Gas Pipeline Systems* (Code) 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 Code. The tender process resulted in the approval of a number of tender outcomes, including the reference tariffs that may be charged until 2019. The tender outcomes were not subject to review during the current approval process.

CRPPL submitted the proposed access arrangement to the ACCC for approval on 23 August 2005.

On 26 October 2005, the ACCC made a draft decision under section 2.13(b) of the Code that it proposed not to approve the proposed access arrangement, and proposed thirteen amendments. The ACCC's reasons for requiring these amendments are set out in the draft decision.

CRPPL submitted a revised proposed access arrangement to the ACCC on 18 November 2005, and a further version on 25 November 2005. The latter revised proposed access arrangement is the subject of this final decision. It incorporates or substantially incorporates the amendments proposed by the ACCC in its draft decision or otherwise addresses the matters identified by the ACCC in its draft decision.

The ACCC has made a final decision, pursuant to section 2.16(b)(i) of the Code, that it approves CRPPL's revised proposed access arrangement.

The access arrangement will become effective on the date on which the pipeline is capable of providing the reference services which is expected to be in the first half of 2006.



# 1. Introduction

## Background

On 3 January 2003 the Central Ranges Natural Gas and Telecommunications Association Incorporated (Association) applied (under section 3.21 of the *National Third Party Access Code for Natural Gas Pipeline Systems* (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 and released 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 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). 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. 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. 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.

## Criteria for assessing an access arrangement

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 has not covered certain aspects that would otherwise be assessed (the tender outcomes). The tender

outcomes are not subject to regulatory assessment until the revisions commencement date of 1 July 2019. For the pipeline, the tender outcomes are:<sup>1</sup>

- the 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
- the additional revenue policy.

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

The elements of the access arrangement that have not been covered by the tender outcomes have been 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. 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.

## Assessment process

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 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 (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 (the draft decision proposing not to approve the proposed access arrangement and identifying 13 amendments was issued on 26 October 2005 along with a call for submissions)
- after considering additional submissions, issue a final decision that either approves or does not approve the access arrangement (or revised access arrangement) and states the amendments (or nature of the amendments) which would have to be made to the access arrangement (or revised access

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<sup>1</sup> Tender documentation, p. 36, Final approval request decision p. 29.



arrangement) in order for the ACCC to approve the access arrangement (this document is the final decision), and

- if the final decision does not approve the proposed access arrangement, issue a further final decision. (This step will not be necessary in this case as the final decision is to approve the revised proposed 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 sought clarification from CRPPL on various aspects of the proposed access arrangement. This resulted in an understanding that some changes were necessary to meet the requirements of the Code. Additional changes were proposed, with the agreement of CRPPL, to increase the clarity of the access arrangement. At the same time, the ACCC has liaised with IPART with a view to ensure regulatory consistency.

Prior to the release of the draft decision one submission was received from the Australian Pipeline Trust. This submission noted that the proposed terms and conditions are broadly consistent to those for the Central West Pipeline and commented on the implied rate of return.

The ACCC called for interested parties to make submissions in response to the draft decision with submissions due by Friday 18 November 2005. No submissions have been received on the draft decision.

## **Access arrangement documentation**

The draft decision and final decision, public submission, proposed access arrangement and approved access arrangement are available from the AER's website ([www.aer.gov.au](http://www.aer.gov.au)).<sup>2</sup> They are also placed on the public register held by the Code Registrar.

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<sup>2</sup> 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.

## 2. Assessment of CRPPL's revised proposed access arrangement

The ACCC concluded in its draft decision document that 13 amendments were required to the proposed access arrangement in order for it to be approved. The ACCC's reasons for requiring these amendments are set out in the draft decision.

On 18 November 2005 CRPPL provided an revised proposed access arrangement which addressed each of these amendments and also made two other changes. On 25 November 2005 CRPPL provided another revised proposed access arrangement which contained one further change. It is the latter version the ACCC is considering in this final decision. No submissions were made in response to the draft decision by either interested parties or the service provider.

Where the service provider has submitted a revised proposed access arrangement, section 2.16A provides that the regulator may approve a revised access arrangement only if it is satisfied that the revised access arrangement incorporates or substantially incorporates the amendments specified or otherwise addresses the reasons given by the regulator for requiring the amendments.

### Amendments 4, 5, 6, 8, 12

CRPPL has incorporated amendments 4, 5, 6, 8 and 12 into its proposed access arrangement without modification from the ACCC's draft decision. The remaining amendments are discussed below.

#### 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.'

The proposed access arrangement defines the terms 'MDQ' and 'Delivery Point MDQ'. In the amendment, the ACCC considered 'MDQ' to be ambiguous and used the expression 'overall MDQ' to distinguish it from 'Delivery Point MDQ'. Similarly, the ACCC considered the use of 'MHQ' to also be ambiguous.

CRPPL has made the amendment as expressed above except that it has replaced 'overall MDQ' with 'User's MDQ' which it has then defined as the maximum quantity of gas the Service Provider is obliged to transport to all the user's delivery points. Similarly, it has replaced 'MHQ' with 'User's MHQ'. This development has also

required 'User's' to be inserted before 'MDQ' and 'MHQ' in various other parts of the access arrangement, which CRPPL has appropriately done.

The ACCC considers the definition of 'User's MDQ' and 'User's MHQ' to be a helpful change which addresses the ACCC's reasons for specifying the amendment. The ACCC considers that CRPPL has substantially incorporated this amendment.

Similar amendments were required to the overrun definition in Schedule 1 (Definitions and Interpretation) and to the overrun provision in Schedule 2 (Terms and Conditions).

### **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.

'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.**'

Amendments 2 and 3 have been incorporated into the revised proposed access arrangement, except for 'User's' replacing 'overall'. For the reasons given when discussing Amendment 1, the ACCC considers that CRPPL has substantially incorporated these amendments.

### **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).

CRPPL has incorporated this amendment with two exceptions. First, 'over-recoveries' has a capital 'O' which indicates that it is a defined term in the access arrangement. The ACCC considers this appropriate. Second the response to the requirement to include a reference to '4.9(a)(i)' omits the '(i)'. The ACCC considers this appropriate as the introductory words in 4.9(a) which occur before 4.9(a)(i) are also relevant to the definition of '-OR applied'.

The ACCC considers these two aspects of amendment 7 that CRPPL has changed result in greater clarity in this section of the revised proposed access arrangement. The ACCC therefore considers that CRPPL has substantially incorporated this amendment.

### **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<sub>n</sub> 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.'

Apart from replacing 'CRPPL's' with 'the Service Provider's', CRPPL has incorporated the amendment specified in the draft decision. The ACCC therefore considers that CRPPL has substantially incorporated this amendment.

### **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.

Apart from changing the heading to ‘Capital Redundancy Mechanism’, which the ACCC considers appropriate, CRPPL has incorporated the amendment specified in the draft decision. The ACCC therefore considers that CRPPL has substantially incorporated this amendment.

### **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

Apart from capitalising the first letters of ‘redundant capital’ (which the ACCC considers appropriate, as it is a defined term in the access arrangement), CRPPL has incorporated the amendment specified in the draft decision. The ACCC therefore considers that CRPPL has substantially incorporated this 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.

CRPPL has added a sub section to section 7.2 which says ‘An extension to or an expansion of the Pipeline will not affect the Reference Tariffs in this Access Arrangement period.’ The ACCC considers that this is a clear statement as to how the inclusion of extensions and expansions in the covered pipeline will affect tariffs and is consistent with the tariff variation method established in section 3.3 of the proposed access arrangement. The ACCC therefore considers that CRPPL has substantially incorporated this amendment.

### **Other changes**

The revised proposed access arrangement states that the revisions submission date is 30 June 2018 whereas the date in the original proposed access arrangement was 30 September 2018. This change would allow the regulator a year in which to complete the assessment of the proposed revised access arrangement (instead of nine months).

The ACCC notes that in its proposed access arrangement for its distribution pipelines, CRPPL proposed a revisions submission date of 1 September 2018. In its draft decision document, the IPART considered this met the requirements of the Code but that a longer period between revisions submission date and the revisions commencement date would also meet the Code requirements and reduce the risk of revisions not commencing by the revisions commencement date.<sup>3</sup> The ACCC understands that CRPPL has responded to IPART's comments by changing the revisions submission date for the distribution access arrangement to 30 June 2018 and as a matter of consistency has changed the revisions submission date in this proposed access arrangement under review by the ACCC.

The ACCC considers that either revisions submission date complies with the provisions of the Code. Further, the ACCC considers that there are advantages if the revisions to the two access arrangements are assessed in parallel. Consequently, the ACCC does not oppose the change to the revisions submission date.

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.

In its revised proposed access arrangement, CRPPL has included in this sub section, '(to be placed on the Regulator's website)' which makes clear that this report will be a public document.

The ACCC expects that documents of the nature of this report should be public and welcomes these changes to the revised proposed access arrangement.

In the revised access arrangement, the wording with respect to the commencement of the access arrangement has been changed. Initially, the proposed access arrangement stated that it would 'commence on the later of the date on which the approval by the Regulator takes effect under Section 2 of the Code and the date on which the Pipeline is capable of providing the Reference Services'. This has been replaced by 'commence on the date on which the Pipeline is capable of providing a Reference Service to at least one Customer'.

The removal of the option tied to the regulator's approval is an appropriate editorial adjustment as construction of the pipeline has not yet been completed and, with approval in this final decision, it is now known the commencement date will relate to the availability of reference services.

The new wording clarifies that the access arrangement will commence as soon as the pipeline is capable of providing a reference service to at least one customer. The ACCC considers this change to be appropriate and that the new wording meets the requirements of the Code.

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<sup>3</sup> IPART, *Access Arrangement for Central Ranges Pipeline Gas Network – Draft Decision*, October 2005, p. 45f.

### **3. Final decision**

The revised proposed access arrangement incorporates or substantially incorporates all thirteen amendments required by the ACCC's draft decision. The ACCC considers the other changes made by CRPPL are reasonable and non-contentious.

In accordance with section 2.16(b)(i) of the Code, the ACCC approves CRPPL's revised proposed access arrangement.

As stated in the access arrangement, the access arrangement will commence on the latter of the date on which the ACCC's approval takes effect and the date on which the pipeline is capable of providing the reference services.

## **Appendix A**

## **Submissions**

### ***Pre draft decision***

Australian Pipeline Trust

23 September 2005

### ***Post draft decision***

*Nil*