

RE: Application under section 39(1) of Schedule 1 of the Gas Pipelines (Western Australia) Act 1998 (which provisions continue to apply by reason of section 28(4) of Schedule 3 of the *National Gas Access (WA) Act 2009*) for a review of the decision of the Economic Regulation Authority to draft and approve revisions of the access arrangement to apply to the Goldfields Gas Pipeline in place of the access arrangement revisions submitted for approval of Goldfields Gas Transmission Pty Ltd on behalf of the Goldfields Gas Transmission Joint Venture

BY: Southern Cross Pipelines Australia Pty Ltd, Southern Cross Pipelines (NPL) Australia Pty Ltd, Alinta DEWAP Pty Ltd and Goldfields Gas Transmission Pty Ltd

Applicant

APPLICANT'S STATEMENT OF FACTS, ISSUES AND CONTENTIONS

In this Statement, unless the contrary intention appears, capitalised terms used bear the same meaning as that attributed to them in the Application in File number 2 of 2010. The abbreviations used in the Applicants' Outline of Written Submissions filed herewith are adopted here.

1 Nature of Statement

- 1.1 GGT has filed an outline of written submissions along with this document. It contains a full statement of the relevant facts and supporting material relied upon, the issues for determination and the contentions which GGT submits.
- 1.2 The present document summarises the principal facts, issues and contentions, but is not intended to be exclusive of any facts, issues and contentions referred to in the full outline of submissions.

2 Facts

- 2.1 GGT submitted proposed revisions for the Access Arrangement for the Goldfields Gas Pipeline.

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- 2.2 By its further final decision, the ERA has required amendments to be made to the Access Arrangement, including amendments in respect of the Extensions and Expansions Policy (the EEP) and the pre-tax rate of return.
- 2.3 GGT seeks review by the Board of the amendments required in respect of the ERA's EEP and pre-tax rate of return.
- 2.4 That review is to be conducted under the National Third Party Access Code for Natural Gas Pipeline Systems (**Code**).
- 2.5 The Pipeline is a transmission pipeline.
- 2.6 The substantial Shippers using the Pipeline each utilise significant capacity.
- 2.7 The Pipeline presently only has spare capacity of 4 TJ / day.
- 2.8 Additional capacity for the Pipeline may be obtained by means of additional compression or by means of looping:
- (a) looping involves adding a pipeline to run in parallel to one or more sections of an existing pipeline, but connected with it;
 - (b) compression enables more gas to flow through the same diameter pipe.
- 2.9 Extra compression can only expand capacity to a certain extent, after which looping is required.
- 2.10 The addition of capacity by means of either compression or looping requires capital investment by GGT, either to purchase compressors or to build additional pipeline loops.
- 2.11 The costs of adding capacity by way of additional compression and looping are different:
- (a) investments in looping effectively involve building additional pipelines and are likely to increase average unit costs, unless the new pipeline is larger in diameter than the existing facility;
 - (b) investments in compressors may enable additional capacity to be added at relatively modest cost, thereby reducing average unit costs.
- 2.12 GGT will make decisions whether to expand the Pipeline acting in an economically rational way.
- 2.13 Mining is risky business. Commodity prices are subject to boom bust cycles, which mean that some planned projects never proceed, while others may shut down prematurely.

3 Issues and Contentions

- 3.1 The basic approach of the Regulator to GGT's proposed revisions to the access arrangement in relation to the EEP and pre-tax rate of return was flawed, as it was contrary to a fundamental principle of regulation. Subject to compliance with the Code, it is for the Service Provider to choose the manner in which it complies with the Code, not for the Regulator to make this choice.
- 3.2 Further, even if the ERA proposes its own amendments, the Service Provider remains entitled to propose different amendments which address the reasons for the ERA's amendments.
- 3.3 In the present case, the ERA was obliged to consider the substance of different amendments which GGT proposed, and the reasons for these amendments, before rejecting them. This obligation reflects the basic principle of regulation, that a Service Provider should determine how and on what terms the relevant services are provided, so long as this complies with the Code.
- 3.4 Contrary to this principle, the ERA failed to consider amendments which GGT proposed after the Final Decision and which addressed the reasons for amendments required by the ERA in relation to each of the EEP and pre-tax rate of return.
- 3.5 As well, in relation to the EEP which the ERA adopted, this is itself contrary to the Code and, for that reason, cannot be allowed to remain in the revised access arrangement.
- 3.6 A decision of the ERA may be set aside where the ERA incorrectly or unreasonably exercised its discretion to require amendments to revisions proposed by a Service Provider, or when the occasion for the exercise of the ERA's discretion did not arise. There may be an incorrect exercise of discretion where the ERA misconstrued or misapplied the Code.
- 3.7 If any such error is made out, the relevant part of the access arrangement, which was approved by the ERA after its further final decision, should be revised by the Board. GGT's proposed revisions to the previous access arrangement should be adopted in lieu of the ERA's proposed revisions.

Date:



Solicitors for the Applicant