



**FINAL DECISION:
ACCESS ARRANGEMENT
PARMELIA PIPELINE**

Submitted by

CMS Gas Transmission of Australia

Part A

Final Decision

**INDEPENDENT GAS PIPELINES ACCESS REGULATOR
WESTERN AUSTRALIA**

20 October 2000



PREFACE

On 7 May 1999 CMS Gas Transmission of Australia (CMS) submitted a proposed Access Arrangement for the Parmelia Pipeline to the Independent Gas Pipelines Access Regulator in Western Australia (the Regulator) for approval under the *National Third Party Access Code for Natural Gas Pipeline Systems* (the Code).

The Access Arrangement describes the terms and conditions under which CMS will make access to the Parmelia Pipeline available to third parties.

The Regulator assessed the Access Arrangement and the associated Access Arrangement Information against the requirements and principles of the *Gas Pipelines Access (WA) Act 1998* which gives effect to the *Gas Pipelines Access (WA) Law*, including the Code. In addition, the Regulator considered issues raised in submissions made on the Access Arrangement by interested parties. The Regulator issued a Draft Decision on 27 October 1999 indicating 41 amendments that would need to be made to the Access Arrangement before it would be approved.

This Final Decision is issued by the Regulator in accordance with the requirements of the Code and after giving further consideration to issues addressed in the Draft Decision and submissions made by interested parties on the Draft Decision. The Final Decision is issued as two documents: Part A being the Draft Decision, and Part B being supporting information to the Final Decision.

Copies of the Final Decision are available from the Office of Gas Access Regulation at a cost of \$25.00 (including goods and services tax) by contacting Mr Mike Jansen on +61 8 9213 1925. Copies can also be obtained free of charge from the Office's web site (<http://www.offgar.wa.gov.au/>).

KEN MICHAEL
GAS ACCESS REGULATOR

FINAL DECISION

On 7 May 1999, CMS Gas Transmission of Australia (CMS) submitted a proposed Access Arrangement for the Parmelia Pipeline to the Independent Gas Pipelines Access Regulator in Western Australia (the Regulator) for approval under the *National Third Party Access Code for Natural Gas Pipeline Systems* (the Code).

The Parmelia Pipeline, previously the Western Australian Natural Gas (WANG) pipeline, was commissioned in 1971 and transports gas from various fields in the northern Perth basin to a number of major industrial customers in the South West. The pipeline is owned by CMS Energy Corporation and is operated by an Australian division named CMS Gas Transmission of Australia (CMS). The Parmelia Pipeline is a 416 km system running from Dongara to Pinjarra. The internal diameter of the main pipeline is 356 mm with laterals ranging in size from 100 mm to 200 mm. With installation of additional compression facilities, the pipeline would be capable of delivering up to 120 TJ/day, including transport of gas from Dongara, the North West Shelf (via an interconnection with the DBNGP), the Beharra Springs field and the Woodada field.

The Regulator assessed the proposed Access Arrangement against the requirements and principles of the *Gas Pipelines Access (WA) Law* which incorporates the Code as set out in the *Gas Pipelines Access (WA) Act 1998* and released a Draft Decision on 27 October 1999.

The Draft Decision of the Regulator was to not approve the Access Arrangement in its current form. The reasons for this decision were detailed in the Draft Decision along with requirements for 41 amendments to be made to the Access Arrangement and Access Arrangement Information before approval will be granted.

This document details the Regulator's Final Decision on the Access Arrangement.

The Final Decision of the Regulator is to not approve the Access Arrangement in its current form. The Regulator requires CMS to re-submit the Access Arrangement incorporating the amendments specified in this Final Decision. The revised Access Arrangement is to be re-submitted by Monday 20 November 2000.

The amendments required by the Regulator are outlined below under the headings of *Non-Tariff Matters*, *Reference Tariffs*, and *Fees, Charges and Penalties*. These amendments are cross referenced, where appropriate, to required amendments indicated in the Draft Decision, although wording and content may have been changed in response to subsequent considerations of the Regulator.

NON-TARIFF MATTERS

The Code requires that an Access Arrangement address the following non-tariff matters.

- A *Services Policy*, describing services to be offered, including Reference Services (section 3.1).

- *General Terms and Conditions* for the provision of Reference Services (section 3.6).
- A *Capacity Management Policy*, indicating whether the covered pipeline is to be administered as a Contract Carriage Pipeline or a Market Carriage Pipeline (section 3.7).
- A *Trading Policy*, addressing the transfer of contracted capacity between Users (section 3.9).
- A *Queuing Policy*, defining the priority that Prospective Users have to negotiate for specific capacity (section 3.12).
- An *Extensions/Expansions Policy*, setting out a method for determining whether an extension or expansion to the covered pipeline is or is not to be treated as part of the covered pipeline for the purposes of the Code (section 3.16).
- A *Review Date*, indicating a date on or by which revisions to the Access Arrangement must be submitted and a date on which the revised Access Arrangement is intended to commence (section 3.17).

The Regulator may refuse to approve an Access Arrangement if it includes matters in addition to those listed above that are considered not to be reasonable.

The Regulator's assessment of the adequacy of the Access Arrangement and Access Arrangement Information is summarised below together with statements of amendments that must be made before the Regulator will approve the Access Arrangement.

Services Policy

A Services Policy is provided in section 4 of the Access Arrangement which commits CMS to making available Reference Services to Prospective Users, and negotiating in good faith for the provision of Non-Reference Services to Prospective Users, subject to there being sufficient Spare Capacity in the Parmelia Pipeline.

Four types of Reference Services are specified in section 4 of the Access Arrangement and described in section 4 of the General Terms and Conditions. The Reference Services are described in terms of the duration of the supply period and continuity of supply, as follows.

- **Firm Extended Service:** a continuous service (under normal operating conditions) over a contract period of between 10 and 20 years.
- **Interruptible Extended Service:** a service that may be curtailed or interrupted at the discretion of CMS, over a contract period of between 10 and 20 years.
- **Firm Spot Service:** a continuous service (under normal operating conditions) over a contract period of one Gas Day.
- **Interruptible Spot Service:** a service that may be curtailed or interrupted at the discretion of CMS, where the spot service is for a contract period of one Gas Day.

All proposed Reference Services relate to a single Receipt Point and a single Delivery Point. Quantities of gas receivable and deliverable as part of each Reference Service are defined as

upper limits in terms of Maximum Daily Quantity (MDQ), Maximum Hourly Quantity (MHQ) and Maximum Flow Rate (MFR).

The only commitments made in the Access Arrangement for the provision of Non-Reference Services are for CMS to negotiate in good faith with Prospective Users for the provision of such services, having regard to applicable principles of the Reference Tariff Policy.

The Regulator considered that the Reference Services proposed by CMS were in several respects inconsistent with the services commonly provided by pipeline operators and as such may not meet the criterion of being services that are likely to be sought by a significant part of the market. This was particularly the case in respect of minimum contract terms for extended services, and the restriction on Reference Services to single gas Receipt Points and Delivery Points. The Regulator also had concerns in regard to the ambiguity of provisions relating to Service Agreements for Spot Services and the discretionary powers of CMS to attach conditions to Service Agreements in addition to any conditions specified in the Access Arrangement.

The following amendments to the Services Policy are required before the Access Arrangement will be approved.

Amendment 1 (was Draft Decision Amendment 1)

Section 4 of the General Terms and Conditions should be amended to make provision for Reference Services to accommodate multiple Receipt Points and Delivery Points in a single Service Agreement.

Amendment 2 (was Draft Decision Amendment 2)

Section 4 of the General Terms and Conditions should be amended to make provision for minimum contract duration of no greater than one year for Firm Extended Services and Interruptible Extended Services.

Amendment 3

The Access Arrangement and/or General Terms and Conditions should be amended to make provision for a Service Agreement for a Reference Service to be capable of including an option to extend the term of the Service Agreement for the capacity contracted in that agreement without exercise of the option being subject to allocation of spare capacity in accordance with the Queuing Policy.

Amendment 4 (was Draft Decision Amendment 3)

Section 4 of the General Terms and Conditions should be amended to clarify that multiple purchases of Spot Services may be made under a single Service Agreement for Spot Services.

Amendment 5 (was Draft Decision Amendment 4)

Section 7.1(c) and 7.2 of the Access Arrangement and section 2 of the General Terms and Conditions should be amended to state the conditions that may be attached to Service Agreements for provision of Reference Services and to remove discretionary powers of CMS to attach conditions to Service Agreements for provision of Reference Services, where such conditions are in addition to those provided for in the General Terms and Conditions.

Terms and Conditions

Section 3.6 of the Code requires that an Access Arrangement include the Terms and Conditions on which the Service Provider will supply each Reference Service. The Terms and Conditions included must, in the Regulator's opinion, be reasonable.

CMS has provided General Terms and Conditions in a single document as Appendix 3 of the Access Arrangement.

The General Terms and Conditions address several matters that relate to specific requirements for an Access Arrangement set out in sections 3.1 to 3.20 of the Code. The Regulator's considerations in respect of these matters are contained in the relevant sections of this Draft Decision. There were, however, several other matters addressed in the General Terms and Conditions that were not required by the Code to be addressed and that the Regulator does not consider to be reasonable.

The following amendments to the General Terms and Conditions are required before the Access Arrangement will be approved.

Amendment 6 (was Draft Decision Amendment 5)

Section 4.3 of the General Terms and Conditions should be amended to specify the degree of reliability for the Firm Extended Service and to make provision for the waiver or reduction of reservation charges where this degree of reliability is not achieved.

Amendment 7 (was Draft Decision Amendment 6)

Section 13.2 and schedule 3 of the General Terms and Conditions should be amended to specify that the pipeline Service Provider will allow access to the Parmelia Pipeline, under a Reference Service, of all gas meeting the following gas quality specification.

Maximum carbon dioxide (mole %)	4.0
Maximum inert gases (mole %)	7.0
Minimum higher heating value (MJ/m ³)	35.1
Maximum higher heating value (MJ/m ³)	42.3
Minimum Wobbe Index (MJ/m ³)	46.0
Maximum Wobbe Index (MJ/m ³)	51.5
Maximum total sulphur including odorant (mg/m ³)	20
Maximum hydrogen sulphide (mg/m ³)	4.6
Maximum oxygen (mole %)	0.2
Maximum water (mg/m ³)	100
Maximum hydrocarbon dewpoint over the pressure range 1.5 to 7.5 MPa absolute (°C)	10°C
Maximum radioactive components (Bq/m ³)	600

Amendment 8 (was Draft Decision Amendment 7)

Section 14.4 of the General Terms and Conditions should be amended to allow for the non-payment of disputed invoices, or the disputed portion of an invoice, in instances of a manifest error in the invoice.

Amendment 9 (was Draft Decision Amendment 8)

Section 16.3 of the General Terms and Conditions should be altered to specify accuracy ranges of metering equipment that contribute to energy measurement or, alternatively, to specify accuracy of metering in the same units as are used for billing.

Amendment 10 (was Draft Decision Amendment 9)

Section 19.6 of the General Terms and Conditions should be amended to remove the provision for CMS to exercise discretion in respect of the level of public liability insurance that Users are required to hold.

Since issue of the Draft Decision, CMS has requested that the Regulator allow two revisions to the General Terms and Conditions. The first of these relates to nominations and is indicated as follows with the crossed words to be deleted from the section 6.10 of the General Terms and Conditions.

6.10 ...

- (c) ~~If no nomination is received by 1200 hours on the Nomination Day, but a nomination is received at any time after 1200 hours on the Nomination Day:~~
- (i) *CMS may in its absolute discretion accept or reject the late nomination; and*
 - (ii) *CMS will acknowledge receipt of the nomination and notify the User of the quantity of User Gas able to be transported by CMS for the Gas Day as soon as reasonably practicable within the context of CMS' prevailing operational circumstances, and the User will be bound by and comply with that notification.*

The revision has the effect of making the General Terms and Conditions less restrictive for a User, allowing a User to submit a late nomination regardless of whether a nomination was placed by that User prior to the nomination closing time. The Regulator will not oppose this revision.

The second revision proposed by CMS relates to liability in situations of contributory negligence by parties other than CMS. The revision is indicated as follows with the underlined words to be added to section 19.3 of the General Terms and Conditions.

19.3 *The Indemnitees shall not be liable for and shall be indemnified by the User against all losses, damages, claims, demands, costs or expenses suffered, incurred or made by the User or its employees, representatives, agents, contractors or any other person in respect of:*

...

(e) any other loss incurred by the User or any person contracting or dealing with or relying upon the provision of goods or services by the User (except for CMS) or having legitimate expectations as to the reliability of the supply of gas howsoever caused.

...

19.4 ...

(c) Notwithstanding anything else contained in the Service Agreement, CMS shall not be liable for any liability or loss to the extent that it is the fault of any other party or person. Where negligence is found to have been contributory each party will bear responsibility in accordance with that party's proportionate fault.

The revision has the effect of limiting the liability of CMS where there is contributory negligence on the part of another party, and where a third party suffers loss because of a legitimate expectation as to the reliability of gas supply. The Regulator regards the provisions to be reasonable and will not oppose the revision.

Capacity Management Policy

Section 3.7 of the Code requires that an Access Arrangement include a statement (a Capacity Management Policy) that the Covered Pipeline is either a Contract Carriage Pipeline or a Market Carriage Pipeline. CMS proposes to manage the Parmelia Pipeline as a Contract Carriage Pipeline. This proposal is considered to meet the requirements of the Code.

Trading Policy

Section 3.9 of the Code requires that an Access Arrangement for a Covered Pipeline, which is described in the Access Arrangement as a Contract Carriage Pipeline, must include a policy that explains the rights of a User to trade its right to obtain a service to another person (a Trading Policy).

The Trading Policy proposed by CMS makes provision for Bare Transfers and Consent Transfers in a manner which is generally consistent with requirements of the Code. The Regulator did, however, have some concerns with the lack of specific provision in the Trading Policy for Users to alter Receipt Points and Delivery Points under a Service Agreement. An inability to alter Receipt Points and Delivery Points may restrict the application of Bare Transfers.

The following amendment to the Trading Policy is required before the Access Arrangement will be approved.

Amendment 11 (was Draft Decision Amendment 10)

Section 9 of the Access Arrangement should be amended to provide for a User to change Receipt Points or Delivery Points in accordance with the requirements of section 3.10(c) of the Code.

Queuing Policy

Section 3.12 of the Code requires that an Access Arrangement must include a policy for determining the priority that a Prospective User has, as against any other Prospective User, to obtain access to Spare Capacity and Developable Capacity (a Queuing Policy). The Code also provides that dispute resolution must be available under section 6 of the Code where difficulties arise in defining the priority that Prospective Users have in respect of negotiation for specific capacity.

CMS has proposed for queues to exist whenever there is insufficient Spare Capacity to satisfy an Access Request which has been lodged with CMS. Provision is made for separate queues to exist for Firm Extended and Interruptible Extended Reference Services. No specific mention is made of queuing arrangements for Non-Reference Services. Provision is made for CMS to allocate pipeline capacity other than in order of queuing in times of “high demand for pipeline services and open seasons and similar invitations”, in which case CMS may deal with Access Requests in such a manner as to maximise pipeline utilisation and economically efficient outcomes for the Parmelia Pipeline.

The Regulator considers that the Queuing Policy proposed by CMS does not meet the requirements of the Code as it does not, for all circumstances, provide sufficient information to enable Users and Prospective Users to understand in advance how priorities of access to Spare Capacity or Developable Capacity are to be determined at times when Access Requests exceed available Spare Capacity.

The following amendments to the Queuing Policy are required before the Access Arrangement will be approved.

Amendment 12 (was Draft Decision Amendment 11)

Section 10 of the Access Arrangement (Queuing Policy) should be amended to provide further information on how priorities of access to Spare Capacity or Developable Capacity will be determined in respect of Access Requests for Non-Reference Services.

Amendment 13 (was Draft Decision Amendment 12)

Section 10 of the Access Arrangement (Queuing Policy) should be amended to indicate how the priority of a Prospective User on a queue for one service is to be determined vis a vis Prospective Users on queues for other services.

Amendment 14 (was Draft Decision Amendment 13)

Section 10 of the Access Arrangement (Queuing Policy) should be amended to describe in detail the circumstances in which CMS may deal with Access Requests other than in accordance with priorities as defined by queues, and describe the method by which priorities of Prospective Users will be determined in these circumstances.

Extensions/Expansions Policy

Section 3.16 of the Code requires that an Access Arrangement include a policy (an Extensions/Expansions Policy) which sets out:

- the method to be applied to determine whether any extension to, or expansion of the Capacity of, the Covered Pipeline should or should not be treated as part of the Covered Pipeline for all purposes under the Code;
- how any extension or expansion, which is to be treated as part of the Covered Pipeline, will affect Reference Tariffs;
- and a description of the New Facilities that will be funded by the Service Provider and the conditions on which the Service Provider will fund the New Facilities.

The Extensions/Expansions Policy proposed by CMS indicates that an extensions/expansion of the pipeline may be made subject to the Access Arrangement either at the discretion of CMS, and subject to the consent of the Regulator, or by amendment to the Access

Arrangement where the amendment is required by the Code. The Policy does not, however, explicitly address a decision for an extension or expansion to be not treated as part of the Covered Pipeline. The Regulator considers that in not indicating how such a decision is to be made, the Access Arrangement does not meet the requirements of the Code.

The following amendment to the Extensions/Expansions Policy is required before the Access Arrangement will be approved.

Amendment 15 (was Draft Decision Amendment 14)

Section 11 of the Access Arrangement (Extensions/Expansions Policy) should be amended to include a section indicating that CMS may elect for a pipeline extension or expansion to be not subject to the Access Arrangement, subject to providing written notice to the Regulator.

Review Date

Section 3.17 of the Code requires that an Access Arrangement include a date upon which the Service Provider must submit revisions to the Access Arrangement (a Revisions Submission Date), and a date upon which the next revisions to the Access Arrangement are intended to commence (a Revisions Commencement Date). Section 3.17 also provides for the Regulator, if the Regulator considers it necessary having had regard to the objectives in section 8.1, to require an earlier or later Revisions Submission Date and Revisions Commencement Date than proposed by the Service Provider; and/or require that specific major events be defined that trigger an obligation on the Service Provider to submit revisions prior to the Revisions Submission Date.

In the proposed Access Arrangement, CMS proposed a Revisions Submission Date of 31 October 2003, and a Revisions Commencement Date of 1 May 2004. The implied term of the Access Arrangement was approximately 4½ years. Subsequent to issue of the Draft Decision, CMS proposed to the Regulator a revision of section 12.1 of the Access Arrangement to provide for the Revisions Submission Date to be 4½ years after the date on which the Access Arrangement comes into effect, and the Revisions Commencement Date to be five years after the date on which the Access Arrangement comes into effect.

The revision has the effect of providing for an Access Arrangement Period of five years regardless of the date on which the Access Arrangement comes into effect. The Regulator notes that no public submissions were received on the initial proposals of the Access Arrangement in respect of the Revisions Submission Date and the Revisions Commencement Date. In view of this, the Regulator will not oppose this revision to the proposed Access Arrangement for the Parmelia Pipeline.

The Access Arrangement also makes provision for CMS to conduct a review of the Access Arrangement in the event of:

- a pipeline extension is undertaken which is subject to the Access Arrangement;

- there is a material or significant change in the market, economic, political or general regulatory conditions or circumstances from those which, at the Effective Date, are forecast and assumed will exist for the duration of the Access Arrangement;
- there is a change in the provisions or administration of any Act or other law, including the Code or the *Trade Practices Act (1974)* (Cth), which necessitates a review of the Access Arrangement;
- any other event occurs which requires the Access Arrangement to be updated or amended under any other provision of the Access Arrangement; or
- if the proposed Commonwealth goods and services tax, when it is introduced, is different from what was understood at the Effective Date.

The Regulator gave consideration to whether the provisions and contingencies for CMS to review the Access Arrangement are consistent with the Code.

Section 2.28 of the Code allows a Service Provider to propose revisions to an Access Arrangement at any time with no restrictions placed on the Service Provider as to the reasons for proposing revisions. Thus the contingencies set out by CMS for review of the Access Arrangement are, for all practical purposes, just declaratory. CMS could propose revisions to the Access Arrangement in response to any of these contingencies even if they were not stated in the Access Arrangement. However, notwithstanding the ability of CMS to propose revisions to the Access Arrangement, any proposed revisions are subject to assessment and approval by the Regulator.

The Regulator also gave consideration to whether it was necessary for the Access Arrangement to define specific major events that trigger an obligation on the Service Provider to submit revisions prior to the Revisions Submission Date, in accordance with section 3.17 of the Code. In the Draft Decision, the Regulator indicated that provision should be made for review of the Access Arrangement in the event of changes to taxation in accordance with the Commonwealth Governments *New Tax System*. For the purposes of this Final Decision, changes to rates of corporate income tax and introduction of the goods and services tax have been taken into account in the determination of Reference Tariffs. As a consequence, the Regulator will not require amendment of the Access Arrangement to provide for taxation changes to trigger a review of the Access Arrangement.

The Regulator did, however, give further consideration to whether a trigger event should be included in the Access Arrangement based on an excess of realised gas throughput over forecast throughput. In doing so, the Regulator gave consideration to the potential for there to be a fundamental change in the way in which the Parmelia Pipeline is operated. For example, the pipeline may become the southern part of a pipeline from the Carnarvon Basin, or may be used to transport gas from the DBNGP, via the Mondarra interconnection, to the Perth market. Such changes could potentially occur relatively early in the Access Arrangement Period (which extends for five years after the date of approval of the Access Arrangement by the Regulator) and involve large increases in gas throughput above forecasts used for the current determination of Reference Tariffs. On this basis, the Regulator considers that a trigger mechanism based on realised throughput quantity is justified.

In considering an appropriate level of realised throughput to be defined as a specific major event that would trigger a review of the Access Arrangement, the Regulator has noted that

there are regulatory precedents for nominating a throughput of 125 percent of forecast throughput.¹

For the Parmelia Pipeline, a 25 percent increase in throughput above the maximum throughput assumed for the determination of Reference Tariffs equals 15 TJ/day, corresponding to an increase in annual revenue of approximately \$3 million assuming that the increased throughput earns revenue at the Reference Tariff (100 percent load factor) of \$0.55/GJ. With costs of reviewing the Access Arrangement possibly being in the order of a few hundred thousand dollars, such an increase in revenue is considered sufficient to cover the costs of reviewing the Access Arrangement and provide some residual benefit to Users.

The following amendment is required before the Access Arrangement will be approved.

Amendment 16

The Access Arrangement should be amended to specify that CMS will submit revisions to the Regulator within three months of the end of any 12 month period for which the average daily gas throughput for the pipeline exceeds 75 TJ.

Other Matters Included in the Access Arrangement

Section 2.24 of the Code requires that an Access Arrangement contain the elements and satisfy the principles set out in sections 3.1 to 3.20 of the Code. An Access Arrangement may, however, address matters or provide information beyond the requirements of sections 3.1 to 3.20 of the Code.

The Regulator may not refuse to approve a proposed Access Arrangement solely for the reason that the proposed Access Arrangement does not address a matter that sections 3.1 to 3.20 do not require an Access Arrangement to address. However, should an Access Arrangement address matters in addition to the requirements of sections 3.1 to 3.20 of the Code, then the Regulator has broad discretion to refuse to accept the Access Arrangement if the additional matters are considered not reasonable. In assessing any additional matters included in an Access Arrangement, the Regulator may take into account the factors listed in section 2.24 of the Code:

The Access Arrangement for the Parmelia Pipeline addresses several matters outside the scope of sections 3.1 to 3.20 of the Code. These matters relate principally to requirements and procedures for the lodgement of Access Requests and entering into a Service Agreement. In considering these matters, the Regulator took into account the factors listed in section 2.24 of the Code. In view of these factors, the Regulator considers the following amendments are necessary to make the Access Arrangement more reasonable.

¹ ACCC, September 1999, Draft Decision, Central West Pipeline (NSW); IPART, October 1999, Draft Decision, AGL Gas Network (NSW); Independent Gas Pipelines Access Regulator WA, Final Decision, Mid-West and South-West Distribution Systems.

Amendment 17 (was Draft Decision Amendment 16)

Section 6.6 of the Access Arrangement should be amended to provide for an Access Request to comprise an irrevocable offer only where CMS imposes no conditions on delivery of the requested service, or where the Prospective User indicates acceptance of any conditions imposed by CMS.

Amendment 18 (was Draft Decision Amendment 17)

Section 6.6 and/or section 6.14 of the Access Arrangement should be amended to remove contradictory provisions relating to the time at which an Access Request becomes an irrevocable offer.

Amendment 19 (was Draft Decision Amendment 18)

Section 6.8 of the Access Arrangement should be amended to limit the scope of additional information able to be required by CMS to the information requirements listed in respect of an Access Request in 6.1, 6.2 or 6.4 of the Access Arrangement, or to the information requirements specified in the Information Package compiled and maintained in accordance with section 5.1 of the Code.

Amendment 20 (was Draft Decision Amendment 19)

Section 6.13 of the Access Arrangement should be amended to indicate that CMS may only refuse to consider an Access Request for reasons of it being considered vexatious or frivolous, only if CMS may reasonably take such a view. The Access Arrangement should also be amended to provide definitions of vexatious and frivolous that are acceptable to the Regulator, and to remove provision for an Access Request to be refused for reason of it being considered anti-competitive.

Amendment 21 (was Draft Decision Amendment 20)

Section 7.3 of the Access Arrangement should be amended to provide for defined events such as including installation and commissioning of Enhanced Facilities or third party equipment, process facilities or infrastructure, to be required only as conditions subsequent to (rather than precedent to) entering into a Service Agreement.

REFERENCE TARIFFS

The Code requires that an Access Arrangement include References Tariffs and a Reference Tariff Policy (sections 3.3 to 3.5). An Access Arrangement must include a Reference Tariff for:

- (a) at least one Service that is likely to be sought by a significant part of the market; and

- (b) each Service that is likely to be sought by a significant part of the market and for which the Regulator considers a Reference Tariff should be included.

The principles used to determine Reference Tariffs are to be stated as a Reference Tariff Policy. Both the Reference Tariff Policy and the Reference Tariffs should be designed with a view to achieving the objectives set out in section 8.1 of the Code:

- (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 Services and other services.

To the extent that any of these objectives conflict in their application to a particular Reference Tariff determination, the Regulator may determine the manner in which they can best be reconciled or which of them should prevail.

CMS has proposed Reference Tariffs for two Reference Services: the Firm Extended Service and the Interruptible Extended Service. In accordance with the principles established by the Code, CMS used a price path methodology for the determination of Reference Tariffs. With this approach, a series of Reference Tariffs are determined in advance for the Access Arrangement Period. The Reference Tariffs follow a path that is forecast to deliver a revenue stream sufficient to cover projected costs of providing the services.

The Code provides a general procedure for the application of the price path methodology to the determination of Reference Tariffs. The steps in this general procedure are:

- estimation of an Initial Capital Base;
- estimation of Capital Expenditure;
- estimation of Non-Capital Costs;
- estimation of an appropriate Rate of Return;
- specification of a Depreciation Schedule;
- determination of Total Revenue;
- allocation of Total Revenue across services;
- determination of Reference Tariffs; and

- specification of Incentive Mechanisms.

The Regulator considered the Reference Tariffs proposed by CMS in light of each of these steps. The Regulator's conclusions and required amendments to the Access Arrangement in respect of each of these steps are indicated below.

Initial Capital Base

CMS adopted a Depreciated Optimised Replacement Cost (DORC) methodology as the basis for the determination of an Initial Capital Base for the Parmelia Pipeline.

The Optimised Replacement Cost (ORC) of the pipeline was estimated by CMS to be in the range \$170 million to \$253 million, estimated as the sum of ORC of the main pipeline (\$157 million to \$240 million), the value of other capital assets (\$9 million), and the value of working capital (\$4.27 million).

The range of ORC values and a range of values for asset life were applied as input parameters into a Monte Carlo simulation to determine a probabilistic estimate of the DORC. The simulation used triangular probability distributions for parameters of ORC and asset life, based around most-likely values of \$210 million for the ORC (ranging from \$170 million to \$253 million) and 60 years for asset life (ranging from 42 to 80 years). The probabilistic estimate of the DORC was not provided in the Access Arrangement, but was provided and made public in response to a subsequent request for information. The estimate indicated a most likely DORC value of approximately \$114 million, with a range of estimates of approximately \$60 million to \$160 million.

In assessing the value of the Initial Capital Base proposed by CMS, the Regulator considered several alternative valuation methodologies, the valuations that arise from these methodologies, and the advantages and disadvantages of each methodology and valuation in the context of the Parmelia Pipeline. In addition, the Regulator critically evaluated the DORC valuation undertaken by CMS.

The Regulator considers that a DORC valuation methodology is not appropriate for valuing the Initial Capital Base for the Parmelia Pipeline. Rather, given the age and substantial under utilisation of the assets, the Regulator considers that an Optimised Deprival Value methodology is appropriate. In accordance with provisions of the Code, however, a DORC value still comprises the maximum value that may be ascribed to the Initial Capital Base by an Optimised Deprival Value methodology.

Lower and upper bounds on a value for the Initial Capital Base are an Optimised Deprival Value, calculated from throughputs and tariffs of current contracts, and a DORC value, respectively. On the basis of the information available to the Regulator at the time of drafting of the Draft Decision and the Regulators judgement as to an appropriate basis for a DORC valuation, the possible range of values for the Initial Capital Base is considered to be \$36.6 million to \$65.8 million.

In nominating a reasonable value for the Initial Capital Base within the acceptable range, the Regulator gave consideration to the interests of CMS and Users, including CMS's expectations of market growth for the pipeline and the tariffs that will arise from the particular values assigned to the Initial Capital Base. The Regulator has concluded that a value of \$62.5 million is acceptable on the basis that it allows for expectations of market

growth to be reflected in the asset value while not resulting in an increase in tariffs above the average tariffs under existing contracts. This value is, however, contingent upon the Access Arrangement being amended to include a Redundant Capital Policy that will see the value of the Capital Base reduced if projections of increases in gas throughput are not realised. Without the Redundant Capital Policy the Regulator considers that a valuation of the Initial Capital Base at \$62.5 million could not be justified and that another lesser valuation would need to be adopted.

In the absence of a valid proposal from CMS for a Redundant Capital Policy since issue of the Draft Decision, the Regulator has determined an alternative policy.

The Regulator requires that the Redundant Capital Policy operate to reduce the value of the Capital Base at the commencement of the next Access Arrangement Period if throughput at the end of the current Access Arrangement Period averages less than 50 TJ/day. This is consistent with the basis for determination of the Initial Capital Base, being the Capital Base value that corresponds to a 100 percent load factor tariff for the Firm Reference Service of \$0.55/GJ (exclusive of any pass through of goods and services tax liability), given assumptions as to other costs taken into account in the Reference Tariff calculation and an assumed average throughput over the Access Arrangement Period of 50 TJ/day.

The Redundant Capital Policy should operate in such a manner that, should average daily throughput in the Parmelia Pipeline at the end of the Access Arrangement Period be less than 50 TJ/day, an amount of the Capital Base will be deemed to constitute Redundant Capital within the meaning of section 8.27 of the Code. The value of Redundant Capital should be determined such that the real value of the total tariff for the Firm Reference Service (at a 100 percent load factor) in the next Access Arrangement Period, under similar cost and rate-of-return assumptions and tariff calculation methodology as used for the current Access Arrangement Period, would not exceed \$0.605/GJ in real terms (1999 dollar value), inclusive of goods and services tax (equivalent to \$0.55/GJ exclusive of goods and services tax pass through).

The following amendments are required before the Access Arrangement will be approved.

Amendment 22 (was Draft Decision Amendment 21)

The Access Arrangement and Access Arrangement Information should be amended to reflect a value of the Initial Capital Base of \$62.5 million, including a value of working capital of \$0.5 million.

Amendment 23 (was Draft Decision Amendment 22)

The Access Arrangement should be amended to include a Redundant Capital Policy that provides for an amount of the Capital Base to be deemed to constitute Redundant Capital within the meaning of section 8.27 of the Code in the event that average daily throughput in the Parmelia Pipeline at the end of the Access Arrangement Period be less than 50 TJ/day. The value of Redundant Capital should be determined as a linear function of throughput as follows.

$$\begin{array}{l}
 \text{Redundan Capital} \\
 \text{atend of} \\
 \text{Access Arrangement Period} \\
 (\$million at 1 July 1999)
 \end{array}
 =
 \begin{cases}
 60.8, \text{ for throughput less than } 18.5 \text{ TJ/day} \\
 96.3 - 1.94 \times \left(\begin{array}{l} \text{Average Daily Throughput} \\ \text{atend of} \\ \text{Access Arrangement Period} \\ \text{(TJ)} \end{array} \right), \text{ for throughput between } 19.5 \text{ and } 49.5 \text{ TJ/day, or} \\
 \text{zero, for throughput greater than } 49.5 \text{ TJ/day}
 \end{cases}$$

The Redundant Capital Policy should provide for Redundant Capital to be added back into the Capital Base in proportion to an increased throughput at the time of subsequent review of the Access Arrangement. The policy may allow for the value of any Redundant Capital added back into the Capital Base to have been increased annually on a compounded basis by the Rate of Return from the time the Redundant Capital value was removed from the Capital Base, consistent with the treatment of Redundant Capital under Section 8.28 of the Code.

Capital Expenditure

CMS provided projections of Capital Expenditure for the Access Arrangement Period with indications in the Access Arrangement Information that the expenditure is to be for replacement of miscellaneous capital equipment, enhancements of peripheral assets, utility systems and equipment. A further breakdown of Capital Expenditure was provided to the Regulator on a confidential basis.

The Regulator made an assessment of the forecast Capital Expenditure on the basis of the confidential breakdown of expenditure provided by CMS. There were three principal issues of concern in respect of the expenditure forecast.

Firstly, forecast expenditure relating to compressor stations, some proportion of SCADA upgrades and electronic communications are linked to projected increases in pipeline throughput to 86 TJ/day for the entire period of the Access Arrangement, an increase of approximately 187 percent over current throughput. The Regulator considers the projected increase throughput to be unsubstantiated.

Secondly, the forecast Capital Expenditure included expenditure on construction of new laterals without the necessary justification as required by the Code. The Regulator considers that the projections of Capital Expenditure do not satisfy the requirements of the Code for such expenditure to be considered in the determination of Reference Tariffs.

The Regulator revised the forecasts of Capital Expenditure to reflect the nature of new facilities investment that is consistent with a more reasonable throughput forecast for the Access Arrangement Period and to exclude Capital Expenditure judged to be unlikely to meet the criteria set out in the Code for addition to the Capital Base.

The Access Arrangement is therefore considered to not meet the requirements of the Code in respect of forecasts of Capital Expenditure to be considered in determination of Reference Tariffs. Required amendments to the Access Arrangement are as follows.

The following amendment is required before the Access Arrangement will be approved.

Amendment 24 (was Draft Decision Amendment 23)

The Access Arrangement and Access Arrangement Information should be amended to reflect Capital Expenditure of \$5.05 million over the Access Arrangement Period, as follows (1999 \$million):

	2000	2001	2002	2003	2004
Minor Capital Expenditure	0.25	0.25	0.25	0.25	0.25
AlintaGas Interconnection	2.25	0	0	0	0.5
SCADA Master Station Upgrade	0	0	0.3	0	0
Building Move and Ringfencing	0.75	0	0	0	0
Total	3.25	0.25	0.55	0.25	0.75

Operating Expenditure

CMS provided projections of Operating Expenditure for the Access Arrangement Period with indications in the Access Arrangement Information that the expenditure is to be for:

- field controllable expenditure, comprising the Operating Expenditure related to routine day to day operations;
- major expense job expenditure, comprising the Operating Expenditure related to non-routine, intermittent, and/or special one off activities; and
- marketing and overhead costs.

A further breakdown of costs was provided to the Regulator by CMS on a confidential basis.

The Regulator made an assessment of the forecast Operating Expenditure on the basis of the confidential breakdown of expenditure provided by CMS. The Regulator is satisfied that the forecast Operating Costs are reasonable with the exception of some costs (related to additional administrative and operational staff and equipment overhaul) that are linked to the high throughput projection of CMS for the Access Arrangement Period. CMS has projected increases in pipeline throughput to 86 TJ/day for the entire period of the Access Arrangement, an increase of approximately 187 percent over current throughput. The Regulator considers this projected throughput to be unsubstantiated and revised the forecasts of Capital Expenditure to reflect the nature of new facilities investment that is consistent with a more reasonable throughput forecast for the Access Arrangement Period

The following amendment is required before the Access Arrangement will be approved.

Amendment 25 (was Draft Decision Amendment 26)

The Access Arrangement and Access Arrangement Information should be amended to reflect total Operating Expenditure, including marketing and overhead costs, of \$17.372 million over the Access Arrangement Period, as follows (1999 \$million):

	2000	2001	2002	2003	2004
Total Operating Expenditure	3.737	3.212	2.949	3.737	3.737

Rate of Return

CMS used Capital Asset Pricing Model (CAPM) theory to derive a Weighted Average Cost of Capital (WACC) for the Parmelia Pipeline. The WACC was derived as a probabilistic estimate using the Monte Carlo simulation technique with triangular probability distributions for input variables. The probabilistic estimate of the WACC (pre-tax, real) has a most likely value of 16 percent, within a range of approximately 10 to 23 percent. CMS did not use this probabilistic estimate of the WACC in the stochastic calculation of Reference Tariffs, but used an arbitrarily specified triangular probability distribution for the WACC with a most likely value of 16 percent, a minimum value of 13.5 percent and a maximum value of 18.6 percent.

In assessing the Rate of Return proposed for the Parmelia Pipeline, the Regulator used a similar CAPM methodology as CMS, but as a deterministic calculation that in some instances utilised different values of input variables. A comparison of the values of input variables used by CMS and the revised values of the Regulator is as follows.

Estimation of the Rate of Return

Parameter	Parameter symbol	Typical value used by CMS	Value proposed by the Regulator
Risk free rate (nominal)	R_f	6.5%	6.21%
Risk free rate (real)	R_f	3.9%	3.30%
Market risk premium	–	6.5%	6.0%
Asset beta	b_a	1.2	0.65
Equity beta	b_e		1.33
Debt beta	b_d		0.20
Cost of debt margin		1.2%	1.20%
Corporate tax rate	T	36%	30.8%
Franking credit value	g	0	50%
Debt to total assets ratio	D/V	50%	60%
Equity to total assets ratio	E/V	50%	40%
Expected inflation	p_e	2.5%	2.85%

For the purposes of determining Reference Tariffs, the Regulator has determined a Rate of Return based on the average taxation rate over the period July 2000 to June 2005, being 30.8 percent.

The Regulator used the forward transformation to derive the implied allowance for corporate taxation, producing a real pre-tax WACC of 8.1 percent. The implied nominal pre-tax WACC is 11.2 percent.

The returns to equity that are implicit in this WACC estimate are as follows.

Returns on equity implicit in the revised pre-tax WACC

Nominal post-tax return on equity	14.2 percent
Real post-tax return on equity	11.1 percent
Nominal pre-tax return on equity	16.8 percent
Real pre-tax return on equity	13.6 percent

The following amendment is required before the Access Arrangement will be approved.

Amendment 26 (was Draft Decision Amendment 28)

The Access Arrangement and Access Arrangement Information should be amended to reflect a pre-tax real Rate of Return of 8.1 percent.

Depreciation

CMS proposed a Depreciation Schedule based on straight line depreciation of the Initial Capital Base and Capital Expenditure forecast to occur during the Access Arrangement Period. For the purposes of depreciation, CMS assumed a single triangular probability distribution for the economic life for all assets making up the pipeline. This did not reflect a weighted average asset life across asset classes, but rather was an “approximate” value selected by CMS.

As the Initial Capital Base and asset life were both specified by CMS as probabilistic estimates, the residual Capital Base at the end of the Access Arrangement Period was also determined as a probabilistic estimate.

In view of the current under utilisation of pipeline assets and the valuation of the Initial Capital Base on the basis of forecast market growth, the Regulator considers that it is appropriate for depreciation to be determined by a method consistent with the part of the value of the Initial Capital Base that is attributable to forecast market growth is depreciated only as the expectations of market growth are realised.

The Regulator has therefore revised the Depreciation Schedule to reflect calculation of depreciation of the Initial Capital Base on a unit-of-production basis, assuming average throughput of 40 TJ/day in 2000, increasing to 60 TJ/day over five years and being maintained at 60 TJ/day thereafter, and a residual life of assets of 42 years. Depreciation of Capital Expenditure has been calculated on a straight line basis over assumed technical lives of particular asset classes.

The following amendment is required before the Access Arrangement will be approved.

Amendment 27 (was Draft Decision Amendments 29 and 30)

The Access Arrangement and Access Arrangement Information should be amended to reflect depreciation costs over the Access Arrangement Period as follows (1999 \$million):

Asset Group	Economic life	Remaining life	Depreciation				
			2000	2001	2002	2003	2004
Existing Assets	70	42	1.004	1.130	1.255	1.381	1.506
Capital Expenditure							
Minor Capex	20	20	0.013	0.025	0.038	0.050	0.063
Interconnection	70	70	0.032	0.032	0.032	0.032	0.039
SCADA	10	10	0	0	0.030	0.030	0.030
Building	70	70	0.011	0.011	0.011	0.011	0.011
Total			1.059	1.197	1.365	1.503	1.649

Total Revenue, Cost/Revenue Allocation and Reference Tariffs

The Code addresses the determination of Reference Tariffs in terms of two principal steps:

- determination of an amount of Total Revenue required to cover all costs associated with providing gas transportation services, including depreciation and a return on capital;
- allocation of the Total Revenue across services, including both Reference and Non Reference Services, and determination of the Reference Tariffs that will return the share of Total Revenue allocated to Reference Services.

CMS did not document each of these steps separately. Instead, the steps were subsumed in a stochastic model used to determine Reference Tariffs. In assessing CMS’s tariff determination, the Regulator interpreted the general procedure for allocating Total Revenue and determining Reference Tariffs to be as follows.

- An estimate was made of total pipeline capacity and a division of this capacity into capacity available for the provision of firm services (firm capacity) and capacity available for the provision of interruptible services (interruptible capacity). CMS used a probabilistic estimate of total pipeline capacity as a triangular probability distribution with a minimum value of 80 TJ/day, a typical value of 86 TJ/day and a maximum capacity of 91 TJ/day. This was assumed to be divided into firm and interruptible capacity in proportions of 74 percent and 26 percent respectively.
- An assumption was made that all services provided under existing capacity utilise firm capacity with a load factor of 100 percent. The projected annual throughputs for services under existing contracts over the Access Arrangement Period were subtracted from the firm capacity of the pipeline to derive a residual firm capacity able to be utilised for additional services. Projected annual throughputs for existing contracts are indicated in section 6.2.2 of the Access Arrangement Information as 29.0 TJ/day in 1999, 29.6 TJ/day in 2000, and 30.2 TJ/day in 2001 to 2003.

Independent Gas Pipelines Access Regulator

- An assumption was made that all residual firm capacity and interruptible capacity would be utilised for the provision of the Firm Extended Service and the Interruptible Extended Service, respectively, with a load factor of 90 percent.
- As the load factor for the Firm Extended Service and Interruptible Extended Service is less than 100 percent, there is residual capacity available for provision of Spot Services. An assumption was made of Reference Spot Services being provided with a probabilistic estimate of throughput as a triangular distribution with a minimum value of 0 TJ/day, a typical value of 5 TJ/day and a maximum value of 15 TJ/day.
- The Total Revenue for the pipeline was specified as being returned through:
 - revenue from services provided under existing contracts, as specified in section 7.5.4.5 of the Access Arrangement Information;
 - revenue from Spot Reference Services determined as the throughput of Spot Services multiplied by a tariff specified as an exogenous random variable with a triangular probability distribution with minimum value \$0.15/GJ, typical value of \$0.25/GJ and maximum value of \$0.50/GJ;
 - revenue from a reservation component of Reference Tariffs for Firm Extended Service and Interruptible Extended Service, levied against all residual firm capacity and all interruptible capacity of the pipeline; and
 - revenue from a commodity component of Reference Tariffs for Firm Extended Service and Interruptible Extended Service, levied against throughput for these services assuming the 90 percent load factor.
- The relativities of Reference Tariffs for Firm Extended Service and Interruptible Extended Service, and the reservation and commodity components of these tariffs, were specified as –

	Reservation Charge	Commodity Charge	Total Tariff
Firm Extended Service	(0.8) x	(0.2) x	x
Interruptible Extended Service	(0.8)(0.9) x	(0.2)(0.9) x	(0.9) x

- A “goal seeking” algorithm was used to determine a value for the Reference Tariff for the Firm Extended Service (x in the table above), and hence for other Reference Tariffs for extended Reference Services, that for a given set of input variable values determines a Total Revenue that returns a net present value of the Pipeline over the Access Arrangement Period of zero with a discount rate equal to the WACC. This was undertaken as a Monte Carlo simulation with the probabilistic estimates of input variables.
- The Monte Carlo simulation methodology returned a probabilistic estimate of the Reference Tariff for the Firm Extended Service (and hence the Reference Tariff for the Interruptible Extended Service and the reservation and commodity components of these

tariffs) that will return a net present value of the pipeline equal to zero. The probabilistic estimate of the Reference Tariff for the Firm Extended Service was characterised by a mean of \$0.83/GJ with a range of approximately \$0.50/GJ to \$1.30/GJ. CMS selected the mean value as the Reference Tariff for the Firm Extended Service, and hence set the Reference Tariffs and commodity and reservation components of these tariffs as follows.

	Reservation Charge	Commodity Charge	Total Tariff
Firm Extended Service	\$0.664/GJ	\$0.166/GJ	\$0.83/GJ
Interruptible Extended Service	\$0.5976/GJ	\$0.1494/GJ	\$0.747/GJ

- CMS propose that the Reference Tariffs be inflated quarterly by a CPI Escalator.

Amendments to the Access Arrangement are required in respect of the Reference Tariffs to reflect revisions to the Initial Capital Base, Capital Expenditure, Operating Expenditure, the Rate of Return, depreciation, and forecasts of pipeline throughput.

The Regulator has also taken into account the impact of the goods and services tax in making adjustments to the Reference Tariff. The Regulator is of the view that it is appropriate to accommodate the pass through of the goods and services tax in the Reference Tariffs as they will be set out in the revised Access Arrangement. CMS has proposed to the Regulator that the goods and services tax be passed through to Reference Tariffs at a rate of 10 percent of the goods-and-services-tax exclusive tariff and the Regulator has assessed the Reference Tariff on this basis. However, prior to the final approval of a Reference Tariff, the Regulator will require CMS to submit an independent accounting opinion on the appropriateness of the methodology used in determining its proposed GST pass-through proportion for Reference Tariff purposes taking into account the tax savings available.

Consideration of the impact of the goods and services tax is also important in the escalation of the Reference Tariff to account for inflation. The Regulator is of the opinion that the CPI measure used for the inflation escalation of Reference Tariffs should be exclusive of the effects of the goods and service tax. The Regulator’s preferred method for adjusting for the inflationary effects of the goods and services tax is to correct the CPI measure, as published by the Australian Bureau of Statistics, by the forecast inflationary effect of the goods and services tax as determined by the Commonwealth Treasury, being 2.75 percentage points. The Access Arrangement is required to be amended to this effect.

The following amendments are required before the Access Arrangement will be approved.

Amendment 28 (was Draft Decision Amendment 31)

The Access Arrangement and Access Arrangement Information should be amended to reflect a forecast of pipeline throughput as follows.

	2000	2001	2002	2003	2004
Throughput (TJ/day)	40	45	50	55	60

Amendment 29 (was Draft Decision Amendment 32)

The Access Arrangement and Access Arrangement Information should be amended to reflect an allocation of costs/revenue as if all Users, including Users under existing contracts, are paying the Reference Tariffs.

Amendment 30 (was Draft Decision Amendment 34)

The Access Arrangement and Access Arrangement Information should be amended such that the tariff calculation is undertaken with a consistent treatment of inflation. In particular, the value of the Capital Base should be treated in real terms consistent with the treatment of other input variables to the tariff calculation.

Amendment 31

The Access Arrangement and Access Arrangement Information should be amended to provide for the following Reference Tariffs, inclusive of the goods and services tax.

Firm Extended Service Reservation Charge:	\$0.484/GJ of MDQ/day
Firm Extended Service Capacity Charge:	\$0.121/GJ
Interruptible Extended Service Reservation Charge:	\$0.436/GJ of MDQ/day
Interruptible Extended Service Capacity Charge:	\$0.109/GJ

Amendment 32 (was Draft Decision Amendment 35)

The Access Arrangement and Access Arrangement Information should be amended such that inflation adjustments of tariffs are based on the eight capital city, all-groups CPI measure as published by the Australian Bureau of Statistics. For the purposes of setting the Reference Tariffs for 2001/02, the CPI measure for 2000/01 should be reduced by 2.75 percent to account for the impact of the goods and services tax.

FEES AND CHARGES

The Access Arrangement provides for CMS to levy a range of fees and charges on Users and Prospective Users of services provided in respect of the Parmelia Pipeline. These fees and charges comprise:

- a Service Request Administration Fee levied on Prospective Users for lodgement of an Access Request;
- charges levied on Users to recoup costs arising from Statutory Charges incurred by CMS;
- Quantity Variation Charges, levied on Users in certain circumstances where quantities of gas received at a Receipt Point and delivered to a Delivery Point differ for the quantities specified in the relevant Service Agreement and/or nominations by the User; and

- charges levied on Users to recoup costs incurred by CMS for unaccounted for gas and system use gas.

These fees and charges constitute a pecuniary impost on Users and Prospective Users in addition to service tariffs. For this reason, the Regulator considered that an assessment of fees and charges was necessary in evaluating the Access Arrangement. Furthermore, matters relating to fees and charges were raised in several public submissions on the Access Arrangement and the Regulator is obliged to consider these submissions.

In considering the fees and charges arising in respect of a Service Agreement for a Reference Service, the Regulator gave attention to the requirements of section 3.6 of the Code that requires that the terms and conditions for provision of Reference Services must, in the Regulator's opinion, be reasonable. In respect of any fees and charges levied otherwise than under a Service Agreement for a Reference Service, the Regulator gave attention to matters to be taken into consideration in approving a proposed Access Arrangement, as set out in section 2.24 of the Code.

Service Request Administration Fee

The Access Arrangement provides for CMS to charge a fee of \$10,000 for lodgement of an Access Request by a Prospective User with CMS. This Service Request Administration Fee is non-refundable except for (i) at the discretion of CMS; or (ii) where the Prospective User is notified that no queue exists for the service requested and CMS and the Prospective User do not enter into a Service Agreement.

In assessing whether the charging of the Service Request Administration Fee is a reasonable practice on the part of CMS, the Regulator considered two matters.

- i. Whether the fee reflects, or is likely to reflect, costs reasonably incurred by CMS in processing an Access Request.
- ii. The practice of other Service Providers in respect of similar fees.

The charging of a Service Request Administration Fee was found to be inconsistent with both the recovery of reasonable costs and common industry practice. However, the Regulator accepts that while a Service Request Administration Fee is not common practice within the pipeline industry, recovery of costs incurred in processing an Access Request is consistent with the intent of section 5.5 of the Code and not unduly contrary to the interests of Users. Moreover, a fixed charge to recover administrative costs that would occur for any Access Request may be a more effective means of cost recovery than making allowance for such costs in the overall operating cost budget for the pipeline, or than establishing costs for each individual Access Request. Notwithstanding this, the Regulator does not consider that a fee of \$10,000 is substantiated on the basis of cost recovery. The Regulator will therefore require the Access Arrangement to be amended to provide for a Service Request Administration Fee of not more than \$1000.

The following amendment is required before the Access Arrangement will be approved.

Amendment 33 (was Draft Decision 37)

Sections 6.1 and 6.16 of the Access Arrangement should be amended to provide for a maximum Service Request Administration Fee of no more than \$1000.

Statutory Charges

The General Terms and Conditions require Users to pay to CMS an amount equal to statutory charges such as financial institutions duty which CMS is liable to pay.

The Regulator is of the view that the Code does not provide for unspecified charges to be levied on Users that are in addition to Reference Tariffs other than by a review of the Access Arrangement. The Code does not provide for a User to be charged any amount other than the Reference Tariff for a Reference Service. Nor does the Code appear to accommodate a change in a Reference Tariff to pass through a tax or other impost without a review of the Access Arrangement in accordance with provisions of section 2 of the Code. Consequently, the Regulator requires the Access Arrangement to be amended to remove the provision for CMS to recover from Users any costs incurred by CMS as a result of the introduction of new statutory charges.

The following amendment is required before the Access Arrangement will be approved.

Amendment 34

Section 21 of the General Terms and Conditions should be amended to remove the provision for charges to be levied on Users, in addition to the Reference Tariff, to recover any impost imposed on or paid or payable by CMS in relation to the provision of Reference Services.

Quantity Variation Charges

The General Terms and Conditions provide for CMS to levy charges (Quantity Variation Charges) on Users in certain circumstances where Users do not manage the receipt of gas into the pipeline and/or the delivery of gas from the pipeline in accordance with relevant conditions of Service Agreements and/or Users' daily nominations of intended gas transportation.

In assessing the reasonableness of the Quantity Variation Charges proposed by CMS, the Regulator gave consideration to common practice of the gas transportation industry in respect of such charges, and also to the potential impact on operation of the pipeline of the particular actions of Users that give rise to Quantity Variation Charges.

The schedule of Quantity Variation Charges proposed by CMS for the Parmelia Pipeline differ substantially from the charges provided for in other pipeline Access Arrangements in several respects, as follows.

- CMS provide for Quantity Variation Charges to be applied in a greater range of circumstances than is common practice in the industry.

- CMS has made no explicit provision for grace periods in which a User may correct gas imbalances before Quantity Variation Charges will apply.
- The Quantity Variation Charges of CMS are substantially higher than would be applied by other Service Providers where the magnitude of a quantity imbalance is more than about 20 percent of the benchmark quantity from which the imbalance is calculated. The charges applicable under other Access Arrangements examined for the purposes of this Draft Decision are in the range of 100 to 350 percent of the relevant service tariff. The proposed charges of CMS may be substantially in excess of these rates for large quantity imbalances.

Several of the Quantity Variation Charges proposed by CMS were also noted by the Regulator to either potentially result in a User being penalised twice for the same action, or to relate to an action by a User that has no material impact on the ability of the Service Provider to operate the pipeline and maintain service provision to other Users. These considerations applied particularly in regard to quantity variations at receipt points and underruns at delivery points.

In view of the above, the Regulator will require the Access Arrangement to be amended such that Quantity Variation Charges are in accordance with common and reasonable industry practice.

The following amendments are required before the Access Arrangement will be approved.

Amendment 35

Section 10 and schedule 2 of the General Terms and Conditions should be amended to remove provision for CMS to apply Quantity Variation Charges in respect of Maximum Flow Rate Overruns.

Amendment 36

The General Terms and Conditions should be amended to remove provision for imposition of daily overrun charges in respect of overruns at Receipt Points.

Amendment 37

General Terms and Conditions should be amended to remove provision for penalty charges to be imposed on Users in respect of daily underruns.

Amendment 38

The General Terms and Conditions should be amended to remove provision for imposition of hourly overrun charges in respect of overruns at Receipt Points.

Amendment 39

Section 10 and schedule 2 of the General Terms and Conditions should be amended to provide for maximum rates of Quantity Variation Charges to be 350 percent of the service tariff for the relevant service per GJ of the quantity variation.

Amendment 40

Section 1.1(d) of schedule 2 of the General Terms and Conditions should be amended to provide for the gas imbalance tolerance to be eight percent of MDQ.

Amendment 41

The General Terms and Conditions should be amended such that the daily overrun is determined on the basis of an excess of gas delivery over the maximum daily quantity.

Amendment 42

The General Terms and Conditions should be amended such that the daily overrun tolerance is eight percent of MDQ.

Amendment 43

The General Terms and Conditions should be amended such that the maximum hourly quantity is determined on the basis of MDQ rather than the nominated daily delivery, and the hourly overrun tolerance is eight percent of the maximum hourly quantity.

Amendment 44

The General Terms and Conditions should be amended to provide for revenue from overrun charges and imbalance charges to be rebatable revenue as if overruns and imbalances were rebatable services within the meaning of the Code.

Charges for Unaccounted for Gas and System Use Gas

The General Terms and Conditions provide for CMS to charge users for System Use Gas as an additional charge to transport tariffs. The System Use Gas Charge is proposed to be determined on the basis of gas prices reasonably nominated by CMS, which may vary from time to time.

In considering the reasonableness of CMS's proposal to charge Users for System Use Gas, the Regulator examined relevant practices in other gas transmission pipelines. The proposal by CMS to purchase System Use Gas and pass the cost on to Users as a System Use Gas Charge is consistent with common industry practice and is therefore considered reasonable.

Notwithstanding this, the Regulator considers that a cost reference or benchmark for System Use Gas Charges should be provided rather than having these charges determined fully at the discretion of CMS.

The following amendments are required before the Access Arrangement will be approved.

Amendment 45

Section 15 of the General Terms and Conditions should be amended to establish a reasonable benchmark for determining costs passed on to Users as a System Use Gas Charge.