



**Submission to the Australian Energy Regulator (AER)**

**Application by NT Gas**

**for**

**New Gas Access Arrangement for Amadeus Gas Pipeline**

**14 March 2011**

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## **1 INTRODUCTION**

Power and Water Corporation (PWC) is a Northern Territory Government Owned Corporation incorporated under the Government Owned Corporations Act 2001 (NT) on 1 July 2002. Its functions include the generation, marketing and supply of electricity to some 80,000 customers throughout the Northern Territory and the buying, selling and transporting of gas. Gas is the predominant source of energy used by PWC to generate electricity.

PWC is the foundation customer for the Amadeus Basin Gas Pipeline (Pipeline) and the current major user of the Pipeline, pursuant to a long term agreement with the service provider entered into in 1985 and due to expire in June 2011. In its role as foundation customer for the Pipeline, PWC underwrote the development of the pipeline system and put in place the infrastructure necessary to consume gas at various locations in the Territory.

PWC has been negotiating with APA Group a replacement Gas Transportation Agreement (GTA). That pipeline was commissioned in early 2009. While agreement on future long-term arrangements with APA Group is close, PWC remains concerned that the Reference Service and Reference Tariffs in the Access Arrangement meet the national gas objective, as stated section 23 of the National Gas Law, that is to "promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas".

In the Northern Territory, gas is the dominant fuel for electricity (>90%) and so consumers of natural gas are also effectively Territory electricity consumers. The proposed Access Arrangement therefore pertains to an essential service required throughout the Northern Territory. The high level of Reference Tariff and the tariff inflexibility proposed could not only impose a significant financial burden on Territorians but create substantial risk of stifling development of the downstream domestic energy market as well as economic growth in the Northern Territory.

This submission deals with the proposed Reference Tariff and the proposed Terms and Conditions.

## **2 REFERENCE TARIFF**

Analysis contained in this submission uses 2009/10 dollars consistent with the Access Arrangement proposed by the service provider.

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## **2.1 Capital Base**

### **2.1.1 Opening Capital base (OCB)**

The prior Access Arrangement allowed an accelerated depreciation of the Amadeus Gas Pipeline resulting in a residual value of the Pipeline in 2011 of \$61.84 million. This accelerated depreciation through an increase in the Reference Tariff, transferred the business risk of a stranding of the Pipeline by a future Timor Sea pipeline to users of the Pipeline. The service provider at that time stated that the depreciation of the Pipeline to a value of \$61.84 million was appropriate as it mirrored the existing contractual and financial arrangements for the Pipeline. Such statement reflected a desire for consistency with the termination of the lease of the Pipeline in June 2011 and the payment that will occur at that time of a lease residual.

There is no basis to suggest that the 2011 value of \$61.84 million as proposed was not in 2011 dollars and it is therefore not appropriate for the service provider to now index this value, the effect would otherwise be for the service provider to recover more than originally intended.

The service provider has also sought to increase the Opening Capital Base by the capital expended in the previous Access Arrangement period. PWC does not consider it reasonable to include these amounts in the Opening Capital Base as funding has already been provided under the existing contractual arrangements. Such inclusion would result in a recovery of the costs a second time as these earlier capital expenditure amounts were reimbursed to the service provider to allow it to meet its cash flow needs of those capital projects. Therefore, the capital amounts should be considered as having been depreciated at the time that the costs were recovered.

Thus, PWC considers the proposed opening capital base of \$112.4 million excessive.

### **2.1.2 Depreciation**

Insufficient information has been provided on the assignment of the OCB to various asset classes to properly examine forecast depreciation over the access arrangement period. However, PWC notes that all compression on the pipeline is redundant and thus should not form any part of the calculation of depreciation.

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## 2.2 Capital Expenditure

PWC notes that in its 2001 decision the ACCC approved a Capex forecast of \$11.8 million or \$13.4 million in today's terms. According to information contained within the NT Gas submission (excluding the 2010/11 forecast), NT Gas under spent this forecast by \$5.2 million. It would therefore appear that NT Gas has deferred required investment in the pipeline.

In terms of the increase in capital investment of \$27.7 million forecast in 2010/11 and 2011/12, PWC has a number of concerns, including:

- *Delivery capacity* – this work scope is an order of magnitude larger than that normally delivered by NT Gas in any given year. PWC questions whether NT Gas, even with the use of a “project team”, can deliver these projects within the nominated timeframes;
- *Delivery efficiency* – it appears that a significant amount of work is being fast-tracked. In our experience, this can result in higher costs and delays. These higher costs may be warranted if the projects have an urgent operational need. In this case, none of the projects appear urgent and in some cases have been deferred for years;
- *Prudent selection* -PWC considers that some of these projects are being accelerated and that new projects are being added which are inadequately scoped or justified simply to suit the special project team. The Southbound Piggability Project is a key example. The service provider indicates that southbound pigging will occur in 2015/16 (page 127). This project is therefore not required before that time and bringing the activity forward as part of the “special projects” appears to have limited benefit outside the project team; and
- *Inflated project scope* – it appears to PWC that some of these projects include work from future years that would normally be covered by the existing forecast Operating and Maintenance or Capital expenditure. These projects include:
  - Below Ground Station Pipework Recoating: This work has traditionally been classified by the service provider as non-routine operating expenditure representing repair to existing pipework. PWC questions the basis for the \$4.822 million now being forecast for this activity and is keen to understand the nature of additional work that is being proposed and the further integrity issues or risks that require attention,
  - Heat Shrink Sleeve Replacement: This activity is normally referred to as a repair programme and treated in the past as a non-routine operating expenditure, and

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- Cathodic Protection Upgrade: PWC is concerned at the cost forecast for the two years 2010/11 and 2011/12 of \$3.644 million in light of previous assessments. The scope suggests the bringing forward of regular maintenance / stay-in-business replacement activities which should then be reflected in future year operating and maintenance cost savings.

It should be recognised that PWC is in on-going discussions with APA Group regarding these projects as part of the discussions on the replacement GTA.

Given that much of the capital expenditure forecast in 2010/11 is yet to occur, the proposed scope of “special projects” to be undertaken within an effective 18 month period is substantial. It is noted that the service provider’s earlier approach has been to undertake remedial integrity activity on a regular and consistent basis on a year-to-year basis. The reason now for an accelerated program has not been made clear in the Access Arrangement; however, if users are being asked to pay for the acceleration of capital expenditure, it is vital that better over-sight and control mechanisms be established. PWC submits that these requirements must be in place to ensure that the service provider satisfies section 79(1) of the National Gas Rules which provides that "the capital expenditure must be such as would be incurred by a prudent service provider acting efficiently, in accordance with accepted good industry practice, to achieve the lowest sustainable cost of providing services". Recommended measures include:

1. The individual projects of the program be scrutinised to ensure an appropriate scope and cost estimation;
2. The “special project” project management costs be scrutinised and assessed relative to good industry practice to ensure cost efficiencies are maintained;
3. The Service Provider fully scopes the accelerated program as included in the final Access Arrangement (and paid for through the tariff) and ensures that it is undertaken within the timeframe stated thus ensuring that the integrity risk reduction outcome as planned is achieved; and
4. Given the significance of integrity assurance for users, the service provider should produce an annual report showing level of integrity management activities undertaken and cost performance compared to the approved capital and relevant operating cost forecasts.

### **2.2.1 Forecast Capital Expenditure from 2012/13 to 2015/16**

The service provider has not provided detailed information on the make-up of capital expenditure in the period from 2012/13 to 2015/16 making it difficult to provide adequate comments. It is recognised that included in the forecast is ~\$500k per annum for Heat Shrink Sleeve repair which has previously been treated as operating expenditure. However,

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given the acceleration of the CP Upgrade expenditure into 2011 and 2012, it is not clear what further capital can reasonably be forecast particularly in the Pipeline, Meter Station and SCADA asset classes.

It is noted that annual average expenditure in these years (excluding Heat Shrink Repair work) is \$885k. In comparison, the actual average capital expenditure in the period 2001/02 to 2009/10, using Table 6.3, is ~\$480k after similarly omitting major project expenditure such as for SCADA upgrade in 2003/04 and making an allowance for assumed out of the ordinary BGP tie-in works in 2008/09.

Actual expenditure as reported in the period 2001/02 to 2009/10 was 69% less than the Capital Expenditure approved for the same period in the ACCC 2002 Decision (Table 6.3). It seems that there is now similar over-estimation of capital expenditure in the next Access Arrangement period. (For this comparison, forecast expenditure for 2010/11 has been excluded due to the high uncertainty and distortion by the proposed bringing forward of future projects.)

It is considered that the baseline forecast capital expenditure for this period (excluding special projects and Heat Shrink Sleeve repair) should not exceed the historical average cost and in fact should provide a reduction to reflect the special project work accelerated into 2011/12.

## **2.3 Operating Expenditure**

### **2.3.1 Operating Expenditure over prior access arrangement period**

Throughout the earlier access arrangement period and under existing contractual arrangements, the service provider developed and reported against expenditure budgets for the following financial year which were approved by PWC. In paragraph 4.4 of its Access Arrangement Revision Proposal, the service provider infers that its expenditure is "prudent and efficient" on grounds that operating and capital expenditure required PWC's approval. While PWC has established approval mechanisms for this expenditure, PWC does not agree that its approval represents a full assessment as to the reasonableness of such expenditure.

Taking account of historical actual expenditure and allowing for cost impacts of one off events such as tie-in of the BGP, a reasonable average operating expenditure of \$8.7 million per annum may be inferred. This is some 8% less than the equivalent annual average contained in the ACCC 2002 Decision. The service provider noted that it achieved substantial cost savings; however, the ACCC 2002 operating cost forecast was a step up on historical performance and the actual outcome may point more to an overstatement of forecast activity and costs at that time.

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### **2.3.2 Forecast Operating Expenditure**

The Pipeline has over the last decade been operated at an all inclusive average operating expenditure of \$8.7 million per annum. Under existing contractual arrangement, there is limited financial incentive on the service provider to minimise its costs. PWC believes that historical expenditure should not be viewed as being unreasonably low such that step change increases can now be justified.

Of the significant increase in forecast operating expenditure referred to above, about half or \$3 million is caused by a sudden jump in overheads. This appears driven by two factors, as follows:

- An increase in corporate overheads. While PWC acknowledges that it is appropriate to include a level of head office overheads, the magnitude proposed by NT Gas is excessive. This is largely due to the allocation methodology, which is based on revenue. This approach inflates the level of corporate overheads charged to the AGP and is not reflective of the actual corporate support provided to NT Gas. As many of the corporate services outlined are related to headcount, a more appropriate allocation methodology would be as a proportion of operating costs;
- An increase in actual historical insurance premiums and those forecast in 2010/11. The forecast large increase in insurance premium is not explained.

### **2.3.3 Benchmarking and Efficiency**

Benchmarking has limitations given the unique attributes of the various pipelines being compared and thus requires substantially more investigation than the simplistic approach taken in the submission.

## **2.4 Cost of Capital**

The service provider has overstated the appropriate weighted average cost of capital (WACC) to be used in the determination of the Pipeline Revenue. PWC sought expert opinion from the Allen Consulting Group and requested that it provide an estimation of WACC appropriate for the Pipeline. The Allen Consulting Group has determined that the WACC estimated in the Synergies report which accompanied the service provider's submission was high due to estimates for the debt margin and the equity beta.

The Allen Consulting Group's estimates of input parameters and the WACC are summarised below and its full report is included as Attachment 1.



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## AMADEUS GAS PIPELINE - WACC ESTIMATES

Parameter	Estimate
<i>Risk free rate (nominal)</i>	5.58%
<i>Debt to value</i>	60%
<i>Debt margin</i>	3.25%
<i>Debt raising costs</i>	Introduce via cash flows, not via WACC.
<i>MRP</i>	6.5%
<i>Gamma</i>	0.65
<i>Equity beta</i>	0.50
<i>Corporate tax rate</i>	30%
<i>Cost of equity</i>	8.83%
<i>Cost of debt</i>	8.83%
<b>Nominal vanilla WACC</b>	<b>8.83%</b>

Source: Allen Consulting Group

### 2.5 Revenue requirement

The service provider reported a 2010/2011 Pipeline revenue budget of \$29 million (Page 131). The proposed revenue requirement outlined in Section 11.1.1 now estimates a revenue requirement of \$33.1 million for 2011/12.

Having met such a large proportion of the original cost of the Pipeline and absorbed the bulk of the project and operating risk, it is difficult to understand the justification for this increase from June 2011. In contrast, PWC would expect a reduction in revenue requirements.

### 2.6 Tariff

The service provider has proposed to allocate all revenue to the Reference Service and all revenue in that Reference Service to one class of users. (Paragraph 11.2.2, page 147)

The service provider also acknowledges that in the event of new users or class of users on the Pipeline, there will be no incremental cost to operating the Pipeline.

To calculate the Reference Tariff which is an MDQ reservation charge, the service provider has used total delivery point capacity of 117 TJ/day (even though this number according to the service provider's own submission varies up to 127.4 TJ/d over the period of the Access Arrangement). It is however not appropriate to allocate Revenue or specify a tariff on such

a basis. It is appropriate, rather, to allocate Revenue and determine a tariff based on the material obligation of the service provider which is the aggregate quantity of gas to be delivered across all delivery points on a Day (or Delivery MDQ). Based on a technical review commissioned by PWC, the Pipeline capacity, when transporting gas consistent with PWC's receipt and delivery profiles, is estimated to be 110 TJ/d. An appropriate allocation of Revenue to users therefore gives a Reference Tariff per GJ/day MDQ as follows:

Smoothed Annual Revenue (2011/12\$'s)	\$16.1 million
Pipeline Capacity	110TJ/day
<b>Reference Tariff (\$/GJ/day MDQ)</b>	\$0.40 Escalated @ 100% CPI

### 2.6.1 Overrun Charge

Recovering the full Revenue requirement from an MDQ reservation charge is effectively the same as a 100% take-or pay contract. In this case and given the Revenue is being recovered from a single user, it is inappropriate to charge that user for an overrun service when it is acknowledged that such service can be provided at no additional cost. If the original Revenue requirement had been divided by the higher MDQ number, the tariff would have been lower and the final tariff charge would have been the same. While an overrun charge existed in the prior access arrangement period, at that time the tariff was variable with reasonable usage flexibility through 80% take or pay. For the most part, the overrun charge matched the variable tariff. No overrun charge should exist as part of the Reference Service.

### 2.6.2 Imbalance Charge

Similarly, when there is no cost impact on the service provider, there is no basis to make an imbalance charge. Such charge was not applicable in the prior access arrangement period and there is no basis for it to be introduced now. In fact, given the present lack of definition on pipeline operational parameters (including delivery pressure) in the access arrangement period, and that the service provider is involved day to day in setting nominations at receipt and delivery points, there is no logic for this charge. It is noted that in this regard, the service provider operates the BGP and controls gas entering the Pipeline.

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### **2.6.3 Daily Variance Charge**

In line with comments in the Section above on cost and revenue impacts and regarding involvement of the service provider in determining nominations, there is no basis for a Daily Variance Charge.

### **2.6.4 Cost Pass-through Reference Tariff Adjustment**

Cost pass-through tariff adjustments should equally apply to any cost decreases against costs previously forecast to the Regulator.

### **2.6.5 Interruptible Service**

An interruptible service provides flexibility to the market and while specific terms may be negotiable, it would be highly beneficial to encouraging potential new users for an interruptible reference service to exist with a reasonable reference tariff.

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### **3 TERMS AND CONDITIONS**

Following a review of the terms and conditions in the Access Arrangement, PWC is concerned that key matters have been dealt with in such a way as to be biased towards the service provider and do not reflect terms typical of a freely negotiated gas transportation agreement. Following this review, a summary of matters which cause concern have been listed in the Table overleaf. This table contains both a summary of the service provider's position and a statement of what PWC considers is a reasonable position, taking into consideration the applicable legislative regime, including the National Gas Rules.

No.	Topic	Proposed Access Arrangement (AA)	PWC Submission
1	Service Provider		Actual contracting party has to be company of financial substance and technical capability otherwise additional security such as parent company guarantee to be provided
2	MHQ	MDQ/24 x 1.1	A generally industry accepted hourly rate is MDQ/24 x 1.2 recognising that average demand is not flat over the cycle of a day. Otherwise the opportunity of a shipper to actually use MDQ is limited. The 2002 Access Arrangement included a 1.2 factor and there is no basis for a change.
3	Basis of tariff	Reference Tariff is \$0.76 per GJ and is a capacity tariff; paid on the aggregate of all Delivery Point MDQs.	A tariff based on the contract MDQ is the norm and not on aggregate delivery point MDQ's. That is, the tariff should be payable on the maximum quantity that may be received and delivered in a day. AA structure has potential to cause some shippers to pay for capacity rights which they are not entitled to use whereas other shippers are not so disadvantaged.
4	Services	No provision for authorised overruns; see further Item below.	An Authorised Overrun Service (for transport in excess of the MDQ or MHQ) should be included on the basis that the Service Provider has a reasonable endeavours obligation to comply with a request if capacity is available. Cost of authorised overrun service should not be at a premium to firm service.

No.	Topic	Proposed Access Arrangement (AA)	PWC Submission
5	Variation to nominations	<p>User can change its nomination at any time prior to 2:30 pm on the day before.</p> <p>Service Provider not liable to provide services nominated unless it schedules those services in accordance with the relevant GTA.</p>	<p>Service Provider should have a reasonable endeavours obligation to comply with nominations received later than 2:30pm on the day before.</p> <p>Service Provider is to be obliged to schedule the nominations made up to the MDQ.</p>
6	Addition of Receipt Points and Delivery Points	User can request additional Receipt or Delivery Points.	This item should cover more generally all new facilities irrespective of whether associated with a receipt or delivery point. Service Provider to ensure costs of new facilities are reasonable and efficient and designed consistent with appropriate industry standards. User is only liable for the incremental cost of operating and maintaining any improvements (if any), recognising that there may be savings on any replaced facility.
7	Off specification gas	User obliged to notify Service Provider if gas might be off-spec but no obligation on Service Provider to notify user.	Service Provider should also have obligation to notify user as soon as it becomes aware that gas entering or leaving the Pipeline is off-spec.

No.	Topic	Proposed Access Arrangement (AA)	PWC Submission
8	Receipt and Delivery Pressures	<p>User to supply gas to the receipt points at pressures nominated by Service Provider from time to time.</p> <p>User to indemnify Service Provider for all loss and damage suffered or incurred by the Service Provider as a result of the User breaching the above.</p> <p>Delivery pressure not addressed.</p>	<p>Gas must be supplied at the Receipt Points at pressures nominated by Service Provider from time to time as being sufficient to allow the Gas to enter the Pipeline but in no case will user be required to deliver Gas at a Receipt Point at pressures in excess of the Receipt Point Pressure/MAOP.</p> <p>Subject to user providing sufficient Gas at the Receipt Point and at the required pressure, Service Provider must deliver Gas for user's account at the Delivery Point Pressure.</p>
9	Priorities	<p>Priority is as follows:</p> <ul style="list-style-type: none"> <li>- gas nominated by firm users up to their respective MDQs</li> <li>- gas nominated by users with "As Available Transportation Agreements" (not defined) up to their respective MDQs</li> <li>- gas accepted for transportation by Service Provider from users with AATAs in excess of their respective MDQs</li> <li>- gas nominated pursuant to interruptible transportation agreements.</li> </ul>	<p>In light of the Pipeline's role in transporting fuel used by PWC in generating and distributing electricity as an essential service in the Northern Territory and given PWC's historical role in underwriting the Pipeline, PWC considers that supply to PWC should have the initial priority.</p>

No.	Topic	Proposed Access Arrangement (AA)	PWC Submission
10	Curtailement	<p>Gas deliveries to be curtailed as follows:</p> <ul style="list-style-type: none"> <li>- first - Overrun Quantities under this and other agreements (Overrun Quantities defined as quantities in excess of MDQ or MHQ; no concept of authorised overruns)</li> <li>- second - quantities scheduled under interruptible transportation agreements</li> <li>- third - quantities accepted for transportation under As Available Transportation Agreements in excess of their respective MDQs</li> <li>- fourth - quantities for transportation under As Available Transportation Agreements up to their respective MDQs</li> <li>- fifth - quantities scheduled for transportation to users pursuant to firm transportation agreements, up to their respective MDQs.</li> </ul>	<p>Consistent with above, quantities of gas scheduled for delivery to PWC up to PWC's Delivery MDQ should be last quantities to be curtailed.</p>
11	Permitted Interruptions (including maintenance)	<p>Service Provider not liable if it interrupts or curtails receipts or deliveries of gas where:</p> <p>(a). the interruption or curtailment:</p> <ul style="list-style-type: none"> <li>- results from planned or unplanned maintenance (under the AA, there are no time limits on these interruptions)</li> <li>- is in Service Provider's opinion (acting reasonably) necessary in accordance with GEOP to ensure the safe and efficient operation or integrity of the Pipeline; or</li> <li>- is permitted under the Transportation Agreement;</li> </ul> <p>(b). Service Provider is not obliged under the TA to provide the service;</p> <p>(c). a Force Majeure Event occurs; or</p>	<p>By not putting a limit on the time available for planned and unplanned maintenance, the users are not being provided with a Firm Service rather can have no surety of service being provided. A limit of 24 hours per contract year is reasonable given firstly the nature of pipeline operations as confirmed by historical performance and secondly the importance of gas supply reliability in the generation of electricity in the Northern Territory</p> <p>Point(d) in this Item as proposed by Service Provider provides unreasonable relief to Service Provider for not providing firm service and should be deleted.</p>



No.	Topic	Proposed Access Arrangement (AA)	PWC Submission
		(d). the insufficiency of pipeline capacity is not caused by Service Provider's wilful default or gross negligence.	In Clause 32 of AA (Operation of Pipeline), the words "without liability to the User" should be deleted
12	System Use Gas (SUG) and Line Pack	<p>User to supply quantity of SUG required by Service Provider, acting reasonably.</p> <p>Service Provider to provide base line pack; user to provide additional line pack on the first day the user uses the firm service and otherwise when advised by Service Provider, in such proportion that the Delivery MDQ bears to the total of all Users' MDQs.</p> <p>User to give Service Provider directions about the delivery of the User's line pack on or before the end of the term, otherwise title will transfer to Service Provider.</p>	<p>Service Provider to provide:</p> <p>calculation and monthly statement of SUG used.</p> <p>Monthly statement in movement of users line pack</p> <p>Service Provider to follow the user's instruction for redelivery of Line pack before end of term at no cost to user.</p>
13	Imbalances	<p>If:</p> <ul style="list-style-type: none"> <li>- Service Provider believes that its ability to transport gas under any Transportation Agreement may be impaired by an Unauthorised Imbalance; and</li> <li>- the User does not, within 4 hours of notice, correct the imbalance, then Service Provider may correct it by reducing the User's receipts or deliveries or by buying or selling sufficient quantities of the User's gas.</li> </ul> <p>User to indemnify Service Provider for 130% of all costs and expenses Service Provider incurs in purchasing gas to make a correction.</p>	<p>User should only be required to reimburse the Service Provider of its costs reasonably incurred in purchasing the relevant quantity of gas. Service Provider should not have right to sell User's gas unless agreed to by user.</p> <p>No Imbalance Charge payable given cost reimbursement..</p>

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No.	Topic	Proposed Access Arrangement (AA)	PWC Submission
		Also Service Provider can charge an Imbalance Charge - payable at the Imbalance Rate (250% of Reference Tariff) on Imbalances above the Imbalance Allowance ( $\pm 5\%$ of sum of MDQs).	

No.	Topic	Proposed Access Arrangement (AA)	PWC Submission
14	Adjustments to Transportation Charge/Reference Tariff	<p>1. Reference Tariff can be adjusted if a "Cost Pass-through Event" occurs which has a Material Impact on costs (defined as being at least 1% of forecast annual revenue per event).</p> <p>"Cost Pass-through Event" is defined as events which are uncontrolled and unforeseen, or not able to be accurately forecast at the time the AA is approved and which lead or are expected to lead to changes in costs not included in the AA; defined to include:</p> <ul style="list-style-type: none"> <li>- changes in regulatory obligations and laws;</li> <li>- change in tax or levy;</li> <li>- an unusual or [un]foreseen event such as flood, cyclone or earthquake.</li> </ul> <p>2. Capital base to be reduced having regard to:</p> <ul style="list-style-type: none"> <li>- any assets that cease to contribute to the delivery of services</li> <li>- costs associated with a decline in the volume of sales of services to be shared between Service Provider and users.</li> </ul> <p>3. Service Provider can also recover amounts (which are not trivial) by which a new impost increases Service Provider's costs of providing the Services.</p> <p>4. Amounts payable under the Transportation Agreement also to be adjusted for changes in relevant costs of Service Provider or its Related Bodies Corporate arising from a change in law.</p>	<p>Cost Pass-through event should be limited to the net financial effect resulting from a Change in Law (defined to mean a new law or a change in existing law) but only to the extent it affects direct pipeline operations.</p> <p>The risk of events that fall within the normal definition of Force Majeure should lie where they fall. An unusual or unforeseen event affecting the pipeline should not be passed to users. Service provider should rely on its insurance.</p> <p>Costs associated with assets that have no future purpose in delivery of services should not be passed to users.</p> <p>Costs decreases should also be passed through by the service provider.</p>

No.	Topic	Proposed Access Arrangement (AA)	PWC Submission
15	Limitation of liability and indemnity	<p>Neither party liable for consequential loss or for punitive or exemplary damages arising in respect of the Transportation Agreement; exceptions are the User's liability in respect of a number of matters including imbalances, overrun quantities, obligation to deliver on-spec gas, failure to supply gas at the Receipt Points at the required pressure, and the third party indemnity (see below).</p> <p>Service Provider's liability under the Transportation Agreement limited to a monetary liability cap set on a case by case basis and included in the Transportation Agreement.</p>	<p>There should be no exceptions regarding liability for consequential loss or for punitive or exemplary damages arising in respect of the Transportation Agreement</p> <p>Where there is a failure to deliver by the Service Provider, it should be liable for user's costs and the Transportation Charge should not apply or be reduced with respect to the gas not delivered.</p> <p>If a cap was agreed by negotiation, Service Provider's liability is not to be limited where the liability is as a result of Service Provider's gross negligence or wilful misconduct.</p>
16	Force Majeure	<p>Party's obligations are suspended during the time and extent they are prevented by FM; User still required to pay Minimum Bill, Capacity Charge, Tolling Charge except that if Service Provider fails to deliver Scheduled gas due to FM affecting Service Provider, it must acting reasonably reduce the Service or Tolling Charge.</p>	<p>Reduction in toll should be related to inability of Service Provider to transport Nominated quantities up to MDQ and not the Scheduled quantity. Otherwise, if the Service Provider is unable to schedule all gas nominated, it is able to reduce its transport obligation and the user is then obliged to maintain payment of tolls.</p>

No.	Topic	Proposed Access Arrangement (AA)	PWC Submission
17	General	<p>AA have clauses lacking proper specificity, for instance:</p> <p>Clause 1 -“Prudential requirements”, which gives Service Provider a right to take action in circumstances of its choosing.</p> <p>Clause 40 – “Metering” – Metering and measurement requirements are as published by Service Provider from time to time at its discretion and which may then require user to upgrade facilities.</p> <p>Clause 57 – “Allocation” – Service Provider may elect (but is not required) to use an allocation procedure agreed by all users</p>	One sided and discretionary clauses defeat the purpose of an access arrangement

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## **ATTACHMENT 1**

Report by the Allen Consulting Group on Estimation of WACC on the Pipeline