

IN THE WESTERN AUSTRALIAN ELECTRICITY REVIEW BOARD (IN ITS CAPACITY AS THE LOCAL APPEALS BOARD PURSUANT TO THE NATIONAL GAS ACCESS (WA) ACT 2009, THE NATIONAL GAS ACCESS (WA) (PART 3) REGULATIONS 2009 AND THE ENERGY ARBITRATION AND REVIEW ACT (WA) 1998)

[No. of 2010]

Re Application for review of the decision by the Western Australian Economic Regulation Authority published on 5 August 2010 to approve its own revised Access Arrangement for the Goldfields Gas Pipeline

Application by:

BHP BILLITON NICKEL WEST PTY LTD (ABN 76 004 184 598)

Applicant

APPLICATION FOR REVIEW

Date of Document: 19 August 2010

Filed on behalf of: The Applicant

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Pursuant to section 39 of Schedule 1 to the *Gas Pipelines Access (Western Australia) Act 1998* (Act), and section 2.26 of the National Third Party Access Code for Natural Gas Pipeline Systems (as set out in Schedule 2 to the Act) (Code) (which continues to apply to the Access Arrangement in respect of the Goldfields Gas Pipeline by operation of clause 29 of Schedule 3 of the *National Gas Access (WA) Act 2009*), the applicant applies for review of the decision made on 5 August 2010 by the Western Australian Economic Regulation Authority (Regulator) and placed on the public register kept by the Code Registrar under the Code on 5 August 2010, whereby the Regulator decided to draft and approve the Regulator's own Access Arrangement (Revised Access Arrangement) for the Goldfields Gas Pipeline in place of the Proposed Revised Access Arrangement submitted by Goldfields Gas Transmission Pty Ltd

(GGT) on 4 June 2010, and all decisions relating thereto, and after making due allowance for the saving and transitional provisions under the *National Gas Access (WA) Act 2009*.

The applicant seeks the following final orders, in order to give effect to the attached grounds of review:

1. The decision of the Regulator to draft and approve his own Access Arrangement be immediately varied so as to correct the errors made by the Regulator, taking into account the grounds of this application.
2. Further or in the alternative, the Board draft and approve a revised Access Arrangement so as to correct the errors made by the Regulator, taking into account the grounds of this application.
3. Such further or other orders as may be appropriate.

The applicant makes application for review on the attached grounds (which may be amended and/or supplemented once the applicant has access to all of the material referred to in section 39(5) of Schedule 1 to the Act).

Mallesons Stephen Jaques
Solicitors for the applicant

Reference Tariffs

1. The Regulator erred in its findings of fact or the exercise of its discretion was incorrect or was unreasonable having regard to all the circumstances, in that the Regulator misconstrued and misapplied the Code, in particular the objectives of the Code and sections 1, 2.42, 3.4, 3.5, 3.16, and 8 of the Code in determining the Reference Tariffs proposed in the Revised Access Arrangement by failing to properly formulate, determine, and/or take account of, the required inputs into the Reference Tariff when determining the Reference Tariffs including by:
 - (a) incorrectly excluding the Expansions of Capacity (as defined in the Regulator's Final Decision on GGT's Proposed Revisions to the Access Arrangement for the Goldfields Gas Pipeline dated 13 May 2010 (**Regulator's Final Decision**)) (**Expansions of Capacity**), from the Covered GGP (as defined in the Regulator's Final Decision) (**Covered GGP**), for the purposes of determining the Reference Tariffs;
 - (b) incorrectly treating the services available as a result of the capacity created by Expansions of Capacity as not forming part of the Revised Access Arrangement for the purposes of determining the Reference Tariffs;
 - (c) further and in the alternative to paragraphs 1(a) and 1(b) above, failing to properly take into account all actual and forecast costs, revenues and volumes relating to the Expansions of Capacity and resulting services in determining the Reference Tariffs;
 - (d) further and in the alternative to paragraphs 1(a) and 1(b) above, failing to bring the capital costs, operating costs of the pipeline as a whole, including the Expansions of Capacity, and the services to be provided by the pipeline as a whole, including the Expansions of Capacity, to account in determining the Reference Tariffs;
 - (e) further and in the alternative to paragraphs 1(a) and 1(b) above, incorrectly using the capital costs, operating costs and capacity of only the Covered GGP in determining the total revenue and only the services provided using the Covered GGP in determining the Reference Tariffs;
 - (f) failing to take into account historical over-recovery of total revenue in respect of the pipeline during the following periods in determining the Reference Tariffs:

- (i) for the periods prior to 1 January 2010; and
 - (ii) from 1 January 2010 to 20 August 2010,
including the over-recovery of total revenue related to inaccurate volume forecasts in respect of the capacity of the pipeline;
- (g) using financial model(s) to determine the Reference Tariffs which did not correctly take into account the period between 1 January 2010 and 20 August 2010, including by failing to properly reflect the revenues, capital base, depreciation, operating costs and other costs in respect of the pipeline during the period 1 January 2010 and 20 August 2010, in determining the Reference Tariffs;
- (h) further and in the alternative to paragraph 1(g), failing to use appropriate inputs in the financial model(s) to account for the position between 1 January 2010 and 20 August 2010, including failing to properly reflect the revenues, capital base, depreciation, operating costs and other costs in respect of the pipeline during the period 1 January 2010 and 20 August 2010, in determining the Reference Tariffs; and
- (i) incorrectly determining the volume forecasts for the Revised Access Arrangement and utilising those forecasts for the purposes of determining the Reference Tariffs.

Coverage of Capacity

2. Further and in the alternative to paragraph 1 above, the Regulator erred in its findings of fact or the exercise of its discretion was incorrect or was unreasonable having regard to all the circumstances, in that the Regulator misconstrued and misapplied the Code, in particular the Objectives and sections 1, 2.42, 3.4, 3.5, 3.16, and 8 of the Code by:
- (a) incorrectly excluding the Expansions of Capacity from the Covered GGP for all purposes under the Revised Access Arrangement;
 - (b) incorrectly treating the services available as a result of the capacity created by the Expansions of Capacity as not forming part of the Revised Access Arrangement for all purposes under the Revised Access Arrangement;
 - (c) further and in the alternative to paragraphs 2(a) and 2(b) above, failing to properly take into account all actual and forecast costs, revenues and volumes

relating to the Expansions of Capacity and resulting services for all purposes under the Revised Access Arrangement;

- (d) further and in the alternative to paragraphs 2(a) and 2(b) above, failing to bring the capital costs, operating costs of the pipeline as a whole, including the Expansions of Capacity, and the services to be provided by the pipeline as a whole, including the Expansions of Capacity, to account for all purposes under the Revised Access Arrangement; and
- (e) further and in the alternative to paragraphs 2(a) and 2(b) above, incorrectly using the capital costs, operating costs and capacity of only the Covered GGP in determining the total revenue and only the services provided using the Covered GGP for all purposes under the Revised Access Arrangement.

Historical Over Recovery

3. Further and in the alternative to paragraph 1 above, the Regulator erred in its findings of fact or the exercise of its discretion was incorrect or was unreasonable having regard to all the circumstances, in that the Regulator misconstrued and misapplied the Code, in particular the Objectives and sections 2.42 , 3.4, 3.5 and 8 of the Code by failing to take into account the historical over-recovery of total revenue in respect of the pipeline during the following periods:

- (a) for the periods prior to 1 January 2010; and
- (b) from 1 January 2010 to 20 August 2010,

for all purposes under the Revised Access Arrangement, including the over-recovery of total revenue related to inaccurate volume forecasts in respect of the capacity of the pipeline.

Effective Date in Regulator's Financial Model

4. Further and in the alternative to paragraph 1 above, the Regulator erred in its findings of fact or the exercise of its discretion was incorrect or was unreasonable having regard to all the circumstances, in that the Regulator misconstrued and misapplied the Code, in particular the Objectives and sections 1, 2.42, 3.4, 3.5 and 8 of the Code by:

- (a) using financial model(s) to determine the Reference Tariffs which did not correctly take into account the period between 1 January 2010 and 20 August 2010, including by failing to properly reflect the revenues, capital base, depreciation, operating costs and other costs in respect of the pipeline during the period 1 January 2010 and 20 August 2010, for all purposes under the Revised Access Arrangement; and
- (b) further and in the alternative to paragraph 4(a), failing to use appropriate inputs in the financial model(s) to account for the position between 1 January 2010 and 20 August 2010, including failing to properly reflect the revenues, capital base, depreciation, operating costs and other costs in respect of the pipeline during the period 1 January 2010 and 20 August 2010, for all purposes under the Revised Access Arrangement.

Volume Forecasts in Revised Access Arrangement

5. Further and in the alternative to paragraph 1 above, the Regulator erred in its finding of facts or the exercise of its discretion was incorrect or was unreasonable having regard to all the circumstances, in that the Regulator misconstrued and misapplied the Code, in particular sections 1, 2.42, 3.4, 3.5 and 8 of the Code by incorrectly determining the volume forecasts for the Revised Access Arrangement for all purposes under the Revised Access Arrangement.

Reservation

6. The applicant reserves the right to amend and/or supplement the grounds set out in paragraphs 1 to 5 above once the applicant has access to all of the material referred to in section 39(5) of Schedule 1 to the Act.