



# **DRAFT DECISION: ACCESS ARRANGEMENT TUBRIDGI PIPELINE SYSTEM**

Submitted by

## **Tubridgi Parties**

SAGASCO South East Inc  
Boral Energy Petroleum Pty Ltd (now Origin Energy Petroleum Pty Ltd)  
Boral Energy Amadeus NL (now Origin Energy Amadeus NL)  
Pan Pacific Petroleum NL  
Tubridgi Petroleum Pty Ltd

## **Part A Draft Decision**

**INDEPENDENT GAS PIPELINES ACCESS REGULATOR  
WESTERN AUSTRALIA**

**7 August 2000**



## **PREFACE**

On 21 October 1999, a proposed Access Arrangement for the Tubridgi Pipeline System was submitted by the joint owners of the pipeline system (the Tubridgi Parties) 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 the Tubridgi Parties will make access to the Tubridgi Pipeline System available to third parties.

The Regulator assessed the proposed Access Arrangement and Access Arrangement Information against the requirements and principles of the *Gas Pipelines Access (Western Australia) Act 1998* which gives effect to the *Gas Pipelines Access (Western Australia) Law*, including the Code. In addition, the Regulator considered issues raised in submissions made on the Access Arrangement by interested parties.

This Draft Decision has been issued by the Regulator in accordance with the requirements of the Code. The Draft Decision is issued as two documents: Part A being the Draft Decision, and Part B being supporting information for the Draft Decision. Copies of the Draft Decision are available from the Office of Gas Access Regulation at a cost of \$25.00 by contacting Mr Mike Jansen on telephone +61 8 9213 1925 or facsimile +61 8 9213 1999. Copies are also available from the Office's web site (<http://www.offgar.wa.gov.au/>) free of cost.

Submissions are invited from interested parties to the Draft Decision.

In general, all submissions from interested parties will be treated as in the public domain and placed on the *OffGAR* web site. Where an interested party wishes to keep part or all of the contents of a submission confidential, it should indicate these parts clearly. However, where the information is not considered to be 'unduly harmful' to the legitimate business interests of any party, the submission may be returned to the party making the submission with the option of revising or withdrawing it. In making a submission, the Respondent warrants to the Regulator that its submission does not contain information, which the Respondent is under an obligation of confidentiality to any person not to disclose.

Submissions must be delivered to the Office of Gas Access Regulation by Friday 8 September 2000, and should be addressed to:

Mr Mike Jansen  
Office of Gas Access Regulation  
6<sup>th</sup> Floor  
197 St Georges Terrace  
PERTH WA 6000

All submissions must be in writing and should be provided in both hard copy and in electronic format.

KEN MICHAEL  
**GAS ACCESS REGULATOR**

## **DRAFT DECISION**

On 21 October 1999, a proposed Access Arrangement for the Tubridgi Pipeline System was submitted by the joint owners of the pipeline system 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 Tubridgi Pipeline System consists of two pipelines. These are the Tubridgi Pipeline (Licence Number WA: PL 16), which is a 150 mm diameter pipeline constructed in 1991, and the Griffin Pipeline (Licence Number WAPL19) which is a 250mm pipeline that became operational in 1994. Both are 87 km long and occupy the same easement, from the Tubridgi gas field to Compression Station 2 of the Dampier to Bunbury Natural Gas Pipeline (DBNGP).

At the time the Access Arrangement was submitted, the joint owners of the pipeline (the Tubridgi Parties) comprised:

SAGASCO South East Inc  
Boral Energy Petroleum Pty Ltd  
Boral Energy Amadeus NL  
Pan Pacific Petroleum NL  
Tubridgi Petroleum Pty Ltd

Since submission of the Access Arrangement, the names of Boral Energy Petroleum Pty Ltd and Boral Energy Amadeus NL have been altered to Origin Energy Petroleum Pty Ltd and Origin Energy Amadeus NL, respectively. The latter company names are used throughout this Draft Decision.

The Regulator assessed the proposed Access Arrangement and Access Arrangement Information against the requirements and principles of the *Gas Pipelines Access (Western Australia) Act 1998* which gives effect to the *Gas Pipelines Access (Western Australia) Law*, including the Code. In addition, the Regulator considered issues raised in submissions made on the Access Arrangement by interested parties.

The Draft Decision of the Regulator is to not approve the Access Arrangement in its current form. The reasons for this decision are summarised in this part and detailed in Part B of this Draft Decision.

The Draft Decision of the Regulator is that, in order for the Access Arrangement to be approved, the Access Arrangement will need to be amended and further information will need to be provided in the Access Arrangement Information. These requirements of the Regulator are summarised below under the following categories.

- Non-tariff matters.
- Reference Tariff.
- Fees and charges other than Reference Tariffs.

## NON-TARIFF MATTERS

Sections 3.1 to 3.20 of the Code require 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 material in addition to the above requirements, and this material is considered not to be reasonable.

The Regulator's assessment of the adequacy of the Access Arrangement in respect of the non-tariff matters is summarised below together with statements of amendments that must be made to the Access Arrangement before it will be approved by the Regulator.

### Services Policy

A Services Policy is provided in clause 2 of the Access Arrangement, comprising an offer by the Tubridgi Parties to make available to Users and Prospective Users a Reference Service (the Haulage Reference Service) and Non-Reference Services (Negotiated Services).

The Haulage Reference Service is described in clauses 2 and 4 of the Access Arrangement and in the General Terms and Conditions. Clause 2 of the Access Arrangement indicates the Haulage Reference Service to comprise:

- accepting a quantity of gas at a transmission receipt point;
- the physical forward haulage of gas from that transmission receipt point to a transmission delivery point;
- the delivery of an equivalent quantity of gas at a transmission delivery point;
- the provision and maintenance of metering equipment at transmission delivery points;

- readings of metering equipment at transmission receipt points once each pipeline day, with readings provided to pipeline Users on a monthly basis.

The service is a continuous service (subject to interruption as provided for under clause 13.1 of the General Terms and Conditions), with a minimum contract period of one year. The quantity of gas able to be transported under a Haulage Reference Service is defined as a Maximum Daily Quantity (MDQ) (clause 3 of the General Terms and Conditions).

The Regulator is of the opinion that the Services Policy, in addition to describing the proposed Haulage Reference Service, should make explicit provision for a back-haul service as a Non-Reference Service. The reason for this is the potential importance of a backhaul service in provision of a competitive gas supply to Onslow.

The Regulator gave consideration to the particular components of the proposed Haulage Reference Service and identified concerns relating to metering, ambiguity as to whether the Haulage Reference Service accommodates single or multiple receipt points and delivery points, and pre-conditions for obtaining services.

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

Amendment 1

Clause 2 of the Access Arrangement should be amended to include a back-haul service as a Non-Reference Service.

Amendment 2

Clause 2.2 of the Access Arrangement and clause 6.2 of the General Terms and Conditions should be amended to incorporate, in the definition of the Haulage Reference Service, the provision of metering information to Users on a daily basis.

Amendment 3

Clause 2 of the Access Arrangement should be amended to clarify whether the Haulage Reference Service provides for multiple receipt points and delivery points in a single service agreement.

Amendment 4

Clause 4.3(g) of the Access Arrangement should be amended to read “(if the pipeline service is a Non-Reference Service, and if required by the Tubridgi Parties) the prospective pipeline user must execute a document setting out or incorporating the terms and conditions on which the Tubridgi Parties are to provide the prospective pipeline user with the pipeline service.”

Amendment 5

Clause 4.3 of the Access Arrangement should be amended to delete reference to the owner or operator of the DBNGP in relation to the requirements for a prospective pipeline user to enter into apportionment arrangements.

***General 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.

The Tubridgi Parties have provided General Terms and Conditions in a single document as Annexure B of the Access Arrangement.

The General Terms and Conditions address several matters that relate to specific requirements of sections 3.1 to 3.20 of the Code. The Regulator's considerations on these matters are dealt with in the relevant sections of this Draft Decision and in respect of the specific requirements of the Code. Other considerations arising in respect of the General Terms and Conditions were addressed by the Regulator in relation to the criterion that the terms and conditions included must, in the Regulator's opinion, be reasonable.

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

Amendment 6

Clause 2.2 of the General Terms and Conditions should be amended such that the clause provides authority to the Tubridgi Parties for delivery of gas through transmission delivery points on behalf of a User only in accordance with the service agreement with the User.

Amendment 7

Clause 4.4 of the General Terms and Conditions should be amended to provide for a less punitive arrangement for adjustments to a User's maximum daily quantity than the current provisions whereby the maximum daily quantity for a User may be increased after a single day overrun by that User.

Amendment 8

Clause 7.9 of the General Terms and Conditions should be amended to the effect that the Tubridgi Parties will not correct readings taken from any metering equipment more than one year prior to the relevant test other than if agreed to with the User or if the Tubridgi Parties are required to do so by law.

Amendment 9

Clause 8.1 of the General Terms and Conditions should be amended to indicate the range of gas quality specifications within which gas can be delivered to the Tubridgi Pipeline System.

Amendment 10

Clause 9.1 of the General Terms and Conditions should be amended to indicate the pressure range within which gas can be delivered to the Tubridgi Pipeline System.

Amendment 11

The Access Arrangement should be amended to the effect that, for any period in which provision of a Reference Service is interrupted or reduced by a failure of the Tubridgi Parties to carry out any of their obligations under a service contract for reasons of force majeure, the fixed charges of the Reference Tariff are waived to the extent to which the provision of the service is reduced.

Amendment 12

The Access Arrangement should be amended to specify the degree of reliability for the Haulage Reference Service and to indicate that capacity reservation charges (in \$/GJ of MDQ) will be waived when deliveries of gas into, through or out of the Tubridgi Pipeline System are curtailed or interrupted to an extent beyond that provided for by the specified degree of reliability.

Amendment 13

Clause 14.5 of the General Terms and Conditions should be amended to provide for a maximum period for payment of invoices of no less than 14 days.

Amendment 14

Clause 18 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 15

Clause 15.2 of the General Terms and Conditions should be amended to indicate that the determination of billing quantities in the absence of meter readings will be undertaken on a basis that is determined by the Tubridgi Parties and that is reasonable.

Amendment 16

Clauses 15.2 and 15.3 of the General Terms and Conditions should be amended to indicate that the determination of billing quantities in the absence of meter readings will be undertaken in accordance with provisions of relevant apportionment agreements.

Amendment 17

Clauses 18.3 and 19.2 of the General Terms and Conditions should be amended such that any capacity for the Tubridgi Parties to offset debt and credit is also available to Users.

Amendment 18

Clause 19.3 of the General Terms and Conditions should be amended to make provision for a seven day notice period before a service can be suspended for a User failing to pay an amount due to the Tubridgi Parties under a service agreement.

Amendment 19

Clause 20 of the General Terms and Conditions should be amended to provide a reasonable period of time for a User to alter the amount of a bank guarantee in response to any change in the amount of charges for which the User would be liable.

Amendment 20

Clause 20 of the General Terms and Conditions should be amended to describe the circumstances in which, and the potential liabilities of Users for which, the Tubridgi Parties may call upon a bank guarantee.

Amendment 21

Clause 21.2(e) of the General Terms and Conditions should be amended to provide for the Tubridgi Parties to terminate a service agreement where, in the *reasonable* opinion of the Tubridgi Parties, there is a material adverse change in the ability of the User to comply with its obligations under a service agreement.

Amendment 22

Clause 21.2(b) of the General Terms and Conditions should be amended to provide for a 21 day period for a User to remedy a breach of an obligation under a service agreement (other than an obligation to pay an amount due to the Tubridgi Parties), prior to the Tubridgi Parties being able to terminate the agreement.



Amendment 23

Clauses 21.4, 22.1 and 22.2 of the General Terms and Conditions should be deleted so as to remove provision for any existing service agreements to be contingent upon decisions by the Tubridgi Parties to decommission the Tubridgi Pipeline System, parts of the Tubridgi Pipeline System, receipt points or delivery points.

Amendment 24

The General Terms and Conditions should be amended such that any time limitation imposed on claims between parties to a service agreement, or requirements for the provision of information in relation to claims, applies equally to all parties.

Amendment 25

Clause 23.2 of the General Terms and Conditions should be amended to clarify the nature of claims relevant to this clause and to ensure that there is no unreasonable limit on the size of claims able to be made by a User against the Tubridgi Parties.

Amendment 26

Clause 25 of the General Terms and Conditions should be amended such that a User is not liable to the Service Provider for any failure, as a result of force majeure, to perform an obligation under a service agreement other than an obligation to make payments.

Amendment 27

Clause 11.5 of the General Terms and Conditions should be amended to indicate that the apportionment of lost or unaccounted-for gas will be undertaken on a basis that is consistent with provisions of relevant apportionment agreements.

Amendment 28

Clause 13.1(e) of the General Terms and Conditions should be amended to limit the rights of the Tubridgi Parties to curtail supply to the imbalance situation that arises where the quantity of gas delivered into the Tubridgi Pipeline System by or for the account of the pipeline User is *less than* the quantity of gas delivered out of the Tubridgi Pipeline System to or for the account of the pipeline User (or will or may be less than unless deliveries of gas are curtailed or interrupted).

### ***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. The Tubridgi Parties propose to manage the Tubridgi Pipeline System 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 provides for Bare Transfers and other transfers consistent with requirements of the Code. The Trading Policy also makes provision for changes of Delivery Points and Receipt Points subject to the ability of the Tubridgi Parties to withhold consent on reasonable commercial and technical grounds. Both capacity transfers and changes in Receipt Points and Delivery Points attract fees payable to the Tubridgi Parties.

The Regulator is of the opinion that the Trading Policy proposed by the Tubridgi Parties generally meets the requirements of the Code. However, the Regulator is concerned that a requirement for notification of the Tubridgi Parties of the details of Bare Transfers does not include the location of the User Receipt Point which is the subject of the transfer, and that this may impede the use of Bare Transfers where such a transfer would involve a change in receipt point.

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

Amendment 29

Clause 6.1 of the Access Arrangement should be amended to include a requirement that, prior to using any contracted capacity that is the subject of a Bare Transfer, the transferee must notify the Tubridgi Parties of the location of the User Receipt Point which is the subject of the transfer.

### ***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.

A Queuing Policy is provided by the Tubridgi Parties in clause 7 of the Access Arrangement.

The Queuing Policy provides for a queue to be formed whenever the Tubridgi Parties receive a request for pipeline services which they cannot fulfil because of insufficient capacity in the Tubridgi Pipeline System. The relative priorities of requests are determined according to:

- the position on the queue, as determined by the date and time at which each request was received; and
- a priority of requests for the Haulage Reference Service over requests for negotiated services, regardless of position in the queue.

The Access Arrangement provides details of operation of the Queuing Policy.

The Code implicitly requires that the Queuing Policy 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 requested capacity exceeds available spare capacity. Also, the Queuing Policy must accommodate, to the extent reasonably possible, the legitimate business interests of the Service Provider and of Users and Prospective Users, and generate, to the extent reasonably possible, economically efficient outcomes.

The Regulator considers that the Queuing Policy meets these requirements, with the exception of one particular provision. The Queuing Policy provides that if a Prospective User refuses an offer of capacity that is less than the capacity requested in the respective queued access request, then the access request will be removed from the queue to the extent that it would have been satisfied by the capacity offered. The Regulator regards this provision as inconsistent with the legitimate business interests of a Prospective User that has a minimum useful requirement for capacity.

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

Amendment 30

Clause 7.3 of the Access Arrangement should be amended to the effect that if a Prospective User rejects an offer of capacity that is less than the capacity requested in the respective queued access request, then the queued access request will be maintained in the same position in the queue and maintained at the same level of requested capacity as pertained to the access request prior to the offer.

***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.

An Extensions/Expansions Policy is provided by the Tubridgi Parties in clause 8 of the Access Arrangement. The policy provides for the Tubridgi Parties to maintain discretion as

to whether an extension of the Tubridgi Pipeline System of greater than \$75,000 in estimated capital cost or greater than 1 km in length becomes either part of the covered pipeline, or is treated as a stand alone pipeline. The policy provides for no change to the Reference Tariff where the extension or expansion meets the economic feasibility test of section 8.16(b)(i) of the Code, and changes to Reference Tariffs through review of the Access Arrangement, subject to the approval of the Regulator, where this test is not met but the Tubridgi Parties believe the extension or expansion has system wide benefits that justify a higher Reference Tariff for all Users or the extension or expansion is necessary to maintain the safety, integrity or Contracted Capacity of services.

Where an extension or expansion does not satisfy any of the requirements of section 8.16 of the Code, the Extensions/Expansions Policy provides for the Tubridgi Parties to apply to the Regulator to impose a surcharge in relation to the extension or expansion, or the Tubridgi Parties may agree to a capital contribution from a User.

The Regulator is of the opinion that the Access Arrangement meets the requirements of the Code in respect of an Extensions/Expansions Policy.

### ***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).

Clause 1 of the Access Arrangement specifies that the Access Arrangement will come into effect on the date on which it is approved by the Regulator under section 2 of the Code. Provision is made in clause 9 of the Access Arrangement for a Revisions Submission Date of 1 January 2004, and a Revisions Commencement Date of 1 July 2004. The implied term of the Access Arrangement is approximately 4 years.

Provision is made in clause 9.3 of the Access Arrangement for a revision of the Access Arrangement to be triggered. The Access Arrangement provides for the Tubridgi Parties to commission an independent report on forecast demand for the Tubridgi Pipeline System. That is, if this report, which will be completed by 31 March 2002, identifies that demand for the Tubridgi Pipeline System is likely to exceed 20 TJ/day for each day over any period of three consecutive months between 1 July 2002 and 30 June 2004, then the Tubridgi Parties will submit revisions to the Access Arrangement to the Regulator by 30 June 2002.

The Regulator had concerns in relation to the proposed revisions submission date and trigger events for review of the Access Arrangement.

The Tubridgi Parties have proposed a Revisions Submission Date of six months prior to the Revisions Commencement Date. In view of regulatory experience throughout Australia, the Regulator is of the opinion that a six month period is inadequate for assessment of a proposed Access Arrangement and will require that the Revisions Submission Date be brought forward to allow a nine month period for assessment.

The Regulator gave consideration to whether other specific major events should be defined that would trigger an obligation on the Tubridgi Parties to submit revisions prior to the revisions submission date. The Regulator, having given regard to the objectives in section

8.1 of the Code and the particular context of the Tubridgi Pipeline System, does not consider it necessary to include trigger mechanisms in the Access Arrangement subject to other changes to the Access Arrangement that will address uncertainty in throughput forecasts for the Access Arrangement Period.

The Tubridgi Parties have, however, included in the Access Arrangement a trigger mechanism for review of the Access Arrangement based on an excess of realised throughput over forecast throughput. The Regulator was concerned that the proposed gas throughput threshold for triggering a review of the Access Arrangement may provide for excessive benefits to be gained by the Tubridgi Parties from increased throughput before Users are able to capture a share of these benefits. Also, the Regulator considered that the proposed trigger mechanism creates inappropriate incentives for the Tubridgi Parties in relation to increasing the quantity of services delivered. Both of these matters are addressed later in this Draft Decision in relation to Incentive Mechanisms.

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

**Amendment 31**

If a provision is maintained in the Access Arrangement for a review to be triggered where an excess of realised gas throughput over forecast gas throughput occurs, clause 9.3 of the Access Arrangement should be amended to specify that the Tubridgi Parties will submit revisions of the Access Arrangement to the Regulator if the independent report on forecast demand for the Tubridgi Pipeline System (to be completed by 31 March 2002), identifies that annual demand for the Tubridgi Pipeline System in 2003/04 or 2004/05 is likely to exceed, by 5000 TJ or more for either year, the forecast throughput used to determine the Reference Tariff.

**Amendment 32**

Clause 9.1 of the Access Arrangement should be amended to provide for a Revisions Submission Date of 1 October 2003.

**REFERENCE TARIFF**

The Code requires that an Access Arrangement 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 Relevant Regulator may determine the manner in which they can best be reconciled or which of them should prevail.

The Tubridgi Parties have proposed a Reference Tariff for the Haulage Reference Service. In accordance with principles established by the Code, the Tubridgi Parties used a price path methodology for the determination of Reference Tariffs. With this approach, Reference Tariffs are determined in advance for the Access Arrangement Period. The Reference Tariff follows a path that is forecast to deliver a revenue stream sufficient to cover projected costs of providing the Haulage Reference Service.

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 Tariff proposed by the Tubridgi Parties 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***

The Tubridgi Parties adopted a Depreciated Optimised Replacement Cost (DORC) methodology as the primary basis for the determination of the Initial Capital Base for the

Tubridgi Pipeline System. The DORC value put forward by the Tubridgi Parties was derived on the basis of an optimised replacement cost for replacing the existing Tubridgi Pipeline System with a single pipeline of the same nominal capacity of the two existing pipelines (120 TJ/day). The DORC was calculated by straight-line depreciation of pipeline assets over the technical lives of three asset classes: the transmission pipeline, metering and regulation stations, and SCADA and communication assets.

The optimised replacement cost value of the Tubridgi Pipeline System was estimated by the Tubridgi Parties to be \$26.092 million and the DORC value to be 23.755 million.

In assessing the value of the Initial Capital Base proposed by the Tubridgi Parties, the Regulator considered a range of possible values for the Depreciated Actual Cost (DAC) and DORC of the Tubridgi Pipeline System. These two valuation methodologies are contemplated by the Code as normally defining the range of possible values for the Initial Capital Base.

The Tubridgi Parties did not provide a DAC value for the pipeline assets based on actual historical depreciation. The Regulator estimated that a DAC value could be in the range of \$9.4 million to \$16.7 million, based on the same assumptions as to asset lives as the Tubridgi Parties have used to determine forward-looking depreciation. The Regulator notes that the actual DAC value may be lower than this amount if historical depreciation has actually been undertaken on the basis of shorter economic lives of assets.

As a result of uncertainty over future throughput for the Tubridgi Pipeline System and hence difficulty in “optimising” replacement assets, it was not possible to definitively estimate a DORC value. However, considering only the case of a replacement pipeline with a capacity of 120 TJ/day (the capacity of the current pipeline system), the Regulator has estimated the DORC value to be \$20.672 million. This is less than the DORC value proposed by the Tubridgi Parties (\$23.755 million) for reason of different assumptions by the Regulator as to unit rates of pipeline construction.

The Regulator has noted that the Tubridgi Parties have proposed depreciating assets over an economic life that is shorter than the technical life of the principal pipeline assets, and that there is no reason to presume that the Tubridgi Parties have not depreciated the assets using a similar accelerated depreciation schedule in the past. Applying the same depreciation schedule to depreciating the optimised replacement cost for a 120 TJ/day pipeline gives an asset value of \$16.943 million. By virtue of being consistent with a “replacement cost” valuation methodology and likely historical depreciation, the Regulator considers that this value comprises a reasonable balance of interests between the Service Provider and potential Users of the Tubridgi Pipeline System.

In determining the most appropriate Initial Capital Base for the Tubridgi Pipeline System, the Regulator considered a balance of interests between the Tubridgi Parties, Users and Prospective Users. The two principal criteria for a balance of interests were that the value ascribed to the ICB should not give rise to an increase in charges for gas transportation in the Tubridgi Pipeline System over existing charges, and that the valuation of the Initial Capital Base should recognise the potential redundancy of the pipeline assets.

The Regulator noted that an Initial Capital Base equal to the revised DORC value based on a pipeline capacity equal to the current maximum capacity would result in a Reference Tariff

that is substantially less than the charges for gas transmission for the sole third party user of the Tubridgi Pipeline System at the time the Access Arrangement was submitted.

The Regulator contemplated mechanisms for accommodating asset redundancy into valuation of the Capital Base. In determining a means of dealing with asset redundancy, the Regulator considered impacts on the Service Provider and Users, arising from the effects of asset redundancy on the Capital Base and Reference Tariffs. A reasonable balance of interests was considered to be achieved through not considering asset redundancy in the valuation of the Capital Base over the Access Arrangement Period, but requiring the Tubridgi Parties to amend the Access Arrangement to incorporate a redundant Capital Policy (in accordance with section 8.27 of the Code) that will result in a reduction of the Capital Base at the end of the Access Arrangement Period to reflect the level of gas throughput and the use of pipeline assets at that time.

In view of the above considerations and other matters detailed in Part B of this Draft Decision, the Regulator has decided that the Initial Capital Base for the Tubridgi Pipeline System should be \$16.943 million as at 1 July 1999 subject to the Access Arrangement being amended to include a Redundant Capital Policy that will see the Capital Base reduced at the end of the Access Arrangement Period in accordance with the level of asset utilisation at that time.

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

Amendment 33

The Access Arrangement and Access Arrangement Information should be amended to reflect an Initial Capital Base of \$16.943 million as at 1 July 1999.

Amendment 34

The Access Arrangement should be amended to include a Redundant Capital Policy that provides for the Capital Base to be reduced at the end of the Access Arrangement in accordance with pipeline throughput and the use of pipeline assets at that time.

### ***Capital Expenditure***

Sections 8.15 to 8.21 of the Code provide for forecast Capital Expenditure on a covered pipeline and associated regulated assets to be incorporated into the Capital Base of the pipeline, and for forecast Capital Expenditure to be considered in determination of Reference Tariffs.

As the Tubridgi Parties have forecast a zero level of Capital Expenditure for the Tubridgi Pipeline, the matter has no relevance to the determination of Reference Tariffs for the Access Arrangement Period.

The Regulator notes that the zero forecast of Capital Expenditure does not negate the possibility of the Tubridgi Parties undertaking New Facilities Investment and rolling this investment into the Capital Base at the time of review of the Access Arrangement, subject to the New Facilities Investment meeting the requirements of section 8.16 of the Code.



However, the zero forecast for Capital Expenditure means that the New Facilities Investment would not be reflected in Reference Tariffs during the Access Arrangement Period.

### ***Non-Capital Costs***

Section 8.37 of the Code provides for a Reference Tariff to recover all Non-Capital Costs (or forecast Non-Capital Costs, as relevant) except for any such costs that would not be incurred by a prudent Service Provider, acting efficiently, in accordance with accepted and good industry practice, and to achieve the lowest sustainable cost of delivering the Reference Service.

The Tubridgi Parties have based the determination of the Reference Tariff on a constant real level of total Non-Capital Costs of \$495,000 per annum.

The Regulator is satisfied that the forecast of Non-Capital Costs presented by the Tubridgi Parties has been determined on the basis of reasonable assumptions and that the total Non-Capital Costs are in a range that may be expected for the particular mode of operation of the pipeline system. However, the Regulator was not satisfied that the mode of operation of the pipeline system represents efficient practice. The Regulator accepts the forecast of non-Capital Costs for the purposes of this Draft Decision, but will require further substantiation of costs associated with contract operators to ensure that these costs are consistent with efficient practice in operation of the pipeline system.

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

Amendment 35

The Access Arrangement Information should be amended, or additional information provided to the Regulator, to justify the costs of contract operations in terms of demonstration that the forecast costs are consistent with efficient operating practice for the pipeline system.

### ***Rate of Return***

The Tubridgi Parties utilised a cost-of-service methodology for the determination of Total Revenue and Reference Tariffs. The Rate of Return enters the tariff calculation through calculation of a return on the Capital Base that appears as a cost in the determination of Total Revenue. The Tubridgi Parties determined a Rate of Return through estimating a Weighted Average Cost of Capital (WACC) using Capital Asset Pricing Model (CAPM) theory.

In assessing the derivation of the WACC by the Tubridgi Parties, the Regulator obtained advice from the Allen Consulting Group. This advice comprised a review of the methodologies employed by the Tubridgi Pipeline and the reasonableness of the values adopted for specific variables, and suggestion of alternative values of variables where appropriate

On the basis of this advice, the Regulator drew conclusions on appropriate values of input variables and the value of the WACC. A comparison of the values of input variables used by the Tubridgi Parties and the revised values of the Regulator is as follows.

**Estimation of the rate of return**

Parameter	Parameter symbol	Value used by the Tubridgi Parties	Value proposed by the Regulator
Risk free rate (nominal)	$R_f$	6.37%	6.27%
Risk free rate (real)	$R_f$	3.07%	3.40%
Market risk premium	–	6.0%	6.0%
Asset beta	$b_a$	0.6	0.65
Equity beta	$b_e$	1.3	1.33
Debt beta	$b_d$	0.235	0.20
Cost of debt margin		1.2%	1.20%
Corporate tax rate	$T$	36%	31.6%
Franking credit value	$g$	30%	50%
Debt to total assets ratio	$D/V$	60%	60%
Equity to total assets ratio	$E/V$	40%	40%
Expected inflation	$p_e$	2.5%	2.78%

The real pre-tax WACC (Officer) values for the Tubridgi Pipeline System generated by the forward and reverse transformations are 8.2 and 7.0 percent, respectively. The Regulator has used the forward transformation to derive the implied allowance for corporate taxation. Accordingly, the Regulator has adopted a real pre-tax WACC of 8.2 percent for the purposes of assessing the Tubridgi Parties’ proposed Reference Tariff. The implied nominal pre tax WACC is 11.2 percent.

Implicit in these WACC values are the following rates of return on equity.

**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	16.9 percent
Real pre-tax return on equity	13.7 percent

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

**Amendment 36**

The Access Arrangement and Access Arrangement Information should be amended to reflect a pre-tax real rate of return of 8.2 percent.

### *Depreciation*

The methodology proposed by the Tubridgi Parties for depreciation of the Capital Base is described in clause 4.1.3 of the Access Arrangement Information. This methodology involves an “accelerated” straight-line depreciation of the Capital Base using depreciation rates that are greater than would be implicit in straight-line depreciation of assets over their entire lives.

Section 8.33(b) of the Code sets out a principle for depreciation that each asset or group of assets that form part of a covered pipeline is depreciated over the economic life of the asset or group of assets. The Regulator considers that this principal is consistent with accelerated depreciation in circumstances where there are reasonable expectations that the useful life of assets (ie. the period over which the assets may be used to generate a revenue stream) is less than the envisaged technical life of the assets. It may reasonably be expected that the useful life of the assets of the Tubridgi Pipeline System would be limited by production from the relevant gas fields. Accelerated depreciation is thus considered to be consistent with the principles of the Code.

While regarding accelerated depreciation to be consistent with the depreciation principles set out in the Code, the Regulator is cognisant of the current use of the pipeline assets at substantially less than capacity and the arguable redundancy of assets. However, the Regulator considers that the redundancy of assets should be addressed through the value of the Capital Base and has proposed that the Access Arrangement should be amended to include a Redundant Capital Policy. In the absence of market growth for gas transport in the Tubridgi Pipeline System, this policy will have the effect of removing amounts from the Capital Base at the time of Review of the Access Arrangement, thus reducing depreciation costs. While the delay in exercising any capital redundancy provisions may benefit the Tubridgi Parties, the Regulator considers this to be a reasonable balancing of interests between the Service Provider and Users.

The Regulator accepts the Depreciation Schedule proposed by the Tubridgi Parties but has adjusted the values of depreciation to reflect the revised value of the Capital Base.

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

## Amendment 37

The Access Arrangement and Access Arrangement Information should be amended to reflect depreciation costs over the Access Arrangement Period as follows.

**Depreciation (\$ million at 30 June 2000)**

<b>Asset Class</b>	<b>1999/00</b>	<b>2000/01</b>	<b>2001/02</b>	<b>2002/03</b>	<b>2003/04</b>
Transmission pipe	0.729	0.729	0.729	0.729	0.729
Meter Stations	0.113	0.113	0.113	0.113	0.113
SCADA & comm.	0.014	0.014	0.014	0.014	0.014
<b>Total</b>	<b>0.855</b>	<b>0.855</b>	<b>0.855</b>	<b>0.855</b>	<b>0.855</b>

**Total Revenue**

The Tubridgi Parties utilised a cost of service methodology for the determination of Total Revenue. Total Revenue for each year of the Access Arrangement Period was calculated as the sum of:

- a return on the Capital Base;
- depreciation of the Capital Base; and
- Non-Capital Costs.

On the basis of analysis of the information provided by the Tubridgi Parties, the Regulator considers the Total Revenue proposed for the Tubridgi Pipeline System needs to be revised to reflect a revised Initial Capital Base of \$16.943 million and a revised Rate of Return of 8.2 percent (pre-tax real). These changes affect the depreciation and the return on capital components of Total Revenue.

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

## Amendment 38

The Access Arrangement and Access Arrangement Information should be amended to reflect a Total Revenue requirement as follows.

**Total Revenue (\$million at 30 June 2000)**

<b>1999/00</b>	<b>2000/01</b>	<b>2001/02</b>	<b>2002/03</b>	<b>2003/04</b>	<b>Total</b>
2.739	2.669	2.599	2.529	2.459	12.995

**Revenue Allocation and Reference Tariff**

In determining Reference Tariffs, a Service Provider must determine (explicitly or implicitly) the costs or share of costs of pipeline operation that will be recovered through each Reference Service.

For the purposes of calculating a Reference Tariff for the Haulage Reference Service, the Tubridgi Parties assumed that all forecast gas transportation in the Tubridgi Pipeline System would occur as a Haulage Reference Service. Total Revenue was thus allocated uniformly across all units of forecast gas transportation. No explicit consideration was given to, or

forecasts provided for, gas transportation occurring as Negotiated Services. The Tubridgi Parties have proposed that Negotiated Services comprise Rebatable Services with any revenue from Negotiated Services in excess of \$350,000 in any financial year being distributed equally between the Tubridgi Parties and Users, subject the target revenue being achieved for the Reference Service.

A further stage of cost allocation is the allocation of target revenue for each Reference Service to the various charges that make up each Reference Tariff. The Code does not establish explicit rules or guidelines for the structuring of Reference Tariffs. However, in setting out the general objectives for Reference Tariffs and a Reference Tariff policy, section 8.1 of the Code states that a Reference Tariff and Reference Tariff Policy should be designed with a view to achieving efficiency in the level and structure of the Reference Tariff.

The Tubridgi Parties have specified the Reference Tariff for the Haulage Reference Service as being made up of two charges:

- i. a fixed charge on booked MDQ, set to recover 80 percent of Total Revenue; and
- ii. a variable charge per GJ of throughput, set to recover 20 percent of Total Revenue.

The Regulator considers that the allocation of Total Revenue and structure of Reference Tariffs should be a matter of commercial discretion for a Service Provider, subject to any proposed tariff structure not being unreasonably inconsistent with any relevant criteria of efficiency and equity.

The allocation of the entire Total Revenue to the Haulage Reference Service is considered by the Regulator to be a reasonable basis for determining the Reference Tariff.

With the Tubridgi Pipeline System, the almost entirely fixed nature of costs underlying Total Revenue means that a Reference Tariff structure comprised predominantly of fixed charges would meet efficiency criteria. This is consistent with the 80 percent fixed charge and 20 percent quantity charge proposed by the Tubridgi Parties. Furthermore, the proposed tariff structure is similar to tariff structures for other Australian transmission pipelines. On this basis, the Regulator does not consider there to be any grounds for requiring changes to the proposed tariff structure.

Notwithstanding the general acceptability of the proposed allocation of Total Revenue and the structure of the Reference Tariff, the Regulator will require amendment of the Access Arrangement to reflect a revised Reference Tariff that reflects changes to the Initial Capital Base and Rate of Return, and also to reflect possible changes to expected gas throughputs over the Access Arrangement Period.

Subsequent to the Tubridgi Parties deriving Reference Tariffs and submitting the Arrangement, additional information has come to the attention of the Regulator that, in the Regulator's opinion, necessitates a revision of forecast quantities of gas throughput for the Access Arrangement Period. For the purposes of this Draft Decision, the Regulator has used a revised forecast of gas throughput based on new information available since submission of the Access Arrangement. The Regulator will, however, require that the Tubridgi Parties submit a revised forecast of gas throughput for consideration prior to the Final Decision.

The revised throughput forecast used for the purposes of considering the Reference Tariff is as follows.

<b>Revised forecast of gas throughput</b>						
	<b>1999/2000</b>	<b>2000/2001</b>	<b>2001/2002</b>	<b>2002/2003</b>	<b>2003/2004</b>	<b>Total</b>
<b>Original throughput forecast (TJ)</b>	11,654	10,440	6,178	2,751	1,095	32,118
<b>Revised throughput forecast (TJ)</b>	12,314	12,124	7,912	6,584	6,222	45,156

The Regulator revised the proposed Reference Tariff to reflect adjustments made in this Draft Decision to Total Revenue (as a result of changes to the Initial Capital Base and Rate of Return) and the revised forecast of gas 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. In view of this, the Tubridgi Parties have 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. For the purposes of the Draft Decision the Regulator has assessed Reference Tariffs on the basis of the 10 percent pass through of the goods and services tax as proposed by the Tubridgi Parties. However, prior to the final approval of a Reference Tariff, the Regulator will require the Tubridgi Parties to submit an independent audit certificate verifying that the percentage increase in the Reference Tariff to account for the net effect of the goods and services tax and related taxation changes has been calculated according to generally accepted accounting principles and/or accounting standards.

A comparison of the proposed and revised Reference Tariff is as follows.

<b>Proposed and revised Reference Tariff (dollar values at 30 June 1999)</b>			
	<b>MDQ Charge (\$/GJ of MDQ/day)</b>	<b>Commodity Charge (\$/GJ throughput)</b>	<b>Indicative Average Tariff at 100% load factor (\$/GJ throughput)</b>
Proposed Tariff	0.322	0.105	0.427
Revised Tariff (excl. goods and services tax)	0.173	0.056	0.229
Revised Tariff (incl. goods and services tax)	0.190	0.062	0.252

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

Amendment 39

The Access Arrangement and Access Arrangement Information should be amended to reflect updated throughput forecasts for the Tubridgi Pipeline System and to substantiate the updated forecast.

Amendment 40

Should the revised throughput forecast for the Tubridgi Pipeline System be consistent with that assumed by the Regulator for the purposes of this Draft Decision, the Access Arrangement should be amended to provide for the Reference Tariff for the Haulage Reference Service in 1999/2000 to comprise an MDQ charge of \$0.190 per GJ of MDQ and a commodity charge of \$0.062 per GJ of gas throughput, inclusive of the goods and services tax.

As already indicated, revenue from the sale of Negotiated Services was not incorporated into the determination of the Reference Tariff. Rather, the Tubridgi Parties made provision in the Access Arrangement for Negotiated Services to be Rebatable Services within the meaning of section 8.40 of the Code. Half of the revenue derived from Negotiated Services in a financial year would be paid to Users of the Reference Service subject to:

- earning of revenue in excess of \$350,000 in that financial year from Negotiated Services; and
- the Tubridgi Parties earning minimum threshold levels of revenue from the Reference Service in that financial year, where the threshold levels are equal to the expected revenue for each year at the commencement of the Access Arrangement Period and determined on the basis of the Tubridgi Parties' proposed Reference Tariff and assumptions as to gas quantities.

The Regulator recognises the strong incentive provided by this rebate mechanism for the Tubridgi Parties to provide Negotiated Services, while at the same time providing for a sharing of benefits with Users. However, notwithstanding the desirability of the incentive to provide Negotiated Services, there are potential incentive problems with the provisions for the payment of rebates. These incentive problems are further addressed below in relation to Incentive Mechanisms.

An additional potential problem with the proposed provisions for Rebatable Services arises as a result of a significant proportion of the projected throughput of the Tubridgi Pipeline System comprising gas transported by the Tubridgi Parties on their own behalf. While this has been assumed to constitute transportation under the Reference Service for the purposes of determining the Reference Tariff, there may not be any revenue explicitly collected for this gas transportation. Unless provision is made to account for notional revenue to be recovered for gas transportation by the Tubridgi Parties on their own behalf as if this was undertaken as a Reference Service, the threshold levels of revenue for payment of rebates may not be reached despite gas throughput exceeding the throughput quantities projected for the purposes of the Access Arrangement. Such provision has not been made in the proposed Access Arrangement.

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

Amendment 41

The Access Arrangement should be amended to the effect that, for regulatory purposes, gas transportation undertaken by the Tubridgi Parties on their own behalf is assumed to return a revenue as if this gas transportation was undertaken as a Haulage Reference Service.

***Reference Tariff Variation and Incentive Mechanisms***

The Tubridgi Parties propose that the charges making up the Reference Tariff be inflated annually by a factor of one plus the percentage change in the CPI.

The Tubridgi Parties have proposed two Incentive Mechanisms that were argued to provide incentives to increase gas throughput in the Tubridgi Pipeline System and to reduce costs:

- i. the Total Revenue and the Reference Tariff will be held constant, in real terms, over the Access Arrangement Period regardless of realised Non-Capital Costs and Revenue; and
- ii. any reductions in Non-Capital Costs achieved within the Access Arrangement Period will be carried through to the next Access Arrangement Period and the savings shared with Users in the subsequent Access Arrangement Period through a reduction in the Total Revenue requirement.

The Regulator had concerns in regard to both the proposal for inflation escalation of Reference Tariffs and the Incentive Mechanisms. This concern is addressed below in relation to incentive mechanisms.

Also, 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 and that the Access Arrangement should be amended to this effect.

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

Amendment 42

The Access Arrangement should be amended such that for the purposes of setting the Reference Tariff 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.

No provision is made in the Access Arrangement for the sharing between the Tubridgi Parties and Users of benefits of cost reductions within the Access Arrangement Period, although it is noted that clause 3.2.3.2 of the Access Arrangement provides for any reductions in Non-Capital Costs to be shared with Users over the subsequent Access Arrangement Period. The Regulator considers these proposed provisions to be consistent with the requirements of the Code and to be reasonable, at least for the initial Access Arrangement Period.

Provision is made in the Access Arrangement for the sharing between the Tubridgi Parties and Users of benefits of increased throughput over the Access Arrangement Period. The relevant provisions in the Access Arrangement are:



- the proposal for a review of the Access Arrangement to be triggered in the event that an independent assessment of demand in 2002 indicates that demand for services is likely to exceed 20 TJ/day for each day over any period of three consecutive months between 1 July 2002 and 30 June 2004 (clause 9.3 of the Access Arrangement, as discussed in section 4.8 of this Draft Decision); and
- the proposal for Negotiated Services to comprise rebatable services, where rebates to Users of the Reference Services are paid where revenue from Reference Services and Negotiated Services exceeds threshold amounts in any financial year (clause 3.2.5 of the Access Arrangement, as discussed in section 5.9 of this Draft Decision).

The Regulator is of the view that these provisions for sharing of benefits between the Tubridgi Parties and Users should be considered as part of an incentive mechanism and assessed against the objectives for an incentive mechanism as set out in section 8.46 of the Code.

As indicated in sections 4.8 and 5.9 of this Draft Decision, the Regulator has concerns as to several potential incentive problems arising from the proposed trigger event for review of the Access Arrangement, and the proposed provisions for payment of rebates from negotiated Services revenue. These potential incentive problems are as follows.

- A provision for triggering a review of the Access Arrangement where realised throughput exceeds forecast throughput by some threshold amount is probably not justified for the Tubridgi Pipeline System given the low revenues from gas transmission for this pipeline and the costs that would be incurred in reviewing the Access Arrangement.
- The provisions for rebates to be paid from revenues received from sale of Negotiated Services create an incentive for the Tubridgi Parties to supply Negotiated Services in preference to the Reference Service, which is contrary to the objective for an incentive mechanism set out in section 8.46(a) of the Code.
- The provision for the payment of rebates from Negotiated Services revenue potentially creates an incentive for the Tubridgi Parties to seek to alter actual gas throughputs across financial years to minimise rebate liabilities. This may be contrary to the efficient use of pipeline capacity, and hence contrary to the objective for a Rebatable Service set out in section 8.40(a) of the Code.

The Regulator will require that the Access Arrangement be amended to address these potential incentive problems. In the first instance, the Regulator will allow the Tubridgi Parties to propose suitable changes to the Access Arrangement. However, the Regulator suggests that it may be appropriate to have a rebate mechanism based on an excess of realised throughput or revenue over forecast throughput or revenue. This could negate the need for inclusion in the Access Arrangement of a trigger for review of the Access Arrangement in such circumstances as well as meeting the objectives of an incentive mechanism for increasing pipeline throughput and the sale of Non-Reference Services. For the purposes of containing the costs of regulation, the Regulator considers that a short Access Arrangement Period and/or the triggering of an early review of the Access Arrangement should be avoided where there exists suitable alternative mechanisms of accommodating uncertainty in throughput forecasts.

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

## Amendment 43

Clause 3.2.5 (Rebate of Revenue from Negotiated Services) and clause 9.3 (Trigger Event) of the Access Arrangement should be amended to be consistent with the objectives for Rebatable Services and Incentive Mechanisms as set out in sections 8.40 and 8.46 of the Code.

***Fees and Charges Other than Reference Tariffs***

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

- a Service Request application fee, levied on Prospective Users for lodgement of application form with the Tubridgi Operator (clause 2.4 of the Access Arrangement);
- an Overrun Charge, levied on Users whenever the quantity of gas delivered through any User Delivery Point to or for the account of the User on any Pipeline Day exceeds the MDQ for that User Delivery Point (clause 4.1 of the General Terms and Conditions);
- goods and services tax in respect of a taxable supply made by the Tubridgi Parties to a User (clause 16 of the General Terms and Conditions);
- charges levied on Users to recoup costs arising from taxes and imposts on the Tubridgi Parties either directly related to the service provided to particular Users or related only to provision of pipeline services *in toto* (clauses 17.1 and 17.2 of the General Terms and Conditions);
- reimbursement of the Tubridgi Parties on demand for any costs incurred by the Tubridgi Parties in connection with the preparation, negotiation, execution and delivery of the Agreement and payment of all stamp duty payable in any jurisdiction on or in respect of the Agreement or any document prepared or executed pursuant to the agreement (clause 34 of the General Terms and Conditions);
- a fee payable on application for a transfer of capacity, other than a Bare Transfer, or on application for a change of Delivery Points or Receipt Points (clause 6.4 of the Access Arrangement); and
- reimbursement of the Tubridgi Parties for costs incurred in assessing the technical and commercial feasibility of an application for a transfer of capacity, other than a Bare Transfer, or an application for a change of Delivery Points or Receipt Points (clause 6.4 of the Access Arrangement).

These fees and charges comprise 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.

The Code does not address the levying of fees and charges by a Service Provider on Users or Prospective Users other than through Reference Tariffs. Sections 3.1 to 3.20 of the Code, that outline the required scope of an Access Arrangement, do not explicitly require fees and charges to be specified. However, to the extent that fees and charges comprise part of the

Terms and Conditions for provision of Reference Services, such matters may fall within the scope of section 3.6 of the Code. This section of the Code requires that an Access Arrangement include the terms and conditions on which the Service Provider will supply each Reference Service.

In considering the fees and charges arising in respect of a Service Agreement for a Reference Service, the Regulator gave attention to 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 considered matters set out in section 2.24 of the Code:

- (a) the Service Provider's legitimate business interests and investment in the Covered Pipeline;
- (b) firm and binding contractual obligations of the Service Provider or other persons (or both) already using the Covered Pipeline;
- (c) the operational and technical requirements necessary for the safe and reliable operation of the Covered Pipeline;
- (d) the economically efficient operation of the Covered Pipeline;
- (e) the public interest, including the public interest in having competition in markets (whether or not in Australia);
- (f) the interests of Users and Prospective Users; and
- (g) any other matters that the Relevant Regulator considers are relevant.

The Regulator also took into account the capacity under the Code for a Service Provider to levy charges on a User in addition to the Reference Tariff, and to alter the Reference Tariff.

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

**Amendment 44**

Clause 16 of the General Terms and Conditions should be amended to remove the provision for a User to be charged an amount in excess of the Reference Tariff for the purposes of recovering any goods and service tax liability incurred by the Tubridgi Parties as a result of the Reference Service being a taxable supply within the meaning of the *A New Tax System (Goods and Service Tax) Act 1999*.

**Amendment 45**

Clause 17 of the General Terms and Conditions should be amended to remove the provision for the Tubridgi Parties to levy charges on Users, in addition to the Reference Tariff, to recover any impost imposed on or paid or payable by the Tubridgi Parties in relation to the provision of pipeline services.

Amendment 46

Clause 34 of the General Terms and Conditions should be amended such that the imposition of charges on a User for the preparation, negotiation, execution and delivery of a service agreement is limited to the costs of stamp duty and other government imposts.